TEXAS REGISTER

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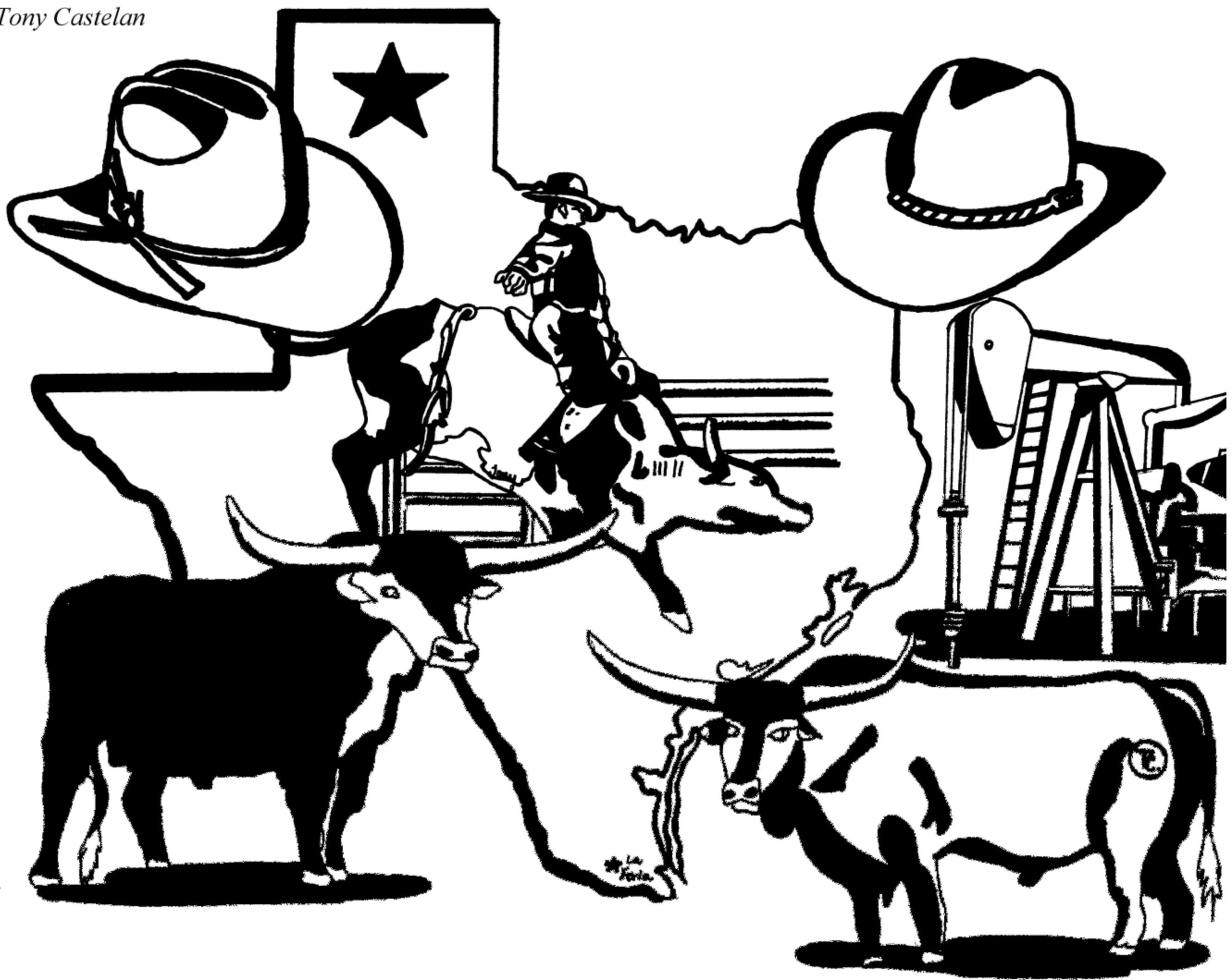
Tony Castelan



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Open Meetings

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

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

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

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

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

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

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

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

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

THE GOVERNOR

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

Proclamation 41-3137

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby amend my September 13, 2007, proclamation to include Chambers County, certifying that severe storms and flooding as a result of Hurricane Humberto that began on September 12, 2007, have also caused a disaster in this county.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such threat and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that threat.

As provided in Section 418.016, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 19th day of September, 2007.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200704515

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-0621-GA

Requestor:

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether section 30.05, Penal Code, the Criminal Trespass statute, is applicable to recreational vehicle parking (Request No. 0621-GA)

Briefs requested by October 22, 2007

RQ-0622-GA

Requestor:

Mr. Robert Scott, Acting Commissioner

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701

Re: Whether the Schoolchildren's Religious Liberties Act, subchapter E, chapter 25, Education Code, is circumscribed in the Houston Independent School District by a 1970 permanent injunction issued by a federal district court (RQ-0622-GA)

Briefs requested by October 22, 2007

RQ-0623-GA

Requestor:

The Honorable Warren Chisum

Chair, Committee on Appropriations

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a foreign corporation may transport horsemeat for human consumption in-bond through Texas for immediate export abroad (RQ-0623-GA)

Briefs requested by October 24, 2007

RQ-0624-GA

Requestor:

The Honorable David Aken

San Patricio County Attorney

San Patricio County Courthouse, Room 108

Sinton, Texas 78387

Re: Meaning of "proper magistrate" or "proper court" for purposes of article 15.20(b), Code of Criminal Procedure (RQ-0624-GA)

Briefs requested by October 24, 2007

RQ-0625-GA

Requestor:

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

County Courthouse

111 East Locust, Suite 408A

Angleton, Texas 77515

Re: Possible conflict between two bills enacted by the 80th Legislature that amend section 25.0951(a), Education Code, relating to a student's failure to attend school (RQ-0625-GA)

Briefs requested by October 24, 2007

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

TRD-200704492
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 25, 2007

♦ ♦ ♦

Opinions

Opinion No. GA-0569

The Honorable Marsha Monroe

Terrell County Attorney

Post Office Box 745

Sanderson, Texas 79848

Re: Whether certain county officers and employees may hold additional county positions (RQ-0580-GA)

S U M M A R Y

A justice of the peace is not barred by either article XVI, section 40 of the Texas Constitution or the common-law doctrine of incompatibility from simultaneously serving as a county emergency medical service employee. The justice of the peace may, however, wish to consult with the State Commission on Judicial Conduct to assess whether the Code of Judicial Conduct bars such dual service.

A justice of the peace is an elected official-not an employee of the county. The salary and other compensation, such as benefits, for justices of the peace are set by the commissioners court.

A full-time dispatcher for a county sheriff's office is not barred by either article XVI, section 40 of the Texas Constitution or the common-law doctrine of incompatibility from simultaneously serving in a contractual position as director of county emergency medical services. Whether one person can, as a practical matter, carry out both functions must be determined by the sheriff and the commissioners court as the respective supervisors of the two positions.

Opinion No. GA-0570

The Honorable Rex Emerson

Kerr County Attorney

County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Whether a county court at law judge may render judgment in felony cases after the presiding judge of the administrative judicial region assigns him to district court (RQ-0581-GA)

S U M M A R Y

Pursuant to proper assignment by the presiding judge of the judicial region, a statutory county court judge is authorized to hear and decide a felony case in a district court within the judge's county of residence.

Opinion No. GA-0571

The Honorable Bill Moore

Johnson County Attorney

Guinn Justice Center

204 South Buffalo Avenue

Fourth Floor, Suite 410

Cleburne, Texas 76033-5404

Re: Responsibility for selection and discontinuance of financial software used by the office of the county auditor (RQ-0583-GA)

S U M M A R Y

Absent a financially excessive or unreasonable request as determined by the county commissioners court, a county auditor has authority to choose the financial software for use in his or her office. Subject to the same limitation, that authority includes the discretion to choose between vendors and to continue using a particular financial software over the objections of the county commissioners court.

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

TRD-200704488
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 25, 2007

EMERGENCY RULES

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

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

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 is renewing the effectiveness of the emergency adoption of the amendment to §4.3, for a 30-day period. The text of the new section was originally published in the June 29, 2007 issue of the *Texas Register* (32 TexReg 3915).

Filed with the Office of the Secretary of State on September 17, 2007.

TRD-200704289
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Original Effective Date: June 14, 2007
Expiration Date: November 10, 2007
For further information, please call: (512) 427-6114

19 TAC §4.10

The Texas Higher Education Coordinating Board is renewing the effectiveness of the emergency adoption of the amendment to §4.10, for a 30-day period. The text of the new section was originally published in the June 29, 2007 issue of the *Texas Register* (32 TexReg 3915).

Filed with the Office of the Secretary of State on September 17, 2007.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Original Effective Date: June 14, 2007
Expiration Date: November 10, 2007
For further information, please call: (512) 427-6114

SUBCHAPTER I. WORK-STUDY STUDENT MENTORSHIP PROGRAM

19 TAC §§4.191 - 4.196

The Texas Higher Education Coordinating Board is renewing the effectiveness of the emergency adoption of new §§4.191 - 4.196, for a 30-day period. The text of the new section was originally published in the June 29, 2007 issue of the *Texas Register* (32 TexReg 4309).

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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 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.5

The Texas Higher Education Coordinating Board is renewing the effectiveness of the emergency adoption of the amendment to §5.5, for a 30-day period. The text of the new section was originally published in the June 29, 2007 issue of the *Texas Register* (32 TexReg 4310).

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER Q. ENGINEERING RECRUITMENT PROGRAMS

19 TAC §§22.312 - 22.315

The Texas Higher Education Coordinating Board is renewing the effectiveness of the emergency adoption of new §§22.312 - 22.315, for a 30-day period. The text of the new section was originally published in the June 29, 2007 issue of the *Texas Register* (32 TexReg 3916).

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Original Effective Date: June 14, 2007
Expiration Date: November 10, 2007
For further information, please call: (512) 427-6114

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.18

The General Land Office adopts, on an emergency basis, new §15.18, concerning Emergency Measures for Beach and Dune Restoration and Existing Shoreline Protection Projects for City of Galveston. The General Land Office recognizes that the City of Galveston has areas where emergency hazard mitigation measures are needed to reestablish the protective barrier provided by the beach and natural dunes damaged or destroyed by storm tidal surges in order to prevent imminent peril to the public health, safety, and welfare.

The section is adopted on an emergency basis due to the imminent peril to public health, safety and welfare represented by the damage to protective barriers caused by high winds, storm surge, high tides and erosion resulting from Hurricane Humberto. As a result of Hurricane Humberto, September 12 - 13, 2007, hurricane and tropical storm winds, storm surge, extreme tides and wave action caused coastal flooding and erosion. Hurricane Humberto made landfall at 2:00 AM on September 13, 2007, five miles east of High Island, Texas, but its destructive force impacted the upper Texas coast. The City of Galveston experienced loss in elevation of beach sand. The protective barrier provided by naturally occurring beaches and dunes in these areas, as well as existing shoreline protection projects, has been adversely impacted. Coastal residents, public beaches, public and private coastal property, and coastal natural resources are extremely vulnerable to injury, damage, and destruction from subsequent tropical storms and hurricanes, as Hurricane Humberto struck before the end of hurricane season.

The General Land Office has previously adopted new §15.20 (pertaining to Emergency Measures for Dune Restoration and Existing Shoreline Protection Project Repairs) as an emergency rule effective September 14, 2007, applicable only to emergency projects located on Bolivar Peninsula in Galveston County, and to Chambers County, and Jefferson County, Texas. The General Land Office has determined that the conditions in the City of Galveston also warrant application of the rule for emergency hazard mitigation measures to projects within that jurisdiction.

New §15.18, also adopted on an emergency basis, provides that new §15.20 (pertaining to Emergency Measures for Dune Restoration and Existing Shoreline Protection Project Repairs) previously adopted and effective on September 14, 2007, also applies to the City of Galveston. The new section extending the authorization for emergency hazard mitigation measures to the City of Galveston shall be effective for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare.

The previously adopted new emergency rule §15.20 provides procedures and requirements for issuance of authorization to undertake emergency measures for dune restoration or geotextile shoreline protection project repairs for littoral property impacted by Hurricane Humberto. Section 15.20(d) allows the local government with beach/dune permitting jurisdiction to issue authorizations for emergency measures for dune restoration or for repairs to existing geotextile shoreline protection projects as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.20(e) provides that the normal permit process shall not apply to authorizations, and that emergency authorizations are valid only for six months. Section 15.20(f) provides that the local government is required to maintain a written record of the names and addresses of property owners who have been authorized to undertake emergency dune restoration projects and geotextile shoreline protection project repairs. The local government is also required to maintain a written record of the specific activities that have been authorized, including pictures of the dune area before and after the emergency dune restoration or geotextile shoreline protection project repairs are completed. Section 15.20(g) provides requirements and limitations with regard to the location of emergency dune restoration projects. Section 15.20(h) provides guidelines for authorized methods and materials with regard to emergency dune restoration projects. Section 15.20(i) contains limitations on geotextile shoreline protection project repairs to ensure that such projects are consistent with policies of the Coastal Coordination Council established for structural shoreline protection projects. Section 15.20(j) contains prohibitions with regard to dune restoration projects and shoreline protection project repairs. Section 15.20(k) prohibits a local government from authorizing construction or repair of a bulkhead or new geotextile tube shoreline protection project.

The General Land Office has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this amendment because the rule is adopted in response to a real and substantial threat to public health, safety, and welfare.

The new section is adopted on an emergency basis under the Texas Natural Resources Code §§63.121, 61.011, and 61.015(b), which provide the General Land Office with the

authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas's public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The new sections are also adopted pursuant to the Texas Natural Resources Code §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection. Finally, the new sections are adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

Texas Natural Resources Code §§63.121, 61.011, and 61.015(b), are affected by the adopted new section.

§15.18. Emergency Measures for Dune Restoration and Existing Shoreline Protection Project Repairs for City of Galveston.

(a) The provisions of §15.20 (relating to Emergency Measures for Dune Restoration and Existing Shoreline Protection Project Repairs) apply to the authorization of emergency dune restoration projects and existing shoreline protection project repairs located in the City of Galveston in addition to the jurisdictions listed in that section.

(b) This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare.

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

Filed with the Office of the Secretary of State on September 17, 2007.

TRD-200704288
Trace Finley
Policy Director
General Land Office
Effective Date: September 17, 2007
Expiration Date: January 14, 2008
For further information, please call: (512) 475-1859

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

The Texas Health and Human Services Commission (HHSC or Commission) proposes the repeal and replacement of §351.3, Purpose, Task, and Duration of Advisory Committees. Specifically, HHSC proposes to repeal §351.3(a) - (j) and replace it with new §351.3(1) - (13).

Background and Justification

The existing rule contains information about advisory committees that are no longer functioning and does not contain all the information about each committee that is required by Government Code, Chapter 2110.

The proposed new rule is necessary to provide required information about the current HHSC advisory committees. The proposed new rule lists the advisory committees and complies with the requirements set out in the Government Code, §2110.005, Agency-Developed Statement of Purpose and Tasks Reporting Requirements and §2110.008, Duration of Advisory Committees. The active advisory committees referenced in the proposed new rule are approved by the HHSC Executive Commissioner. The Government Code, §2110.005 and §2110.008 require the following information regarding advisory committees to be included in rule:

the purpose and task of the committee;

the manner in which the committee will report to the agency; and

a date on which the committee will be abolished.

The new rule is proposed to replace the existing rule, which is concurrently being proposed for repeal.

Section-by-Section Summary

Proposed new §351.3 replaces an existing rule that contains outdated information about HHSC advisory committees. The new rule describes the active HHSC advisory committees and adds language to comply with the requirements set out in Texas Government Code, Chapter 2110, regarding the purpose, reporting requirements, and abolishment of each advisory committee.

Fiscal Note

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

Small and Micro-business Impact Analysis

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

Public Benefit

Mr. Chris Traylor, Associate Commissioner for Medicaid and CHIP, has determined that, for each year of the first five years the proposed rule is in effect, the public will benefit from the proposed rule. The anticipated public benefit, as a result of the proposed rule, is to provide current information about the HHSC advisory committees for public reference.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

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

Public Hearing

A public hearing is scheduled for October 17, 2007, at 9:00 a.m. in the HHSC Lone Star Conference Room at 11209 Metric

Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

1 TAC §351.3

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

Statutory Authority

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

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

§351.3. Purpose, Task, and Duration of Advisory Committees.

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704458
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 424-6576

1 TAC §351.3

Statutory Authority

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

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

§351.3. Purpose, Task, and Duration of Advisory Committees.

The Health and Human Services Commission (HHSC) receives recommendations from advisory committees established through state and federal laws, rules, and regulations. The following advisory committees are approved by the HHSC Executive Commissioner:

(1) Children's Policy Council.

(A) The Children's Policy Council is established under the Human Resources Code, Chapter 22, §22.035. The work group assists the HHSC Executive Commissioner and HHS agencies in developing, implementing, and administering family support policies and related long-term care and health programs for children.

(B) The Children's Policy Council studies and makes recommendations on long-term care and health policies and submits a report on its findings and recommendations to the legislature and the HHSC Executive Commissioner each even numbered year.

(C) The Human Resources Code, Chapter 22, §22.035, exempts the Children's Policy Council from the abolishment date required in the Government Code, Chapter 2110, §2110.008.

(2) Consumer Direction Work Group.

(A) The Consumer Direction Work Group is established under the Government Code, Chapter 531, Subchapter B, §531.052. The work group advises HHSC on the development, implementation, expansion and delivery of services through consumer direction in all programs offering long-term services and supports.

(B) The Consumer Direction Work Group makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Government Code, Chapter 531, Subchapter B, §531.052, exempts the Consumer Direction Work Group from the abolishment date required in the Government Code, Chapter 2110, §2110.008.

(3) Drug Use Review Board.

(A) The Drug Use Review Board is established under the authority of Title 42, Code of Federal Regulations (CFR), 456.716. This advisory committee advises HHSC about criteria and standards for appropriate drug use in the Medicaid program.

(B) The Drug Use Review Board makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Drug Use Review Board is required by federal regulations and will continue as long as the federal law that requires it remains in effect. The continued need for the committee will be reviewed by August 31, 2016.

(4) HHSC Medicaid and Children's Health Insurance Program (CHIP) Regional Advisory Committees.

(A) The HHSC Executive Commissioner established the HHSC Medicaid and CHIP Regional Advisory Committees under the authority of the Government Code, Chapter 531, Subchapter A, §531.012 and Chapter 533, Subchapter B, §533.021. These advisory committees meet quarterly to discuss the implementation and operations of Medicaid and CHIP programs within the respective regions and to provide recommendations to HHSC.

(B) The HHSC Medicaid and CHIP Regional Advisory Committees report quarterly and make recommendations through HHSC staff assigned to the committees.

(C) The HHSC Medicaid and CHIP Regional Advisory Committees will be automatically abolished August 31, 2016.

(5) Hospital Payment Advisory Committee.

(A) The Hospital Payment Advisory Committee (HPAC) is established under the Human Resources Code, Chapter 32, Subchapter B, §32.022(e). HPAC functions as a subcommittee of the Medical Care Advisory Committee (MCAC). HPAC advises MCAC and HHSC about hospital reimbursement methodologies for inpatient hospital prospective payment and on adjustments for disproportionate share hospitals. The committee advises HHSC to ensure reasonable, adequate, and equitable payments to hospital providers and to address the essential role of rural hospitals.

(B) The HPAC makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The HPAC will be automatically abolished August 31, 2016.

(6) Medical Care Advisory Committee.

(A) The Medical Care Advisory Committee (MCAC) is established under the authority of Title 42, CFR, 431.12 and the Human Resources Code, Chapter 32, Subchapter B, §32.022. MCAC makes recommendations to HHSC regarding health and medical care policy for the Medicaid program.

(B) The MCAC makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The MCAC is required by federal regulations and will continue as long as the federal law that requires it remains in effect. The continued need for the committee will be reviewed by August 31, 2016.

(7) Informal Dispute Resolution Quality Assurance Committee.

(A) The Informal Dispute Resolution (IDR) Quality Assurance Committee is established under Government Code §531.012. This committee advises the HHSC IDR program to ensure that the HHSC IDR program stakeholders are kept informed of IDR issues and to provide stakeholders with ongoing opportunity for input.

(B) The IDR Quality Assurance Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The IDR Quality Assurance Committee will be automatically abolished December 31, 2011.

(8) Pharmaceutical and Therapeutics Committee.

(A) The Pharmaceutical and Therapeutics Committee is established under the authority of the Government Code, Chapter 531, Subchapter B, §531.074. The committee advises HHSC on the clinical efficacy, safety, cost-effectiveness and any program benefit associated with a drug product and develops recommendations for the preferred drug lists.

(B) The Pharmaceutical and Therapeutics Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Government Code, Chapter 531, Subchapter B, §531.074, exempts the Pharmaceutical and Therapeutics Committee from the abolishment date requirement by the Government Code, Chapter 2110, §2110.008.

(9) Physician Payment Advisory Committee.

(A) The Physician Payment Advisory Committee (PPAC) is created pursuant to the authority granted by Government Code, Chapter 531, Subchapter A, §531.012. PPAC functions as a subcommittee of the MCAC. PPAC advises MCAC and HHSC about technical issues regarding physician payment policies.

(B) The PPAC makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The PPAC will be automatically abolished August 31, 2012.

(10) Promoting Independence Advisory Committee.

(A) The Promoting Independence Advisory Committee (PIAC) is authorized by the Government Code, Chapter 531, Subchapter B, §531.02441. The task force advises HHSC in the development of a comprehensive, effectively working plan to ensure appropriate care settings for persons with disabilities.

(B) The PIAC will meet at the call of the commissioner. Not later than September 1 of each year, the Committee shall submit a report to the commissioner on its findings and recommendations.

(C) The PIAC will be automatically abolished August 31, 2011.

(11) Public Assistance Health Benefit Review and Design Committee.

(A) The Public Assistance Health Benefit Review and Design Committee was established under the Government Code, Chapter 531, Subchapter B, §531.067. This committee provides recommendations to HHSC regarding health benefits and coverage provided under the Medicaid program, the Children's Health Insurance Program and any other income-based health care program administered by HHSC.

(B) The Public Assistance Health Benefit Review and Design Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Government Code, Chapter 531, Subchapter B, §531.067, exempts the Public Assistance Health Benefit Review and Design Committee from the abolishment date required by the Government Code, Chapter 2110, §2110.008.

(12) Pilot Project Consortium; Expansion Plan.

(A) The Pilot Project Consortium is established under the Government Code, Chapter 531, Subchapter G-1, §531.251. The consortium shall develop criteria for and implement the expansion of the Texas Integrated Funding Initiative (TIFI) pilot project and criteria to develop local mental health care systems in communities for minors who are receiving residential mental health services or who are at risk of residential placement to receive mental health services.

(B) The Pilot Project Consortium makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the consortium.

(C) The Pilot Project Consortium will be automatically abolished effective August 31, 2012.

(13) Telemedicine Advisory Committee.

(A) The Telemedicine Advisory Committee is established under the authority of the Government Code, Chapter 531, Subchapter B, §531.02172. The committee makes recommendations to HHSC on policy for telemedicine and telehealth services, development of telecommunication technology, and coordinating and monitoring related programs and activities.

(B) The Telemedicine Advisory Committee makes recommendations to HHSC through regularly scheduled meetings and HHSC staff assigned to the committee.

(C) The Telemedicine Advisory Committee will be automatically abolished effective August 31, 2016.

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704459
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 424-6576

CHAPTER 355. REIMBURSEMENT RATES

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.7101, Cost Reporting for 24-Hour Residential Child Care Reimbursements, in its Reimbursement Rates Chapter to clarify that Subchapter H (Reimbursement Methodology for 24-Hour Child Care Facilities) applies to the calculation of prospective daily unit rates paid by the Department of Family and Protective Services (DFPS) for 24-Hour Residential Child Care services; require that all cost reports be completed in accordance with 45 Code of Federal Regulations (CFR) Part 74, 48 CFR Part 31, Office of Management and Budget (OMB) circulars A-87 (for state and local governments), A-122 (for non-profit and for-profit corporate entities), and A-110 (for all residential child care contractors), and cost report instructions; indicate that informal reviews are governed by requirements specified in 1 TAC §355.110 (relating to Informal Reviews and Formal Appeals); indicate that costs incurred under less-than-arms-length (related-party) transactions are allowable only up to the cost to the related party; limit related-party salary, wages, and/or benefits costs for administrators, assistant administrators, and owners, partners or stockholders to the 90th percentile of nonrelated-party administration salaries, wages, and/or benefits for administrators, assistant administrators, and owners, partners or stockholders; require first-time cost report preparers to attend state-sponsored, classroom-based cost report training and all other preparers to complete state-sponsored, classroom-based cost report training at least every two years; clarify acceptable cost report formats, cost reporting periods, cost report due dates; eliminate obsolete references; and update agency references to replace references to the legacy Department of Protective and Regulatory Services (DPRS) with references to DFPS, HHSC, and HHSC or its designee, as appropriate.

HHSC also proposes to repeal §355.7105, relating to Definition of Allowable and Unallowable Costs; §355.7107, relating to Allowable Costs; §355.7109, relating to Unallowable Costs; and §355.7111, relating to Costs Not Included in Recommended Payment Rates.

Background and Purpose

In October 2006, the State Auditor's Office (SAO) published "A Report on On-Site Audits of Residential Child Care Providers (Report No. 07-002)." In this report, the SAO recommended that the Department clearly specify in its rules and contracts whether its rules concerning related party transactions apply to: (1) how providers actually spend funds; or (2) how providers report their costs on their annual cost reports.

The Department of Family and Protective Services (DFPS) and HHSC agreed that there was no clear separation of the rules as they apply to 24-Hour Residential Child Care unit rate contracts and all other DFPS contracts. As the entity responsible for rate determination for residential care for children served by the Department of Family and Protective Services (DFPS), HHSC agreed to develop separate cost reporting rules in the HHSC rule base so that it will be clear which rules apply to cost reporting and rate determination for 24-Hour Residential Child Care. The rules pertaining to allowable and unallowable cost determinations that remain in the DFPS rule base will apply only to non-24-Hour Residential Child Care contracts.

The separation of these rules into two distinct rule bases at each agency should clarify that HHSC intends to apply the related-party allowable cost rules to cost reporting and unit rate determination and does not intend to limit or recoup the expenditure of payments made from the unit rate. Likewise, this separation of rules will clarify that DFPS intends to apply the related-party allowable cost rules to limit payments made under non-24-Hour Residential Child Care contracts. HHSC rules will address allowable and unallowable costs for cost reporting purposes, the reporting of related-party transactions, limits to be applied to certain related-party salary costs for cost reporting and rate determination purposes, and cost report training requirements. As well, rules will be revised to enhance consistency with cost reporting rules for other programs completing cost reports for HHSC.

Fiscal Note

Cindy Brown, Chief Financial Officer of DFPS, has determined that, for the first five-year period the proposed rules are in effect, there are no fiscal implications for state government as a result of enforcing or administering the rule proposals. There are no fiscal implications for local governments as a result of enforcing or administering the rule proposals.

Small Business and Micro-business Impact Analysis

Ms. Brown has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the rule proposals. There is no anticipated economic cost to persons who are required to comply with the rule proposals. There is no anticipated effect on local employment in geographic areas affected by these rule proposals.

Public Benefit and Costs

Carolyn Pratt, Director of Rate Analysis, has determined that, for each of the first five years that the rule proposals will be in effect, the public benefit anticipated as a result of the rule changes will be that the rules will provide clear guidance as to how related-party transactions are to be reported on HHSC cost reports and will clearly distinguish between HHSC cost reporting requirements for 24-Hour Residential Child Care providers and DFPS requirements for non-24-Hour Residential Child Care contracts. The rule proposals will also increase consistency of cost reporting requirements across all programs required to submit cost reports to HHSC. The elimination of outdated references and updating of agency references will increase provider understanding of the rules and of their cost reporting requirements. The proposed repeal of subsections referring to DFPS allowable and unallowable requirements will help to clearly demarcate HHSC cost reporting requirements for 24-Hour Child Care providers from DFPS requirements for non-24-Hour Residential Child Care providers. There is no anticipated economic cost to persons who are required to comply with the rule proposals.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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 HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Pam McDonald in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Austin, TX 78708-5200; by fax at (512) 491-1998 or by e-mail at pam.mcdonald@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7101

Statutory Authority

The amendment is proposed under Texas Government Code, §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Government Code, §531.055, which authorizes the executive commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; and the Human Resources Code, §40.004(c) and (d), which authorize the Executive Commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule.

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

§355.7101. Cost Determination Process [~~Cost Reporting~~].

Non-Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS [~~TDPRS~~]) families, facilities, group homes, and child placing agencies that contract with DFPS [~~TDPRS~~] to provide 24-hour residential child-care services must submit financial and statistical information according to the requirements specified in this subsection [~~subchapter~~]. Providers of 24-hour residential child care services must report this information on cost-reporting forms approved by the Texas Health and Human Services Commission (HHSC), or electronically in HHSC-prescribed format where these systems are operational [~~TDPRS~~]. The cost report must cover all of the provider's activities while delivering contracted services during the [~~provider's previous~~] fiscal year specified by the cost report unless HHSC [~~TDPRS~~], at its sole discretion, requires a provider to submit a cost report covering selected activities or covering another time period. [~~The requirements specified in this subchapter shall establish minimum rates for fiscal year 1994 only~~]. The word "rate," when used in this subchapter, shall refer to the prospective daily unit rate [~~reimbursements~~] paid either directly or indirectly to a provider with whom DFPS [~~TDPRS~~] has a contract or an agreement. This subchapter does not apply to DFPS cost reimbursed contracts.

(1) Who must file a cost report. Every 24-hour residential child-care provider that directly or indirectly receives payment from DFPS [~~PRS~~] for services to children whom DFPS [~~PRS~~] has placed with the provider must submit a cost report. The provider must submit a separate cost report for each separately licensed facility that the provider operates. If two or more facilities share a license, but function as separate and distinct facilities, each of them must submit a cost report that covers its own revenues, expenses, and statistics.

(2) Cost report due date. Unless HHSC [~~PRS~~] specifies otherwise, providers must submit cost reports to HHSC Rate Analysis no later then 90 days following the end of the provider entity's fiscal year or [~~within~~] 90 days from the transmittal date of the [~~after receiving~~] cost-reporting forms , whichever due date is later [~~from PRS~~].

(3) Extension of due date. When circumstances that a provider cannot reasonably be expected to control prevent the provider from submitting a cost report by the due date [~~within 90 days~~] as specified in paragraph (2) of this section, HHSC [~~PRS~~] may extend the due date [~~for 30 days~~]. The provider must request the extension in writing before the due date, and HHSC [~~PRS~~] must respond to the request within 15 [~~10~~] workdays after receiving it.

(4) Cost-report supplements. To obtain additional financial and statistical information that does not appear in a provider's regular cost report, HHSC [~~PRS~~] has the authority to require the provider to submit a cost-report supplement. The provider must submit the supplement by the due date specified by HHSC [~~PRS~~].

(5) Vendor hold. If a provider fails to file a cost report or cost-report supplement by the due date or according to the other requirements specified in this subchapter, HHSC [~~PRS~~] has the authority to institute a vendor hold and withhold payments from the provider until the provider submits an acceptable cost report. A provider's failure to submit a cost report after HHSC [~~PRS~~] has placed the provider on vendor hold may result in nonrenewal or cancellation of the provider's contract with DFPS [~~PRS~~]. When a provider is on vendor hold, HHSC [~~PRS~~] does not extend the due date for receipt of the provider's cost report.

(6) Accounting requirements. Except for governmental institutions operated on the cash method of accounting, providers must ensure that the financial and statistical information submitted in their cost reports is based on the accrual method of accounting. Each provider's treatment of financial and statistical data must reflect the application of generally accepted accounting principles (GAAP) approved by the American Institute of Certified Public Accountants (AICPA). For purposes of cost reporting, however, the requirements of this subchapter take precedence over the AICPA's GAAP and any other authority's accounting requirements, including Internal Revenue Service requirements.

(7) Methods of allocation. HHSC [~~TDPRS~~] adjusts allocated costs if the department considers the allocation method to be unreasonable.

(A) Direct costing must be used whenever possible, which means that allowable costs incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. If direct costing is not possible, a provider must use reasonable methods of allocation and must be consistent in the use of allocation methods across program areas and business entities to ensure that allowable costs are equitably allocated across business activities or business entities receiving the benefits of those allocated costs. Costs reported for the provider must be representative of the actual circumstances of the provider's operations, whether directly charged or allocated. An indirect allocation method approved by some other department, program, or governmental entity

is not automatically approved by HHSC [this department]. HHSC [The department] reviews each allocation method on a case-by-case basis in order to ensure that the reported costs fairly and accurately represent the operations of the provider. Any change in allocation methods from one year to the next must be fully disclosed by the provider on its cost report and must be accompanied by a written explanation of the reasons for such change.

(B) When practical and the amounts are material, costs must be allocated on a functional basis. Some examples are listed as follows.

(i) Costs of a central payroll operation could be allocated to all business components based on the number of checks issued.

(ii) Costs of a central purchasing function could be allocated based on the dollar amount of purchases made or requisitions handled.

(iii) Costs of utilities or rent could be allocated based upon square footage.

(iv) Payroll costs for an employee working across business components could be allocated based upon that employees' timesheets and/or a documented time study.

(v) Transportation equipment costs could be allocated based upon mileage logs.

(C) General management and administrative costs that cannot be allocated on a functional basis should be allocated reasonably and consistently across all business components receiving the benefits of those allowable general management and administrative costs. If all the business components have equivalent units of equivalent service, such general management and administrative costs could be allocated based upon each business component's units of service. One recommended method for allocating such costs would be based upon the ratio of each business component's variable costs related to the total variable costs of all the provider's business components. Because only cost data are analyzed in the calculation of reimbursement rates, allocation methods based upon revenue streams are inappropriate and generally unallowable.

(D) Cost allocation methods must be clearly and completely documented in the provider's workpapers, with details as to how specific allocations are made.

(8) Certification. A completed cost report must contain a signed, notarized, original certification page [Providers must complete the certification page of their cost reports to certify that the reports are accurate].

(9) Review of cost reports. HHSC [PRS] conducts a desk review or field audit of each cost report to ensure that the financial and statistical information presented in the report conforms to all applicable requirements, including the requirements of this subchapter. The desk review verifies that the cost report:

(A) displays financial and statistical information in the format required by HHSC [PRS];

(B) reports expenses in conformity with the [lists of] allowable and unallowable cost requirements detailed in paragraph (17) of this section; [costs in §§700.1804-700.1806 of this title (relating to Allowable Costs; Unallowable Costs; and Costs Not Included in Recommended Payment Rates); and]

(C) follows GAAP except as specified in paragraphs (6) and (20) [paragraph (6)] of this section and [or in the lists of allowable and unallowable costs in §§700.1804-700.1806 of this title (relating to Allowable Costs; Unallowable Costs; and Costs Not Included in Recommended Payment Rates).];

(D) is completed in accordance with the program's cost report instructions.

(10) Requests for additional information. If a cost report fails to conform to applicable requirements as specified in paragraph (9) of this section, HHSC [PRS] returns the report to the provider for correction. HHSC [PRS] also has the authority to require providers to supply additional information to substantiate the information provided in the cost report.

(11) On-site audits. HHSC [PRS] performs a sufficient number of on-site audits each year to ensure the fiscal integrity of the 24-hour child-care services program. HHSC [PRS] determines the frequency and nature of on-site audits, and the number of audits performed each year may vary. To maximize the number of audited cost reports available for use in projecting costs, HHSC [PRS] arranges as many on-site audits as possible.

(12) Notification of exclusions and adjustments. HHSC [PRS] gives providers written notification of exclusions and adjustments of reported expenses made during desk reviews and on-site audits of cost reports.

(13) Reviews of exclusions and adjustments. When a provider disputes a HHSC [PRS] exclusion or adjustment of a reported expense, the provider may request an informal review of HHSC'S [PRS's] disallowance. Informal reviews are governed by requirements specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals). [On receipt of the provider's request, PRS reimbursement and audit staff meet with the provider and review the action taken.]

(14) Access to records. Each provider and each provider's designated agents must give HHSC [PRS] access to any and all records necessary to verify information submitted to HHSC [PRS] on cost reports, including records that pertain to related-party transactions or other business activities engaged in by the provider. If a provider does not allow HHSC [PRS] to inspect pertinent records within 30 days after HHSC [PRS] sends the provider written notice, HHSC [PRS] places the provider on vendor hold and withholds payments until the provider gives HHSC [PRS] access to the records. HHSC or its designee [PRS] has the authority to cancel the provider's contract if the provider continues to deny [PRS] access.

(15) Maintaining records. Providers must ensure that all records pertinent to services rendered under their contracts with DFPS [PRS] are accurate and sufficiently detailed to support the financial and statistical information contained in their cost reports. Providers [As specified in §732.202 of this title (relating to Contractors' Records), providers] must retain these records for at least three years and 90 days after the end of the contract period.

(16) Failure to maintain adequate records. If HHSC [PRS] discovers that a provider has failed to maintain adequate records as specified in paragraph (15) of this section, HHSC [PRS] notifies the provider of the deficiencies in the provider's recordkeeping and gives the provider 90 days to correct them. HHSC or its designee [PRS] has the authority to cancel the provider's contract if the provider fails to correct the deficiencies within 90 days after the date of HHSC's [PRS's] notification.

(17) All cost reports must be completed in accordance with the federal regulations and guidelines listed in order of precedence in subparagraphs (A) and (B) of this paragraph, as applicable:

(A) The Code of Federal Regulations (CFR):

(i) 45 CFR, Part 74; and

(ii) 48 CFR, Part 31.

(B) The Office of Management and Budget Circulars:

(i) A-87 (for state and local governmental entities);

(ii) A-122 (for nonprofit and for-profit corporate entities) and;

(iii) A-110 (for all residential child care contractors).

(18) For cost reporting purposes, costs incurred under less-than-arms-length (related-party) transactions are allowable only up to the cost to the related party as per OMB Circulars A-87 and A-122 and §355.102(h)(3)(i) of this title (relating to Cost Determination Process).

(19) Limits on related-party administration salary costs. To ensure that the results of HHSC's cost analyses accurately reflect the costs that an economic and efficient provider must incur, HHSC sets upper limits for certain wages at the 90th percentile in the array of costs per unit of service or total annualized cost, as appropriate for a specific cost categories, as reported by all contracted facilities, unless otherwise specified. The specific cost categories that are subject to the 90th percentile cap are:

(A) Related-party facility administrator/director salary, wages, and benefits with the cap based on an array of nonrelated-party administrator/director salaries, wages, and benefits;

(B) Related-party assistant administrator/director salary, wages, and benefits with the cap based on an array of non-related-party assistant administrator/director salaries, wages, and benefits;

(C) Related-party facility owner, partner, or stockholder salaries, wages, and benefits (when the owner, partner, or stockholder is not the facility administrator/director or assistant administrator/director), with the cap based on an array of nonrelated-party administrator/director salaries, wages, and benefits.

(20) Cost report training. It is the responsibility of the provider to ensure that each preparer signing the Cost Report Methodology Certification has completed the required state-sponsored cost report training. Preparers may be employees of the provider or persons who have been contracted by the provider for the purpose of cost report preparation. Preparers must complete cost report training for each program for which a cost report is submitted. Preparers must complete cost report training every other year for the odd-year cost report in order to receive a certificate to complete both that odd-year cost report and the following even-year cost report. If a new preparer wishes to complete an even-year cost report and has not completed the previous odd-year cost report training, to receive a certificate to complete the even-year cost report, the preparer must complete an even-year cost report training. A copy of the most recent cost report training certificate for each preparer of the cost report must be submitted with each cost report. Contracted preparer's fees to complete state-sponsored cost report training are allowable.

(A) New preparers. Preparers who have not previously completed the required state-sponsored cost report training and received a completion certificate must attend state-sponsored classroom-based cost report training for each contracted program for which a cost report is to be submitted.

(B) If a provider fails to file a completed cost report signed by preparers who have completed the required cost report training, HHSC has the authority to institute a vendor hold and withhold payments from the provider until the provider submits an acceptable cost report. A provider's failure to submit a cost report after HHSC has placed the provider on vendor hold may result in nonrenewal or cancellation of the provider's contract with DFPS.

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704460
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 424-6576

1 TAC §§355.7105, 355.7107, 355.7109, 355.7111

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

The repeals are proposed under Texas Government Code §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Government Code, §531.055, which authorizes the executive commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; and the Human Resources Code, §40.004(c) and (d), which authorize the Executive Commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule.

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

§355.7105. Definition of Allowable and Unallowable Costs.

§355.7107. Allowable Costs.

§355.7109. Unallowable Costs.

§355.7111. Costs Not Included in Recommended Payment Rates.

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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Steve Aragón
General Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6576

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 29. ECONOMIC DEVELOPMENT
SUBCHAPTER C. GO TEXAN CERTIFIED RETIREMENT COMMUNITY PROGRAM

4 TAC §§29.50, 29.51, 29.54

The Texas Department of Agriculture (the department) proposes amendments to Chapter 29, Subchapter C, §29.50, 29.51 and §29.54, concerning the department's Texas Certified Retirement Community Program rules. The amendments are proposed to bring the existing Certified Retirement Community Program under the umbrella of a new certification mark. The department has a highly successful GO TEXAN certification mark used to designate Texas products and the department has applied for a like certification mark for retirement communities to capitalize on the name recognition associated with that mark. Proposed amendments to §29.50 change the references to the program name to reflect its being brought under the "GO TEXAN" umbrella. Proposed amendments to §29.51 change the references to the program name to reflect its being brought under the "GO TEXAN" umbrella. Proposed amendments to §29.54 add a provision for revocation of approval to use the Go Texan certification mark if a program member or sponsor fails to comply with the Go Texan Certified Retirement Community Program guidelines.

Rick Rhodes, assistant commissioner for rural economic development, has determined that for the first five-year period the proposed amended sections are in effect there will be no fiscal implications for state or local government as a result of administering or enforcing the amended sections. The existing Certified Retirement Community Program rules are not being substantively changed, therefore there will be no additional fees or requirements different from those previously existing.

Mr. Rhodes has also determined that for each year of the first five years the proposed amended sections are in effect, the public benefit anticipated as a result of administering and enforcing the amended sections will be an increase in economic activity in Texas communities due to the name recognition of the Go Texan certification mark, by providing communities with a more effective tool to market and promote themselves as a desirable location for retirees seeking to relocate in Texas. There will be no cost to micro-businesses or small businesses, since eligibility for the Program is limited to units of local government.

Comments may be submitted to Rick Rhodes, Assistant Commissioner for Rural Economic Development, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

Amendments to §§29.50, 29.51 and §29.54 are proposed under the Texas Agriculture Code (the Code), §12.016, which authorizes the department to adopt rules to administer its duties under the Code; and §12.039, which authorizes the department to establish and maintain a Texas Certified Retirement Community Program.

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 12.

§29.50. Definitions.

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

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for the Go Texan [~~Texas~~] Certified Retirement Community Program to the Texas Department of Agriculture (TDA).

(2) Application--Written request for certification under the Go Texan [~~Texas~~] Certified Retirement Community Program in the format required by the department.

(3) - (6) (No change.)

(7) Program--The Go Texan [~~Texas~~] Certified Retirement Community Program.

(8) - (9) (No change.)

§29.51. Overview of Program.

(a) The Go Texan [~~Texas~~] Certified Retirement Community Program is established to:

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

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

(d) After approval, a Go Texan [~~Texas~~] Certified Retirement Community may change the sponsor by notifying the department in writing.

§29.54. Providing Assistance to Certified Communities.

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

(d) The department may revoke approval to use the certification mark GO TEXAN if a community or a sponsor fails to comply with the Program guidelines.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704426
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 463-4075

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PART 2 TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.12

The Texas Animal Health Commission proposes amendments to Chapter 59, entitled General Practices and Procedures by adding new §59.12, concerning Carcass Disposal Requirements.

Under HB 2453 the Commission was authorized to determine and implement the most effective method, including methods other than burning or burial, for disposing of diseased livestock

carcasses. The legislation allows the Commission to consider factors such as the most appropriate disposal method for the particular disease, environmental implications, geographic location, number of carcasses, and weather conditions when deciding what method of carcass disposal to employ. Also the legislation authorized the Commission to delegate carcass disposal authority to the Executive Director, by rule.

This new section has the following subsections:

Subsection (a) is entitled "Definitions" and provides definitions for terms used in this chapter.

Subsection (b) is entitled "Carcass Disposal" and provides that dead animals carcasses be disposed in the manner required by the commission under this section.

Subsection (c) is entitled "Executive Director Authorization" and authorizes the Executive Director to issue Orders regarding the disposal of carcasses of animals as necessary to eradicate or control the disease as well as to publish directives, guidelines and standards to be followed for carcass disposal in general events involving a diseased animal.

Subsection (d) is entitled "Disposal of Diseased Carcass" and provides that a person who is the owner or caretaker of an animal if ordered by the executive director, shall dispose of the carcasses under the direction of authorized agents of the commission and in accordance with all appropriate legal standards and requirements.

Subsection (e) is entitled "Disposal Methods Determined by the Executive Director" and provides that the Executive Director may determine the appropriate method of disposal for animals that die of infectious or contagious diseases or agents or any other high consequence disease. The rule provides for rendering, burial, disposal in an approved sanitary landfill, composting, digestion, incineration, burning, decomposition. This subsection also provides a provision for the Executive Director to grant variances from the requirements on a case-by-case basis.

Subsection (f) is entitled "Dead Animal Emergencies" and provides for dead animal emergencies which require extraordinary disposal measures.

FISCAL NOTE

Mr. Mike Jensen, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no significant fiscal implications for state or local government as a result of modifying this rule to clarify carcass disposal procedures. The agency's regulatory activities related to this rule will be fulfilled with existing agency resources. There is not an calculable fiscal impact for small or micro businesses in complying with this rule because the rule is only applied when a disease is present and that requires that certain disposal options be used.

PUBLIC BENEFIT NOTE

Mr. Jensen 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 ensure that diseased animal carcasses are properly disposed.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency believes that the proposed rule will not impact local economies.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These proposed rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed rule may be submitted to Dolores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

House Bill 2543 of the 80th Legislative Regular Session reauthorized the agency for another twelve years. During the process a number of amendments were made to Chapter 161 of the Texas Agriculture Code. Section 161.004 was amended regarding carcass disposal. Section 161.004 provides that "{a} person who is the owner or caretaker of livestock, exotic livestock, domestic fowl, or exotic fowl that die from a disease listed in §161.041 (of this code), or who owns or controls the land on which the livestock, exotic livestock, domestic fowl, or exotic fowl die or on which the carcasses are found, shall dispose of the carcasses in the manner required by the commission under this section."

The statute also provides the commission the authority to "determine the most effective methods of disposing of diseased carcasses, including methods other than burning or burial; and by rule prescribe the method or methods that a person may use to dispose of a carcass." "Furthermore the section provides that the commission by rule may delegate its authority under this section to the executive director."

The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument,

including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Section 161.061 provides that if the Commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. Section 161.101 provides that the Commission may require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of specific diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl.

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

§59.12. Carcass Disposal Requirements.

(a) Definitions:

(1) "Animal" means livestock, exotic livestock, domestic fowl, or exotic fowl.

(2) "Executive Director" means the Executive Director of the Texas Animal Health Commission

(3) "Air Curtain Incineration" means a mechanical process of incineration by which super-heated air is continuously circulated to enhance combustion.

(4) "Burial" means interment of a dead animal below the natural surface of the ground.

(5) "Burning" means the act of consuming or destroying by fire with or without the use of an accelerant.

(6) "Composting" means the biological decomposition of organic matter under controlled conditions.

(7) "Dead Animals" means carcasses and parts of carcasses from animals that are dead from a disease.

(8) "Dead Animal Emergencies" means those situations involving dead animals that may require extenuating disposal measures as determined by the Executive Director.

(9) "Decomposition" means the decay of dead animals under natural conditions.

(10) "Digestion" means a process by which organic matter is hydrolyzed.

(11) "Disposal" means the management of a dead animal.

(12) "Incineration" means the controlled and monitored combustion of dead animals for the purposes of volume reduction and pathogen control.

(13) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal government department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(14) "Rendering" means the process or business of recycling dead animals and animal by-products.

(15) "Sanitary Landfill" means a solid waste disposal site permitted or approved by the Texas Commission on Environmental Quality.

(b) Carcass Disposal. A person who is the owner or caretaker of livestock, exotic livestock, domestic fowl, or exotic fowl that die from a disease listed in §161.041 of the Texas Agriculture Code, or who owns or controls the land on which the livestock, exotic livestock, domestic fowl, or exotic fowl die or upon which a diseased carcass of a dead animal is exposed to other animals, shall dispose of the carcass in the manner required by the commission under this section.

(c) Executive Director Authorization. The commission authorizes the executive director to issue Orders regarding the disposal of carcasses of livestock, exotic livestock, domestic fowl, or exotic fowl as necessary to eradicate or control the disease as well as to protect the livestock of this state. The Executive Director may also publish directives, guidelines and standards to be followed for carcass disposal in general events involving a diseased animal.

(d) Disposal of Diseased Carcass. A person who is the owner or caretaker of livestock, exotic livestock, domestic fowl, or exotic fowl, if ordered by the executive director, shall dispose of the carcasses under the direction of authorized agents of the commission and in accordance with all appropriate legal standards and requirements.

(e) Disposal Methods Determined by the Executive Director. The Executive Director may determine the appropriate method of disposal for animals that die of infectious or contagious diseases or agents as listed in §161.041 of the Texas Agriculture Code or any other high consequence disease.

(1) Rendering. If a licensed and approved rendering facility accepts the dead animal, rendering is an approved method of disposal.

(2) Burial. Dead animals shall be buried to such a depth that no part of the dead animal shall be nearer than three (3) feet to the natural surface of the ground. Every part of the dead animal shall be covered with at least three (3) feet of earth. The location of a burial site shall be in compliance with any applicable set backs for sanitary or public health reasons.

(3) Disposal in an Approved Sanitary Landfill. Arrangements shall be made with a city, county, regional, or private landfill official in order to dispose of a dead animal in a city, county, regional, or private landfill.

(4) Composting. Composting of dead animals shall be accomplished in a manner approved by the Executive Director.

(5) Digestion. Digestion of dead animals shall be accomplished in a properly designed and sized dead animal digester approved by the Executive Director.

(6) Incineration.

(A) Incineration of dead animals shall be accomplished in an approved incineration facility, or by a mobile air curtain incinerator at a site approved by the Executive Director.

(B) The incineration shall be thorough and complete, reducing the carcass to mineral residue.

(7) Burning. Any person who is the owner or caretaker of animals that have died from anthrax, or who owns or controls the land on which the animals have died, is responsible for assuring that the carcass of each animal is set on fire and burned until it is thoroughly consumed as found in §31.3 of this title (relating to Disposal).

(8) Decomposition. Animals that die on private or state rangeland from causes other than significant infectious or contagious diseases or agents may be left to decompose naturally provided their location is not in violation of another legal requirement.

(9) Wavier of Requirements by the Executive Director. The Executive Director may grant variances from the requirements on a case-by-case basis.

(f) Dead Animal Emergencies. Dead animal emergencies are those situations involving dead animals that have been determined by the Executive Director to require extraordinary disposal measures.

(1) Situations Requiring Extraordinary Disposal Measures. These situations include, but are not limited to, the following:

(A) Situations where one (1) or more animals die of an infectious or contagious disease or agent that may pose a significant threat to humans or animals;

(B) Situations wherein the number of dead animals is large enough to require extraordinary disposal measures.

(2) Executive Director to Determine Disposal Methods. The Executive Director may employ exceptional or extraordinary methods of dead animal disposal as necessary to protect the health and welfare of the human and animal populations of the state of Texas. Such methods may include, but shall not be limited to:

(A) Open burning;

(B) Pit burning;

(C) Burning with accelerants;

(D) Pyre burning;

(E) Air curtain incineration;

(F) Mass burial; or

(G) Natural decomposition.

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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Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 719-0700

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 53. HOME INVESTMENT PARTNERSHIP PROGRAM

10 TAC §§53.50 - 53.63

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

The Texas Department of Housing and Community Affairs (Department) proposes the repeal of §§53.50 - 53.63, concerning the HOME Investment Partnership Program. These repeals are proposed in order to allow public comment and adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2008 rule cycle, and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Mr. Michael Gerber, Executive Director, has determined that, for the first five-year period the proposed repeals are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals.

Mr. Gerber has also determined that, for each year of the first five-years the proposed repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe, and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Public hearings will be held across the state between September 24 and October 5 to receive public input on these repeals. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: 2008rulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. All comments must be received by October 10, 2007.

The repeals are proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by this proposed repeal.

§53.50. Purpose.

§53.51. Definitions.

§53.52. Allocation of Funds.

§53.53. Applicant Requirements.

§53.54. Application Limitations.

§53.55. Program Activities.

§53.56. Prohibited Activities.

§53.57. Distribution of Funds.

§53.58. Application Process.

§53.59. Process for Awards.

§53.60. General Selection Criteria.

§53.61. Threshold and Selection Criteria for Single Family Non-development Activities.

§53.62. Program Administration.

§53.63. Community Housing Development Organization (CHDO) Certification.

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

Filed with the Office of the Secretary of State on September 20, 2007.

TRD-200704356
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

CHAPTER 53. HOME PROGRAM RULE

SUBCHAPTER A. GENERAL

10 TAC §§53.1 - 53.9

The Texas Department of Housing and Community Affairs proposes new Chapter 53, Subchapter A, §§53.1 - 53.9, concerning the HOME Program. These new sections are proposed in order to allow public comment and adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2008 rule cycle and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering these new sections.

Mr. Gerber has also determined that for each year of the first five-years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with these new sections as proposed.

Public hearings will be held across the state between September 24 and October 5 to receive public input on these new sections. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: 2008rulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. All comments must be received by October 10, 2007.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§53.1. Purpose.

This Chapter clarifies the use and administration of all funds provided to the Texas Department of Housing and Community Affairs (Department) by the United States Department of Housing and Urban Development (HUD) pursuant to Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 USC §§12701-12839) and HUD regulations at 24 CFR, Part 92. The State's HOME Program is designed to:

(1) focus on the areas with the greatest housing need described in the State Consolidated Plan;

(2) provide funds for home ownership and rental housing through acquisition, new construction, rehabilitation, tenant-based rental assistance, and pre-development loans;

(3) promote partnerships among all levels of government and the private sector, including non-profit and for-profit organizations; and

(4) provide low, very low, and extremely low income families with affordable, decent, safe and sanitary housing.

§53.2. Definitions.

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

(1) Act--HOME Investment Partnership Act at Title II of the Cranston-Gonzalez National Affordable Housing Act as amended, at 42 USC §§12701, et seq.

(2) Activity--A single housing unit with a unique physical address. An activity may also refer to an individual Project or site.

(3) Administrative Deficiencies--The absence of information or a document from the application as required in this Chapter or applicable NOFA.

(4) Administrator--The Person responsible for performing under a Contract with the Department.

(5) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest.

(6) Affiliated Party--A person in a relationship with the Administrator on a Contract with the Department.

(7) Annual Income--As defined in 24 CFR §92.203.

(8) Applicant--A Person who has submitted to the Department an Application for Department funds or other assistance.

(9) Application--A request for funds submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(10) Application Acceptance Period--The period of time that Applications may be submitted to the Department as more fully described in the applicable NOFA.

(11) Application Submission Procedures Manual (ASPM)--The manual that sets forth the procedures, forms, and instructions for the completion and submission of an Application to the Department.

(12) Area Median Family Income (AMFI)--The income estimated and determined by HUD as the median family income with adjustments for family size and geographic locations.

(13) Articles of Incorporation--The document that sets forth the basic terms for a corporation's existence and is the official recognition of the corporation's existence.

(14) Board--The governing board of the Texas Department of Housing and Community Affairs.

(15) Business Plan--The written document that for the purposes of CHDO certification outlines the CHDO's plan for developing eligible housing activities, its internal operations, and citizen participation process.

(16) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the Articles of Incorporation. Bylaws and amendments to Bylaws must be formally adopted in the manner prescribed by the organization's Articles of Incorporation or current Bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend Bylaws.

(17) CFR--Code of Federal Regulations.

(18) Chapter 2306--The enabling statute for the Department found in the Texas Government Code.

(19) CHDO Service Area--A Community in which a CHDO owns, developed and/or sponsored CHDO eligible housing activities for the low income residents of the city/place or county they serve.

(20) Colonia--A geographic area that is located in a county some part of which is within 150 miles of the international border of this state that consists of 11 or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that:

(A) Has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code; or

(B) Has the physical and economic characteristics of a Colonia, as determined by the department.

(21) Colonia Housing Standards--The Department's HUD approved housing standards that allow Colonia residents the opportunity to rehabilitate their homes when located in a designated Colonia.

(22) Community--Urban areas means one or several Neighborhoods, a city, a county, or a metropolitan area and for Rural Areas means one or several Neighborhoods, a town, a village, a county or multi-county area, but not the whole state. For purposes of this Chapter, the Applicant should clearly define the area. For example, the city of Dallas would not include all of Dallas and Collin counties but Dallas and Collin counties would include the city of Dallas.

(23) Community Housing Development Organization (CHDO)--A private nonprofit, community-based service organization that has obtained or intends to obtain staff with the capacity to develop affordable housing for the community it serves in accordance with 24 CFR §92.2 and which is certified as such by the Department. To be certified as a CHDO by the Department, the organization must act in the capacity of Developer, Owner or Sponsor as defined in this chapter.

(24) Community Housing Development Organization (CHDO) Developer--The CHDO:

(A) Either owns a Property and develops a Project, or has a contractual obligation to a property owner to develop a Project; and

(B) Performs all the functions typically expected of for-profit Developers, and assumes all the risks and rewards associated with being the Project Developer.

(i) For RHD, the CHDO must obtain financing, and Rehabilitate, Reconstruct or construct the Project. If it owns the Property, the CHDO may maintain ownership and manage the Project over the long term. If it does not own the Property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the PJ.

(ii) For HBA, the CHDO must obtain Project financing, Rehabilitate, Reconstruct or construct the dwelling(s), and have title of the property and the HOME loan/grant obligations transferred to a HOME-qualified homebuyer within a specified timeframe. If it does not own the Property, the CHDO must enter into a contractual obligation with the property owner. This contractual obligation is independent of the PJ.

(25) Community Housing Development Organization (CHDO) Owner--The CHDO holds valid legal title to or has a long-term (99-year minimum) leasehold interest in a rental Property. The CHDO may be a Development Owner with one or more Persons. If it owns the Project in partnership, it or its wholly-owned nonprofit or for-profit subsidiary must be the managing General Partner with effective control (i.e., decision-making authority) of the Project. The CHDO may be both Development Owner and Developer, or may have another entity as the Developer.

(26) Community Housing Development Organization (CHDO) Sponsor--The CHDO:

(A) For RHD, the CHDO may develop a Project that it solely or partially owns and agrees to convey ownership to a second non-profit organization at a predetermined time prior to or during Development or upon completion of the Development of the Project. The HOME funds are invested in the Project owned by the CHDO. The CHDO Sponsor selects prior to commitment of HOME funds the non-profit organization that will obtain ownership of the Property. The non-profit assumes from the CHDO the HOME obligation (including any repayment of loans) for the Project at a specified time. If the Property is not transferred to the non-profit organization, the CHDO Sponsor remains liable for the HOME loan/grant obligation. The non-profit organization must be financially and legally separate from the CHDO Sponsor. The CHDO Sponsor must provide sufficient resources to the non-profit organization to ensure the Development and long-term operation of the Project.

(B) For HBA, the CHDO owns a Property, then shifts responsibility for the Project to another nonprofit at some specified time in the Development process. The second nonprofit, in turn, transfers title along with the HOME loan/grant obligations and recapture requirements to an Income Eligible Household within a specified timeframe. The HOME funds are invested in the Property owned by the CHDO. The other nonprofit being sponsored by the CHDO acquires the completed units, or brings to completion the Rehabilitation or construction of the Property. At completion of the Rehabilitation or construction, the second nonprofit is required to sell the Property along with the HOME loan/grant obligations to an Income Eligible Household.

(C) For either type of sponsorship, the CHDO must own the Property prior to the development phase of the project.

(27) Community Housing Development Organization Pre-Development Loan--A form of assistance in which funds are made available as loans to cover those costs outlined in 24 CFR §92.301.

(28) Competitive Application Cycle--A defined period of time that Applications may be submitted according to a published No-

tice of Funding Availability (NOFA) that will include a submission deadline and selection or scoring criteria. Applications will be reviewed in accordance with the rules for application review published in the NOFA and the ASPM.

(29) Conflict of Interest--A conflict between the private interests and the official responsibilities of a Person in a position of trust, as specified in 24 CFR §92.356.

(30) Consolidated Plan--The State Consolidated Plan prepared in accordance with 24 CFR, Part 91, which describes the needs, resources, priorities and proposed activities to be undertaken with respect to certain HUD programs and is subject to approval annually by HUD.

(31) Contract--The executed written agreement between the Department and an Administrator or Development Owner performing an activity related to a program that outlines performance requirements and responsibilities assigned by the document.

(32) Control--The possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership or voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing General Partner of a limited liability company.

(33) Deobligated Funds--The funds released by an Administrator or Development Owner or recovered by the Department canceling a Contract or award involving some or all of a contractual financial obligation between the Department and an Administrator or Development Owner.

(34) Department--The Texas Department of Housing and Community Affairs.

(35) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(36) Development--A Project that has a construction component, either in the form of New Construction or Rehabilitation of multi-unit or single family residential housing.

(37) Development funding--

(A) A loan or grant; or

(B) An in-kind contribution, including a donation of real Property, a fee waiver for a building permit or for water or sewer service, or a similar contribution that:

(i) provides an economic benefit; and

(ii) results in a quantifiable cost reduction for the applicable Development.

(38) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract approved by the Department and is the Person responsible for performing under the Contract with the Department.

(39) Development Site--The area, or if scattered site, areas, for which the Development is proposed to be located and is to be under the Development Owner's Control.

(40) Executive Award and Review Advisory Committee (EARAC)--The Department committee that will develop funding priorities and make funding and allocation recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in Chapter 2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities.

(41) Expenditure--An approved expense evidenced by documentation submitted by the Administrator or Development Owner to the Department for purposes of drawing funds from HUD's IDIS for work completed, inspected and certified as complete, and as otherwise required by the Department.

(42) Family--Includes but is not limited to the following types of families as defined in 24 CFR §5.403:

(A) A family with or without children;

(B) An elderly family;

(C) A near elderly family;

(D) A disabled family;

(E) A displaced family;

(F) The remaining member of a tenant family; or

(G) A single person who is not an elderly or displaced person or a person with disabilities or the remaining member of a tenant family.

(43) Feasibility Analysis--The process of performing a budgetary justification for Reconstruction which compares the cost of Rehabilitation to the replacement costs of a housing unit for the purposes of OCC.

(44) FHA 203(b) Mortgage Limits ("§203(b) Limits")--The mortgage limits established under §203(b) of the National Housing Act (12 USC §1709(b) which may be obtained from the HUD Field Office.

(45) Final Rule--The current final rule as published by HUD as 24 CFR, Part 92 with amendments.

(46) General Contractor--A Person who contracts for the construction or Rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors.

(47) General Partner--A Person or Persons who is identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(48) Grant--Financial assistance that is awarded in the form of money to a housing sponsor for a specific purpose and that is not required to be repaid. For purposes of this Chapter, a grant includes a forgivable loan.

(49) Homebuyer Assistance Program (HBA)--A Program Activity for the purpose of providing HOME funds for acquisition, acquisition with Rehabilitation, down payment, closing costs, and gap financing assistance provided to Income Eligible Households. Rehabilitation may be combined with HBA to provide contract for deed conversions and assist Person with Disabilities.

(50) HOME--The HOME Investment Partnerships Program at 42 USC §§12701-12839 and the regulations promulgated thereafter at 24 CFR, Part 92.

(51) Household--One or more persons occupying a housing unit (24 CFR §92.2).

(52) HUD--The United States Department of Housing and Urban Development, or its successor.

(53) HUD's Maximum Per-unit Subsidy Amount ("221(d)(3) limits")--The per-unit dollar limitations established under §221(d)(3)(ii) of the National Housing Act for elevator-type projects that apply to the area in which the housing is located.

(54) IDIS--The electronic grants management information system named the Integrated Disbursement and Information System established by HUD to be used tracking and reporting HOME funding progress.

(55) Income Eligible Households--The federal definition which is:

(A) Low-Income Households--Households whose Annual Incomes do not exceed 80% of the AMFI.

(B) Very Low-Income Households--Households whose Annual Incomes do not exceed 50% of the AMFI.

(C) Extremely Low Income Households--Households whose Annual Incomes do not exceed 30% of the AMFI.

(56) Intergenerational Housing--Housing that includes specific units that are restricted to the age requirements of a Qualified Elderly Development and specific units that are not age restricted in the same Development that:

(A) Have separate and specific buildings exclusively for the age restricted units;

(B) Have separate and specific leasing offices and leasing personnel exclusively for the age restricted units;

(C) Have separate and specific entrances, and other appropriate security measures for the age restricted units;

(D) Provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group;

(E) Share the same Development site;

(F) Are developed and financed under a common plan and owned by the same Person for federal tax purposes; and

(G) Meet the requirements of the federal Fair Housing Act.

(57) Land Use Restriction Agreement (LURA)--An agreement between the Department and a Person related to a specific Property or Properties which is binding upon a Person's successors in interest, filed with the responsible recording authority, and encumbers the Property with respect to requirements in this Chapter, Chapter 2306 of the Texas Government Code and the Final Rule.

(58) Loan--Financial assistance that is awarded in the form of money and an executed written agreement between the Department and Person for a specific purpose and that is required to be repaid.

(59) Manufactured Housing Unit (MHU)--As defined by HUD is a structure transportable in one or more sections which, in traveling mode, is 8 body-feet or more in width or 40 body-feet or more in length, or when erected on site, is 320 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required facilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein.

(60) Match--Eligible forms of non-federal contributions to a Program Activity or Project in the forms specified in 24 CFR §92.220, CPD Notice 97-03 and the Department's Match Guide.

(61) Material Noncompliance--as is defined in 10 TAC, Chapter 60, Subchapter A of this title.

(62) Modular Housing--As defined by HUD is a home built in sections in a factory to meet state, local, or regional building codes. Once assembled, the modular unit becomes permanently fixed to one site.

(63) Mortgagor--The Person who borrows money and uses his or her real property as collateral and security for the payment of the debt.

(64) Neighborhood--As defined by HUD, a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a Unit of General Local Government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a Unit of General Local Government (24 CFR §92.2).

(65) New Construction--Any Development not meeting the definition of Rehabilitation.

(66) NOFA--Notice of Funding Availability, published in the *Texas Register*.

(67) Nonprofit organization--A public or private organization that:

(A) Is organized under state or local laws;

(B) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) Has a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, or §501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective throughout the length of any contract agreements; or classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

(D) A private nonprofit organization's pending application to the IRS for exemption status under §§501(c)(3) or (c)(4) status cannot be used to comply with the tax status requirement.

(68) Open Application Cycle--A defined period of time during which Applications may be submitted according to a published NOFA and which will be reviewed on a first-come, first-served basis until all funds available are committed, or until the NOFA is closed.

(69) Owner-Occupied Housing Assistance (OCC)--A Program Activity for the purpose of providing HOME funds for the Rehabilitation of existing owner-occupied housing for Income Eligible Households. Housing assistance for disaster relief is provided under this Program Activity.

(70) Participating Jurisdiction (PJ)--Any state or Unit of General Local Government, including consortia as specified in 24 CFR §92.101, designated by HUD in accordance with 24 CFR §92.105.

(71) Person--Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(72) Persons with Disabilities--A Household composed of one or more Persons, at least one of whom is an adult, who has a disability that is a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of such a nature that such ability could be improved by more suitable housing conditions. A Person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability and as further defined at 24 CFR §92.2.

(73) Persons with Special Needs--Individuals or categories of individuals determined by the Department to have unmet housing needs consistent with 42 USC §§12701, et seq. and as provided in the Consolidated Plan and may include any households composed of one or more persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers.

(74) Predevelopment Costs--Costs related to a specific eligible Project including:

(A) Predevelopment housing project costs that the Department determines to be customary and reasonable, including but not limited to consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, site control, and title clearance;

(B) Pre-construction housing project costs that the Department determines to be customary and reasonable, including but not limited to, the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies and legal fees;

(C) Predevelopment costs do not include general operational or administrative costs.

(75) Principal--A Person, or Persons, that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships, Principals include all General Partners, special limited partners and Principals with ownership interest;

(B) Corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) Limited liability companies, Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(76) Principal Residence--The primary housing unit a Person or Household inhabits.

(77) Program Activity--The specific purposes for which HOME funds are used and required in the Contract with the Administrator.

(78) Program Income--The gross income received by the Department, Development Owners or Administrators directly generated from the use of HOME funds or matching contributions as further described in 24 CFR §92.2.

(79) Project--A site or an entire building (including a manufactured housing unit), or two or more buildings, together with the site or sites on which the building or buildings are located, that are under common ownership, management, and financing and are to be assisted with HOME funds, under a commitment by the owner, as a single undertaking under 24 CFR §92.2.

(80) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(81) Qualified Elderly Development--A Development which meets the requirements of the federal Fair Housing Act and:

(A) Is intended for, and solely occupied by, individuals 62 years of age or older; or

(B) Is intended and operated for occupancy by at least one individual 55 years of age or older per unit, where at least 80% of the total housing units are occupied by at least one individual who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older.

(82) Qualified Market Analyst--A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a market analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(83) Received Date--The date and time that an Application is physically received by the Department.

(84) Rehabilitation--The improvement or modification of an existing residential development through an alteration, addition, or enhancement. The term includes the demolition of an existing residential development and the Reconstruction of any development units, but does not include the improvement or modification of an existing residential development for the purpose of an adaptive reuse of the development. In accordance with the federal definition of Reconstruction at 24 CFR §92.2, the term also means the demolition and rebuilding, on the same lot, of housing standing on the site at the time of commitment of HOME funds. The number of units on the lot may not be decreased or increased as part of the rehabilitation, but the number of rooms per unit may be increased or decreased. Rehabilitation also includes replacing an existing substandard MHU with a new MHU.

(85) Rental Housing Development (RHD)--A Program Activity and Project for the purpose of providing HOME funds for the acquisition, New Construction or Rehabilitation of multi-family or single family rental housing, or conversion of commercial property to rental housing for Income Eligible Households.

(86) Rural area--An area that is located:

(A) Outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 25,000 or less and does not share a boundary with an urban area; or

(C) In an area that is eligible for funding by the Texas Rural Development Office of the United States Department of Agriculture, other than an area that is located in a municipality with a population of more than 50,000.

(87) Rural Development--A Development or proposed Development that is located in a Rural Area, other than rural New Construction Developments with more than 80 units.

(88) Service Area--The city, county and/or place identified in the Contract that the Administrator will serve.

(89) Set-Aside--A statutory or federally mandated reservation of a portion of available funds or units for specific types of housing priorities, Program Activities or geographic locations.

(90) Single Family Housing Development--A Program Activity and Project for the purpose of providing HOME funds for the acquisition, and/or New Construction or Rehabilitation of affordable single family housing units Income Eligible Households to acquire homeownership.

(91) State Recipient--A Unit of General Local Government designated by the Department to receive HOME funds.

(92) Subrecipient--A public agency or nonprofit organization selected by the Department to administer all or a portion of the Department's HOME program. A public agency or nonprofit that receives HOME funds solely as a developer or owner of housing is not a Subrecipient. The Department's selection of a Subrecipient is not subject to the procurement procedures and requirements.

(93) TAC--Texas Administrative Code.

(94) Tenant-Based Rental Assistance (TBRA)--A Program Activity for the purpose of providing HOME funds for rental subsidy and security and utility deposit assistance to Income Eligible Households.

(95) Texas Minimum Construction Standard (TMCS)--The program standard used to determine the minimum acceptable housing condition for the purposes of Rehabilitation and acquisition.

(96) Third Party--A Person who is not:

(A) An Applicant, Administrator, Borrower, General Partner, Developer, Development Owner, or General Contractor; or

(B) An Affiliate, Affiliated Party to the Applicant, Administrator, Borrower, General Partner, Developer, Development Owner or General Contractor; or

(C) A Person receiving any portion of the administration, contractor fee or developer fee.

(97) Unit of General Local Government--A city, town, county, or other general purpose political subdivision of the State; a consortium of such subdivisions recognized by HUD in accordance with 24 CFR §92.101 and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction. An urban county is considered a unit of general local government under the HOME Program.

(98) Urban Area--The area that is located within the boundaries of a primary metropolitan statistical area other than an area that is described by paragraph (86) of this subsection.

(99) USC--The United States Code.

§53.3. Ex Parte Communications.

(a) During the period beginning on the date project Applications are filed in an application cycle and ending on the date the board makes a final decision with respect to the approval of any Application in that cycle, a member of the Board may not communicate with the following Persons:

(1) an Applicant or a Related Party, as defined by state law, including board rules, and federal law; and

(2) any Person who is:

(A) active in the construction, rehabilitation, ownership, or control of the proposed project, including:

(i) a General Partner or contractor; and

(ii) a Principal or Affiliate of a General Partner or contractor; or

(B) employed as a consultant, lobbyist, or attorney by an Applicant or a Related Party.

(b) Subject to subsection (c) of this section, during the period beginning on the date project Applications are filed in an application cycle and ending on the date the Board makes a final decision with respect to the approval of any Application in that cycle, an employee of the Department may communicate about the Application with the following Persons:

(1) the Applicant or a Related Party, as defined by state law, including board rules, and federal law; and

(2) any Person who is:

(A) active in the construction, Rehabilitation, ownership, or Control of the proposed Project, including:

(i) a General Partner or contractor; and

(ii) a Principal or Affiliate of a General Partner or contractor; or

(B) employed as a consultant, lobbyist or attorney by the Applicant or a Related Party.

(c) A communication under subsection (b) of this section may be oral or in any written form, including electronic communication through the internet, and must satisfy the following conditions:

(1) the communication must be restricted to technical or administrative matters directly affecting the Application;

(2) the communication must occur or be received on the premises of the Department during established business hours; and

(3) a record of the communication must be maintained and included with the Application for purposes of Board review and must contain the following information:

(A) the date, time, and means of communication;

(B) the names and position titles of the Persons involved in the communication and, if applicable, the Person's relationship to the Applicant;

(C) the subject matter of the communication; and

(D) a summary of any action taken as a result of the communication.

(d) Notwithstanding subsection (a) or (b) of this section, a Board member or Department employee may communicate without restriction with a Person listed in subsection (a) or (b) of this section during any board meeting or public hearing held with respect to the Application, but not during a recess or other nonrecord portion of the meeting or hearing.

(e) Subsection (a) of this section does not prohibit the Board from participating in social events at which a Person with whom communications are prohibited may or will be present, provided that all matters related to Applications to be considered by the Board will not be discussed.

§53.4. Waivers in Disaster Areas.

It is the policy of the Department to utilize the waivers granted by HUD in disaster areas unless otherwise specifically stated in any NOFA released.

§53.5. Printed Materials Available.

Upon request, any materials identified as available of the Department's website in this Chapter may also be distributed in hard copy.

§53.6. Alternative Dispute Resolution.

The Department encourages Persons to use the Alternative Dispute Resolution rules found in §1.17 of this title, to resolve disputes.

§53.7. Compliance Rules.

Multifamily Developments (whether single family homes or Developments with four or more units) are subject to the relevant compliance rules found in Chapter 60 of this title.

§53.8. Notice of Receipt of Application or Proposed Application.

(a) Not later than the 14th day after the date an Application or a proposed Application for housing funds described by §2306.111 has been filed, the Department shall provide written notice of the filing of the Application or proposed Application to the following Persons:

(1) the United States representative who represents the community containing the Development described in the Application;

(2) members of the legislature who represent the community containing the Development described in the Application;

(3) the presiding officer of the governing body of the political subdivision containing the Development described in the Application;

(4) any member of the governing body of a political subdivision who represents the area containing the Development described in the Application;

(5) the superintendent and the presiding officer of the board of trustees of the school district containing the Development described in the Application; and

(6) any neighborhood organizations on record with the state or county in which the Development described in the Application is to be located and whose boundaries contain the proposed development site.

(b) The notice provided under subsection (a) of this section must include the following information:

(1) the relevant dates affecting the Application, including:

(A) the date on which the Application was filed;

(B) the date or dates on which any hearings on the Application will be held; and

(C) the date by which a decision on the Application will be made;

(2) a summary of relevant facts associated with the development;

(3) a summary of any public benefits provided as a result of the Development, including rent subsidies and tenant services; and

(4) the name and contact information of the employee of the Department designated by the director to act as the information officer and liaison with the public regarding the Application.

§53.9. Environmental Clearance and Loan Closing Are Required Prior to Construction.

Administrators and Development Owners must not proceed or allow a contractor to proceed with construction, including demolition, on any Activity, Project or Development without first completing the required environmental clearance procedures and Loan closing with the Department.

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

Filed with the Office of the Secretary of State on September 20, 2007.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 475-3916

SUBCHAPTER B. ALLOCATION OF FUNDS

10 TAC §53.20, §53.21

The Texas Department of Housing and Community Affairs proposes new Chapter 53, Subchapter B, §53.20 and §53.21, concerning the HOME Program. These new sections are proposed in order to allow public comment and adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2008 rule cycle and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering these new sections.

Mr. Gerber has also determined that for each year of the first five-years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with these new sections as proposed.

Public hearings will be held across the state between September 24 and October 5 to receive public input on these new sections. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: 2008rulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. All comments must be received by October 10, 2007.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§53.20. Consolidated Plan.

The Department will annually develop a Consolidated Plan One-Year Action Plan that will determine funding priorities and Set-Asides for the use of funds provided under the Act by HUD. Funds will be released only after approval of the One-Year Action Plan by HUD.

§53.21. Allocation of Funds.

(a) The Department shall administer all federal housing funds provided to the state under the Act in accordance with the Final Rule and Chapter 2306 of the Texas Government Code by:

(1) adopting a goal to apply an aggregate minimum of 25% of the division's total housing funds toward housing assistance for individuals and families of extremely low and very low income, pursuant to §2306.111(b);

(2) expending 95% of these funds for the benefit of non-participating small cities and Rural Areas that do not qualify to receive funds under the Act directly from HUD;

(3) expending 5% of these funds for Persons with Disabilities who live in any area of the state as required by §2306.111(c).

(b) The funds under subsection (a)(2) of this section shall be allocated according to the regional allocation formula adopted as required by Chapter 2306.

(c) The funds will not be regionally allocated as required by subsection (b) of this section if the funds are reserved for contract for deed conversions or for Set-Asides mandated by state or federal law and each contract for deed Set-Aside equals not more than 10% of the total allocation of funds.

(d) The funds under subsection (a)(3) of this section are not subject to the regional allocation formula and may be used in any region of the state. Limitations on funds for a single region, if any, will be included within a NOFA. If limitations are not included in a NOFA, the maximum funds available are 5% of the annual allocation.

(e) The Department will make every effort to distribute funds throughout the state as outlined in the Department's Consolidated Plan One-Year Action Plan and in accordance with Chapter 2306.

(f) Redistribution. In an effort to commit HOME funds in a timely manner, the Department may reallocate funds to other areas identified in the Consolidated Plan, at its own discretion.

(g) Deobligated Funds. The Department shall use Deobligated Funds in accordance with §1.19 of this title. As required by Chapter 2306, the funds will be expended under the same allocation method called for under subsection (a) of this section and are not subject to the regional allocation formula.

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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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

SUBCHAPTER C. PROGRAM ACTIVITIES

10 TAC §§53.30 - 53.37

The Texas Department of Housing and Community Affairs proposes new Chapter 53, Subchapter C, §§53.30 - 53.37, concerning the HOME Program. These new sections are proposed in order to allow public comment and adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2008 rule cycle and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering these new sections.

Mr. Gerber has also determined that for each year of the first five-years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with these new sections as proposed.

Public hearings will be held across the state between September 24 and October 5 to receive public input on these new sections. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: 2008rulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. All comments must be received by October 10, 2007.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§53.30. Activities in Consolidated Plan.

Through its Consolidated Plan, the Department has identified general guidelines for funding of a Program Activity. Applicants that meet the qualifications identified in this Chapter and under the terms of a NOFA may apply for any Program Activity the Department funds.

§53.31. Owner-Occupied Housing Assistance Program (OCC).

(a) Eligible activities are limited to the Rehabilitation or Reconstruction of existing owner-occupied housing. The Rehabilitation of a MHU is not an eligible activity.

(b) Eligible forms of homeownership are limited to fee simple title to the real property, a 99-year leasehold interest in the real property, a 50-year leasehold interest on trust, a 50-year leasehold on restricted Indian lands, or ownership or membership in cooperative or a mutual housing project that constitutes homeownership under Texas law.

(c) Eligible property types are limited to single family dwellings, condominium units and cooperative units in mutual housing projects. A MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a MHU or Modular Home if:

(1) the unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act, §19(1);

(2) the unit is permanently installed down;

(3) the unit is permanently attached to utilities; and

(4) the ownership of the unit is recorded in the taxing authority of the county in which it is located.

(d) The Household must comply with the following initial eligibility requirements:

(1) own and occupy the single family unit as its Principal Residence;

(2) be an Income Eligible Household;

(3) be located within the Administrator's Service Area; and

(4) meet all other eligibility requirements.

(e) Real property taxes assessed on the housing unit must be current and/or the Household must be participating in an approved payment plan with the taxing authority.

(f) The property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(g) The maximum amount of assistance to an eligible Household is based on Household size:

(1) Rehabilitation that is Reconstruction for 1 - 4 person Household: $60,000

(2) Rehabilitation that is Reconstruction for 5 - 6 person Household: $67,500

(3) Rehabilitation that is Reconstruction for 7 or more person Household: $75,000

(4) Rehabilitation that is not Reconstruction: $30,000

(h) The minimum amount of assistance to an eligible household is $1,000.

(i) The estimated value of the housing unit, after Rehabilitation or Reconstruction, must not exceed the HUD 203(b) Limits.

(j) The form of assistance to an eligible Household is based on AMFI except in the instances of a MHU being replaced with newly constructed housing (site-built) on the same site or any housing unit being replaced on an alternate site. For Rehabilitation that is Reconstruction (excluding contract for deed conversion), the Loan amount is based upon the amount of assistance minus the appraised value of the existing housing unit. Upon completion of the Reconstruction, the Department will reduce the Loan amount with a principal reduction for any change orders that resulted in a net decrease in the amount of assistance, a net decrease of the after-improved value and 10% of the after-improved value of the housing unit:
Figure: 10 TAC §53.31(j)

(k) When a MHU is being replaced with newly constructed housing (site-built) or any housing unit being replaced on an alternate site, the activity is considered acquisition and will trigger affordability requirements for homeownership as defined by 24 CFR §92.254. (Refer to §53.14 of this chapter.)

(l) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(m) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease, unless the Property is transferred by devise, descent or operation of law upon the death of the homeowner that is a Household whose Annual Income does not exceed 30% of the AMFI.

(n) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised by the appropriate governmental authority without prior written consent of the Department unless the balance on the Loan will be paid at closing.

(o) Housing units assisted with HOME funds must meet or exceed the TMCS or CHS, as applicable, and all applicable codes and standards. In addition, housing that is Rehabilitated under this Chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the Final Rule.

§53.32. Homebuyer Assistance Program (HBA).

(a) Eligible activities are limited to the acquisition or acquisition and Rehabilitation of single family housing units.

(b) Eligible property types are limited to single family dwellings, condominium units and cooperative units in mutual housing projects. A MHU is not an eligible property type for Rehabilitation. HOME funds may be used to replace (Reconstruct) an owner-occupied housing unit with a MHU or Modular Home if:

(1) the unit complies with standards at 24 CFR §92.205 and with the Texas Manufactured Housing Standards Act, §19(1);

(2) the unit is permanently installed down;

(3) the unit is permanently attached to utilities; and

(4) the ownership of the unit is recorded in the taxing authority of the county in which it is located.

(c) The Household must comply with the following initial eligibility requirements:

(1) occupy the single family unit as its Principal Residence;

(2) be an Income Eligible Household and for contract for deed conversion, the Households Annual Income must not exceed 60% AFMI;

(3) be located within the Administrator's Service Area; and

(4) meet all other eligibility requirements.

(d) The Property must not be encumbered with tax liens, child support liens, or mechanic or materialmen's liens.

(e) The maximum amount of assistance to an eligible Household for downpayment and closing cost assistance is the lesser of:

(1) $15,000 for Persons with Disabilities; or

(2) $10,000.

(f) The maximum amount of assistance for Rehabilitation that is not Reconstruction to an eligible PWD Household that is also using funds for acquisition is $20,000.

(g) The maximum amount of assistance to an eligible Household for acquisition and closing costs for a contract for deed conversion

is $25,000. In the case of a contract for deed conversion housing unit that involves both the acquisition of a loan on an existing MHU and the associated land, the Executive Director may grant an exception to exceed this amount, however, the Executive Director will not grant an exception to exceed $40,000 of assistance.

(h) The maximum amount of assistance for Rehabilitation to an eligible Household for a contract for deed conversion is limited to the OCC Program Activity requirements in §53.13(g) of this chapter.

(i) When a MHU is being replaced with newly constructed housing (site-built) or any housing unit being replaced on an alternate site, the maximum amount of assistance to an eligible Household is based on Household size:

(1) Rehabilitation that is Reconstruction for 1 - 4 person Household: $60,000

(2) Rehabilitation that is Reconstruction for 5 - 6 person Household: $67,500

(3) Rehabilitation that is Reconstruction for 7 or more person Household: $75,000

(j) For contract for deed conversions and when a MHU is being replaced with newly constructed housing (site-built) or any housing unit being replaced on an alternate site, the form of assistance to an eligible Household is based on AMFI:
Figure: 10 TAC §53.32(j)

(k) The minimum amount of assistance to an eligible Household is $1,000.

(l) The purchase price of the housing unit, plus the value of the Rehabilitation or Reconstruction if applicable, must not exceed 95% of the area's median purchase price as specified in the HUD 203(b) Limits.

(m) With the exception of subsection (j) of this section, the total amount of assistance under this section and Program Activity, including Rehabilitation, will be provided in the form of a zero percent (0%) deferred, forgivable Loan with a term based on the federal affordability requirements as defined in 24 CFR §92.254.

(n) Any forgiveness of the Loan occurs upon the anniversary date of the Household's continuous occupancy as its Principal Residence and continues on an annual pro-rata basis until maturity of the Loan.

(o) In the event that the housing unit ceases to be the Principal Residence of the Household, the Department has established that the federal recapture requirements as defined in 24 CFR §92.254 will be imposed.

(p) In the event that the housing unit ceases to be the Principal Residence of the Household, the forgiveness of the Loan, if applicable, will cease.

(q) In the event that the housing unit is sold, the Department will recapture the shared net proceeds available based on the requirements of 24 CFR §92.254 and the housing unit must be sold for an amount not less than the current appraised value as then appraised but the appropriate governmental authority without prior written consent of the Department unless the balance on the Loan will be paid at closing.

(r) Housing units assisted with HOME funds must meet or exceed the TMCS or CHS, as applicable, and all applicable codes and standards. In addition, housing that is Rehabilitated under this Chapter must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the Final Rule.

(s) This Program Activity is a CHDO-eligible activity.

§53.33. Tenant-Based Rental Assistance Program (TBRA).

(a) TBRA is provided to eligible tenants for payment of rental subsidies and for a period of time that does not exceed 24 months per Household. Security deposits and utility deposits may be provided in conjunction with rental assistance.

(b) The Household must comply with the following initial eligibility requirements:

(1) participate in an approved self-sufficiency program;

(2) maintain Principal Residency in the rental unit for which the subsidy is being provided;

(3) be an Income Eligible Household;

(4) reside in a rental unit that is located within the Administrator's Service Area; and

(5) meet all other eligibility requirements.

(c) Assistance to an eligible Household is limited by:

(1) for rental subsidy, cannot exceed twenty-four (24) months per Household; and

(2) for security deposit, cannot exceed two (2) months rent for the unit.

(d) The rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program."

(e) Rental units must be inspected prior to occupancy and must comply with Housing Quality Standards established by HUD.

§53.34. Rental Housing Development Program (RHD).

(a) Eligible activities include the acquisition and New Construction or Rehabilitation of multifamily housing Developments and as further defined in the NOFA. Owners of rental units assisted with HOME funds must comply with income and rent restrictions for the duration of the required affordability period as required and defined at 24 CFR §92.252. Housing assisted with HOME funds must meet all applicable codes and standards. In addition, housing that is Newly Constructed or Rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with 24 CFR §92.251(a).

(b) This Program Activity is a CHDO-eligible activity.

§53.35. Single Family Housing Development Program.

(a) Eligible activities include the acquisition and New Construction or Rehabilitation of single family housing and as further defined in the NOFA. Single family housing units assisted with HOME funds must comply with the required affordability requirements as defined at 24 CFR §92.254. In addition, housing that is Newly Constructed or Rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances in accordance with the 24 CFR §92.251(a). If eligible, an Applicant that applies for Single Family Housing Development may also apply for Homebuyer Assistance.

(b) This Program Activity is a CHDO-eligible activity.

§53.36. CHDO Pre-Development Loan Program.

Applicants for pre-development loans will be required to have a summary description of a proposed Development and be able to show the necessary development experience to apply, as outlined in the NOFA and Application. Predevelopment loan funds may only be used for activities such as project-specific technical assistance, site control loans, and project-specific seed money. Pre-development Loans must be repaid from construction loan proceeds or other project income.

§53.37. Prohibited Activities.

Department awards may not be used to:

(1) Provide project reserve accounts, except as provided in 24 CFR §92.206(d)(5), or operating subsidies;

(2) Provide tenant-based rental assistance for the special purposes of the existing Section 8 program, in accordance with §212(d) of the Act;

(3) Provide non-federal matching contributions required under any other Federal program;

(4) Provide assistance authorized under §9 of the 1937 Act (Public Housing Capital and Operating Funds);

(5) Provide assistance to eligible low-income housing under 24 CFR Part 248 (Prepayment of Low Income Housing Mortgages), except that assistance may be provided to priority purchasers as defined in 24 CFR §248.101;

(6) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the PJ in the written agreement under 24 CFR §92.504. However, additional HOME funds may be committed to a project up to one year after project completion (24 CFR §92.502), but the amount of HOME funds in the Project may not exceed the maximum per-unit subsidy amount established under 24 CFR §92.250;

(7) Pay for the acquisition of Property owned by the PJ, except for Property acquired by the PJ with HOME funds, or Property acquired in anticipation of carrying out a HOME project;

(8) Pay delinquent taxes, fees or charges on Properties to be assisted with HOME funds;

(9) Pay for any cost that is not eligible under 24 CFR §§92.206 - 92.209;

(10) Assist Persons who owe payments identified by the Comptroller of Texas as relevant;

(11) Assist Households whose Property has current tax liens and/or judgments to the State of Texas against it; or

(12) Provide Rehabilitation on a housing unit without prior written consent of all Persons who have a valid lien or ownership interest in the Property.

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

Filed with the Office of the Secretary of State on September 20, 2007.

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Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

SUBCHAPTER D. APPLICATION REQUIREMENTS AND PROCEDURES

10 TAC §§53.40 - 53.49

The Texas Department of Housing and Community Affairs proposes new Chapter 53, Subchapter D, §§53.40 - 53.49, concerning the HOME Program. These new sections are proposed in order to allow public comment and adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2008 rule cycle and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering these new sections.

Mr. Gerber has also determined that for each year of the first five-years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with these new sections as proposed.

Public hearings will be held across the state between September 24 and October 5 to receive public input on these new sections. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: 2008rulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. All comments must be received by October 10, 2007.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§53.40. Competitive and Open Cycles.

All NOFAs will be presented to the Board. The Department will declare within a NOFA whether the application cycle will be a competitive or open cycle. Funds made available for disaster relief will not be released in a NOFA but will be provided in accordance with the Department's Deobligated Funds Policy §1.19 of this title.

§53.41. Eligible Applicants.

The following organizations or entities are eligible to apply for HOME eligible activities:

(1) nonprofit organizations;

(2) CHDOs;

(3) Units of General Local Government;

(4) for-profit entities and sole proprietors; and

(5) public housing agencies.

§53.42. Ineligible Applicants and Applications.

The following violations will cause an Applicant and any Applications they have submitted to be ineligible:

(1) The Applicant, Development Owner, or Developer is an Administrator of a previously funded Contract for which HOME funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to application submission

date, unless the deobligation was voluntary and prior to the contract term expiration date, or was the remainder on a completed Contract;

(2) The Applicant, Development Owner, or Developer has failed to submit a response to provide an explanation, evidence of corrective action or a payment of disallowed costs or fees as a result of a monitoring review;

(3) The Applicant, Development Owner, or Developer has failed to make timely payment or is delinquent on any loans or fee commitments made with the Department on the date of the Application submission;

(4) The Applicant, Development Owner, or Developer has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs or has otherwise been debarred by HUD or the Department;

(5) The Applicant, Development Owner, or Developer has violated the State's revolving door policy;

(6) The Applicant, Development Owner, or Developer has been convicted of a state or federal felony crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline;

(7) The Applicant, Development Owner, or Developer at the time of Application submission is:

(A) subject to an enforcement or disciplinary action under state or federal securities law or by the NASD;

(B) subject to a federal tax lien;

(C) or is the subject of an enforcement proceeding with any governmental entity;

(8) The Applicant, Development Owner, or Developer with any past due audits has not submitted those past due audits to the Department in a satisfactory format on or before the Application submission date in accordance with §1.3 of this title;

(9) The submitted Application has an entire volume of the Application missing; has excessive omissions of documentation from the threshold Criteria or uniform Application documentation; or is so unclear, disjointed, or incomplete that a thorough review can not reasonably be performed by the Department, as determined by the Department. If an Application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibility will be included in the termination letter to the Applicant;

(10) The Applicant, Development Owner, or Developer or anyone that has Controlling ownership interest in the Development Owner or Developer that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA;

(11) The Application is a joint venture Application for the same Program Activity to serve the same town, city, or county that is identified in the Application already submitted as a sole Application for the same Program Activity in the same town, city or county;

(12) Applicant is requesting funding not related to Persons with Disabilities in a PJ; or

(13) Any Application that includes financial participation by a Person who, during the five-year period preceding the date of the bid or award, has been convicted of violating a federal law in connection with a contract awarded by the federal government for relief, recovery, or Reconstruction efforts as a result of Hurricanes Rita or Katrina or any other disaster occurring after September 25, 2005, or was assessed a federal civil or administrative penalty in relation to such a contract.

§53.43. Application Forms and Materials and Deadlines.

(a) The Department will develop and publish on its website an Application and ASPM that if completed would satisfy the requirements for requesting funds from the Department. The Department may limit the eligibility of Applications in the NOFA and ASPM. Threshold and selection criteria and any other Application requirements will be specified in the NOFA approved by the Board.

(b) Applicants must submit an Application by the deadline date specified in the NOFA using the Application, ASPM and forms required by the Department. All Applications must be received during business hours (8:00 a.m. to 5:00 p.m. Central Standard Time) on any business day.

§53.44. General Applicant Eligibility Requirements.

(a) An Applicant must satisfy each of the following requirements in order to be eligible to apply for HOME funding and as more fully described in the NOFA and Application, when applicable:

(1) provide evidence of its ability to carry out the program in the areas of financing, acquiring, rehabilitating, developing or managing affordable housing Developments;

(2) demonstrate fiscal, programmatic, and contractual compliance on previously awarded Department Contracts or Loans;

(3) submit any past due audit to the department in a satisfactory format on or before the application deadline, in accordance with §1.3 of this title;

(4) demonstrate satisfactory performance otherwise required by Department rules and set out in the Application;

(5) comply with all requirements to utilize the Department's website to provide necessary data to the Department;

(6) provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of Match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith;

(7) provide certification that all contractors, consulting firms, Administrators, and Development Owners will sign an affidavit to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions; and

(8) if required or requested, provide reasonable Match.

(b) Noncompliance. Each Application will be reviewed for its compliance history by the Department, consistent with Chapter 60 of this title. Applications containing Persons found to be in Material Noncompliance, or otherwise violating the compliance rules of the Department, will be terminated.

§53.45. Rental Housing Development (Multifamily) Application Requirements.

(a) Rental Housing Development site and development restrictions include all those items referred to in the Final Rule, and any additional items included in the NOFA for RHD.

(b) Developments involving New Construction will be limited to 252 Units. These maximum unit limitations also apply to those Developments which involve a combination of Rehabilitation and New

Construction. Developments that consist solely of acquisition and Rehabilitation or Rehabilitation only may exceed the maximum unit restrictions. Developments in Rural Areas are limited to no more than 80 units. The minimum number of units shall be 4 units.

(c) For funds being used for RHD, the Development Owner must establish a reserve account consistent with Texas Government Code, §2306.186, and as further described in §1.37 of this title.

§53.46. Multifamily Applicants also Seeking Housing Tax Credits.

Applicants who are seeking housing tax credits and are also seeking funds under this Chapter for the same Development must meet the requirements under the Qualified Allocation Plan for the year in which they are applying for these funds and all of the requirements of this subchapter unless specifically waived by the Department

§53.47. Application and Award Limitations.

(a) The Department reserves the right to reduce the amount requested in an Application based on Program Activity or Project feasibility, underwriting analysis, or availability of funds.

(1) The Contract award amount for OCC shall not exceed $375,000 per Applicant per NOFA.

(2) The Contract award amount for HBA shall not exceed $300,000 per Applicant per NOFA, however, up to $500,000 may be awarded to HBA Applicants whose Service Area includes multiple counties within a Uniform State Service Region.

(3) The Contract award amount for TBRA shall not exceed $300,000 per Applicant per NOFA.

(4) The Contract award amount for contract for deed conversions shall not exceed $500,000 per NOFA, except as may be otherwise allowed by the Board or NOFA.

(5) The Contract award amount for disaster relief shall not exceed $500,000 per state or federally declared disaster, or as may be otherwise allowed by the Board. Only one Application per affected Unit of General Local Government may be submitted for each declared disaster. Public Housing Authorities (PHAs) and Nonprofit organizations may only act as an Applicant, in lieu of the Unit of General Local Government, if they are so designated by the affected Unit of General Local Government. If the disaster is a federally declared disaster, the Applicant may not be funded until 90 days have expired from the federal declaration date. Applications for disaster relief will only be accepted within six (6) months after the first day assistance under this program is made available.

(6) The Contract Award amount for RHD or Single Family Development activities shall not exceed $3 million. The Department reserves the right to set maximum loan to value limitations and minimum Match requirements on all Development activities.

(7) The Contract award amount for CHDO Operating Expenses shall not exceed:

(A) the lesser of clauses (i) or (ii) of this subparagraph:

(i) fifty percent (50%) of the CHDO's total annual operating expenses in that fiscal year; or

(ii) five percent (5%) of the CHDO funds awarded for the Project from the CHDO Set-Aside; and

(B) $50,000, whichever is greater.

(C) An Applicant shall not receive more than one award of CHDO operating funds during the same fiscal year regardless of the number of Applications submitted.

(8) The Contract award amount for CHDO Predevelopment Loans may not exceed $50,000 per Application. Applicants may submit only one Application per NOFA to cover eligible costs.

(b) The Board may waive the amounts in this section by stating the increase in the applicable NOFA.

§53.48. Application Review Process.

(a) Applications received by the Department in response to an Open Application Cycle NOFA will be handled in the following manner:

(1) The Department will accept Applications on an ongoing basis, until such date when the Department makes notice to the public that an Open Application Cycle has been closed; and

(2) Each Application will be handled on a first-come, first-served basis as further described in this section. Each Application will be assigned a Received Date based on the date and time it is physically received by the Department. Then each Application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on its Received Date unless it does not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over Applications that may have an earlier Received Date but that did not timely complete a phase of review.

(A) Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Two or Three will be reviewed for recommendation to the Board by the Committee.

(B) Phase Two will include a comprehensive review for financial feasibility for RHD and Single Family Development Program Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department may issue a notice of any Administrative Deficiencies. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be reviewed for recommendation to the Board by the Committee.

(C) Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies

will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be reviewed for recommendation to the Board by the Committee.

(3) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

(b) Applications received by the Department in response to a Competitive Application Cycle NOFA will be handled in the following manner:

(1) The Department will accept Applications on an ongoing basis during the Application Acceptance Period as specified in the NOFA;

(2) Applications submitted and accepted by the Department will be reviewed for eligibility, threshold and selection criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM. A comprehensive review of financial feasibility for RHD and Single Family Development Program Activities will be conducted by the Real Estate Analysis (REA) Division consistent with §1.32 of this title. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. If applicable, a review of the CHDO Certification Application will be performed. The Department will issue a notice of any Administrative Deficiencies for items reviewed. If Administrative Deficiencies are not cured to the satisfaction of the Department within five (5) business days of the deficiency notice date, then five (5) points shall be deducted from the selection score for each additional day the Administrative Deficiency remains unresolved. If Administrative Deficiencies are not clarified or corrected within seven (7) business days from the deficiency notice date, then the Application shall be terminated; and

(3) Upon completion of review and no unresolved Administrative Deficiencies, the Application will be reviewed for recommendation to the Board by the Committee.

(c) Administrative Deficiencies. If an application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies including threshold and/or selection criteria documentation and/or financial feasibility analysis. The Department staff may request clarification or correction in a deficiency notice in the form of a facsimile and a telephone call to the Applicant advising that such a request has been transmitted. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. To cure an Administrative Deficiency, an Applicant must provide a clarification, further definition or exposition of an issue, an explanation as to why an Applicant has provided certain information, or resolution of a discrepancy where an Applicant has provided conflicting information. An Administration Deficiency may not be cured by substantially changing an Application or providing any new unrequested information. An Applicant may not change or supplement any part of an Application in any manner after submission to the Department, and may not add any Set-asides, increase their award amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Real Estate Analysis Division to remedy an Administrative Deficiency as further described in this title or by amendment of an Application after a commitment or allocation of HOME funds.

(d) Decline to Fund. The Department may decline to fund any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

§53.49. Selection Criteria for Program Activities.

Selection criteria for any Program Activities will be described in the applicable NOFA and ASPM. The Applicant's self-score must be completed in the Application. An Applicant may not adjust the self-score without a request from the Department as a result of an Administrative Deficiency.

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

Filed with the Office of the Secretary of State on September 20, 2007.

TRD-200704360
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 475-3916

SUBCHAPTER E. COMMUNITY HOUSING DEVELOPMENT ORGANIZATION (CHDO)

10 TAC §53.50

The Texas Department of Housing and Community Affairs proposes new Chapter 53, Subchapter E, §53.50, concerning the HOME Program. These new sections are proposed in order to allow public comment and adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2008 rule cycle and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering these new sections.

Mr. Gerber has also determined that for each year of the first five-years the new section is in effect the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules to enhance the State's ability to provide

decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with this new section as proposed.

Public hearings will be held across the state between September 24 and October 5 to receive public input on this new section. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: 2008rulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. All comments must be received by October 10, 2007.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by this proposed new section.

§53.50. Application Procedures for Certification of CHDO.

(a) An Applicant requesting certification as a CHDO must submit an application for CHDO certification in a form prescribed by the Department. The CHDO Application must be submitted with an Application for HOME funding under the CHDO Set-Aside. The Application must include documentation evidencing the requirements of this subsection:

(1) The Applicant must be organized as a private nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/nonprofit statute as evidenced by:

(A) charter; or

(B) Articles of Incorporation.

(2) The Applicant must be registered with the Secretary of State to do business in the State of Texas.

(3) No part of the private nonprofit organization's net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by:

(A) charter; or

(B) Articles of Incorporation.

(4) The Applicant must have the following tax status:

(A) A current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, or §501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective while certified as a CHDO; or

(B) Classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and a private nonprofit organization's pending application for §501(c)(3) or §(c)(4) status cannot be used to comply with the tax status requirement under this subparagraph.

(5) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's:

(A) Articles of Incorporation,

(B) Charter;

(C) Resolutions; or

(D) Bylaws; and

(E) A Business Plan for the CHDO, as prescribed in the CHDO Application.

(6) The Applicant must have a clearly defined CHDO Service Area. The Applicant may include as its service area an entire Community, but not the whole state. The Applicant must provide evidence of its participation in the Community for each city/place or county listed in the Service Area. Private nonprofit organizations serving special populations must also define the geographic boundaries of its Service Areas and provide evidence of its participation in the Community for each city/place or county listed in the Service Area. This subparagraph does not require a private nonprofit organization to represent only a single neighborhood.

(7) An Applicant must have the following capacity and experience:

(A) Conforms to the financial accountability standards of 24 CFR §84.21, "Standards of Financial Management Systems" as evidenced by:

(i) notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department;

(ii) certification from a Certified Public Accountant; or

(iii) HUD approved audit summary; and

(iv) a written narrative describing internal controls used to create financial duties and safe guard corporate assets; and

(v) a written narrative describing the conflict of interest policy governing employees and development activities and procurement; and

(vi) a written narrative describing the current corporation's financial structure can support housing development activities; and

(vii) describe the organization's ability to manage additional rental development activities, if applicable.

(B) Demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

(i) documentation that describes the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds; or

(ii) contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization.

(C) Has a history of serving the low income residents of the Community within the city/place or county which housing to be assisted with HOME funds is to be located as evidenced by:

(i) documentation of at least one year of experience in serving that Community; or

(ii) for newly created organizations formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year of experience in

serving the Community in which the housing to be assisted with HOME funds is to be located; and

(iii) The CHDO or its parent organization must be able to document one year of serving the Community in which housing to be assisted with HOME funds is to be located prior to the date the PJ provides HOME funds to the organization. In the submission, the organization must document and describe its history (or its parent organization's history) of serving the community in which the housing to be assisted with HOME funds is to be located by describing and documenting CHDO eligible activities which it provided (or its parent organization provided), such as, developing new housing, rehabilitating existing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for the Community, such as counseling, food relief, or childcare facilities. The statement in the submission package must be signed by the president or other official of the organization.

(8) An Applicant must have the following organizational structure. The Applicant must maintain at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations in the Applicant's service area. Low-income neighborhoods are defined as neighborhoods where 51 % or more of the residents are low-income. Residents of low-income neighborhoods do not have to be low income individuals themselves. If a low-income individual does not live in a low-income neighborhood as herein defined, the low-income individual must certify that he qualifies as a low-income individual. This certification is in addition to the affidavit required in subparagraph (B) of this paragraph. For the purpose of this paragraph, elected representatives of low-income neighborhood organizations include block groups, town watch organizations, civic associations, neighborhood church groups, Neighbor Works organizations and any organization composed primarily of residents of a low-income neighborhood as herein defined whose primary purpose is to serve the interest of the neighborhood residents. Compliance with this paragraph shall be evidenced by:

(A) written provision or statement in the organizations Bylaws, Charter or Articles of Incorporation;

(B) affidavit in a form prescribed by the Department signed by the organization's Executive Director and notarized; and

(C) current roster of all Board of Directors, including names and mailing addresses. The required one-third low-income residents or elected representatives must be marked on list as such.

(9) The Applicant must provide a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects. The formal process should include a system for community involvement in parts of the private nonprofit organization's service areas where housing will be developed, but which are not represented on its boards. Input from the low-income community is not met solely by having low-income representation on the board. The formal process must be in writing and approved or adopted by the private nonprofit organization, as evidenced by:

(A) organization's Bylaws; or

(B) written statement of operating procedures approved by the governing body. Statement must be original letterhead, signed by the Executive Director and evidence date of board approval; and

(C) A Resolution as prescribed by the Department and evidence date of board approval.

(10) A local or state government and/or public agency cannot qualify as a CHDO, but may sponsor the creation of a CHDO. A private nonprofit organization may be chartered by a State or local government, but the following restrictions apply:

(A) The state or local government may not appoint more than one-third of the membership of the organization's governing body;

(B) The board members appointed by the state or local government may not, in turn, appoint the remaining two-thirds of the board members;

(C) No more than one-third of the governing board members may be public officials. Public officials include elected officials, appointed public officials, employees of the participating jurisdiction, or employees of the sponsoring state or local government, and individuals appointed by a public official. Elected officials include, but are not limited to, state legislators or any other statewide elected officials. Appointed public officials include, but are not limited to, members of any regulatory and/or advisory boards or commissions that are appointed by a State official;

(D) Public officials who themselves are low-income residents or representatives do not count toward the one-third minimum requirement of community representatives in subparagraph (A) of this paragraph; and

(E) Compliance with subparagraphs (A) - (E) of this paragraph shall be evidenced by:

(i) organization's Bylaws with evidence date of board approval;

(ii) Charter; or

(iii) Articles of Incorporation.

(11) If the Applicant is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the Applicant's governing body, and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members, as evidenced by the Applicant's:

(A) Bylaws with evidence date of board approval;

(B) Charter; or

(C) Articles of Incorporation.

(D) An Applicant may be sponsored or created by a for-profit entity provided the for-profit entity's primary purpose does not include the development or management of housing, as evidenced in the for-profit organization's Bylaws. If an Applicant is associated or has a relationship with a for-profit entity or entities, the Applicant must prove it is not controlled, nor receives directions from individuals, or entities seeking profit as evidenced by:

(i) organization's Bylaws with evidence date of board approval; or

(ii) Memorandum of Understanding (MOU);

(12) CHDO that are in partnership agreements associated with the Development must maintain effective Control and decision making control over the Development. All legally binding ownership and/or partnership agreements must clearly state the CHDO's role in the Development, as evidenced by:

(A) partnership agreement; and/or

(B) ownership agreement; and/or

(C) developer agreement ; and/or

(D) sponsorship agreement.

(13) Religious or Faith-based Organizations may sponsor a CHDO if the CHDO meets all the requirements of this section. While the governing board of a CHDO sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the faith-based organization may retain control over appointments to the board. If a CHDO is sponsored by a religious organization, the following restrictions also apply:

(A) Housing developed must be made available exclusively for the residential use of program beneficiaries and must be made available to all persons regardless of religious affiliations or beliefs;

(B) A religious organization that participates in the HOME program may not use HOME funds to support any inherently religious activities: such as worship, religious instruction, or proselytizing;

(C) HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Sanctuaries, chapels, or other rooms which a faith-based CHDO uses as its principal place of worship are always ineligible for HOME-funded improvements;

(D) Compliance with subparagraphs (A) - (C) of this paragraph may be evidenced by:

(i) Organization's Bylaws;

(ii) Charter; or

(iii) Articles of Incorporation.

(b) An Application for CHDO Certification will only be accepted if submitted with an Application to the Department for HOME funds. If all requirements under this section are met, the Applicant will be certified as a CHDO upon the award of HOME funds by the Department. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME funds under the CHDO Set-Aside.

(c) Community Housing Development Organizations (CHDO) that have received an award of HOME funds must submit recertification documentation every two years. The recertification documentation is due to the Department biannually on the last day of the anniversary month in which the Board approved the CHDO Set-Aside award. The recertification documentation must include, but is not limited to:

(1) A narrative describing the housing production objectives accomplished over the last 2-year period.

(2) A description of any ongoing/future initiatives.

(3) A statement of objectives for the CHDO over the next two years.

(4) A timeline and budget describing the completion of any development activities undertaken by the CHDO within the last two years.

(5) An organizational chart listing current personnel and a brief description of each individual's position, primary responsibilities and authority in the organization.

(6) A written statement indicating how the current organization's financial structure can support housing development activities in the future.

(7) A written statement describing how the CHDO will continue to leverage other resources in the future.

(8) A written statement describing ways in which the Department can assist your organization through technical assistance, capacity building, and/or training.

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

Filed with the Office of the Secretary of State on September 20, 2007.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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SUBCHAPTER F. AWARD AND CONTRACTS

10 TAC §§53.70 - 53.73

The Texas Department of Housing and Community Affairs (Department) proposes new Chapter 53, Subchapter F, §§53.70 - 53.73, concerning the HOME Program. These new sections are proposed in order to allow public comment and adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2008 rule cycle and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Mr. Michael Gerber, Executive Director, has determined that, for the first five-year period the proposed new sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering these new sections.

Mr. Gerber has also determined that, for each year of the first five-years the proposed new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe, and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with these new sections as proposed.

Public hearings will be held across the state between September 24, 2007 and October 5, 2007 to receive public input on these proposed new sections. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: 2008rulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. All comments must be received by October 10, 2007.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§53.70. Process for Awards.

(a) All recommendations for awards will be presented to the Committee before presentation to the Board. All Applications must

comply with all applicable program requirements or regulations established in 24 CFR Part 92 and in this chapter.

(b) Applicants applying in response to an Open Application Cycle will be prioritized for recommendation to the Board based on the process described in §53.48 of this chapter and as otherwise specified in the NOFA.

(c) Applicants applying in response to a Competitive Application Cycle will be ranked by highest score per Program Activity, per Uniform State Service Region and Area Type, unless otherwise specified in the NOFA.

(1) If sufficient qualified Applications are not received for a Program Activity in a Uniform State Service Region and Area Type, the funds will be redirected to the next Uniform State Service Region that had a higher number of qualified Applicants for that same Program Activity type, unless otherwise specified in the NOFA.

(2) If sufficient Applications are not received in a Uniform State Service Region and Area Type for a Program Activity, the funds will be redirected to the Uniform State Service Region and Area Type with the highest number of qualified Applicants for another Program Activity type, unless otherwise specified in the NOFA.

(d) In the event of a tie between two or more Applicants, the Department reserves the right to determine which Application will receive a recommendation for funding, or as otherwise specified in the NOFA. Tied Applicants may also receive a partial recommendation for funding.

(e) When the remainder of the allocation for an allocation within a Uniform State Service Region is insufficient to completely fund the next ranked Application in the Program Activity or Uniform State Service Region, it is within the discretion of the Department to:

(1) award a partial amount to the next ranked Application, reducing the scope of the Application proportionally;

(2) make necessary adjustments to fully fund the Application; or

(3) transfer the remaining funds to other Program Activities or Uniform State Service Regions.

(f) Applications may also receive a partial recommendation for funding. A minimum award amount may be established to ensure feasibility.

(g) Applications receiving a favorable EARAC recommendation are presented to the Board for approval, pending the availability of HOME funds.

(h) Applicants may appeal on the decision regarding their Applications in accordance with §1.7 of this title.

(i) Board approval of the award of any HOME funds, acquisition or construction activities will be conditional upon a completed Loan closing and any other conditions deemed necessary by the Department.

§53.71. Contract Required after Award.

Any Program Activity funded under this program will be governed by a written Contract that identifies the terms and conditions related to the awarded funds. The Contract will not be effective until executed by all parties to the Contract. Any amendments must be in writing and are subject to the requirements of this Chapter.

§53.72. Contract Terms.

(a) Unless otherwise changed by agreement of the parties in a Contract or the applicable NOFA, the terms found in Contract shall be consistent with the following and performance under the Contract will be evaluated with the following benchmarks:

(1) OCC Program Activity. The Contract term will not exceed 22 months. Performance under the Contract term will be based on the following benchmarks from the Contract begin date:

(A) 6 months, exempt administrative and broad review environmental clearance must be complete, and if not tiering, the first Household to be assisted must be environmentally cleared;

(B) 8 months, Authority to Use Grant Funds must be fully executed and all Households to be assisted must be environmentally cleared;

(C) 12 months, 100% of funds must be committed to Households to be assisted;

(D) 15 months, 100% of Household's Loans must be closed, if applicable;

(E) 20 months, 100% of construction must be complete for all Households to be assisted; and

(F) 22 months, 100% funds drawn and 100% of match requirement supplied.

(2) HBA Program Activity. The Contract term will not exceed 24 months. Performance under the Contract term will be based on the following benchmarks from the Contract begin date:

(A) 6 months, exempt administrative and environmental clearance must be complete for at least one Household to be assisted;

(B) 12 months, environmental clearance must be complete for at least 50% of the Households to be assisted, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(C) 18 months, environmental clearance must be complete for at least 75% of the Households to be assisted, 75% of funds must be committed, 50% of funds drawn, and 50% of match requirement supplied; and

(D) 24 months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied.

(3) TBRA Program Activity. The Contract term will not exceed 36 months. Performance under the Contract term will be based on the following benchmarks from the Contract begin date:

(A) 6 months, exempt administrative environmental clearance must be complete and application intake complete for 30% for Households to be assisted;

(B) 9 months, application intake complete for 75% for Households to be assisted;

(C) 12 months, 100% of funds must be committed to Households to be assisted and 25% of funds drawn;

(D) 18 months, 100% of funds already committed and 35% of funds drawn;

(E) 24 months, 100% of funds already committed and 50% of funds drawn; and

(F) 36 months, 100% of funds already committed and 100% of funds drawn.

(4) Rental Housing Development and Single Family Housing Development Program Activity. The Contract term will not exceed 36 months based on the size of the development and length of the Development period. Performance under the Contract term will be based

on benchmarks established in the Contract and specific to the Development. Repayment of Loans or affordability periods will extend beyond the Contract end date depending on the Final Rule and Chapter 2306 requirements.

(5) CHDO Pre-Development Loans. The initial contract term will not exceed 24 months. Repayment is expected from development funds if development is begun prior to 24 months.

(b) Revised benchmarks and/or lower percentages, due to extenuating or unforeseeable circumstances, may be allowed and as approved by the Department.

§53.73. Contract Amendments.

(a) Amendment requests to be approved by the Executive Director of the Department are allowable under the following circumstances:

(1) Time extensions. The Executive Director may collectively provide up to one six-month extension to the end date of any Contract. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director relating to unusual and non foreseeable circumstances that warrant more than a six-month extension. If the extension is longer than six months and the Executive Director determines that a statement related to unusual or non-foreseeable circumstances can not be issued, it will be presented to the Board for approval, approval with modifications, or denial of the requested extension; and

(2) Increase in funds. In the case of a modification or amendment to the dollar amount of the Contract, such modification or amendment does not increase the dollar amount by more than 25% of the original Contract or $50,000, whichever is greater. Modifications and/or amendments that increase the dollar amount by more than 25% of the original Contract or $50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval.

(b) If the Administrator or Development Owner fails to meet the Contract term or benchmark requirements and does not seek, or is not granted, a Contract amendment for an extension of a benchmark or the entire term, the awarded funds related to the lack of performance may be entirely or partially deobligated at the Department's sole discretion.

(c) Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the requirements of this Chapter if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for good cause, as determined by the Board.

(d) Accounting Requirements. Within 60 days after the Contract end date, the Administrator or Development Owner shall provide a full accounting of funds expended under the terms of the Contract. Failure of an Administrator or Development Owner to provide full accounting of funds expended under the terms of a Contract shall be sufficient reason for the Department to deny any future Contract to the Administrator or Development Owner.

(e) Individual benchmarks. Each benchmark is an individual term and subject to the amendment processes. An interim benchmark extension may or may not extend the entire Contract at the Department's discretion.

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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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916

SUBCHAPTER G. LOANS AND CONTRACT ADMINISTRATION

10 TAC §§53.80 - 53.86

The Texas Department of Housing and Community Affairs proposes new Chapter 53, Subchapter G, §§53.80 - 53.86, concerning the HOME Program. These new sections are proposed in order to allow public comment and adoption of new rules governing the HOME Program, to coordinate the adoption of new HOME rules with new rules being adopted as part of the 2008 rule cycle and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering these new sections.

Mr. Gerber has also determined that for each year of the first five-years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with these new sections as proposed.

Public hearings will be held across the state between September 24 and October 5 to receive public input on these new sections. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: 2008rulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. All comments must be received by October 10, 2007.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§53.80. Documents Supporting Mortgage Loans.

(a) Administrators and Development Owners must not proceed or allow a contractor to proceed with construction, including demolition, on any Activity, Project or Development without first completing the required environmental clearance procedures and Loan closing with the Department.

(b) A mortgage Loan shall be evidenced by a mortgage or deed of trust note or bond and by a mortgage that creates a lien on the housing

development and on all real property that constitutes the site of or that relates to the housing development.

(c) A note or bond and a mortgage or deed of trust:

(1) must contain provisions satisfactory to the Department;

(2) must be in a form satisfactory to the department; and

(3) may contain exculpatory provisions relieving the borrower or its principal from personal liability if the department agrees.

(d) For each Loan made for the Development of multifamily housing with funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (42 USC §§12701, et seq.), the department shall obtain a mortgagee's title policy in the amount of the loan. The Department may not designate a specific title insurance company to provide the mortgagee title policy or require the borrower to provide the policy from a specific title insurance company. The borrower shall select the title insurance company to close the loan and to provide the mortgagee title policy. Award amount for disaster relief shall not exceed $500,000 per State declared disaster, or as may be otherwise allowed by the Board. Only one application per affected Unit of General Local Government may be submitted for each designated disaster. Public Housing Authorities (PHAs) and Nonprofit organizations may only act as an Applicant, in lieu of the Unit of General Local Government, if they are so designated by the affected Unit of General Local Government.

(e) Documentation required for OCC and HBA with Rehabilitation Loans: The Administrator must ensure the following documents are submitted to the Department in order to request Loan documents be prepared for the Household:

(1) An as-is and final appraisal or an as-is and as-built appraisal no older than ninety (90) days;

(2) A title commitment no older than ninety (90) days that evidences no tax lien, no child support lien, no mechanic or materialmen's lien;

(3) Tax certificate no older than ninety (90) days that evidences a current paid status, and in the case of delinquency, evidence of an approved payment plan with the taxing authority and evidence that the payment plan is current;

(4) Life event documentation, as applicable;

(5) A copy of the original contract for deed, for contract for deed conversion Loan; and

(6) A current payoff statement, for contract for deed conversion Loan.

(f) Trailing documentation requirements for HBA Loans for downpayment and closing cost assistance. Within ninety (90) days after the Loan closing date, the Administrator or Development Owner must submit to the Department the original recorded deed of trust and transfer of lien, if applicable. Failure to submit these documents within ninety (90) days after the Loan closing date will result in the Department withholding payment for disbursement requests.

§53.81. General Contract Administration.

All Administrators and Development Owners must use the forms provided on the Department's website and comply with the Department's procedural and documentation requirements as outlined in the HOME Program Manual and in this section including, but not limited to:

(1) Contract must be signed and executed by all appropriate authorized parties;

(2) Attend training as required by the Department;

(3) Develop and comply with written procurement selection criteria and committees;

(4) Procure consultants, if applicable. Consultants may not participate in or direct any part of the process for procuring consultants;

(5) Complete all applicable Department Contract System access request forms and requirements;

(6) Perform environmental clearance procedures before committing or expending funds to a Project or Activity, performing any construction activities, including demolition, or the occurrence of the Loan closing, if applicable;

(7) Develop and comply with written accounting, reporting, filing, and documentation procedures;

(8) Develop and comply with written applicant intake and selection criteria for and ensure program eligibility which must include, but is not limited to:

(A) Homeownership, if applicable;

(B) Income eligibility;

(C) Assisted Households must be located within the Administrator's Service Area, as defined by the Contract;

(D) Property taxes are current, if applicable; and

(E) Assist Special Needs Households, if applicable.

(9) Develop and comply with affirmative marketing procedures in accordance with the Final Rule;

(10) Complete applicant intake and applicant selection. Notify each applicant Household in writing of either acceptance or denial of HOME assistance within sixty (60) days following receipt of the intake application;

(11) Ensure that no Conflict of Interest exists between Households to be assisted and Persons designated to receive or assist with the application intake process;

(12) Document and verify all income and asset eligibility requirements for the Household to be assisted;

(13) Ensure compliance with applicable audit certification requirements;

(14) Ensure that the demolition and removal of all dilapidated units on the lot occurs prior to the Household's occupancy of the Newly Constructed or Rehabilitated housing unit;

(15) Ensure and verify that each building construction contractor performing activities in the amount of $10,000 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission in accordance with 16 TAC, Subtitle C, §16.001;

(16) Ensure and verify that each housing unit being rehabilitated in the amount of $10,000 or more under the Contract is registered with the Texas Residential Construction Commission in accordance with 16 TAC, Subtitle C, §426.003;

(17) Provide building construction contractor oversight and ensure builder's risk coverage is provided;

(18) Ensure that the demolition of any housing unit does not occur less than 4 (four) months prior to the Contract end date;

(19) Ensure compliance with applicable construction or property standards and lead-based paint requirements;

(20) Conduct appropriate property inspections and documentation in accordance with applicable program requirements;

(21) Submit required documentation and electronic requests for Project setups and disbursement requests to the Department;

(22) Submit support documentation for Project setups and disbursement requests within thirty (30) days of electronic submission to the Department;

(23) Submit all Project setups and support documentation for Households to be assisted no later than ninety (90) days prior to the Contract end date;

(24) Submit required Match documentation to the Department;

(25) Not retain Program Income of any kind, including Program Income to fund other eligible HOME Activities;

(26) Submit any Program Income received to the Department within ten (10) days of receipt;

(27) Return any refunds to the Department's accounting division and include a written explanation of the return of funds, the Contract number, name of Administrator or Development Owner, Activity address and Activity number referenced on the check;

(28) Submit required documentation for Project completion reports and certificate of Contract Completion no later than sixty (60) days from the Contract end date; and

(29) Complete the terms of the Contract.

§53.82. Conflict of Interest.

The Conflict of Interest provisions in 24 CFR §92.356 apply to any Person who is an employee, agent, consultant, officer, or elected official or appointed official of the Department, Administrator or Development Owner. All Administrators and Development Owners must comply with procedures to submit a request to the Department to grant an exception to any conflicts prohibited by 24 CFR §92.356. The request submitted to the Department must include a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made. No HOME funds can be used to assist a Household until HUD has granted an exception to the Conflict of Interest provisions.

§53.83. Procurement.

(a) All Administrators acting in the capacity of State Recipients must comply with procurement requirements and regulations established under 24 CFR Part 84 pertaining to the HOME Program, 24 CFR Part 92, Chapter 2254, Texas Government Code, and the HOME Program Manual, as well as any other applicable state and/or local procurement requirements.

(b) Administrators acting in the capacity of Subrecipients must comply with procurement requirements and regulations established under 24 CFR Part 85 pertaining to the HOME Program, as well as any other applicable state and/or local procurement requirements.

(c) Procurement procedures and the selection process must be integrated into the Administrator's HOME program and must comply with federal, state, and local procurement requirements. The Administrator must have a written code of conduct governing employees, officers, or agents engaged in administering a HOME Contract and appoint a Procurement Officer to manage the bid process.

(d) Procedures established for procurement of building construction contractors may not include requirements for the provision of general liability insurance coverage for an amount to exceed the value of the contract.

(e) HOME funds may not be used to directly or indirectly employ, award contracts to, or otherwise engage the services of any service provider or vendor during any period for which the service provider or vendor has been debarred, suspended, or designated as ineligible on the federal Excluded Parties Listing System.

(f) Building construction contractors must be procured using a formal sealed bid procedure for single family New Construction or Rehabilitation Activities or Projects.

(g) Professional service providers must be procured using an open competitive procedure for single family New Construction or Rehabilitation Activities or Projects. Professional services may not be procured based solely on the lowest priced bid. Consultants may not participate in or direct the process of procurement for consultants.

(h) Goods and services other than professional services and building construction contractors, for an amount less than $100,000 may be procured using documented price quotation procedures.

§53.84. Project Setups and Disbursement Requests.

All Administrators and Development Owners must comply with procedures and timeframes established by this Chapter and the HOME Program Manual to submit requests for Project setup and disbursement requests and support documentation required by the Department. The Department reserves the right to request additional documentation or clarification from the Administrator or Development Owners. Requests must be made electronically and submitted in accordance with applicable benchmarks to the Department using the online TDHCA Contract System database as defined in the "TDHCA Contract System Users Guide."

§53.85. Soft Cost Limitations.

(a) The Department has established cost guidelines and limitations for soft costs related to the OCC and HBA Program Activities.

(1) These costs are maximums per Activity or Project and may not be exceeded without approval by the Department. Upon prior approval of the Department, exceptions may be allowed in the case of Rehabilitation activities for lead-based paint hazard reduction and/or relocation.

(2) Contract Administrators must certify that the amount being disbursed is for the actual amount of costs.

(3) Costs that may be categorized as either a project cost or an administrative cost are identified below. No duplicate disbursement of costs is allowed. Costs may only be disbursed as either a project cost or administrative cost but not both. Additionally, costs may only be disbursed once per occurrence when providing both acquisition and construction type of assistance to the same Project or Activity as may take place with, but not limited to, contract for deed conversions.

(4) Unless otherwise noted, all items are limited to one (1) occurrence per Project or Activity.

Figure: 10 TAC §53.85(a)(4)

(b) The allowable activities for each cost category are defined as follows:

(1) Affirmative marketing plan is the cost incurred to develop a written plan for ensuring that marketing, advertising, and outreach activities are provided to all protected classes and to the populations being served by the Contract. This includes the development of advertising materials and hand-outs and public presentation;

(2) Application intake and processing is the cost incurred for the completion of all intake application documentation and forms, verification of all sources of income, employment verification, asset

verification and imputation and re-verification of all expired documentation. This includes all Department-required forms, worksheets, addendums and certifications required for the household's application intake and processing;

(3) Appraisal is the cost incurred in obtaining appraisals prepared by an independent, state-licensed real estate appraiser;

(4) Construction and disbursement documentation preparation is the cost incurred in the preparation of forms required by the Department that are related to construction or disbursement documentation and include electronic entry into the TDHCA Contract System, support documentation preparation and completion of Department-required forms including, but not limited to, the Contractor Request for Payment, Lien Waiver Affidavits, Final Bills Paid Affidavit and Certification of Completion;

(5) Environmental review is the cost incurred for the preparation and completion of all required forms, checklists and certifications, publication activities and Request for Release of Funds and Finding of No Significant Impact and Eight Step Process, if applicable;

(6) Exempt administrative environmental is the cost incurred in the completion of an exemption form for administrative expenses;

(7) Final inspection is the cost incurred in performing a final walk through and physical inspection of the assisted housing unit noting any deficient items that must be corrected before final payment and the completion of any Department-required forms or checklists.

(8) Financial management is the cost incurred in the management of all project and program accounts using a fund type accounting system that can trace each expense to an individual Project or to the program as a whole and ensures compliance with OMB circulars. A written or printed journal of all transactions including receipt and disbursement of funds should be included;

(9) Homebuyer counseling is the cost incurred to provide a minimum of eight hours of counseling provided by a certified homebuyer counselor. Instruction may include, but is not limited to, financial management, credit management, homebuyer education, and/or job training;

(10) Information services is the cost incurred to provide information to homeowners, prospective homebuyer and/or tenants. These may include the following:

(A) Fair housing--cost incurred to provide information to prospective homebuyers and tenants (not applicable to OCC);

(B) Loan procedures--cost incurred to provide information pertaining to fair lending practices, loan requirements, and closing procedures to participants in OCC and HBA (not applicable to TBRA);

(C) Warranty (Project cost only)--cost incurred to provide an explanation of the builder's homeowner warranty (must comply with Texas Residential Construction Commission requirements) to households assisted with Reconstruction or Rehabilitation activities;

(D) Lead-based paint--cost incurred to provide lead-based paint hazard notification to all applicants in all HOME Program Activities;

(11) Initial inspection is the cost incurred in the completion of the initial physical inspection of the housing unit to be assisted and Department-required forms and checklists. The inspection must identify all health and safety concerns regarding the housing unit, all sub-standard conditions that require repair or replacement to comply with applicable codes and standards and the TMCS, and provide enough detail to complete a work write-up, and if applicable, a justification of Reconstruction;

(12) Plans are the cost incurred to obtain a complete set of plans shall include a site plan for each housing unit showing known easements and lot set-backs, a floor plan, a front elevation, a foundation plan, a plumbing and electrical plan and a mechanical and energy efficiency plan. If these plans are purchased from or donated by a licensed architect or engineer they should bear the appropriate stamp. While builders may require less complete plan sets and it is understood that some of these details may be combined on the same sheet, any plans set that does not include this level of detail will be pro-rated accordingly;

(13) Pre-construction conference is the cost incurred in conducting a meeting with the homeowner and building construction contractor to explain and discuss the construction process being undertaken. This meeting should include a description of construction activities and procedures, expectations of the final product, an explanation of the roles and duties for all parties, detail and review of the timelines and contractual milestones, required access and use of utilities, provision of appropriate security measures, selection of products and improvements to be provided, and a discussion of appropriate handicap accessibility features;

(14) Procurement of contractor is the cost incurred in the preparation of bid documents, pre-bid advertising, conducting of the pre-bid conference, the verification of required builder certifications, conducting of the walk-through of housing units to be assisted, conducting checks of bidder qualifications and references, conducting bid opening including keeping minutes and tabulations, the review of the bids, conducting contract negotiation and verification, the notification of award and the completion of any Department-required forms;

(15) Procurement of professional service provider is the cost incurred to procure a professional service provider (i.e. consultant). The Administrator must use negotiated bidding procedures for the procurement of professional service providers (i.e. consultants) and provide for independent procurement of professional service providers (i.e. consultants may not participate in any aspect of procuring consultants);

(16) Progress inspections is the cost incurred in performing inspections at logical points during the construction process or prior to approving each draw that verify quality and completeness of work to date and are signed by the inspector, homeowner, and Contract Administrator. Logical points of inspection include but are not limited to:

(A) Foundation--prior to pouring a monolithic foundation and after initial curing or alternatively after completion of piers,

(B) Framing--completion of framing,

(C) Rough-in--after completion of electrical and plumbing but before covering and placement of fixtures, and

(D) Substantial completion;

(17) Progress inspections should each require at least one hour and include inspection forms, filed notes, sketches, and photographs adequate for verification of that stage of completion;

(18) Project documentation preparation is the cost incurred in the preparation of forms required by the Department that are not related to income eligibility or construction and include, but are not limited to, the TDHCA Contract System Access Request, Direct Deposit Authorization, Texas Application for Payee Identification, and Audit Certification;

(19) Property inspections is the cost incurred to perform an inspection of the subject property in order to certify that no substandard conditions exist according to TMCS using the Department's forms;

(20) Punch list verification inspection is the cost incurred in performing a final physical inspection of the assisted housing unit to verify the completion of punch list items only;

(21) Recordkeeping is the cost incurred to develop, prepare and maintain a recordkeeping system in the order prescribed by the Departments which includes three separate types of filing for program, environmental, and project areas;

(22) Schedule of values is the cost incurred to prepare a line-item description of each work activity and its associated cost and enter electronically into the Department's Contract System as the budget;

(23) Specification manual is the cost incurred to prepare or obtain a single generic manual to be used for multiple sites or projects detailing the methods and materials to be used on all construction jobs. The homeowner's choices may be included but should be detailed for each job. All trade areas and construction activities must be included in the specification manual. In cases where there are no local requirements for specifications and TMCS are used, no additional cost should be requested for disbursement;

(24) Work write-up is the cost incurred to prepare or obtain a complete description of the work activity specific to Rehabilitation required to bring the entire structure into compliance with the applicable construction standards. It must include all units of measurement, materials to be used, methods of application, and all necessary construction detail and/or may be used in conjunction with a specification manual; and

(25) Work write-up/cost estimate is the cost incurred in performing the Feasibility Analysis which is a budgetary justification for Reconstruction which compares the cost of Rehabilitation to the replacement costs of a housing unit and in the completion of Department-required forms. The analysis must include a summary of the steps and costs required to correct the deficiencies identified in the initial inspection.

(c) Notwithstanding the limitations of subsection (a) of this section, the total of all soft costs for each Project or Activity is limited based on the maximum amount of assistance allowed for the housing unit and is calculated as a percentage of the hard or project costs for each Activity or Project. For example, a household that is eligible to be assisted with an OCC Reconstruction amount of assistance of $67,500, the maximum amount of total soft costs is derived by dividing $67,500 by 1.09 and then subtracting this amount from $67,500, which equals $5,573.39. There is no minimum percentage for soft costs per housing unit. These percentages are the maximums allowed per Activity or Project and may not be exceeded without approval by the Department. Upon prior approval of the Department, exceptions may be allowed in the case of Rehabilitation activities for lead-based paint hazard reduction and/or relocation.

Figure: 10 TAC §53.85(c)

§53.86. Performance Reviews and Sanctions.

The Department may review and monitor the performance of Administrators and Development Owners in carrying out its responsibilities in accordance with the Contract, this Chapter, the Final Rule and any other applicable federal and state requirements.

(1) Performance reviews. If the Department determines that the Administrator or Development Owner has not met any terms of the Contract or benchmark requirements, the Administrator or Development Owner will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by the Department and on the basis of substantial facts and data at the Department's discretion, that it has done so. If Administrator or Development Owner fails to demonstrate to the Department's satisfaction that it has met any terms of the Contract or benchmark requirements, the Department will take corrective or remedial action up to and including termination of the Contract, deobligation of funds and denial of any future Contract to the Administrator or Development Owner.

(2) Corrective and remedial actions. Corrective or remedial actions for a performance deficiency are designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence. The Department will instruct the Administrator or Development Owner to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including but not limited to:

(A) preparing and following a schedule of actions for carrying out the affected activities, consisting of timetables necessary to implement the affected activities;

(B) canceling or revising Activities likely to be affected by the performance deficiency, before expending HOME funds for additional Activities;

(C) repayment of HOME funds that were expended on ineligible Activities;

(D) suspending disbursement of HOME funds for affected Activities and/or the total Contract amount; and

(E) sanction the Administrator or Development Owner from receiving funds for two (2) years from the date of monitoring report.

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

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CHAPTER 60. COMPLIANCE ADMINISTRATION
SUBCHAPTER B. ACCESSBILITY REQUIREMENTS

10 TAC §§60.201 - 60.211

The Texas Department of Housing and Community Affairs (Department) proposes new 10 TAC Chapter 60, Subchapter B, §§60.201 - 60.211, concerning Accessibility Requirements. The new sections are proposed to ensure that the accessibility policy conforms to other Department rules that are being revised in the 2008 rule cycle and to implement changes enacted during the 80th Regular Session of the Texas Legislature.

Michael Gerber, Executive Director, has determined that, for the first five-year period the proposed new sections are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering these new sections.

Mr. Gerber has also determined that, for each year of the first five-years the proposed new sections are in effect, the public benefit anticipated as a result of enforcing the new sections will be the more consistent delivery of accessible affordable housing and a Fair Housing policy that coordinates and conforms with other Department rules that are undergoing revision as part of the 2008 rule cycle. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with these new sections as proposed.

Public hearings will be held across the state between September 24, 2007 and October 5, 2007 to receive public input on these proposed new sections. More information on the public hearings can be found at http://www.tdhca.state.tx.us. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2008 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: 2008rulecomments@tdhca.state.tx.us, or by fax to (512) 475-3978. All comments must be received by October 10, 2007.

The new sections are proposed pursuant to authority granted in Chapter 2306 of the Texas Government Code and the Internal Revenue Code of 1986, §42, as amended, and related Internal Revenue Service Regulations which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by these proposed new sections.

§60.201. Scope.

(a) The purpose of this subchapter is to provide guidance about and to ensure compliance with the requirements of §504 of the 1973 Rehabilitation Act and the Fair Housing Act in the alteration or construction of multifamily housing projects by recipients of funding from the Texas Department of Housing and Community Affairs ("the department").

(b) No otherwise qualified individual with a disability shall, solely by reason of their disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Housing and Urban Development through the department. *(Source: 24 CFR §8.1(a), 24 CFR §8.20.)*

(c) This subchapter applies to all of the programs and activities of recipients of federal financial assistance from the Department of Housing and Urban Development through the programs and activities of the department and/or any other program required to meet §504 of the 1973 Rehabilitation Act under state law. *(Source: Texas Government Code §2306.6722 and §2306.6730, 24 CFR §8.2. See also the Civil Rights Restoration Act of 1987, 20 U.S.C. §794 (b), March 22, 1988, (the amendments "make clear that discrimination is prohibited throughout entire agencies or institutions if any part receives Federal financial assistance. "S. Rep. No. 64, 100th Cong., 2d Sess. 4 (1988) and Texas Government Code Chapter 2306.)*

(d) This subchapter does not apply to entities which only participate in the Housing Choice Voucher or the Enhanced Voucher programs and receive no other federal financial assistance, except that these entities are covered by the Fair Housing Act's prohibitions against discrimination, including the requirements that such entities permit reasonable modifications to existing premises; make reasonable accommodations to rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling; and, for those properties that were designed and constructed for first occupancy after March 13, 1991, compliance with the Fair Housing Act's provisions for accessible design and construction of new multifamily housing. See §60.207 of this subchapter. *(Source: 24 CFR §8. 3 Definitions: Definition of Recipient.)*

(e) This subchapter does not apply to contracts for the procurement of goods or services by the department. *(Source: 24 CFR §8.3, Definition of Federal Financial Assistance.)*

(f) There are additional requirements for compliance with §504 of the 1973 Rehabilitation Act; Title VI of the Civil Rights Act of 1964; the Fair Housing Act; the Americans with Disabilities Act; and other civil rights laws, regulations and Executive Orders by recipients of federal financial assistance. This subchapter addresses only the requirements relating to physical accessibility in new construction, alterations, and reasonable accommodations under §504 and the Fair Housing Act. Other disability-related requirements include:

(1) Operating housing that is not segregated based upon disability or type of disability, unless authorized by federal statute or executive order;

(2) Providing auxiliary aids and services necessary for effective communication with persons with disabilities; and

(3) Operating programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities. See 24 CFR Part 8 for complete information. *(Source: 24 CFR §8.4.)*

(g) These rules are to be performed in conjunction with the rules found in Chapter 60, Subchapter A, of this title.

§60.202. Definitions.

(a) The following terms are used for purposes of this subchapter:

(1) Accessible route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of an applicable accessibility standard. In cases of rehabilitation, an accessible route is not required to serve units that are occupied by persons with hearing or vision impairments. *(Source: 24 CFR §8.3 Definitions. Definition of Accessible Route.)*

(2) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems. *(Source: 24 CFR §8.3 Definitions. Definition of Alteration.)*

(3) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. *(Source: 24 CFR §8.3 Definitions. Definition of Individual with Handicaps. 24 CFR §§100.201, 202 (d).)*

(4) Federal financial assistance--Any assistance provided or otherwise made available by the department through any grant, loan, contract or any other arrangement, in the form of:

(A) Funds;

(B) Services of personnel; or

(C) Real or personal property or any interest in or use of such property, including transfers or leases of the property for less than fair market value or for reduced consideration. *(Source: 24 CFR §8.3 Definitions. Definition of Federal Financial Assistance.)*

(D) Multifamily housing project--A project identified under a single project number that includes five or more dwelling units. It does not include a single family development. A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application for assistance, or which are treated as a whole for processing purposes, whether or not located on a common site. *(Source: 24 CFR Definitions. Definition of multifamily housing project and definition of project. ADAPT v. Philadelphia Housing Authority, 2000 U.S. Dist. LEXIS 5380 (E.D. PA 2000).)*

(E) Recipient--Includes a subrecipient and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. Recipients include private entities in partnership with recipients to own or operate a program or service. *(Source: 24 CFR §8.4 Definitions. Definition of recipient.)*

(F) Replacement cost--The total development cost for construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, non-dwelling facilities or administrative costs for project development activities. *(Source: 24 CFR §8.4 Definitions. Definition of replacement cost.)*

§60.203. General Requirements.

(a) A unit is not considered to be fully accessible unless it meets the requirements of the Uniform Federal Accessibility Standards (UFAS). All units that are accessible to persons with mobility impairments must be on an accessible route. *(Source: HUD Handbook 4350.3, Occupancy Requirements of Subsidized Multifamily Housing Programs, §2-22 (C)(4).)*

(b) Recipients must give priority to methods that offer housing in the most integrated setting possible (i.e., a setting that enables qualified persons with disabilities and persons without disabilities to interact to the fullest extent possible). To the maximum extent feasible and subject to reasonable health and safety requirements, accessible units must be:

(1) Distributed throughout the project and site; and

(2) Made available in a sufficient range of sizes and amenities so that the choice of living arrangements of qualified persons with disabilities is, as a whole, comparable to that of other persons eligible for housing assistance under the same program. *(Source: 24 CFR §8.26.)*

(c) Multifamily housing projects covered by this subchapter and built after July 11, 1988 must have a minimum of 5% of the units in multifamily housing that are fully accessible in accordance with the Uniform Federal Accessibility Standards (UFAS) and an additional 2% that are accessible to persons with visual and hearing impairments. This obligation is an absolute requirement. For buildings that fall within this category, an owner may not justify a failure to have met these requirements because of an undue financial and administrative burden.

(d) Multifamily housing projects which are designed and constructed only for homeownership are not subject to the 5%/2% requirement. However, they are subject to the other requirements of this subchapter, including, but not limited to, the requirements found in §60.207(2) and §60.209 of this subchapter. *(Source: 24 CFR 8.22, HUD Handbook 4350.3, §2-35, Telesca v. Long Island Housing Partnership, 443 F. Supp. 2nd 397 (E.D. N.Y. 2006). EXAMPLE 203(1): A recipient receives funding from the Department and will construct a 10 unit homeownership project. The requirement that 5% of the units are accessible to persons with mobility impairments and 2% of the units are accessible to persons with sensory impairments does not apply. However, structural changes that are needed by a purchaser with a family member who is disabled are subject to the requirement that the recipient make reasonable accommodations, including structural changes that may be necessary to enable the family to live in the unit. So a request that a ramp be constructed to access the front porch of a homeownership unit to accommodate the disability of a 12 year old resident or prospective resident must be provided as a reasonable accommodation, unless the accommodation presents an undue financial and administrative hardship or constitutes a fundamental alteration of the program. In addition, if some or all of the units are covered by the design and construction requirements of the Fair Housing Act, those units must comply with the requirements.)*

§60.204. Other Limitations Relating to Alterations.

(a) When alterations are considered for a project:

(1) Recipients are not required to make structural changes where other methods, which may not cost as much, are effective in making federally assisted housing programs or activities readily accessible to and usable by persons with disabilities. *(EXAMPLE 204(1): A rental office in an older building where rent payments are made can only be reached by traveling a flight of stairs. Removal of the steps would be an undue financial and administrative burden. Alternative methods of offering residents with disabilities a readily usable way of making rent payments could include offering them an alternative way of making rent payments at an accessible location.)*

(2) Recipients are not required to make structural changes that would impose an undue financial and administrative burden, even if alternatives to making housing programs or activities readily accessible to and usable by persons with disabilities are not effective.

(A) Payment for alterations from operating funds, residual receipts accounts or reserve replacement accounts must be sought using appropriate approval procedures.

(B) The approved amount must be able to be replenished through property rental income within one year without a corresponding raise in rental rates.

(C) A projected inability to replenish an operating fund account or the reserve for replacement account within one year for funds spent in providing alterations under this subchapter is evidence that the alteration would be an undue financial and administrative burden.

(i) EXAMPLE 204(2): Each entrance to existing pre-1988 units is reached by a number of steps. Estimates of the cost of making any of the units accessible are high. The project rental income will not cover the cost of making the units accessible without a rent increase or a reduction in services or benefits to other tenants. However, the project has a large residual receipts account. Therefore, the operator of the housing could request approval to use money from this account to remove the steps and replace them with a ramp or chairlift.

(ii) EXAMPLE 204(3): In the same situation, the project does not have funds in its residual receipts account, but it has a large reserve for replacement account. However, the estimate is large enough that a rent increase would be required in order to replenish the account completely within one year. It would be a financial and administrative burden for the project to make a unit accessible. The owner may explore alternatives to making its program accessible but is not required to make the structural changes.

(iii) EXAMPLE 204(4): A high rise project that was built before 1988 has no units that comply with UFAS. In order to make one of its units large enough to comply with UFAS, it would be required to rehabilitate the property substantially and eliminate at least one unit. The loss of income from the rental unit would present a serious financial hardship to the property and there are inadequate funds in the relevant accounts. The property is not required to meet the 5% requirement. It must meet the requirement that 2% of its units and be accessible to persons with sensory impairments, and it must make reasonable accommodations to meet the needs of individuals with disabilities.

(iv) EXAMPLE 204(5): A project seeks funding for rehabilitation of the property from the Department. The project includes in its request all structural alterations that are necessary to ensure compliance with this section. A property that receives funding for accessible features from the Department may not assert that providing those features is an undue financial and administrative burden if it receives funding to undertake those alterations. The other provisions in this section with respect to limitations on alterations apply.

(v) EXAMPLE 204(6): A project receives funding for rehabilitation of the property from the Department. The property already has 5% of the units that are UFAS compliant.. No additional rehabilitation for accessibility need be conducted.

(vi) EXAMPLE 204(7): A project receives funding for repair of the waste disposal system at the property from the Department. Because the funding does not cover alteration of structural elements but only repair of an existing system, no accessible elements need be provided. *(Source: HUD Handbook 4350.3, §2-43 (C), Exhibit 2-6.)*

(b) Recipients are not required to install an elevator solely for the purpose of making units accessible. *(Source: HUD Handbook 4350.3, §2-36 (E).)*

(c) Recipients do not have to make mechanical rooms and similar spaces accessible when, because of their intended use, they do not require accessibility by the public, by tenants, or by employees with physical disabilities. *(Source: HUD Handbook 4350.3, §2-36 (D).)*

(d) Recipients are not required to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member. *(Source: 24 CFR §8.32(c). EXAMPLE 204(8): A property built before 1988 has no units that comply with UFAS. An assessment of the property indicates that no units can be made accessible to persons with mobility impairments because of the existence of load bearing interior and exterior walls which prevent construction of accessible exterior doorways. Therefore, no units must be made accessible to persons with mobility impairments except to the extent that they are made as a reasonable accommodation for a person with a disability.)*

§60.205. Substantial Alteration.

When a recipient undertakes alterations to one or more structural elements in a project that contains fifteen or more units, which was built before July 11, 1988 and which lacks the required minimum of 5% of units that are accessible to persons with mobility impairments: If the total cost of the alterations is 75% or more of the replacement cost of the completed property, then the recipient must make a minimum of 5% of the units in the property accessible for persons with mobility impairments, and a minimum of 2% of the units accessible for persons with visual and hearing impairments. These units must comply fully with UFAS. *(Source: 24 CFR §8.23 (a). EXAMPLE 205(1): The total development cost for a planned alteration of a 40 unit apartment building with no accessible unit amounts to $80,000 per unit and the replacement cost per unit is $100,000. Because the cost of the alterations is more than 75% of the replacement cost of the unit, the recipient must make a minimum of 5% of the 40 units, or at least two, of the units accessible to persons with mobility impairments by compliance with UFAS and at least 2%, or one unit, accessible to people with visual and hearing impairments.)*

§60.206. Renovation of Elements.

(a) When a recipient has a project which was built before July 11, 1988 and that contains five or more units but lacks the required 5% of units that are accessible to people with mobility impairments, when the recipient undertakes alterations to a structural element that are not substantial as defined in §60.205 of this subchapter:

(1) Those alterations must be accessible, to the maximum extent feasible, until at least 5% of the units are fully accessible for persons with mobility impairments. If the 5% requirement is met, no other structural alterations are required to units except to provide reasonable accommodations to individuals with disabilities.

(2) If alterations of single elements (such as replacement of a bathtub or a door) or spaces (such as kitchens or bathrooms) occur in a single unit and when the alterations are considered as a group amount to an alteration of the entire unit, the recipient must make the entire dwelling unit accessible until 5% of the units are accessible to persons with mobility impairments.

(3) When the recipient is not altering the entire unit, all of the single elements or spaces that are being altered must be made accessible unless at least 5% of the units in the project already comply fully with the UFAS, requirements for persons with mobility impairments. If at least 5% of the units comply with UFAS, no additional single elements need be made accessible except to provide reasonable accommodation for an individual with a disability.

(4) Recipients are encouraged to examine existing units for compliance with UFAS and ensure that at least 5% of the units in a property are accessible. When at least 5% of the units comply with UFAS requirements for accessibility, individual elements need not comply with accessibility requirements when they are altered.

(5) Recipients are encouraged, but not required, to make at least an additional 2% of the units being altered comply with UFAS requirements for persons with hearing and vision impairments, if such units do not already exist.

(6) Completion of minor maintenance required to maintain a property in a decent, safe and sanitary condition is generally considered to be normal repairs and not alteration. *(Source: 24 CFR §8.23, HUD Handbook 4350.3, 4315.1, Rev 1, Chg 2, page 10-14.)*

(A) EXAMPLE 206(1): A property is remodeling all of the bathrooms throughout the property by replacing plumbing, fixtures, and cabinets. Remodeling the bathroom is an alteration to a space. Unless the property already has a minimum of 5% of its units that comply with UFAS to serve people with mobility impairments, 100% of the bathrooms remodeled must be made accessible until the property has a minimum of 5% of its units compliant with UFAS.

(B) EXAMPLE 206(2): A property is remodeling all of the kitchens throughout a property by replacing stoves and refrig-

erators. Because this is not an alteration to a structural element, no structural elements must be made accessible.

(C) EXAMPLE 206(3): A property is renovating its heating system by replacing furnaces, ductwork and vents. This is not an alteration that triggers compliance with this section because it is the replacement of a mechanical system.

(D) EXAMPLE 206(4): A property has 100 units and 6 of the units are for persons with mobility impairments. They comply with UFAS and are on an accessible route. The property is remodeling all of the bathrooms throughout the property by replacing plumbing, fixtures, and cabinets. None of the remodeled bathrooms need be made accessible because the property already has at least 5% of its units that comply with UFAS.

(E) EXAMPLE 206(5): A property that was built before 1988 has 100 units and none of them comply with the UFAS requirements. The property is replacing all of the roofs as part of regularly scheduled maintenance and repair. No units are required to be made accessible because the work being performed is regular maintenance and repair.

(F) EXAMPLE 206(6): A property has 100 units and only three of those units (or 3%) comply with UFAS for persons with mobility impairments. The property is renovating 10 units, but the cost of renovation is only 50% of the cost of replacing the units, so this is not a substantial alteration. Because the entire unit is being renovated, two of the renovated units must comply with UFAS in order to provide a minimum of 5% of the total number of units that are accessible to people with mobility impairments.

§60.207. New Construction and Additions of Units.

(a) New multifamily housing construction of five or more units in a project by a recipient due to demolition, addition of units, or replacement of uninhabitable units shall be designed and constructed to provide accessibility to persons with disabilities.

(1) A minimum of 5% of the new units, or at least one, shall be made accessible for persons with mobility impairments.

(2) The new accessible units must be on an accessible route. The accessible units must comply with the UFAS requirements. *(Source: 24 CFR §8.22.)*

(b) All covered multifamily housing that is newly constructed for first occupancy, including additions of four or more units, must be designed and constructed to comply with the Fair Housing Act's design and construction requirements, regardless of funding.

(1) Multifamily housing units are covered if they:

(A) Are in a building with four or more units;

(i) In a building with one or more elevators, all units are covered;

(ii) In a building without an elevator, all of the ground floor units are covered.

(2) All covered units must be on an accessible route. The accessible units must comply with an objective accessibility standard that provides at least as much accessibility as the Fair Housing Act Accessibility Guidelines.

(A) There are eight standards that the Department of Housing and Urban Development has identified as safe harbors for compliance with the accessibility standards. Compliance with one of these safe harbors will provide full compliance with the accessibility requirements.

(B) Compliance with local building code requirements does not assure compliance with the federal law. The International Building Code 2003 is a safe harbor. *(Source: 24 CFR §100.205, www.fairhousingfirst.org)*

§60.208. Public and Common Use Areas in Multifamily Housing.

(a) Recipients must make common use facilities, or parts of facilities, and public spaces accessible to persons with disabilities, as long as such improvements would not result in an undue financial and administrative burden. This requirement applies regardless of the date of construction of the property. This responsibility means that recipients must do everything feasible to make these areas accessible up to the point at which any further modifications or improvements would result in an undue financial and administrative burden. Public spaces include, but are not limited to, community rooms, laundry and trash rooms, parking spaces, entrances, sidewalks, public restrooms, and the management office.

(b) Recipients are not required to make each location of an amenity or facility accessible to persons with mobility impairments. If only one entrance or amenity is made accessible, it must be accessible to tenants with mobility impairments who live in any part of the development on the same terms that the entrance or amenity is made available to persons without disabilities.

(1) EXAMPLE 208(1): If a property has multiple buildings with two laundry rooms located in two different central areas, only one laundry room need be made accessible.

(2) EXAMPLE 208(2): Each building has its own laundry room for use by the residents of the building. Each laundry room must be made accessible, so that tenants with mobility impairments do not have to go out in inclement weather to do their laundry, when residents without disabilities may do their laundry in their building.

(c) The recipient must make one-of-a kind amenities or facilities accessible and usable to persons with disabilities or provide an alternative means for accessibility. *(EXAMPLE 208(3): A property has only one community room. It must be made accessible, or programs and services offered in that room must also be offered at another, accessible location to provide access for people with disabilities.) (Source: HUD Handbook 4350.3, §2-35(D).)*

§60.209. Reasonable Accommodations.

(a) A reasonable accommodation is an alteration, change, exception, or adjustment to a program, service, building, dwelling unit, or workplace that will allow a qualified person with a disability to:

(1) Participate fully in a program;

(2) Take advantage of a service; or

(3) Use and enjoy a dwelling.

(b) To show that a requested accommodation may be necessary, there must be an identifiable relationship between the requested accommodation and the individual's disability.

(c) When a resident or applicant requires an accessible unit, feature, space or element, or a policy modification, or other reasonable accommodation to accommodate a disability, the recipient must provide and pay for the requested accommodation, unless doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. A fundamental alteration is a modification that is so significant that it alters the essential nature of the provider's operations.

(d) If a particular accommodation would result in an undue financial and administrative burden or fundamentally alter the program,

the recipient must explore whether other accommodations, although not those requested, can meet the needs of the person with a disability.

(e) A recipient may not charge a fee or place conditions on a resident or applicant in exchange for making the accommodation.

(f) A reasonable accommodation that amounts to an alteration should be made to meet the needs of the individual with a disability, rather than any particular minimum code specification.

(g) If a recipient refuses to provide a requested accommodation because it is either an undue financial and administrative burden or would result in a fundamental alteration to the nature of the program, the recipient shall engage in an interactive dialogue with the requester to determine if there is an alternative accommodation that would adequately address the requester's disability-related needs. If an alternative accommodation would meet the individual's needs and is reasonable, the recipient must provide it. *(Source: HUD Handbook 4350.3, §2-39, §2-40, 24 CFR §8.33, Secretary v. Country Manor, HUDALJ 05-98-1469-8 (September 20, 2001).)*

(1) EXAMPLE 209(1): A resident requires an accessible parking space that will accommodate her wheelchair-equipped van. A reasonable accommodation includes relocating and enlarging an existing parking space that will serve the van.

(2) EXAMPLE 209(2): A project has five parking spaces located outside the main entrance to the building and another parking lot with 20 spaces a half block away. All five of the parking spaces near the entrance to the building have been assigned to disabled residents who need a parking space near their door because of their disabilities. A sixth tenant with difficulty in walking long distances moves into the project and requests a parking space near his door. The recipient has explored the options and concluded that the only way to provide more parking spaces near the door would be to widen the parking area by purchasing valuable real estate next door. It would be an undue financial and administrative burden for the recipient to provide the sixth tenant with a parking space near the entrance. An alternative accommodation could be to provide the sixth tenant with an assigned parking space in the lot a half block away until such time as one of the five spaces near the door becomes available.

(3) EXAMPLE 209(3): A resident needs grab bars at the toilet in her bathroom. She does not require other accessible features. The recipient must install grab bars consistent with the resident's needs in the bathroom.

(4) EXAMPLE 209(4): A resident needs a ramped entrance to her ground floor unit to accommodate her wheelchair. She does not wish to move to an accessible unit. The recipient must provide an accessible entrance at the resident's current unit, unless it would be an undue financial and administrative hardship or a fundamental alteration of the program to do so.

(5) EXAMPLE 209(5): A resident uses a scooter type wheelchair which is 38 inches in width. She requests a ramp to enter her ground floor unit. The ramp which she requests must be at least 40 inches wide, it must have a slope of no more than 3%, and the landing at the front door, which opens outward, must be enlarged to provide adequate maneuvering space to enter the doorway. The changes must be provided, even though they may exceed the usual specifications for such alterations.

(6) EXAMPLE 209(6): A resident who is a quadriplegic requests replacement of a bathtub in his unit with a roll-in shower. Due to the location of existing plumbing in the building and the size of the existing bathroom, a plumber confirms that installation of a roll-in shower in that unit is impossible. The on-site manager meets with the resident to explain why the roll-in shower cannot be installed and to explore alternative accommodations with the resident.

(h) Housing Tax credit Properties that are not layered with additional federal funds are not subject to any provision identified in §60.209 of this subchapter.

§60.210. Certifications and Effect of Non Compliance.

(a) Compliance with the provisions of this subchapter is included in the certifications required in the Certification of Program Compliance Chapter 60, Subchapter A, §60.103 of this title.

(b) Failure to comply with the provisions of this subchapter shall be addressed by the rights and remedies found in Chapter 60, Subchapter C of this title.

§60.211. Resources.

The following materials are cited within or are generally available as resources for the underlying topic of this subchapter:

(1) Uniform Federal Accessibility Standards (UFAS). Individual copies of UFAS are available on line at http://www.access-board.gov/ufas/ufas-html/ufas.htm or from the Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW, Suite 1000, Washington, D.C. 20004-1111, Telephone: (202) 272-0080, TTY: (202) 272-0082, e-mail address: info@access-board.gov.

(2) Accessibility Requirements. HUD provides technical information about the accessibility requirements of §504, the Fair Housing Act, and the Americans with Disabilities Act at http://www.hud.gov/offices/fheo/disabilities/accessibilityR.cfm.

(3) Americans with Disabilities Act. Technical guidance materials are available on line from the United States Department of Justice for the Americans with Disabilities Act, Titles II and III, relating to the operations of public entities and entities that serve the general public at http://www.usdoj.gov/crt/ada/publicat.htm or from the ADA Information Line, Telephone: 1-800-514-0301, TDD, 1-800-514-0383 (TDD).

(4) Fair Housing Act. Technical guidance materials on the design and construction requirements of the Act are available on line from the FairHousingFIRST program at www.fairhousingfirst.org. Additional technical guidance is available from the FIRST program, Telephone: 1-888-341-7781 V/TTY.

(5) Reasonable Accommodations: The Department of Housing and Urban Development and the Department of Justice have issued a joint statement on reasonable accommodations under the Fair Housing Act that is available on line at http://www.hud.gov/offices/fheo/library/huddojstatement.pdf.

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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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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TITLE 16. ECONOMIC REGULATION

PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §§401.301, 401.304, 401.305, 401.307, 401.308, 401.312, 401.315, 401.316

The Texas Lottery Commission (Commission) proposes amendments to Title 16, Part 9, Chapter 401, §401.301 (relating to General Definition); §401.304 (relating to On-Line Game Rules (General)); §401.305 (relating to "Lotto Texas" On-Line Game Rule); §401.307 (relating to "Pick 3" On-Line Game Rule); §401.308 (relating to "Cash Five" On-Line Game); §401.312 (relating to "Texas Two Step" On-Line Game); §401.315 (relating to "Mega Millions" On-Line Game Rule); and §401.316 (relating to "Daily 4" On-Line Game Rule). The purpose of the amendments is to allow the on-line system to include a buffer period during which no new player selections or Quick-Pick selections could be entered into the on-line system but during which the on-line system could complete the processing of player selections or Quick-Pick selections already entered into the on-line system prior to the draw break. In other words, during the draw break, new transactions could not be initiated but transactions could be completed. The buffer would reduce the possibility of incomplete transactions. An incomplete transaction occurs when player selections or Quick-Pick selections are recorded in the on-line system but no ticket is produced at the retail location.

The proposed amendments to §401.301 (relating to General Definition) would change the title of the section to "General Definitions," and redefine the term "draw break." The current definition of "draw break" is "[t]he period of time on a draw day when tickets cannot be sold, produced, or validated on an on-line terminal for the specific game." The proposed amendments would change the definition to "[a] period of time before a drawing for an on-line game during which player selections for that drawing may not be entered into the on-line system and during which no requests for Quick Pick selections for that drawing may be entered into the on-line system."

The proposed amendments to §401.304 (relating to On-Line Game Rules (General)) would clarify that a retailer's ability to sell on-line tickets may be impeded by draw breaks. The proposed amendments to §401.304 (relating to On-Line Game Rules (General)) also revise the language requiring the executive director to establish times for draw breaks. The purpose of the revision is to make clear that while a new transaction may not be initiated during a draw break, a transaction may be completed during a draw break.

The proposed amendments to §401.305 (relating to "Lotto Texas" On-Line Game Rule); §401.307 (relating to "Pick 3" On-Line Game Rule); §401.308 (relating to "Cash Five" On-Line Game); §401.312 (relating to "Texas Two Step" On-Line Game); §401.315 (relating to "Mega Millions" On-Line Game Rule); and §401.316 (relating to "Daily 4" On-Line Game Rule) would eliminate any reference to draw break and a reference to time period during which tickets may not be sold. Because §401.304 (relating to On-Line Game Rules (General)) would require the executive director to establish times for draw breaks for each on-line game, it is not necessary to include such a requirement in each specific on-line game rule.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments would be in effect, enforcing or administering the rule does not have foreseeable implications related to cost or revenues of the state or local governments. Ms. Pyka has also determined that there will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed.

Michael Anger, Lottery Operations Director, has determined that for each year of the first five years the proposed amendments would be in effect, the public benefit expected from the adoption of the proposed amendments is that the amended rules would allow the Lottery Commission to include a buffer in the on-line system that would reduce the possibility of incomplete transactions. An incomplete transaction occurs when a wager is initiated, but not completed on the central computer system. One cause of incomplete transactions is a technological communications disruption in the transmission of information between the central computer to a retail terminal. A buffer would be a period of time after the beginning of draw break, which is the period when new wager requests cannot be initiated prior to the drawing for a particular on-line game, in which the central computer system and the retail terminal could continue to attempt to reestablish communications to complete a wager transaction initiated prior to draw break, thereby resulting in a ticket being printed at the retail location. There is no probable economic cost to persons required to comply with the proposed rules.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Sarah Woelk, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. The Commission will hold a public hearing on this proposal at 10:00 a.m. on October 18, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The amendments are also proposed under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this proposal.

§401.301. General Definitions[~~Definition~~].

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

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

(10) Draw break--A [~~The~~] period of time before a drawing for [~~on a draw day when tickets cannot be sold, produced, or validated on~~] an on-line game during which player selections for that drawing may not be entered into the on-line system and during which no requests for Quick Pick selections for that drawing may be entered into the on-line system [~~terminal for the specific game(s) being drawn~~].

(11) - (59) (No change.)

§401.304. On-Line Game Rules (General).

(a) (No change.)

(b) Sale of tickets.

(1) Except to the extent that sales in on-line games are impeded by draw breaks, on-line [~~On-line~~] tickets may be sold during all normal business hours of the lottery on-line retailer during on-line game operating hours. On-line retailers must give prompt service to lottery customers present and waiting at the on-line terminal to purchase tickets for on-line games. Prompt service includes interrupting processing of on-line ticket orders for which the customer is not present at the terminal.

(2) (No change.)

(c) Drawings and end of sales prior to drawings.

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

(3) The executive director shall establish the times [~~determine~~] for draw breaks for each [~~type of~~] on-line game [~~the time for the end of sales prior to the drawings. On-line terminals will not process on-line tickets for that drawing after the time established by the executive director~~].

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

(d) Procedures for claiming on-line prizes.

(1) All apparent winning tickets presented for payment to the lottery or an on-line retailer must meet the commission's validation requirements as set forth in subsection (e) [~~(f)~~] of this section.

(2) - (11) (No change.)

(e) - (h) (No change.)

§401.305. "Lotto Texas" On-Line Game Rule.

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

(c) Plays and tickets

(1) - (11) (No change.)

[~~(12) The commission shall establish a time period before each drawing during which tickets may not be sold.~~]

(12) [~~(13)~~] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

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

§401.307. "Pick 3" On-Line Game Rule.

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

(d) Plays and tickets

(1) - (17) (No change.)

[~~(18) The commission shall establish a time period before each drawing during which tickets may not be sold.~~]

(18) [~~(19)~~] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(e) - (h) (No change.)

§401.308. "Cash Five" On-Line Game.

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

(g) Drawings.

(1) (No change.)

[~~(2) Cash Five tickets will not be sold during the draw break for the Cash Five game on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday nights.~~]

(2) [~~(3)~~] The drawings will be conducted by lottery officials.

(3) [~~(4)~~] Each drawing shall determine, at random, five winning numbers in accordance with Cash Five drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the lottery in accordance with the drawing procedures. The winning numbers shall be used in determining all Cash Five winners for that drawing.

(4) [~~(5)~~] Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one lottery security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(5) [~~(6)~~] A drawing will not be invalidated based on the financial liability of the lottery.

(h) (No change.)

§401.312. "Texas Two Step" On-Line Game.

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

(g) Drawings.

(1) (No change.)

[~~(2) Texas Two Step tickets will not be sold during the draw break for the Texas Two Step game.~~]

(2) [~~(3)~~] The drawings will be conducted by commission officials.

(3) [~~(4)~~] Each drawing shall determine, at random, five winning numbers in accordance with Texas Two Step drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the commission in accordance with the drawing procedures. The winning numbers shall be used in determining all Texas Two Step winners for that drawing.

(4) [~~(5)~~] Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by at least one commission security representative, the drawing supervisor, and the independent certified public accountant immediately prior to a drawing and immediately after the drawing.

(5) [~~(6)~~] A drawing will not be invalidated based on the financial liability of the commission.

(h) (No change.)

§401.315. "Mega Millions" On-Line Game Rule.

(a) - (h) (No change.)

(i) Drawings.

(1) (No change.)

[~~(2) Mega Millions tickets will not be sold during the draw break for the Mega Millions game.~~]

(2) [~~(3)~~] Each drawing shall determine, at random, the six winning numbers in accordance with the Mega Millions drawing procedures. Any numbers drawn are not declared winning numbers until the drawing is certified by the commission in accordance with the drawing procedures. The winning numbers shall be used in determining all Mega Millions winners for that drawing.

(3) [~~(4)~~] Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined immediately prior to a drawing and immediately after the drawing.

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

§401.316. "Daily 4" On-Line Game Rule.

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

(d) Plays and tickets

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

[~~(15) The commission shall establish a time period before each drawing during which tickets may not be sold.~~]

(15) [~~(16)~~] An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(e) - (i) (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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

The Texas Lottery Commission (Commission) proposes new Title 16, Part 9, Chapter 402, Subchapter B, §402.210 (relating to House Rules); §402.211 (relating to Fair Conduct) and new Subchapter G, §402.709 (relating to Corrective Action--Audit).

The purpose of proposed new §402.210 is to set out the minimum requirements for house rules, including: posting, announcement, publication, and content. Specifically, the new rule requires the licensed authorized organization to establish and adhere to its house rules for the fair conduct of bingo, and the operator on duty to be responsible for ensuring the house rules are consistently enforced. The new rule also provides that the house rules shall not conflict with the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

The purpose of proposed new §402.211 is to set out the requirements for organizations to follow in order to ensure the fair conduct of a bingo game. The new rule provides that a fairly conducted bingo occasion is one that is impartial, honest and free from prejudice or favoritism. The bingo game is also to be conducted competitively, and free of corrupt and criminal influences, and follows applicable provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules. Specifically, the new rule provides that the licensee is responsible for ensuring minimum requirements are met in order to conduct a fair bingo occasion.

The purpose of proposed new §402.709 is to set out the requirements for organizations to follow in order to address compliance issues identified in an audit of their organization. The new rule provides a process for organizations to take corrective actions for violations noted as a result of an audit of the organization's bingo activities. Specifically, the new rule sets forth the definition of "corrective action," lists examples of corrective actions, and explains what occurs if a licensed authorized organization does not take corrective action.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new rules will be in effect, there will be no significant fiscal impact for state or local governments as a result of this new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rules as proposed.

Philip D. Sanderson, Director of the Charitable Bingo Operations Division, has determined that for each year of the first five years the proposed new rules will be in effect, the public benefit anticipated is providing interested parties with the following: rules adopted by the licensed authorized organization to explain in detail how the organization is going to conduct its bingo games, information about the conduct of a bingo game in a manner that is fair, and information about the audit process and related requirements.

The Commission requests comments on the proposed new rules from any interested person. Comments on the proposed rules may be submitted to Sandra Joseph, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. The Commission will hold a public hearing on this proposal at 10:00 a.m. on October 16, 2007, at 611 E. 6th Street, Austin, Texas 78701. Comments must be received within 30 days after publication of the proposed new rules in order to be considered.

SUBCHAPTER B. CONDUCT OF BINGO

16 TAC §402.210, §402.211

The new rules are proposed under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rules implement Occupations Code, Chapter 2001.

§402.210. House Rules.

(a) House rules are rules adopted by the licensed authorized organization that have been developed by its officers to inform players in detail of how the organization is going to conduct its bingo games.

(b) The licensed authorized organization shall establish and adhere to its house rules for the fair conduct of bingo.

(c) The operator on duty is responsible for ensuring house rules are consistently enforced.

(d) The house rules must be posted in a conspicuous manner.

(e) At a minimum, the house rules shall contain the following information:

(1) Effective date of the house rules;

(2) Licensed authorized organization's name and taxpayer number;

(3) How players are expected to gain the caller's attention when they bingo;

(4) How the prize will be split when there are multiple winners of a bingo game;

(5) Contingency plan for inclement weather, power outages, equipment failure, caller error, and other emergencies that occur during the occasion;

(6) Procedure for handling malfunctioning card-minders;

(7) Acceptable payment options for purchase of pull-tabs, bingo cards, and use of card-minders; and

(8) Refund policy.

(f) If applicable, the house rules shall contain the following information:

(1) That the last number called must be on the winning card(s);

(2) That players must be present during the play of a regular game or an event ticket game to be eligible to win;

(3) That players must purchase bingo paper or instant tickets by a certain time to participate in a bingo game;

(4) That persons under the age of 18 are allowed on the premises;

(5) Minimum required purchase; and

(6) Returned check policy.

(g) The information required in subsections (e)(2) - (4) and (f)(1) - (3) of this section must be announced prior to the start of the first game of each bingo occasion.

(h) House rules shall not conflict with the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

§402.211. Fair Conduct.

(a) A fairly conducted bingo occasion is one that is impartial, honest, and free from prejudice or favoritism. It is also conducted competitively, free of corrupt and criminal influences, and follows applicable provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(b) The licensee is responsible for ensuring the following minimum requirements are met to conduct a bingo occasion in a manner that is fair:

(1) Consistent enforcement of the house rules.

(2) Availability of the following information to all players:

(A) the games to be played;

(B) the order in which the games will be played;

(C) the patterns needed to win;

(D) the prize(s) to be paid for each game;

(E) if the prize payout is based on sales or attendance;

(F) the entrance fee and the number of cards associated with the entrance fee, if any; and

(G) the price of each type of bingo card offered for sale.

(3) Announcement to players of any changes to information required by paragraph (2) of this subsection before the first game of the bingo occasion.

(4) Availability of the following information to players prior to the play of a pull-tab bingo event ticket game:

(A) how the game will be played; and

(B) how the winners will be determined.

(5) Inspection of bingo balls and bingo cards, making sure all of the balls and cards are present and not damaged or otherwise compromised. The inspection must be done by a registered bingo worker in the presence of one or more players.

(6) Replacement of bingo balls or bingo cards if balls or cards are missing, damaged or otherwise compromised. Bingo balls or bingo cards shall be replaced in complete sets.

(7) Inspection of the following items, if applicable, to ensure proper working order prior to the first game of the bingo occasion:

(A) bingo console and flashboard, and

(B) bingo hall sound system.

(8) Addressing bingo equipment problems during the occasion.

(A) If a problem is discovered with the bingo balls, bingo equipment, or the operation of the bingo equipment, while the game is still in progress, the game is voided and must be replayed during the same occasion at no additional cost to the players. Each player shall be allowed to replay the bingo cards previously purchased.

(B) If a problem is discovered with the bingo balls, bingo equipment, or the operation of the bingo equipment, after the game has been closed then the licensee shall follow their established procedures in accordance with 16 TAC §402.210(e)(5).

(9) Addressing improper bingo ball calls or placements.

(A) A game may be reconstructed when a bingo ball has been incorrectly called, improperly placed or entered into the bingo board, and the error was discovered prior to the close of the game.

(B) The operator on duty shall assess the situation and determine if the game can be reconstructed. If the game can be reconstructed, the game continues by recalling the game from the point of error.

(C) If the game cannot be reconstructed, the game shall be declared void and replayed during the same bingo occasion.

(D) If a problem is discovered after the game has been closed then the licensee shall follow its established procedures in accordance with 16 TAC §402.210(e)(5).

(10) Caller requirements--The caller shall:

(A) be located so that players can:

(i) observe the drawing of the ball from the bingo receptacle; and

(ii) gain the attention of the caller when the players bingo.

(B) be the only one to handle the bingo balls during each bingo game;

(C) call all numbers in a manner clear and audible to all of the playing areas of the bingo premises;

(D) announce the amount of the prize prior to the end of the game, if the prize amount is based on sales or attendance;

(E) ask at least two times, in a manner clear and audible to the players if there are any other bingos;

(F) announce in a manner clear and audible to the players that the game is closed after a pause to permit additional winners to

identify themselves. In multiple-part games, the announcement shall specify the part of the game that is closed;

(G) announce in a manner clear and audible to the players whether the bingo is valid. If there is not a valid bingo, then the caller must state in a manner clear and audible to the players that there is no valid bingo and the game shall resume. The caller shall repeat the last number called before calling any more numbers;

(H) announce in a manner clear and audible to the players the number of winners and the total amount of money or prizes awarded for that game;

(I) return the bingo balls to the bingo receptacle only upon the conclusion of the game; and

(J) not, except for emergency situations, use cell phones, personal digital assistants (PDAs), computers, or other personal electronic devices to communicate with anyone during the bingo occasion.

(11) Bingo worker requirements--A bingo worker shall:

(A) have a presence in each playing area while a bingo game is in progress;

(B) not communicate verbally, or in any other manner, the number(s) or symbol(s) needed by any player to win a bingo game; and

(C) not require anything of value from players, other than payment, for bingo cards, instant tickets, and supplies.

(12) Equal opportunity for all players to play and win.

(13) Establishment of procedures to address disputes and availability of those procedures to the players.

(c) All bingo games must be conducted and prizes awarded within the days and times specified on the license to conduct bingo.

(d) All pull-tab bingo event tickets must be sold prior to the occurrence of the event.

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.709

The new rule is proposed under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

The proposed new rule implements Occupations Code, Chapter 2001.

§402.709. Corrective Action--Audit.

(a) Definition of Corrective Action--An action(s) required by any of the following in order to resolve audit findings or violations of the Bingo Enabling Act or the Charitable Bingo Administrative Rules:

(1) a determination letter resulting from a compliance audit;

(2) an agreed order; or

(3) a decision in a contested case.

(b) Examples of corrective actions:

(1) Reimbursement of funds--Non-bingo funds deposited into a bingo bank account to replenish the account for:

(A) non-permissible expenses; or

(B) bingo proceeds that were not deposited into the account.

(2) Removal of funds--Funds removed from a bingo bank account that are not proceeds from the conduct of bingo.

(3) Additional charitable distribution--Bingo funds disbursed from a bingo account to meet the minimum charitable distribution requirements.

(4) Implementation of internal controls--Controls a licensee or unit develops and implements to minimize or prevent theft or fraud related to its bingo operation.

(5) Implementation of policies and procedures--Written steps and processes a licensee or unit develops and implements to assist in the operation and control of the bingo operation.

(6) Payment of additional prize fees or rental taxes--The amount a licensee or unit must pay for any additional prize fee or rental tax due, including penalty and interest.

(c) If corrective action is not taken as required, the licensee may be subject to administrative disciplinary action such as:

(1) license revocation;

(2) license suspension;

(3) administrative penalty; and

(4) more frequent inspections and compliance audits.

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

Filed with the Office of the Secretary of State on September 24, 2007.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.101

The Texas Lottery Commission (Commission) proposes amendments to Title 16, Part 9, Chapter 403, §403.101 (relating to Open Records). The purpose of the amendments is to clarify that charges to a person requesting reproductions of any readily available record of the Commission will be the charges established by rule in accordance with the Texas Government Code Chapter 552, Subchapter F, and to change "Open Records Specialist" to "Open Records Coordinator".

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments would be in effect, enforcing or administering the rule does not have foreseeable implications related to cost or revenues of the state or local governments.

Ms. Pyka has also determined that there will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed.

Kimberly L. Kiplin, General Counsel, has determined that for each year of the first five years the proposed amendments would be in effect, the public benefit expected from the adoption of the proposed amendments is clarification of the charges to persons requesting reproductions of Commission records, and identification of the agency's Open Records contact person, the Open Records Coordinator.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Deanne Rienstra, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The amendments are also proposed under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this proposal.

§403.101. Open Records.

(a) Charges for Copies of Public Records. The charges to any person requesting reproductions of any readily available record of the Texas Lottery Commission will be the charges established by rule in accordance with the Texas Government Code Chapter 552, Subchapter F [~~the General Services Commission~~].

(b) (No change.)

(c) Open Records Requests. The following guidelines apply to requests for records under the Open Records Act, Texas Government Code, Chapter 552.

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

(7) All open records requests appointments will be referred to the agency's Open Records Coordinator [~~Specialist~~] before complying with a request.

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

16 TAC §403.301

The Texas Lottery Commission (Commission) proposes amendments to Title 16, Part 9, Chapter 403, §403.301 (relating to Historically Underutilized Businesses). The purpose of the amendments is to revise the Texas Lottery Commission's adoption by reference of the Historically Underutilized Businesses (HUB) rules so that it accurately reflects the location of the HUB rules within the Texas Administrative Code and the state agency responsible for the promulgation of the HUB rules, Office of the Comptroller of Public Accounts.

Kathy Pyka, Controller, has determined that for each year of the first five years the amendments would be in effect, enforcing or administering the rule does not have foreseeable implications related to cost or revenues of the state or local governments. Ms. Pyka has also determined that there will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the amendments as proposed.

Michael Fernandez, Administration Director, has determined that for each year of the first five years the proposed amendments would be in effect, the public benefit expected from the adoption of the proposed amendments is the adoption by reference by the Texas Lottery Commission of the HUB rules that accurately identifies the state agency responsible for the promulgation of the HUB rules as well as the location of the rules within the Texas Administrative Code.

The Commission requests comments on the proposed amendments from any interested person. Comments may be submitted to Sarah Woelk, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under Texas Government Code, §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The amendments are also proposed under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction. The amendments are also proposed under Texas Government Code §2161.003 which requires a state agency to adopt the HUB rules as the agency's own rules.

Texas Government Code, Chapter 466, is affected by this proposal.

§403.301. Historically Underutilized Businesses.

The Texas Lottery Commission adopts by reference the rules administered [~~promulgated~~] by the Office of the Comptroller of Public Accounts [~~General Services Commission~~] regarding historically underuti-

lized businesses, which are set forth in the Texas Administrative Code, Title 34, Part 1, Chapter 20, §§20.11 - 20.28 [~~1 TAC §§111.11-111.28~~].

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5113

16 TAC §403.402

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

The Texas Lottery Commission (Commission) proposes the repeal of Title 16, Part 9, Chapter 403, §403.402 (relating to Exemption from Vehicle Inscription Requirements). The Commission is proposing the repeal of the rule because during Chapter 403 rule review, the Commission determined that there was no reason to re-adopt the rule. The rule is obsolete, no longer reflects current legal and policy considerations, and no longer reflects current procedures and practices of the Commission. The Commission no longer maintains surveillance vehicles and does not anticipating doing so in the future.

Kathy Pyka, Controller, has determined that for each year of the first five years the repeal will be in effect there will be no significant fiscal impact for state or local government. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to individuals who are required to comply with the repeal as proposed.

Kimberly L. Kiplin, General Counsel, has determined that for each year of the first five years the repeal will be in effect, the public benefit anticipated is the elimination of an unnecessary and obsolete rule.

The Commission requests comments on the proposed repeal from any interested person. Comments may be submitted to Sarah Woelk, Special Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.txlottery.org. Comments must be received within 30 days after publication of this proposed repeal in order to be considered.

The repeal is proposed under Texas Government Code, §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The repeal is also proposed under Texas Government Code, §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

Texas Government Code, Chapter 466, is affected by this proposal.

§403.402. Exemption from Vehicle Inscription Requirements.

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

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Kimberly L. Kiplin
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TITLE 28. INSURANCE

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

CHAPTER 134. BENEFITS--GUIDELINES FOR MEDICAL SERVICES, CHARGES, AND PAYMENTS

The Texas Department of Insurance (Department), Division of Workers' Compensation (Division) proposes amendments to §134.1 and new §§134.2, 134.203 and 134.204 concerning medical reimbursement policies and medical fee guidelines.

The proposed changes to Subchapters A and C of Chapter 134 are necessary to meet the requirements of Labor Code §413.011, which requires the commissioner to adopt fee guidelines that are fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. Changes to Subchapters A and C of Chapter 134 are also proposed pursuant to Labor Code §408.0252, which allows the commissioner to identify areas of the state in which access to health care providers is less available and adopt appropriate standards, guidelines, and rules regarding the delivery of health care in those areas.

In developing fee guidelines, Labor Code §413.011 requires the commissioner to adopt health care reimbursement policies and guidelines that reflect the standardized reimbursement structures found in other health care delivery systems, using the most current reimbursement methodologies, models, and values or weights used by the Centers for Medicare and Medicaid Services (CMS) in order to achieve standardization.

Additionally, Labor Code §413.011 requires the commissioner to develop one or more conversion factors or other payment adjustment factors in determining appropriate fees, taking into account economic indicators in health care, and to provide reasonable fees for the evaluation and management of care as required by Labor Code §408.025(c) and Division rules. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual's behalf, may not adopt conversion factors or other payment adjustment factors based solely on those factors as developed by CMS, and must comply with the statute by not

interpreting the legislation in a manner that would discriminate in the amount or method of payment or reimbursement for services in manner prohibited by Insurance Code §1451.104, or as restricting the ability of chiropractors to serve as treating doctors. Labor Code §413.012 is also applicable to the proposed rule amendments and new rules as it requires the commissioner to review and revise the fee guidelines every two years to reflect fair and reasonable fees. These requirements have been taken into consideration in the development of this proposal.

As part of the development of these proposed sections, the Division posted an informal working draft of the sections on its website and received written informal comments from 34 system participants and this proposal incorporates several recommendations offered by insurance carriers and health care providers (HCPs).

The proposed amendments to §134.1 are necessary to address rule name changes and the addition of the proposed new §134.203 and §134.204, clarify when fair and reasonable reimbursement applies, and correct grammatical inconsistencies in the section.

Proposed new §134.2 provides a listing of the ZIP Codes that are designated as workers' compensation underserved areas, which are determined by the ZIP Code where the service is provided. The section provides that when required by Division rule, an incentive payment shall be added to the maximum allowable reimbursement (MAR) for services performed in a designated workers' compensation underserved area. In specifying workers' compensation underserved areas, the Division utilized three criteria simultaneously: a ZIP Code that was not in a designated Medicare Health Professional Shortage Area (HPSA), a ZIP Code that had at least one approved case-by-case exception of Division-approved request to the appointment of a provider who was not on the Division's Approved Doctor List (ADL), and a ZIP Code where there was no provider on the ADL. Using those three criteria, the Division has designated 122 of the 4,254 Texas ZIP Codes as eligible for the 10 percent incentive payment. The Division has determined that 10 percent is a fair and reasonable incentive because it is the percentage factor currently used as the physician bonus payment provided by CMS for its 2007 Primary Care HPSA. The 10 percent incentive payment is anticipated to improve participation because it is a reasonable financial bonus in a physician scarcity geographic area and it is a measure that has been used historically by the federal Medicare system.

New proposed §134.203 and §134.204 are based on and address the same subject as the current §134.202, medical fee guidelines; however these sections will be applicable to medical services provided on or after March 1, 2008, and contain changes that provide for fair and reasonable fee guidelines in the current health care market. In reviewing the conversion factors from §134.202, the Division used the Medicare Economic Index (MEI) to provide updated reimbursement rates that are fair and reasonable. The MEI is a portion of Medicare's Sustainable Growth Rate (SGR). The other components of the SGR serve as major restraints in Medicare's budget neutrality requirements, and do not directly relate to workers' compensation reimbursements. The MEI is a weighted average of price changes for goods and services used to deliver physician services. The goods and services include physician time and effort as well as practice expenses.

Rather than modifying §134.202, two new sections (§134.203 and §134.204) are being proposed in order to create a separation of the conversion factors and Medicare-based fee schedules from workers' compensation specific services and reimbursements that are currently combined in §134.202. With these two separate sections, any future amendments will be easier for the Division to manage and for system participants to implement. Proposed new §134.203 relates to medical fees for reimbursements predominantly based on conversion factors and Medicare, and new §134.204 relates to medical fees for reimbursements of workers' compensation specific codes, services, and programs that, for the most part, are not as dependant on conversion factors and Medicare. Section 134.202 will remain in effect for reimbursements related to professional medical services provided between August 1, 2003 and March 1, 2008.

There are no additional rules or rule amendments anticipated in order to implement the proposed changes.

Proposed §134.203 is applicable to professional services provided on or after March 1, 2008; it does not apply to facility, pharmaceutical, dental, and other services, and it is not applicable to services provided through a workers' compensation health care network certified pursuant to Insurance Code Chapter 1305.

In place of the single conversion factor that is currently provided by §134.202, new §134.203 proposes the use of two conversion factors. The two proposed conversion factors are established in consultation with the Medical Advisor pursuant to Labor Code §413.0551(b)(1). The conversion factor of $52.93 for calendar year 2008 is to be used for all professional service categories, with the exception of surgical procedures performed in a facility setting, such as a hospital or ambulatory surgical center (ASC). This "non-facility" conversion factor is based on the MEI proposed by CMS to be used in 2008. The conversion factor of $66.45 for calendar year 2008 is to be used for surgical procedures performed in a facility setting. With the passage of House Bill 7 in the 2005 Texas Legislative Session, the Labor Code was amended at §413.011(b) to direct the commissioner develop one or more conversion factors taking into account economic indicators in health care and the requirements of subsection (d), which requires that reimbursement be fair and reasonable and designed to ensure the quality of medical care. The Division proposes the alternate conversion factor for surgical procedures performed in a facility setting to promote the quality of the surgical procedures available to injured employees and to provide fair and reasonable reimbursement to health care providers providing those procedures in a facility setting. The Division notes that numerous other workers' compensation jurisdictions that utilize Medicare's Resource Based Relative Value Scale (RBRVS) have adopted one or more conversion factors and a higher conversion factor is generally assigned to surgical services.

Currently §134.202 applies a fixed 125 percent multiplier to the current Medicare conversion factor in order to determine reimbursement. This has been the multiplier for professional services reimbursements since the implementation of the section in August 2003. Rather than using 125 percent of the most current Medicare conversion factor, the proposed §134.203 establishes conversion factors that reflect the aggregate changes in the MEI since the baseline year of 2002. The conversion factor will adjust annually based on annual changes to the MEI and subject to monitoring by the Division pursuant to its rulemaking authority. The recommended conversion factor of $52.93 for calendar year 2008 was developed by beginning with the 125 percent multiplier developed for §134.202, and applying the annual MEI adjustment activity year-to-year beginning with the baseline year of 2002.

Labor Code §413.011(b) allows for the use of one or more conversion factors. The proposed section establishes a conversion factor of $66.45 for calendar year 2008 to be used for surgical procedures performed in a facility setting, such as a hospital or ASC. This conversion factor is based on the average reimbursement differential between reimbursement rates for surgical services and overall services of those states using RBRVS as listed in Benchmarks for Designing Workers' Compensation Medical Fee Schedules: 2006 (Workers' Compensation Research Institute, 2006). This conversion factor also takes into consideration the expertise of the health care providers who provide these services in a facility setting as well as the limited availability of health care providers with that expertise and the administrative processes required by the Labor Code to secure those services. As reported by the Texas Medical Association in their *2006 Survey of Texas Physicians Research Findings*, there has been a dramatic loss of access to surgical specialties by injured employees since the adoption of §134.202. As a result of input received in response to the posting of the informal working draft sections, the $66.45 conversion factor applies only to surgical services when performed in a facility setting, instead of the earlier suggestion of specialty surgical procedures distinguished by CPT codes.

Both proposed conversion factors are to be updated each subsequent calendar year to reflect the annualized MEI percentage adjustment published in the *Federal Register* each November.

Proposed §134.203 maintains reimbursement of Healthcare Common Procedure Coding System (HCPCS) Level II codes at the level specified in §134.202, 125 percent of fees listed in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule, or 125 percent of the published Texas Medicaid fee schedule for durable medical equipment if the code has no published Medicare DMEPOS rate.

Proposed §134.203(a) describes the applicability of the section. Proposed §134.203(a)(1) states that the section does not apply to workers' compensation codes, services, and programs described in §134.204; prescription drugs or medicine; dental services; facility services of a hospital or other health care facility; or medical services provided through a workers compensation health care network certified pursuant to Insurance Code Chapter 1305, except as provided in Insurance Code Chapter 1305. Proposed §134.203(a)(2) notes that the section only applies to professional medical services provided on or after March 1, 2008, the applicability date of proposed new §134.203. Proposed §134.203(a)(3) provides that §134.202 is to be applied to professional medical services provided between August 1, 2003 and March 1, 2008.

Proposed §134.203(a)(4) describes that for professional medical services provided before August 1, 2003, §134.201 (relating to Medical Fee Guideline for Medical Treatments and Services Provided under the Texas Workers' Compensation Act) and §134.302 (relating to Dental Fee Guideline) apply. Proposed §134.203(a)(5) defines the term "Medicare payment policies" to mean reimbursement methodologies, models, and values or weights, including its coding, billing, and reporting payment policies as set forth in the CMS payment policies specific to Medicare, when used in this section. As with current §134.202, this section allows for the basic Medicare program provisions to be applied with any additions or exceptions necessary for adaptation to the Texas workers' compensation system. The Medicare program is not a static system. Medicare policies change frequently. To achieve standardization it is necessary to use the Medicare billing and reimbursement policies as they are modified by CMS.

Proposed §134.203(a)(6) clarifies that, notwithstanding Medicare payment policies, chiropractors may be reimbursed for services provided within the scope of their practice act, which, in accordance with the Labor Code, allows them to serve as treating doctors in the Texas workers' compensation system. Proposed §134.203(a)(7) states that specific provisions contained in the Labor Code or the Division rules, including this chapter, take precedence over any conflicting provision adopted or utilized by CMS in administering the Medicare program and that Independent Review Organization (IRO) decisions regarding medical necessity be made in accordance with Labor Code §413.031 and §133.308 (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies. Proposed §134.203(a)(8) establishes that whenever a component of the Medicare program is revised, use of the revised component shall be required for compliance with Division rules, decisions, and orders for professional services rendered on or after the effective date, or after the effective date or the adoption date of the revised component, whichever is later.

Proposed §134.203(b)(1) requires that for coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other applicable payment policies in effect on the date a service is provided with any additions or exceptions in the rules.

Proposed §134.203(b)(2) provides that a 10 percent incentive payment shall be added to the maximum allowable reimbursement (MAR) for services outlined in subsections (c) - (f) and (h) of the section that are performed in designated workers' compensation underserved areas in accordance with §134.2.

Proposed §134.203(c) requires system participants to apply the Medicare payment policies with minimal modifications to determine the maximum allowable reimbursements (MARs). Proposed §134.203(c)(1) provides a table setting out the annual conversion factors beginning in calendar year 2008 for use in the various service categories. Proposed §134.203(c)(2) indicates that the conversion factors in paragraph (1) of that subsection are for calendar year 2008 and that the subsequent year's conversion factors will be determined by applying the annual percentage adjustment of the MEI to the previous year's conversion factors and the new conversion factors shall be effective January 1 of the new calendar year. Paragraph (2) also provides an example of the calculation methodology used early in rule development in calendar year 2007 to describe the 2007 workers' compensation conversion factor based on the Medicare 2006 conversion factor with the annual increase of 2.1 percent of the MEI. This calculation methodology is to be applied each new subsequent calendar year based on the annualized MEI percentage adjustment published each November in the *Federal Register* for the ensuing calendar year.

As in §134.202(c)(2), proposed §134.203(d) provides that the MAR for HCPCS Level II codes A, E, J, K, and L shall be 125 percent of the Medicare DMEPOS fee schedule, or 125 percent

of the published Medicaid fee schedule, or, if neither applies, according to subsection (f) of this section.

As in §134.202(c)(3), proposed §134.203(e) provides that the MAR for pathology and laboratory services not addressed in (c)(1) of this section or in other Division rules shall be 125 percent of the fee listed for the code in the Medicare Clinical Fee Schedule for the technical component, and 45 percent of the Division established MAR for the technical component shall be the professional component.

Proposed §134.203(f) establishes that where no relative value unit or payment has been assigned by Medicare, Texas Medicaid, or the Division, reimbursement shall be provided in accordance with §134.1.

Proposed §134.203(g) establishes that where there is a negotiated or contracted amount that complies with Labor Code §413.011, that amount shall be the reimbursement amount that applies to the billed services.

Proposed §134.203(h) establishes that where there is no negotiated or contracted amount that complies with Labor Code §413.011, the reimbursement shall be the least of the MAR amount, the HCP's usual and customary charge, unless a Division rule specifies a specific bill amount, or the fair and reasonable amount consistent with the standards of §134.1.

Proposed §134.203(i) requires HCPs to bill their usual and customary charges using the most current HCPCS Level I and Level II codes and to submit medical bills in accordance with the Labor Code and Division rules.

Proposed §134.203(j) describes that appropriate modifiers, including more than one modifier if necessary, shall follow the appropriate Level I and Level II HCPCS codes on the bill to identify modifying circumstances. Division-specific modifiers are identified in proposed new §134.204(n) along with instructions for application.

Proposed new §134.204 is necessary for reimbursement of workers' compensation specific services, and provisions for a separate section from new proposed §134.203 are recommended for ease in future amendments by the Division and for ease of implementation by system participants. Proposed §134.204 applies to workers' compensation specific codes, services and programs provided on or after March 1, 2008. The proposed section is not applicable to professional medical services described in proposed new §134.203; prescription drugs or medicines; dental services; facility services of a hospital or other health care facility; or medical services provided through a workers' compensation health care network certified pursuant to Insurance Code Chapter 1305, except as provided in §134.1 of this title and Insurance Code Chapter 1305.

Proposed §134.204(a)(3) provides that §134.202 (relating to Medical Fee Guideline) applies to workers' compensation specific codes, services and programs provided between August 1, 2003 and March 1, 2008, the applicability date of proposed §134.204. Proposed §134.204(a)(4) provides that for workers' compensation specific codes, services and programs provided before August 1, 2003, §134.201 (relating to Medical Fee Guideline for Medical Treatments and Services Provided under the Texas Workers' Compensation Act) and §134.302 (relating to Dental Fee Guideline) apply. Proposed §134.204(a)(5) sets forth that specific provisions contained in the Texas Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, take precedence over any conflicting provision adopted or utilized by CMS in administering the Medicare program and that Independent Review Organization (IRO) decisions regarding medical necessity be made in accordance with Labor Code §413.031 and §133.308 (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies.

Proposed §134.204(b)(1) requires HCPs to bill their usual and customary charges using the most current HCPCS Level I and Level II codes and to submit medical bills in accordance with the Labor Code and Division rules.

Proposed §134.204(b)(2) states that appropriate modifiers, including more than one modifier if necessary, shall follow the appropriate Level I and Level II HCPCS codes on the bill to identify modifying circumstances. Division-specific modifiers are identified in subsection (n) of this section along with instructions for their application.

Proposed §134.204(b)(3) provides that a 10 percent incentive payment shall be added to the MAR for services outlined in subsections (d), (e), (g), (i), (j), and (k) of the section that are performed in designated workers' compensation underserved areas in accordance with §134.2.

Proposed §134.204(c) establishes that where there is a negotiated or contracted amount that complies with Labor Code §413.011, that amount shall be the reimbursement amount for the billed services.

Proposed §134.204(d) establishes that where there is no negotiated or contracted amount that complies with Labor Code §413.011, the reimbursement shall be the least of the MAR amount, the HCP's usual and customary charge, unless Division rule specifies a specific bill amount, or the fair and reasonable amount consistent with the standards of §134.1.

Proposed §134.204(e) sets forth the case management responsibilities for the treating doctor, establishes set fees for treating doctor case management services, directs the treating doctor to use a specific modifier when billing for these services that will distinguish treating doctors from other health care providers, and allows treating doctors a payment commensurate with case management responsibilities and workers' compensation administrative tasks. Proposed §134.204(e) also establishes set fees, which are 25 percent of the total provided to treating doctors, when a referral health care provider contributes to the case management activity. These established fees were derived from the 2007 Ingenix publication of The Essential RBRVS for determining the gap-filled, non-facility value, and then multiplied by the Division's 2007 conversion factor used during the early 2007 calendar year rule development stage.

Proposed §134.204(f) establishes that the reimbursement for home health services provided by a licensed home health agency shall be 125 percent of the published Texas Medicaid fee schedule for home health agencies or as provided in proposed subsections (c) or (d) of this section.

As in §134.202(e)(4), proposed §134.204(g) sets forth the requirements and limitations on functional capacity evaluations (FCEs), including limits on the number of FCEs allowed, the maximum number of hours to be reimbursed, the required billing code and modifier, and the required elements of a physical examination and neurological examination.

As in §134.202(e)(5), proposed §134.204(h) sets forth the billing and reimbursement requirements for Return to Work Rehabilitation Programs including appropriate coding, modifiers, and reimbursement rates. The section includes details of comparable CARF accredited programs.

Proposed §134.204(i) addresses the examinations and reimbursements with new modifiers that are associated with the expanded duties of designated doctors. This subsection is established for whichever examination is appropriate, and proposes an established cap with a prorated payment method for the four examinations not associated with MMI and IR.

As in §134.202(e)(6), proposed §134.204(j) sets forth the billing, coding, and reimbursement requirements, including modifiers, for Maximum Medical Improvement (MMI) and Impairment Rating (IR) examinations. The subsection specifies what shall be included in the examinations, any limitations on the number of examinations allowed, billing and reimbursement for testing not outlined in the AMA Guides, and that the doctor performing the examinations be an authorized doctor under the Act, Division rules, and Chapter 130 relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment. The subsection further sets out different billing, coding, including modifiers, and reimbursement rates depending on whether the examining HCP is the treating doctor, a referral doctor, or a referral specialist. A new, clarifying provision has been added for the billing and reimbursement of an IR evaluation in circumstances when there is no test to determine an IR for a non-musculoskeletal condition.

Proposed §134.204(k) sets forth the billing, coding, including modifiers, and reimbursements rates for Return to Work and Evaluation of Medicare Care examinations (RTW/EMC), that are not done for the purpose of certifying MMI or assigning IR. The proposed subsection addresses the newer designated doctor responsibilities and raises the overall reimbursement rate from $350 to $500 for whichever examination is appropriate as outlined in subsection (i) of this section. Additionally, any required testing is to be billed using appropriate codes and modifiers in addition to the examination fee.

Proposed §134.204(l) refers a HCP to §129.5 (relating to Work Status Reports) when billing for a Work Status Report that is not conducted as part of the examination outlined in subsections (i) and (j) of this section.

Proposed §134.204(m) refers a treating doctor to §126.14 (relating to Treating Doctor Examination to Define Compensable Injury) when billing for an examination to define the compensable injury.

Proposed §134.204(n) sets forth Division modifiers to be used by HCPs in conjunction with procedure codes to ensure correct coding, reporting, billing, and reimbursement. The proposal includes six new modifiers associated with treating doctor case management functions and requested designated doctor examinations.

Jaelene Fayhee, Deputy Executive Commissioner for Policy and Research, has determined the following with respect to fiscal impact for the first five-year period the proposed rule amendment and proposed new rules are in effect.

With regard to enforcement and administration of the rules by state government, the Division will experience minimal increased costs in some areas and decreased costs in others. Increased costs, although difficult to quantify, may include expenses associated with the preparation of new training materials and presentation of training classes for Department and Division staff and other system participants, and costs associated with monitoring the Medicare payment policies.

Once system participants become familiar with the amendments to these sections and the conversion factors to consider in calculating the maximum allowable reimbursement amounts, it is expected to result in fewer medical fee disputes. For example, case management activities have an established set fee amount as do the reimbursements for designated doctor examinations. Additionally, there is more direction provided for the reimbursement of home health services, and all of these previously were silent and left to the insurance carrier's determination of a fair and reasonable reimbursement.

There will be no fiscal impact on local government as a result of enforcing or administering the rules as local governments do not have regulatory authority with respect to these rules. Local governments and state governmental entities as regulated entities will be impacted in the same manner as persons required to comply with the rules as proposed. Aggregate medical costs should increase in proportion to the raise in the conversion factor reimbursement amounts, which have not increased since the implementation of §134.202 in August 2003. If the local government's workers' compensation coverage is provided by an insurance company, premium costs may increase as a result of the higher medical costs. However, at this time the Division cannot determine if local governments will experience an increase in these premium costs. Any local government that is self-insured will likely experience a similar cost increase if utilization and injury experience remain unchanged.

There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Fayhee 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 the proposed sections is the continued access to health care and stability provided through consistent application of the Division's adopted fee guidelines that are based on the standardized Medicare reimbursement methodologies, models and values or weights, as well as Medicare's payment policies relating to coding, billing, and reporting.

Injured employees will benefit from the proposed rules because the conversion factor increase will result in additional reimbursement to providers. Increased reimbursement rates may encourage additional providers to participate in the workers' compensation system, thereby increasing injured employees' access to quality health care. Additionally, injured employees in underserved areas will benefit from the inducement to providers created by the provisions for an additional 10 percent reimbursement to health care providers who provide services in designated shortage areas represented by specific ZIP Codes.

Insurance carriers will benefit from the proposed rules by the establishment of fees for reimbursing case management activities, the specification of the tiered reimbursement structure for the non-MMI and IR designated doctor examinations, guidance on the coding and billing for licensed home health services, and the proposed new modifiers, all of which lend certainty and stability to the system. Insurance carriers will also benefit from the predictability of the annual MEI adjustments that will determine the annual workers' compensation conversion factor changes. Carriers will continue to benefit from use of standardized and current

methodologies, models, and value units, and use of standardized reporting, billing, and coding requirements.

Health care providers will benefit from the reimbursement modifications included in the proposed rules. The conversion factor increase will result in additional reimbursement to providers. Based on calendar year 2005 reimbursement data, reimbursement for professional services other than surgical procedures performed in a facility setting is anticipated to increase approximately $51 million, or 9.8 percent. Reimbursement for surgical services performed in a facility setting is anticipated to increase approximately $20.6 million, or 39.5 percent. This is an approximate $71.6 million increase in system costs with a net change of approximately 7.2 percent of total system medical payments. These increases are reflective of the increased costs as identified through the MEI for the provision of medical services and more accurately reflect the increases in costs of providing health care than the previous index to Medicare. This relationship will improve the financial viability of providers to participate in the Texas workers' compensation system. HCPs will benefit from the predictability of the annual MEI adjustments which ensure that changes in the costs of providing services will be reflected in the yearly workers' compensation conversion factor changes.

In addition, the Division has identified workers' compensation underserved areas. Those HCPs identified in the §134.203 and §134.204 providing medical services and treatments in those areas will benefit from an additional 10 percent reimbursement.

Providers will also benefit from the set reimbursement amounts for case management functions as these activities become increasingly important in our disability management model. The clarifications and specificities associated with this change in reimbursement methodology will allow providers to be more consistently reimbursed for case management responsibilities. This change further supports the responsibilities of the treating doctor and contributing HCPs to fulfill the disability management objectives of the Division.

Licensed home health agencies, as providers, will also benefit from clarification as to reimbursement for home health services provided to injured employees. Designated doctors will benefit from a more streamlined and tiered reimbursement structure for non-MMI and IR designated doctor examinations.

Employers, similar to insurance carriers, will benefit from the proposed rules due to the carrier's ability to process the established fees for reimbursing case management activities, the specification of the tiered reimbursement structure for the non-MMI and IR designated doctor examinations, guidance on the coding and billing for licensed home health services, and the proposed new modifiers, all of which lend certainty and stability to the system. Employers also benefit from these proposed rules as they support disability management and return to work initiatives.

The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on November 5, 2007. Comments may be submitted via the Internet through the Division's Internet website at *http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html* or by mailing your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

The commissioner will consider the adoption of the proposed amended section and proposed new sections in a public hearing at 1:00 p.m. on November 5, 2007, in Room 100 at the William B. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas 78701. Written and oral comments presented at the hearing will be considered.

SUBCHAPTER A. MEDICAL REIMBURSEMENT POLICIES

28 TAC §134.1, §134.2

The amended rule and new rules are proposed under the Texas Labor Code §§408.021, 413.002, 413.007, 413.011, 413.012, 413.0551, 408.0252, 413.013, 413.014, 413.015, 413.016, 413.017, 413.019, 413.031; 402.0111, and 402.061.

Section 408.021 entitles injured employees to all health care reasonably required by the nature of the injury as and when needed. Section 413.002 requires the Division to monitor health care providers, insurance carriers and claimants to ensure compliance with rules adopted by the commissioner of workers' compensation, including fee guidelines. Section 413.007 sets out information to be maintained by the Division. Section 413.011 mandates that the Division by rule establish medical policies and guidelines. Section 413.012 requires the Division to review and revise the medical policies and fee guidelines at least every two years to reflect fair and reasonable fees. Section 413.0551 requires the Medical Advisor to make recommendations regarding the adoption of rules and policies to develop, maintain, and review guidelines as provided by §413.011. Section 408.0252 allows the commissioner of workers' compensation to identify areas of the state in which access to health care provides is less available and adopt appropriate standards, guidelines, and rules regarding the delivery of health care in those areas. Section 413.013 requires the Division by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review. Section 413.014 requires preauthorization by the insurance carrier for health care treatments and services. Section 413.015 requires insurance carriers to pay charges for medical services as provided in the statute and requires that the Division ensure compliance with the medical policies and fee guidelines through audit and review. Section 413.016 provides for refund of payments made in violation of the medical policies and fee guidelines. Section 413.017 provides a presumption of reasonableness for medical services fees that are consistent with the medical policies and fee guidelines. Section 413.019 provides for payment of interest on delayed payments refunds or overpayments. Section 413.031 provides a procedure for medical dispute resolution. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section 402.061 provides that the commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§408.021, 408.0252, 413.002, 413.007, 413.011 - 413.017, 413.019, 413.031; 402.0111, 413.0551, and 402.061.

§134.1. Medical Reimbursement.

(a) Medical reimbursement for health care services provided to injured employees subject to a workers' compensation health care network established under Insurance Code Chapter 1305 shall be made in accordance with the provisions of Insurance Code Chapter 1305, except as provided in subsections [subsection] (b) and (c) of this section.

(b) Examinations conducted pursuant to Labor Code §§408.004, 408.0041, and 408.151 shall be reimbursed in accordance with §134.204 of this chapter (relating to Medical Fee Guideline for Workers' Compensation Specific Services)[§134.202 of this chapter (relating to Medical Fee Guideline)].

(c) Examinations conducted pursuant to Labor Code §408.0042 shall be reimbursed in accordance with §126.14 of this title (relating to Treating Doctor Examination to Define the Compensable Injury).

(d) [(c)] Medical reimbursement for health care not provided through a workers' compensation health care network shall be made in accordance with:

(1) the Division's fee guidelines;

(2) a negotiated contract; or

(3) in the absence of an applicable fee guideline or a negotiated contract, a fair and reasonable reimbursement amount as specified in subsection (e) [(d)] of this section [in the absence of an applicable fee guideline].

(e) [(d)] Fair and reasonable reimbursement shall:

(1) be[is] consistent with the criteria of Labor Code §413.011;

(2) ensure[ensures] that similar procedures provided in similar circumstances receive similar reimbursement; and

(3) be[is] based on nationally recognized published studies, published Division medical dispute decisions, and values assigned for services involving similar work and resource commitments, if available.

(f) [(e)] The insurance carrier shall consistently apply fair and reasonable reimbursement amounts and maintain, in reproducible format, documentation of the insurance carrier's methodology(ies) establishing fair and reasonable reimbursement amounts. Upon request of the Division, an insurance carrier shall provide copies of such documentation.

§134.2. Incentive Payments for Workers' Compensation Underserved Areas.

(a) When required by Division rule, an incentive payment shall be added to the maximum allowable reimbursement (MAR) for services performed in a designated workers' compensation underserved area.

(b) The following list of ZIP Codes comprise the Division designated workers' compensation underserved areas: 75134, 75135, 75161, 75181, 75212, 75410, 75558, 75603, 75630, 75650, 75653, 75654, 75658, 75660, 75663, 75666, 75667, 75672, 75687, 75692, 75704, 75750, 75752, 75763, 75789, 75849, 75915, 75933, 75949, 75964, 75969, 75973, 75980, 76023, 76055, 76060, 76066, 76088, 76119, 76226, 76239, 76247, 76271, 76380, 76443, 76534, 76621, 76640, 76657, 76682, 76711, 76932, 76935, 77033, 77050, 77053, 77078, 77336, 77354, 77363, 77389, 77396, 77466, 77496, 77517, 77561, 77632, 77808, 77905, 77968, 78025, 78123, 78132, 78140, 78141, 78210, 78220, 78239, 78242, 78333, 78335, 78343, 78368, 78370, 78383, 78407, 78535, 78574, 78583, 78590, 78605, 78640, 78669, 78802, 78830, 78836, 78877, 78884, 78935, 78960, 79010, 79107, 79108, 79114, 79118, 79311, 79367, 79408, 79411, 79511, 79521, 79536, 79561, 79563, 79778, 79782, 79836, 79838, 79849, 79901, 79922, 79934.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704413
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation Commission
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 804-4715

SUBCHAPTER C. MEDICAL FEE GUIDELINES

28 TAC §134.203, §134.204

The amended rule and new rules are proposed under the Texas Labor Code §§408.021, 413.002, 413.007, 413.011, 413.012, 413.0551, 408.0252, 413.013, 413.014, 413.015, 413.016, 413.017, 413.019, 413.031; 402.0111, and 402.061.

Section 408.021 entitles injured employees to all health care reasonably required by the nature of the injury as and when needed. Section 413.002 requires the Division to monitor health care providers, insurance carriers and claimants to ensure compliance with rules adopted by the commissioner of workers' compensation, including fee guidelines. Section 413.007 sets out information to be maintained by the Division. Section 413.011 mandates that the Division by rule establish medical policies and guidelines. Section 413.012 requires the Division to review and revise the medical policies and fee guidelines at least every two years to reflect fair and reasonable fees. Section 413.0551 requires the Medical Advisor to make recommendations regarding the adoption of rules and policies to develop, maintain, and review guidelines as provided by §413.011. Section 408.0252 allows the commissioner of workers' compensation to identify areas of the state in which access to health care provides is less available and adopt appropriate standards, guidelines, and rules regarding the delivery of health care in those areas. Section 413.013 requires the Division by rule to establish programs related to health care treatments and services for dispute resolution, monitoring, and review. Section 413.014 requires preauthorization by the insurance carrier for health care treatments and services. Section 413.015 requires insurance carriers to pay charges for medical services as provided in the statute and requires that the Division ensure compliance with the medical policies and fee guidelines through audit and review. Section 413.016 provides for refund of payments made in violation of the medical policies and fee guidelines. Section 413.017 provides a presumption of reasonableness for medical services fees that are consistent with the medical policies and fee guidelines. Section 413.019 provides for payment of interest on delayed payments refunds or overpayments. Section 413.031 provides a procedure for medical dispute resolution. Section 402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and other laws of this state. Section

402.061 provides that the commissioner of workers' compensation has the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §§408.021, 408.0252, 413.002, 413.007, 413.011 - 413.017, 413.019, 413.031; 402.0111, 413.0551, and 402.061.

§134.203. Medical Fee Guideline for Professional Services.

(a) Applicability of this rule is as follows:

(1) This section applies to professional medical services provided in the Texas workers' compensation system, other than:

(A) workers' compensation specific codes, services, and programs described in §134.204 of this title (relating to Medical Fee Guideline for Workers' Compensation Specific Services);

(B) prescription drugs or medicine;

(C) dental services;

(D) the facility services of a hospital or other health care facility; and

(E) medical services provided through a workers' compensation health care network certified pursuant to Insurance Code Chapter 1305, except as provided in Insurance Code Chapter 1305.

(2) This section applies to professional medical services provided on or after March 1, 2008.

(3) For professional services provided between August 1, 2003 and March 1, 2008, §134.202 of this title (relating to Medical Fee Guideline) applies.

(4) For professional services provided prior to August 1, 2003, §134.201 of this title (relating to Medical Fee Guideline for Medical Treatments and Services Provided under the Texas Workers' Compensation Act) and §134.302 of this title (relating to Dental Fee Guideline) apply.

(5) "Medicare payment policies" when used in this section, shall mean reimbursement methodologies, models, and values or weights including its coding, billing, and reporting payment policies as set forth in the Centers for Medicare and Medicaid Services (CMS) payment policies specific to Medicare.

(6) Notwithstanding Medicare payment policies, chiropractors may be reimbursed for services provided within the scope of their practice act.

(7) Specific provisions contained in the Texas Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by CMS in administering the Medicare program. Independent Review Organization (IRO) decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies.

(8) Whenever a component of the Medicare program is revised, use of the revised component shall be required for compliance with Division rules, decisions, and orders for professional services rendered on or after the effective date, or after the effective date or the adoption date of the revised component, whichever is later.

(b) For coding, billing, reporting, and reimbursement of professional medical services, Texas workers' compensation system participants shall apply the following:

(1) Medicare payment policies, including its coding; billing; correct coding initiatives (CCI) edits; modifiers; bonus payments for health professional shortage areas (HPSAs) and physician scarcity areas (PSAs); and other payment policies in effect on the date a service is provided with any additions or exceptions in the rules.

(2) A 10 percent incentive payment shall be added to the maximum allowable reimbursement (MAR) for services outlined in subsections (c) - (f) and (h) of this section that are performed in designated workers' compensation underserved areas in accordance with §134.2 of this title (relating to Incentive Payments for Workers' Compensation Underserved Areas).

(c) To determine the MAR for professional services, system participants shall apply the Medicare payment policies with minimal modifications.

(1) The following table establishes the conversion factors to be applied to each of the listed service categories.
Figure: 28 TAC §134.203(c)(1)

(2) The conversion factors listed in paragraph (1) of this subsection shall be the conversion factors for calendar year 2008. Subsequent year's conversion factors shall be determined by applying the annual percentage adjustment of the Medicare Economic Index (MEI) to the previous year's conversion factors, and shall be effective January 1st of the new calendar year. The following hypothetical example illustrates this annual adjustment activity if the Division had been using this MEI annual percentage adjustment: The 2006 Division conversion factor of $50.83 (with the exception of surgery) would have been multiplied by the 2007 MEI annual percentage increase of 2.1 percent, resulting in the $51.90 (with the exception of surgery) Division conversion factor in 2007.

(d) The MAR for Healthcare Common Procedure Coding System (HCPCS) Level II codes A, E, J, K, and L shall be determined as follows:

(1) 125 percent of the fee listed for the code in the Medicare Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) fee schedule;

(2) if the code has no published Medicare rate, 125 percent of the published Texas Medicaid fee schedule, durable medical equipment (DME)/medical supplies, for HCPCS; or

(3) if neither paragraph (1) nor (2) of this subsection apply, then as calculated according to subsection (f) of this section.

(e) The MAR for pathology and laboratory services not addressed in subsection (c)(1) of this section or in other Division rules shall be determined as follows:

(1) 125 percent of the fee listed for the code in the Medicare Clinical Fee Schedule for the technical component of the service; and,

(2) 45 percent of the Division established MAR for the code derived in paragraph (1) for the professional component of the service.

(f) For products and services for which no relative value unit or payment has been assigned by Medicare, Texas Medicaid, or the Division, reimbursement shall be provided in accordance with §134.1 of this title (relating to Medical Reimbursement).

(g) When there is a negotiated or contracted amount that complies with Labor Code §413.011, reimbursement shall be the negotiated or contracted amount that applies to the billed services.

(h) When there is no negotiated or contracted amount that complies with Labor Code §413.011, reimbursement shall be the least of the:

(1) MAR amount;

(2) health care provider's usual and customary charge, unless directed by Division rule to bill a specific amount; or

(3) fair and reasonable amount consistent with the standards of §134.1 of this title.

(i) Health care providers (HCPs) shall bill their usual and customary charges using the most current Level I (CPT codes) and Level II HCPCS codes. HCPs shall submit medical bills in accordance with the Labor Code and Division rules.

(j) Modifying circumstance shall be identified by use of the appropriate modifier following the appropriate Level I (CPT codes) and Level II HCPCS codes. Division-specific modifiers are identified and shall be applied in accordance with §134.204(n) of this title (relating to Medical Fee Guideline for Workers' Compensation Specific Services). When two or more modifiers are applicable to a single CPT code, indicate each modifier on the bill.

§134.204. Medical Fee Guideline for Workers' Compensation Specific Services.

(a) Applicability of this rule is as follows:

(1) This section applies to workers' compensation specific codes, services and programs provided in the Texas workers' compensation system, other than:

(A) professional medical services described in §134.203 of this title (relating to Medical Fee Guideline for Professional Services);

(B) prescription drugs or medicine;

(C) dental services;

(D) the facility services of a hospital or other health care facility; and

(E) medical services provided through a workers' compensation health care network certified pursuant to Insurance Code Chapter 1305, except as provided in §134.1 of this title and Insurance Code Chapter 1305.

(2) This section applies to workers' compensation specific codes, services and programs provided on or after March 1, 2008.

(3) For workers' compensation specific codes, services and programs provided between August 1, 2003 and March 1, 2008, §134.202 of this title (relating to Medical Fee Guideline) applies.

(4) For workers' compensation specific codes, services and programs provided prior to August 1, 2003, §134.201 of this title (relating to Medical Fee Guideline for Medical Treatments and Services Provided under the Texas Workers' Compensation Act) and §134.302 of this title (relating to Dental Fee Guideline) apply.

(5) Specific provisions contained in the Labor Code or the Texas Department of Insurance, Division of Workers' Compensation (Division) rules, including this chapter, shall take precedence over any conflicting provision adopted or utilized by the Centers for Medicare and Medicaid Services (CMS) in administering the Medicare program. Independent Review Organization (IRO) decisions regarding medical necessity made in accordance with Labor Code §413.031 and §133.308 of this title (relating to MDR by Independent Review Organizations), which are made on a case-by-case basis, take precedence in that case only, over any Division rules and Medicare payment policies.

(b) Payment Policies Relating to coding, billing, and reporting for workers' compensation specific codes, services, and programs are as follows:

(1) Billing. Health care providers (HCPs) shall bill their usual and customary charges using the most current Level I (CPT codes) and Level II Healthcare Common Procedure Coding System (HCPCS) codes. HCPs shall submit medical bills in accordance with the Labor Code and Division rules.

(2) Modifiers. Modifying circumstance shall be identified by use of the appropriate modifier following the appropriate Level I (CPT codes) and Level II HCPCS codes. Where HCPCS modifiers apply, carriers shall treat them in accordance with Medicare and Texas Medicaid rules. Additionally, Division-specific modifiers are identified in subsection (n) of this section. When two or more modifiers are applicable to a single HCPCS code, indicate each modifier on the bill.

(3) Incentive Payments. A 10 percent incentive payment shall be added to the maximum allowable reimbursement (MAR) for services outlined in subsections (d), (e), (g), (i), (j), and (k) of this section that are performed in designated workers' compensation underserved areas in accordance with §134.2 of this title (relating to Incentive Payments for Workers' Compensation Underserved Areas).

(c) When there is a negotiated or contracted amount that complies with Labor Code §413.011, reimbursement shall be the negotiated or contracted amount that applies to the billed services.

(d) When there is no negotiated or contracted amount that complies with §413.011 of the Labor Code, reimbursement shall be the least of the:

(1) MAR amount;

(2) health care provider's usual and customary charge, unless directed by Division rule to bill a specific amount; or

(3) fair and reasonable amount consistent with the standards of §134.1 of this title (relating to Medical Reimbursement).

(e) Case Management Responsibilities by the Treating Doctor is as follows:

(1) Team conferences and telephone calls shall include coordination with an interdisciplinary team.

(A) Team members shall not be employees of the treating doctor.

(B) Team conferences and telephone calls must be outside of an interdisciplinary program. Documentation shall include the purpose and outcome of conferences and telephone calls, and the name and specialty of each individual attending the team conference or engaged in a phone call.

(2) Team conferences and telephone calls should be triggered by a documented change in the condition of the injured employee and performed for the purpose of coordination of medical treatment and/or return to work for the injured employee.

(3) Contact with one or more members of the interdisciplinary team more often than once every 30 days shall be limited to the following:

(A) coordinating with the employer, employee, or an assigned medical or vocational case manager to determine return to work options;

(B) developing or revising a treatment plan, including any treatment plans required by Division rules;

(C) altering or clarifying previous instructions; or

(D) coordinating the care of employees with catastrophic or multiple injuries requiring multiple specialties.

(4) Case management services require the treating doctor to submit documentation that identifies any HCP that contributes to the case management activity. Case management services shall be billed and reimbursed as follows:

(A) CPT Code 99361.

(i) Reimbursement to the treating doctor shall be $113. Modifier "W1" shall be added.

(ii) Reimbursement to the referral HCP shall be $28 when a HCP contributes to the case management activity.

(B) CPT Code 99362.

(i) Reimbursement to the treating doctor shall be $198. Modifier "W1" shall be added.

(ii) Reimbursement to the referral HCP shall be $50 when a HCP contributes to the case management activity.

(C) CPT Code 99371.

(i) Reimbursement to the treating doctor shall be $18. Modifier "W1" shall be added.

(ii) Reimbursement to a referral HCP contributing to this case management activity shall be $5.

(D) CPT Code 99372.

(i) Reimbursement to the treating doctor shall be $46. Modifier "W1" shall be added.

(ii) Reimbursement to the referral HCP contributing to this case management activity shall be $12.

(E) CPT Code 99373.

(i) Reimbursement to the treating doctor shall be $90. Modifier "W1" shall be added.

(ii) Reimbursement to the referral HCP contributing to this case management action shall be $23.

(f) To determine the reimbursement amount for home health services provided through a licensed home health agency, reimbursement shall be 125 percent of the published Texas Medicaid fee schedule for home health agencies; or, as provided in subsections (c) or (d) of this section.

(g) The following applies to Functional Capacity Evaluations (FCEs). A maximum of three FCEs for each compensable injury shall be billed and reimbursed. FCEs ordered by the Division shall not count toward the three FCEs allowed for each compensable injury. FCEs shall be billed using CPT Code 97750 with modifier "FC". FCEs shall be reimbursed in accordance with §134.203(c)(1) of this title. Reimbursement shall be for up to a maximum of four hours for the initial test or for a Division ordered test; a maximum of two hours for an interim test; and, a maximum of three hours for the discharge test, unless it is the initial test. Documentation is required. FCEs shall include the following elements:

(1) A physical examination and neurological evaluation, which include the following:

(A) appearance (observational and palpation);

(B) flexibility of the extremity joint or spinal region (usually observational);

(C) posture and deformities;

(D) vascular integrity;

(E) neurological tests to detect sensory deficit;

(F) myotomal strength to detect gross motor deficit; and

(G) reflexes to detect neurological reflex symmetry.

(2) A physical capacity evaluation of the injured area, which includes the following:

(A) range of motion (quantitative measurements using appropriate devices) of the injured joint or region; and

(B) strength/endurance (quantitative measures using accurate devices) with comparison to contralateral side or normative database. This testing may include isometric, isokinetic, or isoinertial devices in one or more planes.

(3) Functional abilities tests, which include the following:

(A) activities of daily living (standardized tests of generic functional tasks such as pushing, pulling, kneeling, squatting, carrying, and climbing);

(B) hand function tests that measure fine and gross motor coordination, grip strength, pinch strength, and manipulation tests using measuring devices;

(C) submaximal cardiovascular endurance tests which measure aerobic capacity using stationary bicycle or treadmill; and

(D) static positional tolerance (observational determination of tolerance for sitting or standing).

(h) The following shall be applied to Return To Work Rehabilitation Programs for billing and reimbursement of Work Conditioning/General Occupational Rehabilitation Programs, Work Hardening/Comprehensive Occupational Rehabilitation Programs, Chronic Pain Management/Interdisciplinary Pain Rehabilitation Programs, and Outpatient Medical Rehabilitation Programs. To qualify as a Division Return to Work Rehabilitation Program, a program should meet the specific program standards for the program as listed in the most recent Commission on Accreditation of Rehabilitation Facilities (CARF) Medical Rehabilitation Standards Manual, which includes active participation in recovery and return to work planning by the injured employee, employer and payor or carrier.

(1) Accreditation by the CARF is recommended, but not required.

(A) If the program is CARF accredited, modifier "CA" shall follow the appropriate program modifier as designated for the specific programs listed below. The hourly reimbursement for a CARF accredited program shall be 100 percent of the MAR.

(B) If the program is not CARF accredited, the only modifier required is the appropriate program modifier. The hourly reimbursement for a non-CARF accredited program shall be 80 percent of the MAR.

(2) For Division purposes, General Occupational Rehabilitation Programs, as defined in the CARF manual, are considered Work Conditioning.

(A) The first two hours of each session shall be billed and reimbursed as one unit, using CPT Code 97545 with modifier "WC". Each additional hour shall be billed using CPT Code 97546 with modifier "WC". CARF accredited Programs shall add "CA" as a second modifier.

(B) Reimbursement shall be $36 per hour. Units of less than one hour shall be prorated by 15 minute increments. A single 15

minute increment may be billed and reimbursed if greater than or equal to eight minutes and less than 23 minutes.

(3) For Division purposes, Comprehensive Occupational Rehabilitation Programs, as defined in the CARF manual, are considered Work Hardening.

(A) The first two hours of each session shall be billed and reimbursed as one unit, using CPT Code 97545 with modifier "WH". Each additional hour shall be billed using CPT Code 97546 with modifier "WH". CARF accredited Programs shall add "CA" as a second modifier.

(B) Reimbursement shall be $64 per hour. Units of less than one hour shall be prorated by 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to 8 minutes and less than 23 minutes.

(4) The following shall be applied for billing and reimbursement of Outpatient Medical Rehabilitation Programs.

(A) Program shall be billed and reimbursed using CPT Code 97799 with modifier "MR" for each hour. The number of hours shall be indicated in the units column on the bill. CARF accredited Programs shall add "CA" as a second modifier.

(B) Reimbursement shall be $90 per hour. Units of less than one hour shall be prorated by 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to eight minutes and less than 23 minutes.

(5) The following shall be applied for billing and reimbursement of Chronic Pain Management/Interdisciplinary Pain Rehabilitation Programs.

(A) Program shall be billed and reimbursed using CPT Code 97799 with modifier "CP" for each hour. The number of hours shall be indicated in the units column on the bill. CARF accredited Programs shall add "CA" as a second modifier.

(B) Reimbursement shall be $125 per hour. Units of less than one hour shall be prorated in 15 minute increments. A single 15 minute increment may be billed and reimbursed if greater than or equal to eight minutes and less than 23 minutes.

(i) The following shall apply to Designated Doctor Examinations.

(1) Designated Doctors shall perform examinations in accordance with Labor Code §§408.004, 408.0041 and 408.151 and Division rules, and shall be billed and reimbursed as follows:

(A) Impairment caused by the compensable injury shall be billed and reimbursed in accordance with subsection (j) of this section, and the use of the additional modifier "W5" is the first modifier to be applied when performed by a designated doctor;

(B) Attainment of maximum medical improvement shall be billed and reimbursed in accordance with subsection (j) of this section, and the use of the additional modifier "W5" is the first modifier to be applied when performed by a designated doctor;

(C) Extent of the employee's compensable injury shall be billed and reimbursed in accordance with subsection (k) of this section, with the use of the additional modifier "W6";

(D) Whether the injured employee's disability is a direct result of the work-related injury shall be billed and reimbursed in accordance with subsection (k) of this section, with the use of the additional modifier "W7";

(E) Ability of the employee to return to work shall be billed and reimbursed in accordance with subsection (k) of this section, with the use of the additional modifier "W8"; and

(F) Issues similar to those described in paragraphs (1) - (5) of this subsection shall be billed and reimbursed in accordance with subsection (k) of this section, with the use of the additional modifier "W9".

(2) When multiple examinations under the same specific Division order are performed concurrently under paragraph (1)(C) - (F) of this subsection:

(A) the first examination shall be reimbursed at 100 percent of the set fee outlined in subsection (k) of this section;

(B) the second examination shall be reimbursed at 50 percent of the set fee outlined in subsection (k) of this section; and

(C) subsequent examinations shall be reimbursed at 25 percent of the set fee outlined in subsection (k) of this section.

(j) Maximum Medical Improvement and/or Impairment Rating (MMI/IR) examinations shall be billed and reimbursed as follows:

(1) The total MAR for an MMI/IR examination shall be equal to the MMI evaluation reimbursement plus the reimbursement for the body area(s) evaluated for the assignment of an IR. The MMI/IR examination shall include:

(A) the examination;

(B) consultation with the injured employee;

(C) review of the records and films;

(D) the preparation and submission of reports (including the narrative report, and responding to the need for further clarification, explanation, or reconsideration), calculation tables, figures, and worksheets; and,

(E) tests used to assign the IR, as outlined in the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides), as stated in the Act and Division rules in Chapter 130 of this title (relating to Impairment and Supplemental Income Benefits).

(2) An HCP shall only bill and be reimbursed for an MMI/IR examination if the doctor performing the evaluation (i.e., the examining doctor) is an authorized doctor in accordance with the Act and Division rules in Chapter 130 of this title.

(A) If the examining doctor, other than the treating doctor, determines MMI has not been reached, the MMI evaluation portion of the examination shall be billed and reimbursed in accordance with paragraph (3) of this subsection. Modifier "NM" shall be added.

(B) If the examining doctor determines MMI has been reached and there is no permanent impairment because the injury was sufficiently minor, an IR evaluation is not warranted and only the MMI evaluation portion of the examination shall be billed and reimbursed in accordance with paragraph (3) of this subsection.

(C) If the examining doctor determines MMI has been reached and an IR evaluation is performed, both the MMI evaluation and the IR evaluation portions of the examination shall be billed and reimbursed in accordance with paragraphs (3) and (4) of this subsection.

(3) The following applies for billing and reimbursement of an MMI evaluation.

(A) An examining doctor who is the treating doctor shall bill using CPT Code 99455 with the appropriate modifier.

(i) Reimbursement shall be the applicable established patient office visit level associated with the examination.

(ii) Modifiers "V1", "V2", "V3", "V4", or "V5" shall be added to the CPT code to correspond with the last digit of the applicable office visit.

(B) If the treating doctor refers the injured employee to another doctor for the examination and certification of MMI (and IR); and, the referral examining doctor has:

(i) previously been treating the injured employee, then the referral doctor shall bill the MMI evaluation in accordance with paragraph (3)(A) of this subsection; or,

(ii) not previously treated the injured employee, then the referral doctor shall bill the MMI evaluation in accordance with paragraph (3)(C) of this subsection.

(C) An examining doctor, other than the treating doctor, shall bill using CPT Code 99456. Reimbursement shall be $350.

(4) The following applies for billing and reimbursement of an IR evaluation.

(A) The HCP shall include billing components of the IR evaluation with the applicable MMI evaluation CPT code. The number of body areas rated shall be indicated in the units column of the billing form.

(B) When multiple IRs are required as a component of a designated doctor examination under §130.6 of this title (relating to Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings), the designated doctor shall bill for the number of body areas rated and be reimbursed $50 for each additional IR calculation. Modifier "MI" shall be added to the MMI evaluation CPT code.

(C) For musculoskeletal body areas, the examining doctor may bill for a maximum of three body areas.

(i) Musculoskeletal body areas are defined as follows:

(I) spine and pelvis;

(II) upper extremities and hands; and,

(III) lower extremities (including feet).

(ii) The MAR for musculoskeletal body areas shall be as follows.

(I) $150 for each body area if the Diagnosis Related Estimates (DRE) method found in the AMA Guides 4th edition is used.

(II) If full physical evaluation, with range of motion, is performed:

(-a-) $300 for the first musculoskeletal body area; and

(-b-) $150 for each additional musculoskeletal body area.

(iii) If the examining doctor performs the MMI examination and the IR testing of the musculoskeletal body area(s), the examining doctor shall bill using the appropriate MMI CPT code with modifier "WP". Reimbursement shall be 100 percent of the total MAR.

(iv) If, in accordance with §130.1 of this title (relating to Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment), the examining doctor performs the MMI examination and assigns the IR, but does not perform the range of motion, sensory, or strength testing of the musculoskeletal body area(s), then the examining doctor shall bill using the appropriate MMI CPT code with CPT modifier "26". Reimbursement shall be 80 percent of the total MAR.

(v) If a HCP, other than the examining doctor, performs the range of motion, sensory, or strength testing of the musculoskeletal body area(s), then the HCP shall bill using the appropriate MMI CPT code with modifier "TC". In accordance with §130.1 of this title, the HCP must be certified. Reimbursement shall be 20 percent of the total MAR.

(D) Non-musculoskeletal body areas shall be billed and reimbursed using the appropriate CPT code(s) for the test(s) required for the assignment of IR.

(i) Non-musculoskeletal body areas are defined as follows:

(I) body systems;

(II) body structures (including skin); and,

(III) mental and behavioral disorders.

(ii) For a complete list of body system and body structure non-musculoskeletal body areas, refer to the appropriate AMA Guides.

(iii) When the examining doctor refers testing for non-musculoskeletal body area(s) to a specialist, then the following shall apply:

(I) The examining doctor (e.g., the referring doctor) shall bill using the appropriate MMI CPT code with modifier "SP" and indicate one unit in the units column of the billing form. Reimbursement shall be $50 for incorporating one or more specialists' report(s) information into the final assignment of IR. This reimbursement shall be allowed only once per examination.

(II) The referral specialist shall bill and be reimbursed for the appropriate CPT code(s) for the tests required for the assignment of IR. Documentation is required.

(iv) When there is no test to determine an IR for a non-musculoskeletal condition:

(I) The IR is based on the charts in the AMA Guides. These charts generally show a category of impairment and a range of percentage ratings that fall within that category.

(II) The impairment rating doctor must determine and assign a finite whole percentage number rating from the range of percentage ratings.

(III) Use of these charts to assign an IR is equivalent to assigning an IR by the DRE method as referenced in subparagraph (C)(ii)(I) of this paragraph.

(v) The MAR for the assignment of an IR in a non-musculoskeletal body area shall be $150.

(5) If the examination for the determination of MMI and/or the assignment of IR requires testing that is not outlined in the AMA Guides, the appropriate CPT code(s) shall be billed and reimbursed in addition to the fees outlined in paragraphs (3) and (4) of this subsection.

(6) The treating doctor is required to review the certification of MMI and assignment of IR performed by another doctor, as stated in the Act and Division Rules, Chapter 130 of this title. The treating doctor shall bill using CPT Code 99455 with modifier "VR" to indicate a review of the report only, and shall be reimbursed $50.

(k) The following shall apply to Return to Work (RTW) and/or Evaluation of Medical Care (EMC) Examinations. When conducting a Division or insurance carrier requested RTW/EMC examination, the examining doctor shall bill and be reimbursed using CPT Code 99456 with modifier "RE." In either instance of whether MMI/IR is performed or not, the reimbursement shall be $500 in accordance with subsection (i) of this section and shall include Division-required reports. Testing that is required shall be billed using the appropriate CPT codes and reimbursed in addition to the examination fee.

(l) The following shall apply to Work Status Reports. When billing for a Work Status Report that is not conducted as a part of the examinations outlined in subsections (i) and (j) of this section, refer to §129.5 of this title (relating to Work Status Reports).

(m) The following shall apply to Treating Doctor Examination to Define the Compensable Injury. When billing for this type of examination, refer to §126.14 of this title (relating to Treating Doctor Examination to Define Compensable Injury).

(n) The following Division Modifiers shall be used by HCPs billing professional medical services for correct coding, reporting, billing, and reimbursement of the procedure codes.

(1) CA, Commission on Accreditation of Rehabilitation Facilities (CARF) Accredited programs - This modifier shall be used when a HCP bills for a Return To Work Rehabilitation Program that is CARF accredited.

(2) CP, Chronic Pain Management Program - This modifier shall be added to CPT Code 97799 to indicate Chronic Pain Management Program services were performed.

(3) FC, Functional Capacity - This modifier shall be added to CPT Code 97750 when a functional capacity evaluation is performed.

(4) MR, Outpatient Medical Rehabilitation Program - This modifier shall be added to CPT Code 97799 to indicate Outpatient Medical Rehabilitation Program services were performed.

(5) MI, Multiple Impairment Ratings - This modifier shall be added to CPT Code 99455 when the designated doctor is required to complete multiple impairment ratings calculations.

(6) NM, Not at Maximum Medical Improvement (MMI) - This modifier shall be added to the appropriate MMI CPT code to indicate that the injured employee has not reached MMI when the purpose of the examination was to determine MMI.

(7) RE, Return to Work (RTW) and/or Evaluation of Medical Care (EMC) - This modifier shall be added to CPT Code 99456 when a RTW or EMC examination is performed.

(8) SP, Specialty Area - This modifier shall be added to the appropriate MMI CPT code when a specialty area is incorporated into the MMI report.

(9) TC, Technical Component - This modifier shall be added to the CPT code when the technical component of a procedure is billed separately.

(10) VR, Review report - This modifier shall be added to CPT Code 99455 to indicate that the service was the treating doctor's review of report(s) only.

(11) V1, Level of MMI for Treating Doctor - This modifier shall be added to CPT Code 99455 when the office visit level of service is equal to a "minimal" level.

(12) V2, Level of MMI for Treating Doctor - This modifier shall be added to CPT Code 99455 when the office visit level of service is equal to "self limited or minor" level.

(13) V3, Level of MMI for Treating Doctor - This modifier shall be added to CPT Code 99455 when the office visit level of service is equal to "low to moderate" level.

(14) V4, Level of MMI for Treating Doctor - This modifier shall be added to CPT Code 99455 when the office visit level of service is equal to "moderate to high severity" level and of at least 25 minutes duration.

(15) V5, Level of MMI for Treating Doctor - This modifier shall be added to CPT Code 99455 when the office visit level of service is equal to "moderate to high severity" level and of at least 45 minutes duration.

(16) WC, Work Conditioning - This modifier shall be added to CPT Code 97545 to indicate work conditioning was performed.

(17) WH, Work Hardening - This modifier shall be added to CPT Code 97545 to indicate work hardening was performed.

(18) WP, Whole Procedure - This modifier shall be added to the CPT code when both the professional and technical components of a procedure are performed by a single HCP.

(19) W1, Case Management for Treating Doctor - This modifier shall be added to the appropriate case management billing code activities when performed by the treating doctor.

(20) W5, Designated Doctor Examination for Impairment or Attainment of Maximum Medical Improvement - This modifier shall be added to the appropriate examination code performed by a designated doctor when determining impairment caused by the compensable injury and in attainment of maximum medical improvement.

(21) W6, Designated Doctor Examination for Extent - This modifier shall be added to the appropriate examination code performed by a designated doctor when determining extent of the employee's compensable injury.

(22) W7, Designated Doctor Examination for Disability - This modifier shall be added to the appropriate examination code performed by a designated doctor when determining whether the injured employee's disability is a direct result of the work-related injury.

(23) W8, Designated Doctor Examination for Return to Work - This modifier shall be added to the appropriate examination code performed by a designated doctor when determining the ability of employee to return to work.

(24) W9, Designated Doctor Examination for Other Similar Issues - This modifier shall be added to the appropriate examination code performed by a designated doctor when determining other similar issues.

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

Filed with the Office of the Secretary of State on September 21, 2007.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 17. TAX RELIEF FOR PROPERTY USED FOR ENVIRONMENTAL PROTECTION

30 TAC §§17.1, 17.2, 17.4, 17.10, 17.12, 17.14, 17.15, 17.17, 17.20

The Texas Commission on Environmental Quality (commission) or (TCEQ) proposes amendments to §§17.1, 17.2, 17.4, 17.10, 17.12, 17.15, 17.17, and 17.20. The commission also proposes new §17.14.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The program for providing tax relief for pollution control property was established under a constitutional amendment listed as Proposition 2 on the state ballot on November 2, 1993. This amendment added §1-1 to the Texas Constitution, Article VIII. The 73rd Legislature added Texas Tax Code (TTC), §11.31, Pollution Control Property, and TTC, §26.045, Rollback Relief for Pollution Control Requirements, to implement the new constitutional provision. The commission adopted 30 TAC Chapter 277 on September 30, 1994, to establish the procedures for obtaining a tax exemption under Proposition 2. In 1998, Chapter 277 was changed to Chapter 17 to be consistent with the commission's policy to place general or multimedia rules within 30 TAC Chapters 1 - 100. In 2001, the Texas Legislature enacted House Bill (HB) 3121 during the 77th Legislative Session. HB 3121 amended TTC, §11.31 in several respects. First, HB 3121 required that the commission adopt specific standards for considering applications to ensure that use determinations are equal and uniform, and to allow for partial determinations. Second, HB 3121 created an appeals process for a person seeking a use determination from the executive director, or the chief appraiser of the appraisal district for the county in which the property is located. Third, HB 3121 required the commission's executive director to provide a copy of the use determination to the chief appraiser of the appraisal district for the county in which the property is located.

In 2007, the Texas Legislature enacted (HB) 3732 during the 80th Legislative Session. HB 3732 amended TTC, §11.31, Tax Relief for Property Used for Environmental Protection, by adding three new subsections. TTC, §11.31(k), requires the commission to adopt, by rule, a list of pollution control property which must include the listed 18 categories of items. TTC, §11.31(l), requires the commission to adopt a procedure to review the list at least once every three years and allows the removal of items from the list when there is compelling evidence that the item does not provide pollution control. TTC, §11.31(m), requires the executive director to review applications containing only items on the adopted list, and to issue a determination without regard to the information provided in response to TTC, §11.31(c)(1), within 30 days of receipt of the required application documents.

TTC, §11.31(k) requires the TCEQ to adopt a list containing the listed 18 categories of equipment. However, §11.31(k) does not provide the pollution control percentage for each of the 18 categories of items. Staff has reviewed these items and determined that the pollution control percentage could vary depending upon the type of facility where the property is located, and the function of the property. After discussions with stakeholders, program staff decided to recommend for proposal, a two-part list. Part A would be the former Predetermined Equipment List, which consists of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B of the list would consist of the 18 property categories listed in TTC, §11.31(k). Part B categories will then be further defined in the program guidelines document. The items in Part B would be listed without set use determination percentages. Applicants would be required to calculate an application-specific determination for each piece of equipment. It is the responsibility of the executive director to determine the proper use percentage using the range of 0%-100%. Simply because a piece of equipment is on the Equipment and Categories List or purports to fall under a category set forth on the list, does not mean that it will receive a positive use determination. The use percentage will be calculated for each piece of property on an application-by-application basis.

This rulemaking will amend Chapter 17 by adding one new subsection and by modifying the application review process in order to meet the requirements of TTC, §11.31(m).

In addition to these amendments, incorrect references to the TCEQ will be corrected.

SECTION BY SECTION DISCUSSION

§17.1. Scope and Purpose.

The commission proposes to amend this section by removing the phrase "including political subdivisions." New 30 TAC Chapter 18, Rollback Relief for Pollution Control Requirements is being proposed under concurrent rulemaking and will implement Texas Tax Code (TTC), §26.045, Rollback Relief for Pollution Control Requirements. Once Chapter 18 is adopted, political subdivisions will no longer be covered under Chapter 17.

§17.2. Definitions.

The commission proposes to amend §17.2 by defining the acronyms TCAA and TSWDA and by including the Texas Tax Code (TTC) in the list of regulations where terms used in this chapter may be defined. The commission proposes to amend §17.2(5) by changing the definition of Decision Flow Chart to reflect that it is not used for applications containing property listed or contained in Part B of the Equipment and Categories List (ECL). The commission proposes to add §17.2(6) which provides the definition for ePay, which is the commission's electronic payment system. The use of ePay provides applicants with an additional method for paying application fees. The commission proposes to add §17.2(7) which provides the definition for Equipment and Categories List (ECL). The ECL is a two-part list. Part A of this list is the former Predetermined Equipment List, which consists of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B includes the property categories listed in TTC, §11.31(k). Section 17.2(6) will be renumbered as §17.2(8). The commission proposes to add §17.2(9) which

provides the definition for the Part B Decision Flow Chart. Sections 17.2(7) and (8) will be renumbered as §17.2(10) and (11) respectively. The commission proposes to remove §17.2(9) to reflect the elimination of the Predetermined Equipment List. Section 17.2(10) - (13) will be renumbered as §17.2(12) - (15) respectively. The commission proposes to add §17.2(16) which provides a definition for Tier IV, the fee level for applications containing property which is listed or contained in Part B of the Equipment and Categories List. Section 17.2(14) and (15) will be renumbered as §17.2(17) and (18) respectively. The commission proposes to add new §17.2(18)(E) which explains what information will be included with the use determination letter. Section 17.2(18)(E) is relettered as §17.2(18)(F).

§17.4. Applicability.

The commission proposes to delete §17.4(c). The property currently listed in the list referred to in this subsection is now proposed to be included in Part A of the Equipment and Categories List (ECL), set forth in §17.14. The commission would no longer maintain a list called the Predetermined Equipment List. The commission proposes to amend §17.4(d) by adding "applicable" to show the existence of two decision flow charts and two partial determination processes.

§17.10. Application for Use Determination.

The commission proposes to amend §17.10(a)(1) by removing "Texas Natural Resource Conservation Commission" and replacing it with "commission." The commission proposes to amend §17.10(c) by removing the phrase "other than a political subdivision." The program for political subdivisions is being relocated to the new Chapter 18, which has been proposed under concurrent rulemaking. In addition, this proposal amends this subsection to make it grammatically correct. The commission proposes to amend §17.10(d)(1) by adding language to show that this subsection does not apply to Tier IV applications. The commission proposes to renumber §17.10(d)(6) - (9) to §17.10(d)(7) - (10) respectively. The commission proposes adding §17.10(d)(6) in order to reflect the requirement that a worksheet containing the calculation of the pollution control percentage must be provided for Tier IV applications. The commission proposes to amend §17.10(d)(10) by adding the word "appropriate" to reflect that there are now two Decision Flow Charts.

§17.12. Application Review Schedule.

The commission proposes to amend §17.12(2) by changing the 30-day administrative review period to a three-day period, in order to implement the HB 3732 requirements that the application review process described in TTC, §11.31(m), be limited to 30 days. The commission proposes to amend §17.12(2)(A) by removing the word "deficient" and inserting the phrase "not administratively complete" to better define the differences between the two types of deficiencies. The commission proposes to amend §17.12(2)(B) by adding "For Tier I, II, and III applications" to differentiate between existing fee levels and the new fee level for Tier IV applications. The commission proposes to add §17.12(3) which explains that the technical review period for Tier IV applications is limited to 30 days. The commission proposes to renumber existing §17.12(3) to §17.12(4).

The Commission solicits comments on the appropriate format and process for notifying the chief appraiser for the appraisal district where the pollution control equipment is located.

§17.14. Equipment and Categories List.

The commission proposes new §17.14 which provides the Equipment and Categories List (ECL). The ECL is a two part list. Part A is the former Predetermined Equipment List, which consists of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of the property located in TTC, §11.31(d).

The commission proposes new §17.14(b) which defines the review process of the ECL list as at least once every three years. Proposed new §17.14(b)(1) defines the requirements for adding an item to the ECL and §17.14(b)(2) defines the requirements for removing an item from the ECL.

The Commission solicits comments on whether Part B should be limited to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003.

§17.15. Review Standards.

The commission proposes to renumber §17.15 to §17.15(a) and to amend §17.15(a) by removing two incorrect references to the program's name and stating that the chart in Figure 30 TAC §17.15(a) is not to be used for Tier IV applications. The commission proposes to amend Figure: 30 TAC §17.15(a) by removing two incorrect references to the program's name. The commission proposes to add §17.15(b) which states that both the applicant and the executive director will use the new Part B Decision Flow Chart for applications containing only items listed or contained in Part B of the Equipment and Categories List (ECL). The commission proposes to add Figure: 30 TAC §17.15(b) "Part B Decision Flow Chart." This is necessary in order to establish in detail the review process for an application containing only items listed or contained in Part B of the ECL, which differs from the standard review process.

The Commission solicits comments on the current regulation pertaining to the requirement that there be an environmental benefit at the site for a facility, device, or method for the control of air, water, or land pollution to be eligible for a positive use determination.

§17.17. Partial Determinations.

The commission proposes to amend §17.17(a) to reflect that, where applicable, a partial determination must be calculated for all pieces of equipment listed or contained in Part B of the Equipment and Categories List and for property which is not used wholly as pollution control property. The commission proposes to amend §17.17(b) to reflect that the formula in Figure 30 TAC §17.17(b) is to be used for all partial determinations except those which contain property listed or contained in Part B of the ECL. The commission proposes to add §17.17(d) which explains that it is the responsibility of the applicant to determine a reasonable method for calculating a partial determination for all items submitted under a category or categories contained in Part B of the ECL. Subsection (d) also explains that it is the responsibility of the executive director to determine if the proposed method is appropriate. The commission proposes to reletter existing §17.17(d) as §17.17(e) in order to reflect the addition of new subsection (d). The commission proposes to amend subsection (e) by adding the "method accepted by the executive director under subsection (d) of this section."

§17.20. Application Fees.

The commission proposes to amend §17.20(a) to reflect that there would be four fee levels rather than three. The commission proposes to amend §17.20(a)(1) to reflect that the Tier I fee

level applies only to applications containing only property listed in part A of the Equipment and Categories List. The commission proposes to amend §17.20(a)(2) by replacing the reference to the Predetermined Equipment List with a reference to the Equipment and Categories List. The commission proposes to add §17.20(a)(4) to establish a new Tier IV level for applications containing property which is purported to fall under a category or categories listed on Part B of the Equipment and Categories list. The commission proposes to amend §17.20(b) by adding "administratively" as a means of defining the word "complete. The commission proposes to amend §17.20(c) by adding the word "either" and the phrase "or by electronic funds transfer by using the commission's ePay system." This will allow applicants to remit application fees through the electronic payment system. In addition, this proposal amends this subsection by correcting the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality." This proposal further amends this section by removing the phrase "and delivered with the application to the TNRCC, at the address listed on the application form." This phrase is moved to new §17.20(d). The commission proposes to add §17.20(d) which requires that the application fee must be delivered with the application. In addition, this proposed new section clarifies that if the applicant pays the applicant fee by using the ePay system, a copy of the receipt must be included with the application form.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state government as a result of the administration or enforcement of the proposed rules. Some local governments may realize a decrease in tax revenue and/or a decrease in their tax base due to the exemption of certain pollution control property, which may be significant. Industries or businesses that own certain qualifying pollution control equipment may be eligible for tax relief as a result of the administration or enforcement of the proposed rules.

The proposed rule changes in Chapter 17, implement portions of House Bill 3732, 80th Legislature, Regular Session. HB 3732 provides incentives via grants, loans, tax abatements and exemptions, as well as expedited permit processing for advanced clean energy projects and other environmentally protective projects. The proposed rules relate to tax relief for pollution control property.

The proposed amendments include the following: proposal of an Equipment and Categories List consisting of equipment that the commission has previously determined to qualify as whole or partial pollution control property and 18 categories of equipment listed in TTC, §11.31(k); a procedure to review this list at least once every three years; a requirement that items may not be removed from the list unless there is compelling evidence that the item does not provide a pollution control benefit; and a requirement that agency review of applications, containing only equipment from the 18 categories on the adopted list, must be completed within 30 days of receipt of the required application documents.

The agency would be impacted by the rulemaking in that the Equipment and Categories List (ECL) must be reviewed at least once every three years. Since the agency is proposing that the list be adopted by rule, the review process would require rulemaking. Secondly, for those applications that contain only property listed or contained in Part B of the ECL, final determinations must be issued within 30 days of receipt of the required application documents. The current rules provide for a 30-day administrative review period and a 60-day technical review period, so under the proposed amendments, there would be a quicker turnaround time for the issuance of final determinations.

Agency staff estimates that the proposed rule changes would result in an additional 500 applications being filed each year containing equipment listed or contained in Part B of the ECL. Any additional costs for the agency to review and issue final determinations for the additional applications are expected to be offset by additional fee revenue collected for administering the program as authorized by the General Appropriations Act. The agency proposes to adopt a new fee level, Tier IV, for these applications. The agency proposes setting the filing fee for each Tier IV application at $500. The fee would be deposited into the General Revenue Fund. If there are 500 Tier IV applications each year, the agency could see an estimated $250,000 increase in fee revenue each year.

Local governments who collect property taxes could be affected by this rulemaking. Businesses and individuals who own Tier IV equipment and who are granted a positive use determination by the commission, would be eligible for exemption from certain property taxes. In potentially exempting the additional categories of property listed in HB 3732, local governments could either realize a decrease in tax revenue for pollution control property currently installed or a decrease in their tax base for future equipment that will be installed by industry. Individuals living within the taxing jurisdiction of affected local governments could see either a decrease in levels of services provided by these local governments or an increase in taxes to compensate for decreases in revenue or the tax base.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law and the provision of incentives for businesses and industries to use pollution control technologies which would result in a cleaner environment.

Fiscal implications are anticipated for industries, businesses, and individuals who own pollution control equipment that qualifies under the commission's Tax Relief Program. Qualifying businesses, industries, or individuals would be eligible for tax benefits.

Industries and businesses who own pollution control equipment would need to file a completed Tier IV Use Determination application and pay the appropriate fee ($500 for Tier IV application). Agency staff estimates that there could be 500 additional applications from businesses and industry filed each year.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. Based upon previous program history, it is estimated that of the 500 new applications, approximately 21 small businesses and 2 micro-businesses may be affected by the proposed rulemaking each year. These businesses would realize the same tax benefits and savings as larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of "a major environmental rule." Under Texas Government Code, §2001.0225, "a major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking would amend the Tax Relief for Pollution Control Property. Because the proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax incentive program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. These rules do not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to these proposed amendments. Promulgation and enforcement of these proposed rules would be neither a statutory or constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is not a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505, concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, not require that goals and policies of the CMP be considered during the rulemaking process. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on October 26, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-055-017-AS. The comment period closes November 5, 2007. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ron Hatlett, Small Business and Environmental Assistance, (512) 239-6348.

STATUTORY AUTHORITY

The amendments and new rules are proposed under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers and §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. These rules are also proposed under Texas Tax Code (TTC), §11.31, which authorizes the commission to adopt rules to implement the Pollution Control Property Tax Exemption.

The proposed amendments and new rules implement the new subsections added to TTC, §11.31.

§17.1. Scope and Purpose.

The purpose of this chapter is to establish the procedure and mechanism for an owner[~~, including political subdivisions,~~] of pollution control property, to apply to the commission for a determination of pollution control use.

§17.2. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), the Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code (TWC), the Texas Tax Code (TTC), or the Texas Health and Safety Code (THSC), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the fields of pollution control or property taxation. In addition to the terms which are defined by the TCAA, the TSWDA, TWC, TTC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(5) Decision flow chart--A flow chart which is used to determine if a property or process, which is not listed in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories

List), is eligible for a whole or partial use determination as pollution control property.

(6) ePay--The commission's electronic payment system which is located on the TCEQ's web page at www.tceq.state.tx.us.

(7) Equipment and Categories List--A list of property or categories of property used either wholly or partially for pollution control purposes or that is listed in TTC, §11.31(k).

(8) [(6)] Installation--The act of establishing, in a designated place, property that is put into place for use or service.

(9) Part B decision flow chart--A flow chart which is used to determine if a property or process, which falls under a category listed in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), is eligible for a whole or partial use determination or a negative use determination as pollution control property.

(10) [(7)] Partial Determination--A determination that an item of property or a process is not used wholly as pollution control. [This is property that is not on the predetermined equipment list (PEL) and that is not used wholly for pollution control.]

(11) [(8)] Pollution control property--A facility, device, or method for control of air, water, or land pollution as defined by Texas Tax Code, §11.31(b).

[(9) Predetermined equipment list--A list of property that the executive director has determined is either wholly or partially for pollution control purposes.]

(12) [(10)] Production capacity factor--A calculated value used to adjust the value of a partial use determination to reflect capacity considerations.

(13) [(11)] Tier I--An application which contains property that is in Part A of the figure in §17.14(a) of this title (relating to Equipment and Categories List) [on the PEL] or that is necessary for the installation or operation of property located on Part A of the Equipment and Categories List [the PEL].

(14) [(12)] Tier II--An application for property that is used wholly for the control of air, water, and/or land pollution, but not on the Equipment and Categories List, located in §17.14(a) of this title (relating to Equipment and Categories List) [PEL].

(15) [(13)] Tier III--An application for property used partially for the control of air, water, and/or land pollution.

(16) Tier IV--An application containing only pollution control property which falls under a category located in Part B of the figure in §17.14(a) of this title, (relating to Equipment and Categories List).

(17) [(14)] Use determination--A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes and listing the percentage of the property that is determined to be used for pollution control.

(18) [(15)] Use determination letter--The letter sent to the applicant and the chief appraiser which includes the executive director's use determination. In addition to the use determination, the letter will also include at least the following information:

(A) the name of the applicant;

(B) the name and location of the facility;

(C) the property description;

(D) in the case of a Tier III application, a copy of the Cost Analysis Procedure worksheet; and

(E) in the case of a Tier IV application, a copy of the worksheet explaining the calculation of the use percentage; and

(F) [(E)] any other information the executive director deems relevant to the use determination.

§17.4. Applicability.

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

[(c) The executive director shall maintain a predetermined equipment list of property that is predetermined to qualify, either wholly or partially, as pollution control property.]

(c) [(d)] The executive director may not make a determination that property is pollution control property unless all requirements of this section and the applicable requirements of §17.15 and §17.17 of this title (relating to Review Standards and Partial Determination) have been met.

§17.10. Application for Use Determination.

(a) In order to be granted a use determination a person [or political subdivision] shall submit to the executive director:

(1) a commission [Texas Natural Resource Conservation Commission] application form or a similar reproduction; and

(2) (No change.)

(b) (No change.)

(c) If the applicant[, other than a political subdivision,] desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the following year. Applications postmarked after this date will not be processed until after review of all applications postmarked by the due date are [is] completed and without regard for any appraisal district deadlines.

(d) Except for paragraph (1) of this subsection, all use determination applications [The application] shall contain at least the following:

(1) for Tier I, II, and III use determination applications, the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, or land pollution;

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

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, and is not on the Equipment and Categories List [predetermined equipment list], a worksheet showing the calculation of the Cost Analysis Procedure, §17.17 of this chapter (relating to Partial Determination), and explaining each of the variables;

(6) if the pollution control property contains equipment which falls under one of the categories listed in Part B of the Equipment and Categories List, located in §17.14 of this title (relating to Equipment and Categories List), a worksheet showing the method and the calculation used to calculate the use percentage;

(7) [(6)] any information that the executive director deems reasonably necessary to determine the eligibility of the application;

(8) [(7)] if the property for which a use determination is sought has been purchased from another owner who previously used the property as pollution control property, a copy of the bill of sale or other information submitted by the person or political subdivision that demonstrates, to the satisfaction of the executive director, that the transaction involves a bona fide change in ownership of the property and is not a sham transaction for the purpose of avoiding tax liability;

(9) [(8)] the name of the appraisal district for the county in which the property is located; and

(10) [(9)] the appropriate Decision Flow Chart, §17.15 of this title (relating to Review Standards), showing how each piece of pollution control property flows through the applicable diagram.

§17.12. Application Review Schedule.

Following submission of the information required by §17.10 of this title (relating to Application for Use Determination), the executive director shall determine whether the pollution control property is used wholly or partly for the control of air, water, or land pollution. If the determination is that the property is used partly for pollution control, the executive director shall determine the proportion of the property used for pollution control.

(1) (No change.)

(2) Within three [30] days of receipt of an application for use determination, the executive director shall mail written notification informing the applicant that the application is administratively complete or that it is deficient.

(A) If the application is not administratively complete [deficient], the notification shall specify the deficiencies, and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §17.20(b) of this title (relating to Application Fees).

(B) For Tier I, II and III applications, additional [Additional] technical information may be requested within 60 days of issuance of an administrative completeness letter. If the applicant does not provide the requested technical information within 30 days, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §17.20(b) of this title.

(C) (No change.)

(3) For Tier IV applications the executive director will complete the technical review of the application within 30 days of receipt of the required application documents.

(4) [(3)] The executive director shall determine whether the property is or is not used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for some or all of the property included in the application that is deemed pollution control property.

(A) If a positive use determination is made, the executive director shall issue a use determination letter to the applicant which describes the proportion of the property that is pollution control property.

(B) If a negative use determination is made, the executive director shall issue a denial letter explaining the reason for the denial.

(C) A letter enclosing a copy of the use determination shall be sent by regular mail to the chief appraiser of the appraisal district for the county in which the property is located.

§17.14. Equipment and Categories List.

(a) The Equipment and Categories List (ECL) is a two-part list. Part A is a list of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of categories of property which is located in TTC, §11.31(k).
Figure: 30 TAC §17.14(a)

(b) The commission shall review and update the ECL at least once every three years.

(1) An item may be added to the list only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.

(2) An item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

§17.15. Review Standards.

(a) The [Prop 2] Decision Flow Chart shall be used for each item of [pollution control] property or process, submitted in a non-Tier IV use determination application to determine whether the particular [equipment] item will qualify as pollution control property. The executive director shall apply the standards in the [Prop 2] Decision Flow Chart when acting on a non-Tier IV use determination application.
Figure: 30 TAC §17.15(a)
[Figure: 30 TAC §17.15]

(b) For applications containing only property located in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List), the Part B Decision Flow Chart shall be used for each item or process to determine whether the particular item will qualify as pollution control property. The executive director shall apply the standards in the Part B Decision Flow Chart when acting on an application containing only property which is listed in Part B of the Equipment and Categories List.
Figure: 30 TAC §17.15(b)

§17.17. Partial Determinations.

(a) A partial determination must be requested for all property that is either not on Part A of the Equipment and Categories List located in §17.14(a) of this title (relating to Equipment and Categories List) [the predetermined equipment list] or does not fully satisfy the requirements for a 100% positive use determination under this chapter. [and that is not wholly used for pollution control.] In order to calculate a partial determination percentage for pollution control property submitted in a Tier IV application, the cost analysis procedure described in subsection (d) of this section must be used. For all other property for which a partial use determination is sought, the cost analysis procedure described in subsection (b) of this section must be used.

(b) Consistent with subsection (a) of this section, the [The] following calculation (cost analysis procedure) must be used to determine the creditable partial percentage for a property submitted in a non-Tier-IV application [or project which is not used wholly for pollution control]:
Figure: 30 TAC §17.17(b) (No change.)

(c) (No change.)

(d) For applications containing only property falling under a category listed in Part B of the Equipment and Categories List, located in §17.14(a) of this title (relating to Equipment and Categories List), a use determination must be calculated. It is the responsibility of the applicant to propose a reasonable method for determining the use determination percentage. It is the responsibility of the executive director to review the proposed method and make the final determination.

(e) [(d)] If the cost analysis procedure or the method accepted by the executive director under subsection (d) of this section produces a negative number or a zero, the property is not eligible for a positive use determination.

§17.20. Application Fees.

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (4) [(3)] of this subsection.

(1) Tier I Application--A $150 fee shall be charged for applications for property that is located in the figure in §17.14(a) of this title (relating to Equipment and Categories List) [~~on the predetermined equipment list~~], as long as the application seeks no variance from that use determination.

(2) Tier II Application--A $1,000 fee shall be charged for applications for property that is used wholly for the control of air, water, and/or land pollution, but not in the figure in §17.14(a) of this title (relating to Equipment and Categories List) [~~on the predetermined equipment list~~].

(3) (No change.)

(4) Tier IV Application--A $500 fee shall be charged for applications containing only property which is located in Part B of the figure in §17.14(a) of this title (relating to Equipment and Categories List).

(b) Fees shall be forfeited for applications for use determination which are sent back under §17.12(2) of this title (relating to Application Review Schedule). An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §17.12(2) of this title. The fee must be remitted with the response to the deficiency notice before the application will be deemed administratively complete.

(c) All fees shall either be remitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality (TCEQ) [~~Texas Natural Resource Conservation Commission (TNRCC)~~] or by electronic funds transfer by using the commission's ePay system [~~and delivered with the application to the TNRCC, at the address listed on the application form~~].

(d) The check, money order, or electronic funds transfer receipt must be delivered with the application to the commission, at the address listed on the application form.

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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CHAPTER 18. ROLLBACK RELIEF FOR POLLUTION CONTROL REQUIREMENTS

30 TAC §§18.1, 18.2, 18.5, 18.10, 18.15, 18.25, 18.30, 18.35

(Editor's Note: The Equipment and Categories List is published in this issue of the Texas Register under 30 TAC §17.14. Please refer to Figure: 30 TAC §17.14(a) in the Tables and Graphics section for the text of Figure: 30 TAC §18.25(a).)

The Texas Commission on Environmental Quality (commission) proposes new §§18.1, 18.2, 18.5, 18.10, 18.15, 18.25, 18.30 and 18.35.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

This rulemaking would implement the Rollback Relief for Pollution Control Requirements contained in Texas Tax Code (TTC), §26.045. In 1993 the Texas Legislature, 73rd Session, enacted House Bill 1920, which created TTC, §11.31 and §26.045. Section 11.31 established a property tax exemption program for property which is used wholly or partly for pollution control. Section 26.045 created a rollback tax relief program for political subdivisions. Section 11.31 required the TCEQ to adopt rules to implement the tax relief program. Section 26.045 gave the commission the authority to adopt rules but did not require the adoption of rules. In response the commission adopted 30 TAC Chapter 17, Tax Relief for Property Used for Environmental Protection. Chapter 17 implemented TTC, §11.31. Section 17.1, Scope and Purpose included political subdivisions in the definition of the applicability of the rule. The commission chose not to adopt a separate rule to implement §26.045.

In 2007 the 80th Legislature, modified the Rollback Relief for Pollution Control Requirements program (TTC, §26.045) through the passage of House Bill 3732 (HB 3732). The legislature modified TTC, §26.045 by adding three new subsections, (f), (g), and (h). Section 26.045(f) requires the commission to adopt by rule a list of 18 categories of property listed in §26.045(f). Subsection (g) requires the commission to adopt a procedure to review the list at least once every three years. In addition, it allows the removal of items from the list when there is compelling evidence that the item does not provide pollution control. Subsection (h) requires the executive director to review applications, containing only items on the adopted list, and to issue a determination without regard to the information provided in response to §26.045(c)(1), within 30 days of receipt of the required application documents.

SECTION BY SECTION DISCUSSION

§18.1. Scope and Purpose.

Proposed new §18.1 would provide an explanation of the scope and purpose of Chapter 18. The purpose of this chapter is to implement the Rollback Relief for Pollution Control Requirements Program for political subdivisions of this state. The scope of this rule is to provide the framework for political subdivisions to apply to the commission for a determination that a pollution control project qualifies for rollback tax rate relief.

§18.2. Definitions.

Proposed new §18.2 would provide definitions for the terms: ePay, Equipment and Categories List, installation, partial determination, permit requirement, pollution control property, Tier I, Tier II, use determination, and use determination letter as these terms are used within Chapter 18. The purpose is to assist in the understanding of the rules and the program.

§18.5. Applicability.

Proposed new §18.5 would provide an explanation of the property which is eligible for inclusion under the Rollback Relief Program. It explains that it is the responsibility of executive director to determine the portion of the property which is eligible for Rollback Relief. This section would be used by political subdivisions to determine what property may be eligible under this program.

§18.10. Application for Use Determination.

Proposed new §18.10 would provide the information which must be included in an application submitted to the commis-

sion. These items include: the appropriate fee, the anticipated environmental benefit from the installation of the property, the estimated cost of the property, the permit requirement being met, a copy of the permit, a partial calculation worksheet if the property is not used wholly for pollution control or if the property is located in Part B of the Equipment and Categories List, and any other information which the executive director requires. This section would be used by applicants to determine what information they must provide in order to receive a positive determination from the executive director.

§18.15. Application Review Schedule.

Proposed new §18.15 would explain the executive director's responsibility once an application has been received. The difference in review time frames between types of applications is explained. This section also explains how positive and negative determinations would be documented. This section would be used by political subdivisions to understand the review process which would occur once the commission has received the application and explains how the executive director's decision would be documented.

§18.25. Equipment and Categories List.

The commission proposes new §18.25 which provides for the Equipment and Categories List (ECL), which is a two-part list. Part A is the former predetermined equipment list, which consists of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of categories of property which is located in TTC §26.045(f). The commission proposes new §18.25(b) which states that the commission must review the ECL at least once every three years. Proposed new §18.25(b)(1) defines the requirements for adding an item to the ECL and §18.25(b)(2) defines the requirements for removing an item from the ECL.

The Commission solicits comments on whether Part B should be limited to pollution control property associated with advanced clean energy projects, as defined in Texas Health and Safety Code, §382.003.

§18.30. Partial Determinations.

Proposed new §18.30 would explain how to calculate a partial determination. A partial determination must be requested for any property which is on Part B of the Equipment and Categories List and which is not wholly used for pollution control. Calculations for determining a partial percentage are based on determining the incremental cost difference between the property with the pollution control aspect and similar property without the pollution control aspect. The calculation must be documented and included with the application. This section would be used by applicants to determine how to calculate a determination for property not solely used for pollution control.

§18.35. Application Fees.

Proposed new §18.35 would establish a two-tier fee system for the program. The first level, Tier I is a $150 fee, and is to be used for applications containing only items located in Part A of the Equipment and Categories List (ECL), adopted under §18.20 of this title. The second level, Tier II is a $500 fee, and is to be used for property listed or contained in the ECL and for applications containing property not used wholly for pollution control. The Tier II fee is higher than the Tier I fee in order to reflect the increased difficulty related to agency review of a Tier II application. Failure to pay the appropriate fee can lead to the rejection of the application. Fees may be remitted by attaching a check or money order to the application and mailing it to the appropriate address or be paid using the ePay system located on the commission's web page.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed addition of 30 TAC Chapter 18, Rollback Relief for Pollution Control Requirements, implements portions of House Bill 3732, 80th Legislature, Regular Session. HB 3732 provides incentives via grants, loans, tax abatements and exemptions, and expedited permit processing for advanced clean energy projects and other environmentally protective projects. The proposed rules relate to rollback relief for pollution control requirements for political subdivisions in the state.

The proposed rules provide the framework for political subdivisions to apply to the commission for a determination that a pollution control project qualifies for rollback tax rate relief. Qualifying political subdivisions would then be allowed to increase their tax rate (by extending the "rollback relief" already granted to political subdivisions) to fund the purchase or installation of equipment included on list specified in TTC, §26.045. This proposed list of equipment and categories includes clean coal technologies and other technologies that would directly or indirectly prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.

At this time, there are no political subdivisions operating coal fired electric generating stations using clean coal technologies, although there may be one in the future. It is not known how many political subdivisions may apply for rollback tax relief as the proposed rules could apply to any political subdivision which sets property tax rates, collects property taxes, and has permits issued by the TCEQ. However, agency staff does not anticipate an increase in applications as a result of this rulemaking based on the number of prior applications from political subdivisions for rollback tax relief, (there have been two to date). Therefore, it is estimated that there will not be a significant number of applications processed by the agency. The agency is authorized to collect fees from political subdivisions filing such applications. However, because the proposed rules are expected to generate a limited number of applications, any fee revenue to the agency and any application costs to political subdivisions are not expected to be significant. Those political subdivisions who qualify for rollback tax relief under the program would benefit from additional tax revenues to fund certain equipment costs of advanced energy projects or other environmentally protective projects.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed new rules are in effect, the anticipated public benefit would be compliance with state law and the provision of incentives for political subdivisions to use pollution control technologies which would result in a cleaner environment.

In general, no significant fiscal implications are anticipated for businesses and individuals as a result of the administration or enforcement of the proposed rules. However, if political subdivisions purchase or install pollution control equipment that qual-

ifies for rollback tax relief, they may be able to raise property taxes to fund the purchase or installation of the equipment. In this case, businesses and individuals may experience an increase in property tax rates as a result of the proposed rules. It is not known how many political subdivisions would apply for rollback tax relief and agency staff does not anticipate an increase in applications as a result of this rulemaking based on the number of prior applications from political subdivisions for rollback tax relief, (there have been two to date). Any increase in property taxes for businesses and individuals would depend upon the costs of qualified pollution control equipment.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. Political subdivisions that purchase or install pollution control equipment that qualifies for rollback tax relief may be able to raise property taxes to the fund purchase or installation of the equipment. In this case, small and micro-businesses may experience an increase in property tax rates as a result of the implementation of HB 3732 through the proposed rules. However, at this time agency staff does not anticipate an increase in the number of applications for rollback tax relief based upon historical trends.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a (major environmental rule.(Under Texas Government Code, §2001.0225, (major environmental rule(means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225 applies only to a major environmental rule which 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The proposed rulemaking would implement a Rollback Relief for Pollution Control Requirements program as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES and SECTION BY SECTION DISCUSSION sections above. Because the proposed rules are not specifically intended to protect the environment or reduce risks to human health from environmental exposure but to implement a tax incentive program, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. This rule does not result in any new environmental requirements and should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs. The commission invites public comment regarding this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment indicates Texas Government Code, Chapter 2007 does not apply to these proposed rules because this action creates a program which is available only to political subdivisions as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES and SECTION BY SECTION DISCUSSION sections of this preamble. Promulgation and enforcement of these proposed rules would be neither a statutory or constitutional taking of private real property. Specifically, the proposed rules do not affect a landowner's rights in private real property, because this rulemaking action does not burden, restrict, nor limit the owner's rights to property or reduce its value by 25% or more beyond which would otherwise exist in the absence of the proposed regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is not a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505, concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, not require that goals and policies of the CMP be considered during the rulemaking process. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on October 26, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2007-055-017-AS. The comment period closes November 5, 2007. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ron Hatlett, Small Business and Environmental Assistance, (512) 239-6348.

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.102, which authorizes the commission to perform any acts authorized by the TWC or other law which are necessary and convenient to the exercise of its jurisdiction and powers; and §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC. The new sections are also proposed under Texas Tax Code (TTC), §26.045, which authorizes that the rollback tax rate for a political subdivision of this state be increased by the rate that, if applied to the total current value, would impose an amount of taxes equal to the amount the political subdivision will spend out of its maintenance and operation funds under TTC, §26.012(16) to pay for a facility, device, or method for the control of air, water, or land pollution that is necessary to meet the requirements of a permit issued by the commission.

The proposed new sections implement TTC, §26.045.

§18.1. Scope and Purpose.

The purpose of this chapter is to establish the procedure and mechanism for a political subdivision to apply to the Texas Commission on Environmental Quality (commission) for a determination that the installation or construction of a facility, device, or method for the control of air, water, or land pollution is necessary in order to meet the requirements of a permit issued by the commission.

§18.2. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA), the Texas Solid Waste Disposal Act (TSWDA), the Texas Water Code (TWC), the Texas Tax Code (TTC), the Texas Health and Safety Code (THSC), or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the fields of pollution control or property taxation. In addition to the terms which are defined by the TCAA, the TSWDA, TWC, TTC, and THSC, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ePay--The commission's electronic payment system which is located on the commission's web page at www.tceq.state.tx.us.

(2) Equipment and Categories List (ECL)--A list of property or categories of property used either wholly of partially for pollution control purposes or that is listed in TTC, §26.045(f).

(3) Installation--The act of establishing, in a designated place, property that is put into place for use or service.

(4) Partial determination--A determination that an item of property or a process is not used wholly as pollution control.

(5) Permit requirement--A clause within a permit issued by the Texas Commission on Environmental Quality (TCEQ) which requires the receiver of a permit to expend funds for a facility, device, or method for control of air, water, or land pollution as defined by TTC, §26.045(b).

(6) Pollution control property--A facility, device, or method for control of air, water, or land pollution as defined by TTC, §26.045(b).

(7) Tier I--An application containing only property that is listed in Part A of the figure in §18.25(a) of this title (relating to Equipment and Categories List) or that is necessary for the installation or operation of property located on the Equipment and Categories List, in §18.25(a) of this title.

(8) Tier II--An application containing property that is listed or contained in Part B of the figure in §18.25(a) of this title or that is not listed on the Equipment and Categories List.

(9) Use determination--A finding, either positive or negative, by the executive director that the property is used wholly or partially for pollution control purposes and listing the percentage of the property that is determined to be used for pollution control.

(10) Use determination letter--the letter sent to the political subdivision and the appropriate tax assessor including the executive director's use determination. In addition to the use determination, the letter will also include at least the following information:

(A) the name of the political subdivision;

(B) the name and location of the facility;

(C) the property description;

(D) the permit requirement being met; and

(E) any other information the executive director deems relevant to the use determination.

§18.5. Applicability.

(a) To obtain a positive use determination, the pollution control property must be used, constructed, acquired, or installed wholly or partly to meet the requirements of a permit issued by the commission. In addition, pollution control property must meet the following conditions:

(1) property must have been constructed, acquired, or installed after January 1, 1994.

(2) land must include only the portion of the land acquired after January 1, 1994, that actually contains pollution control property.

(3) it must be funded out of the operations and maintenance funds under TTC, §26.012(16).

(b) The executive director shall determine the portion of the pollution control property eligible for a positive use determination.

§18.10. Application for Use Determination.

(a) In order to be granted a positive use determination, a political subdivision shall submit to the executive director:

(1) a Texas Commission on Environmental Quality application form or a similar reproduction; and

(2) the appropriate fee, under §18.30 of this title (relating to Application Fees).

(b) An application must be submitted for each permit requirement for which pollution control property has been or will be installed.

(c) The application shall contain at least the following:

(1) the anticipated environmental benefits from the installation of the pollution control property for the control of air, water, or land pollution, except for applications containing only equipment on Part B of the figure in §18.25(a) of this title (relating to Equipment and Categories List);

(2) the estimated cost of the pollution control property, where the cost includes not only the cost of the specific property, but also any costs related to the installation or construction of the property;

(3) the permit requirement being met by the installation of such facility, device, or method, and the proportion of the installation that is pollution control property;

(4) a copy of the permit that is being met or exceeded by the use, installation, construction, or acquisition of the pollution control property;

(5) if the installation includes property that is not used wholly for the control of air, water, or land pollution, and is not in Part

A of the figure in §18.25(a) of this title or is property which is listed on Part B of the figure in §18.25(a) of this title, a worksheet showing the calculation of the partial determination, and explaining each of the variables; and

(6) any information that the executive director deems reasonably necessary to determine the eligibility of the application.

§18.15. Application Review Schedule.

Following submission of the information required by §18.10 of this title (relating to Application for Use Determination), the executive director shall determine whether the pollution control property is used wholly or partly to meet the requirements of a permit issued by the commission. If the determination is that the property is used partly for pollution control, the executive director shall determine the proportion of the property used for pollution control.

(1) Within three days of receipt of an application, the executive director shall mail written notification informing the applicant that the application has been received and if the application is considered to be administratively complete.

(A) If the application is not administratively complete, the notification shall specify the deficiencies and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §18.35(b) of this title (relating to Application Fees).

(B) If an application is sent back to the applicant under subparagraph (A) of this paragraph, the applicant may re-file the application and pay the appropriate fee as required by §18.35(a) of this title (relating to Application Fees).

(2) For applications which contain only property which is listed or contained in Part B of the figure in §18.25(a) of this title (relating to Equipment and Categories List), the executive director shall complete the technical review of the application and issue the final determination within 30 days of receipt of the required application documents.

(3) For all other applications, within 30 days of receiving the application, the executive director shall either issue a notification requesting additional information or issue the final determination.

(A) If additional information is requested, the notification shall specify the deficiencies and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, the application will be sent back to the applicant without further action by the executive director and the application fee will be forfeited under §18.35(b) of this title.

(B) If an application is sent back to the applicant under subparagraph (A) of this paragraph, the applicant may re-file the application and pay the appropriate fee as required by §18.35(a) of this title.

(4) The executive director shall determine whether the property is used wholly or partly to control pollution. The executive director is authorized to grant positive use determinations for some or all of the property included in the application that is deemed pollution control property.

(A) If a positive use determination is made, the executive director shall issue a use determination letter to the applicant which describes the proportion of the property that is pollution control property.

(B) If a negative use determination is made, the executive director shall issue a denial letter explaining the reason for the denial.

§18.25. Equipment and Categories List.

(a) The Equipment and Categories List (ECL) is a two-part list. Part A is a list of the property that the executive director has determined is used either wholly or partly for pollution control purposes. Part B is a list of categories of property which is located in Texas Tax Code, (TTC) §26.045(f).
Figure: 30 TAC §18.25(a)

(b) The commission shall review and update the ECL at least once every three years.

(1) An item may be added to the list only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable.

(2) An item may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits.

§18.30. Partial Determinations.

A partial determination must be requested for all property that is in Part B of the figure in §18.25(a) of this title (relating to Equipment and Categories List) or that is not wholly used for pollution control. It is the responsibility of the applicant to propose a reasonable method for calculating a partial determination. The calculation must be documented and included with the application. It is the responsibility of the executive director to review the appropriateness of the proposed method and make the final determination.

§18.35. Application Fees.

(a) Fees shall be remitted with each application for a use determination as required in paragraphs (1) - (2) of this subsection.

(1) Tier I Application. A $150 fee shall be charged for applications which contain only property that is listed in Part A of the figure in §18.25(a) of this title (relating to Equipment and Categories List) or is necessary for the installation or operation of an item listed on the Equipment and Categories List (ECL), as long as the application seeks no variance from the percentage listed on the ECL.

(2) Tier II Application. A $500 fee shall be charged for applications for property not listed in Part A of the figure located in §18.25(a) of this title.

(b) Fees shall be forfeited for applications for use determination which are sent back under §18.15 of this title (relating to Application Review Schedule). An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §18.15 of this title. The fee must be remitted with the response to the deficiency notice before the application will be deemed administratively complete.

(c) All fees shall either be remitted in the form of a check or money order made payable to the Texas Commission on Environmental Quality or by electronic funds transfer by using the commission's ePay system.

(d) The check, money order, or electronic funds transfer receipt must be delivered with the application to the commission at the address listed on the application form.

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

Filed with the Office of the Secretary of State on September 21, 2007.

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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) 239-0177

CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES
SUBCHAPTER J. OPERATIONAL CONTROLS FOR MOTOR VEHICLES
DIVISION 2. LOCALLY ENFORCED MOTOR VEHICLE IDLING LIMITATIONS

30 TAC §114.512, §114.517

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §114.512 and §114.517.

The 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 PROPOSED RULES

Chapter 114, Subchapter J, Operational Controls for Motor Vehicles, Division 2, Locally Enforced Motor Vehicle Idling Limitations, was adopted on November 17, 2004, at the request of the local air quality planning organization in the Austin Early Action Compact (EAC) area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties) for use as a control strategy in its EAC agreement to maintain attainment with the federal eight-hour ozone national ambient air quality standards (29 TexReg 11355). The rule package also provided local governments in other areas of the state the option of applying these rules in their areas when additional control measures were needed to achieve or maintain attainment of the federal eight-hour ozone standard in the future.

The concept of an early, voluntary eight-hour air quality plan, or EAC was endorsed by EPA Region 6 in June 2002 then slightly modified and made available nationally in November 2002. A key point of an EAC is the flexibility afforded areas to select emission reduction measures such as limiting vehicle idling. On August 1, 2005, members of the Austin EAC and the commission signed the locally enforced idling restrictions memorandum of agreement (MOA). This MOA allowed participating counties to enforce the idling restriction rule in their jurisdictions. Members of the Austin EAC area signing the MOA included the counties of Bastrop, Caldwell, Hays, Travis, and Williamson and the cities of Austin, Bastrop, Elgin, Georgetown, Hutto, Lockhart, Luling, Round Rock, and San Marcos.

In meetings with officials of the Austin EAC to develop the idling rule MOA, concerns arose regarding language in the locally enforced idling restrictions. Austin EAC members voiced concern that parts of §114.517, Exemptions, were ambiguous and needed revision. Members of the Austin EAC felt that §114.517(7) and (8) could be misinterpreted to mean that a transit vehicle could idle for a total of one hour. There was also concern that the commission's rule conflicted with Texas Department of Transportation (TxDOT) guidelines for vehicle idling by employees. Austin EAC members brought to the commission's attention TxDOT's policy regarding idling. The guidelines advise employees to idle their vehicles to operate the air conditioner or heating system for employee health and safety while they perform an essential job function related to roadway construction or maintenance. In many instances on-road and off-road vehicles at roadway construction sites must remain in idle mode during normal operations. The commission agreed with the Austin EAC members that the locally enforced idling restrictions should be revised in light of these concerns. At the request of the Austin EAC members, the commission adopted revisions to the locally enforced motor vehicle idling rule (31TexReg 3900).

In that same rulemaking, the commission also adopted revisions to the idling rule to conform to legislation passed in 2005. The 79th Legislature, 2005, passed House Bill (HB) 1540, amending Texas Health and Safety Code (THSC), Chapter 382, Subchapter B, §382.0191, Idling of Motor Vehicle While Using Sleeper Berth. The bill, stated that the "commission may not prohibit or limit the idling of a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period." In addition, the bill stated that, "no driver using the vehicle's sleeper berth may idle the vehicle in a school zone or within 1,000 feet of a public school during its hours of operation," or else be subject to a fine not to exceed $500.

This rulemaking amended the rule on idling limits for gasoline and diesel-powered engines in motor vehicles within the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. Local enforcement is crucial to the effective implementation of rules to reduce the extended idling of gasoline and diesel-powered heavy-duty vehicles and will help to ensure the reduction in nitrogen oxides (NO_x) and volatile organic compound (VOC) emissions, which is needed by local governments to achieve or maintain attainment of the federal eight-hour ozone standard. These idling limits will lower NO_x emissions and other pollutants from fuel combustion. Because NO_x is a precursor to ground-level ozone formation, reduced emissions of NO_x will result in ground-level ozone reductions.

In May 2007, the 80th Legislature passed Senate Bill (SB) 12, which in part amended THSC, §382.0191. The legislation further prohibited vehicle idling in residential areas as defined by Local Government Code, §244.001 and within 1,000 feet of hospitals. The legislation also prohibited vehicles with sleeper berths from idling if an electrification facility with external heat and air conditioning hook-ups is located within two miles of where they are stopped. SB 12 extended the expiration of prohibitions on the commission from adopting rules restricting certain idling activities from September 1, 2007, to September 1, 2009.

Currently, there are no federal regulations governing idle time for motor vehicles. The requirements developed by the commission for this NO_x emission reduction strategy will result in restrictions on the time allowed for motor vehicle idling.

SECTION BY SECTION DISCUSSION

§114.512, Control Requirements for Motor Vehicle Idling

The proposed amendment to §114.512(b), Control Requirements for Motor Vehicle Idling, would prohibit idling by drivers using the vehicle's sleeper berth in residential areas as defined by Local Government Code, §244.001, or within 1,000 feet of a

hospital. Additionally, the expiration of this subsection would be changed from September 1, 2007, to September 1, 2009.

§114.517, Exemptions

The proposed amendment to §114.517(a)(1), Exemptions, would change the expiration date of these paragraphs from September 1, 2007, to September 1, 2009. Proposed §114.57(a)(2) has been added to clarify that after September 1, 2009, vehicles with Gross Vehicle Weight Rating (GVWR) of 14,000 pounds or less will no longer be exempt from the requirements of §114.512. The current exemptions listed as paragraphs (2) - (11) of this section will be renumbered as paragraphs (3) - (12) for consistency. Renumbered §114.517(a)(12) will be amended by changing the expiration date of the paragraph from September 1, 2007, to September 1, 2009. The proposed amendment to §114.517(a)(11) would also prohibit idling to power a heater or air conditioner if the vehicle is within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available.

The amendments to §114.512 and §114.517 are proposed to ensure that the rules are consistent with the requirements set forth in SB 12.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeff Horvath, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local government as a result of the administration or enforcement of the proposed rules.

The proposed rules implement portions of SB 12, 80th Legislature, Regular Session by: prohibiting drivers who are using the vehicle's sleeper berth from idling in residential areas or within 1,000 feet of hospitals; prohibiting vehicles with sleeper berths from idling if an electrification facility with external heat and air conditioning hook-ups is located within two miles of where they are stopped and; extending the expiration of prohibitions on the commission to adopt rules restricting certain idling activities from September 1, 2007, to September 1, 2009.

The current vehicle idling rules are intended for use as a control strategy by the Austin EAC area (Bastrop, Caldwell, Hays, Travis, and Williamson Counties) in its EAC agreement to maintain attainment with the federal eight-hour ozone national ambient air quality standards. The vehicle idling rules also provide local governments in other areas of the state the option of applying these rules in their areas when additional control measures are needed to achieve or maintain attainment of the federal eight-hour ozone standard in the future.

The proposed rules would impact the Austin EAC members and any other local governments in the state who have adopted vehicle idling restrictions as an additional control measure to achieve or maintain attainment of the federal eight-hour ozone standard. There could be marginal enforcement costs for local governments who enforce the additional idling controls. The rules provide local governments the authority to fine drivers $500 for using their sleeper berths and idling within a school zone or within 1,000 feet of a hospital or public school during its hours of operation. No fiscal implications are expected for the agency as enforcement of the idling rule is delegated to local governments who enter into an agreement with the commission.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years the proposed amendments are in effect, the anticipated public benefit will be compliance with state law and the provision of additional options for local governments to use to obtain a reduction in emissions needed to maintain attainment with the federal eight-hour ozone standards.

No fiscal implications are anticipated to businesses or individuals as a result of the implementation of the proposed amendments. The proposed idling rule will allow drivers to idle the motor to heat or cool the vehicle in which the driver is using the sleeper berth for a government mandated rest break as long as they are not in residential areas, in a school zone, within 1,000 feet of hospitals and schools, or as long as an electrification facility with external heat and air conditioning hook-ups is not located within two miles of where they are stopped.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are expected for small or micro-businesses as a result of the proposed rules. The proposed idling rule will allow drivers to idle the motor to heat or cool the vehicle in which the driver is using the sleeper berth for a government mandated rest.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking action in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because although the proposal meets the definition of a "major environmental rule" as defined the statute, it does not meet any of the four applicability requirements listed in §2001.0225(a).

The regulatory analysis requirements of Texas Government Code, §2001.0225 only apply 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 an requirement of a delegation agreement of 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. Specifically, the proposal will amend the rules that limit heavy-duty motor vehicle idling with the jurisdiction of any local government in the state that has signed an MOA with the commission to delegate enforcement to that local government. The proposed amendments would implement changes to THSC, §382.0191 as a result of passage of SB 12 in the 80th Legislature, 2007. The legislation further prohibited vehicle idling in residential areas and within 1,000 feet of hospitals. The legislation also prohibited vehicles with sleeper berths from idling if an electrification facility with external heat and air conditioning hook-ups is located within two miles of where they are stopped. SB 12 extended the expiration of prohibitions on the commission from adopting rules restricting certain idling activities from September 1, 2007, to September 1, 2009. Currently, there are no federal regulations governing idle time

for motor vehicles. This proposal therefore does not exceed an express requirement of federal law. The amendments are needed to implement state law but do not exceed those new requirements. The proposed rules do involve a compact (in particular, the Austin EAC), which is an agreement between the state and federal government to implement a state and federal program, however, the proposed amendments do not exceed the requirements of that compact. Finally, this proposed rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of THSC, Chapter 382, which are cited in the STATUTORY AUTHORITY section of this preamble, including §382.012 and §382.0191. Because this rulemaking does not meet any of the four applicability requirements, Texas Government Code, §2001.0225(b) does not apply, and a regulatory impact analysis is not required.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact assessment for the proposed rules. Promulgation and enforcement of the rules will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The proposed rules also will not affect private real property in a manner that restricts or limit an owner's right the property that would otherwise exist in the absence of the government action. Therefore, the proposed rules will not cause a "taking" as defined under, Texas Government Code, §2007.002(5).

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking action and found that the proposal is an action identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, or will affect an action/authorization identified in §505.11, and therefore will require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that under 31 TAC §505.22, the proposed rulemaking 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 ozone levels will be reduced as a result of the proposed rulemaking. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal area (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations. Therefore, in compliance with 31 TAC §505.22(e), this rulemaking action is consistent with CMP goals and policies. Interested persons may submit comments regarding the consistency of the proposed amendments with the CMP during the public comment period.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The public hearing on this proposal will be held in Austin on October 22, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, agency staff will be available to discuss the proposal 30 minutes prior to the hearing. Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Lesley Williamson, at (512) 239-2461. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lesley Williamson, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. All comments should reference Rule Project Number 2007-041-114-EN. The comment period closes October 22, 2007. Copies of the proposed rule can be obtained from the commission's web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Theodore Kosub, Air Quality Division, (512) 239-5609.

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt rules necessary to carry out its powers and duties under the TWC, and under THSC, Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. The amendments are also proposed under TCAA, §382.011, which authorizes the commission to control the quality of the state's air; §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; §382.019, which authorizes the commission to adopt rules to control and reduce emissions from engines used to propel land vehicles; §382.0191, which authorizes use of a sleeping berth for a government-mandated rest period; and §382.208, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate attainment and protect the public from exposure to hazardous air contaminants from motor vehicles.

The proposed amendments implement TWC, §5.103, THSC, §§382.002, 382.011, 382.012, 382.017, 382.019, 382.0191, and 382.208, and SB 12, Article 4, 80th Legislature, 2007.

§114.512. Control Requirements for Motor Vehicle Idling.

(a) (No change.)

(b) No driver using the vehicle's sleeper berth may idle the vehicle: in a residential area as defined by Local Government Code, §244.001, in a school zone, within 1,000 feet of a hospital, or within 1,000 feet of a public school during its hours of operation. An offense under this subsection may be punishable by a fine not to exceed $500. This subsection expires September 1, 2009 [2007].

§114.517. Exemptions.

The provisions of §114.512 of this title (relating to Control Requirements for Motor Vehicle Idling) do not apply to:

(1) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less and [if before September 1, 2007,] does not have a sleeper berth;

(2) a motor vehicle that has a gross vehicle weight rating of 14,000 pounds or less, after September 1, 2009;

(3) [(2)] a motor vehicle forced to remain motionless because of traffic conditions over which the operator has no control;

(4) [(3)] a motor vehicle being used by the United States military, national guard, or reserve forces, or as an emergency or law enforcement motor vehicle;

(5) [(4)] the primary propulsion engine of a motor vehicle providing a power source necessary for mechanical operation, other than propulsion, and/or passenger compartment heating, or air conditioning;

(6) [(5)] the primary propulsion engine of a motor vehicle being operated for maintenance or diagnostic purposes;

(7) [(6)] the primary propulsion engine of a motor vehicle being operated solely to defrost a windshield;

(8) [(7)] the primary propulsion engine of a motor vehicle that is being used to supply heat or air conditioning necessary for passenger comfort and safety in vehicles intended for commercial or public passenger transportation, or passenger transit operations, in which case idling up to a maximum of 30 minutes is allowed;

(9) [(8)] the primary propulsion engine of a motor vehicle being used to provide air conditioning or heating necessary for employee health or safety while the employee is using the vehicle to perform an essential job function related to roadway construction or maintenance;

(10) [(9)] the primary propulsion engine of a motor vehicle being used as airport ground support equipment;

(11) [(10)] the owner of a motor vehicle rented or leased to a person that operates the vehicle and is not employed by the owner; or

(12) [(11)] a motor vehicle when idling is necessary to power a heater or air conditioner while a driver is using the vehicle's sleeper berth for a government-mandated rest period and is not within two miles of a facility offering external heating and air conditioning connections at a time when those connections are available. This subsection expires September 1, 2009 [2007].

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704402

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 239-2461

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

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

31 TAC §53.16

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.16, concerning Vessel, Motor, and Marine Licensing Fees.

The proposed amendment would establish a fee of $125 for an initial application for a party boat operator license, a renewal application fee of $50 for a party boat operator license, an inspection fee of $125 per party boat, and a $50 fee for a replacement party boat operator license. The amendment is necessary to implement the requirements of House Bill (H.B.) 12, enacted by the 80th Texas Legislature. Section 19A of H.B. Bill 12 amended Parks and Wildlife Code, Chapter 31, by adding new Subchapter G, which requires the commission to establish by rule the requirements and procedures for the issuance and renewal of a party boat operator license, as necessary to protect the public health and safety. Additionally, H.B. 12 requires the commission to by rule establish a reasonable fee for the issuance of a party boat operator license and a fee for the required annual water safety inspection of a party boat. The department is proposing new rules to implement the party boat operator license; those rules are published elsewhere in this issue of the *Texas Register*.

The proposed fees were calculated based on the estimated cost to process and track applications and renewals in the department's automated boating information system and to cover the overhead of providing educational and informational materials to persons preparing for the examination required by the statute.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years the rule as proposed is in effect, there will be minimal fiscal implications to the department as a result of enforcing or administering the rule. The department estimates that the proposed rule will affect no more than 250 boats. Given that number, the department will realize license revenue of approximately $31,250 the first year the rules are in effect. Because the permit is a two-year permit, the department will realize revenue of $12,500 during each two-year period following initial licensure. This estimate assumes all licenses are renewed and no new licenses are issued. For each new license issued after the first year the rule is in effect, the department will realize $125 in the first year and $50 for every two-year period thereafter. The department has no method for determining future demand. The department has no method to

estimate potential costs to the department to review applications, perform inspections, and conduct inspector training, but anticipates that such costs will be offset by the fees collected for license application, license renewal, and inspections.

There will be no fiscal implications for other units of state or local government as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the enhanced health and safety of the public.

The rule will result in adverse economic costs to businesses, microbusinesses, or persons required to comply with the rules. Although the proposed rule would establish the specific fee amounts, the provisions of H.B. 12 require the department to establish the party boat operator license and the annual inspection of party boats by the department.

Any person operating a party boat on the public inland waters of the state will be required to obtain a party boat operator license ($125 for the initial application for two-year licensure, $50 per two-year period thereafter). Additionally, the owner of a party boat will be required to have the boat inspected annually ($125). Elsewhere in this issue of the Texas Register, the department is proposing a rule requiring a party boat owner to carry a minimum of $300,000 in liability insurance. Although the insurance requirement is addressed in a separate rulemaking, the economic impact of the insurance requirement is included here to ensure a comprehensive analysis.

Boat insurance rates are not regulated in Texas; thus there are no required rate filings with the Texas Department of Insurance that could be used to determine an approximate range of costs. The average annual cost of a $300,000 liability policy is dependent upon a number of variables, including the number of party boats covered by the policy, the location, size, age, and power type of the boat(s), ownership and operating experience, the types of activities allowed, and size of deductible. Consultation with persons presently operating party boats in this state indicate that the cost of maintaining liability insurance in the amount of $300,000 could range from $1,000 to $7,500 per year for a single boat, depending on the factors previously mentioned; however, the cost of insuring multiple vessels would result in a cheaper per vessel cost. Therefore, the department has used the maximum estimated insurance cost to prepare this analysis.

If a business employed one employee, the per vessel cost of compliance would be $7,750 per employee for the first year of licensure (initial license plus inspection plus the cost of liability insurance); $7,625 per employee for the second year of licensure (annual inspection only, plus the cost of liability insurance); and $15,375 per employee per two-year period thereafter (one license renewal plus two annual inspections, plus the cost of liability insurance). If a business employed 20 employees, the per vessel cost of compliance would be $387.50 per employee the first year (initial license plus inspection plus the cost of liability insurance); $381.25 per employee for the second year of licensure (annual inspection only plus the cost of liability insurance); and $768.75 per employee per two-year period thereafter (one license renewal plus two annual inspections plus the cost of liability insurance). If a business employed 100 employees, the per vessel cost of compliance would be $77.50 per employee the first year (initial license plus inspection plus the cost of liability insurance); $76.25 per employee for the second year of licensure (annual inspection only plus the cost of liability insurance); and $153.75 per employee per two-year period thereafter (one renewal license plus two inspections plus the cost of liability insurance). The proposed rule would affect the smallest and largest businesses equally, since the fee applies irrespective of the size of the operation.

In the case of persons obtain a party boat operator license but do not own a party boat, the rule will result in a cost of $125 for the first year and $50 per year thereafter.

In the case of persons who own a party boat(s) and do not pay for the party boat operator license, the rule will result in an annual cost of $125 per boat for the annual safety inspection. For a business employing one person, this will result in a cost of $125 per employee per year. For a business employing 20 persons, this will result in a cost of $6.25 per year. For a business employing 100 persons, this will result in a cost of $1.25 per year.

The proposed rule would affect the smallest and largest businesses equally, since the fee applies irrespective of the size of the operation.

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

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

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

Comments on the proposed rule may be submitted to Major Alfonso Campos, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4624 (e-mail: alfonso.campos@tpwd.state.tx.us).

The amendment is proposed under the provisions of House Bill 12, §19A, enacted by the 80th Texas Legislature, which added new Subchapter G to Parks and Wildlife Code, Chapter 31, requiring the commission to adopt and enforce rules necessary to implement that subchapter and to establish a fee for the annual water safety inspection of a party boat required by this subchapter; and Parks and Wildlife Code, §11.027, which authorizes the commission to rule may establish and provide by rule for the collection of a fee to cover costs associated with the review of an application for a permit required by the Parks and Wildlife Code.

The proposed amendment affects Parks and Wildlife Code, Chapters 11 and 31.

§53.16. Vessel, Motor, and Marine Licensing Fees.

(a) Registration fees:

(1) livery vessel-Class A--$30;

(2) vessel-Class A--$30;

(3) vessel-Class 1--$50;

(4) vessel-Class 2--$70;

(5) vessel-Class 3--$90;

(b) Titling fees:

(1) certificate of title--$25;

(2) administrative surcharge for expedited title to a vessel (in addition to applicable fee)--$35;

(3) administrative surcharge for expedited title to a motor (in addition to applicable fee)--$35; and

(4) bonded certificate of title--$35.

(c) Duplicate/transfer fees:

(1) vessel-transfer of ownership--$10;

(2) vessel-duplicate certificate of number--$10;

(3) vessel-duplicate decals--$10.

(d) Marine dealer/distributor/manufacturer fees:

(1) marine dealer manufacturer number (effective until February 29, 2004)--$130;

(2) marine dealer, distributor or manufacturer license--$500;

(3) marine dealer, distributor or manufacturer ownership transfer of license--$500;

(4) marine dealer, distributor or manufacturer location transfer--$10;

(5) marine dealer, distributor or manufacturer information update/license correction--$3.

(e) Report fees:

(1) certified history report of ownership for vessel or outboard motor--$10;

(2) accident/water fatality report up to five pages in length--$5; and

(3) accident/water fatality report over five pages in length--$10.

(f) Party boat fees:

(1) annual party boat inspection--$125 (if the inspection is performed by a department-approved entity, $60 may be retained by the inspecting entity);

(2) initial application for party boat operator license--$125;

(3) party boat operator license renewal application--$50;

(4) replacement party boat operator license to for lost, damaged, destroyed, or stolen license--$50.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704454
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 389-4775

CHAPTER 55. LAW ENFORCEMENT
SUBCHAPTER H. PARTY BOATS
31 TAC §§55.401 - 55.406

The Texas Parks and Wildlife Department (the department) proposes new §§55.401 - 55.406, Concerning Regulation of Party Boats.

The new rules are necessary to implement the requirements of House Bill (H.B.) 12, enacted by the 80th Texas Legislature. Section 19A of H.B. Bill 12 amended Parks and Wildlife Code, Chapter 31, by adding new Subchapter G, which requires the commission to establish by rule the requirements and procedures for the issuance and renewal of a party boat operator license, as necessary to protect the public health and safety.

A "party boat" is defined in Parks and Wildlife Code §31.171(2), as added by H.B. 12 as "a vessel: (A) operated by the owner of the vessel or an employee of the owner; and (B) rented or leased by the owner for a group recreational event for more than six passengers." The provisions of H.B. 12 require the department to regulate party boats on inland lakes and waterways. The bill requires party boats to be subject to annual inspection, requires the operator of a party boat to be licensed and complete a boat safety course, imposes limits on the number of passengers that are authorized to be present at one time on a party boat, and requires party boat operators to maintain a minimum amount of liability insurance. The bill provides rulemaking authority to the commission to implement the provisions of the subchapter, including fees, and requires the commission to adopt such rules by no later than January 1, 2008.

Proposed new §55.401, concerning Definitions, would establish the meanings for words and terms used in the subchapter, and is necessary to provide for the unambiguous interpretation of specialized terms for purposes of compliance and enforcement.

Proposed new §55.402, concerning Applicability and Exceptions, would specify the activities and vessels to which the subchapter does and does not apply and would exempt persons who possess a pilot's or captain's license issued by the United States Coast Guard (USCG), or who possess a similar license issued by another state, from having to acquire a Texas party boat operator's license. The new section is necessary to ensure that persons who operate a party boat are licensed and regulated as required by statute. The exceptions to the license requirement are necessary to prevent duplication of licensing effort for persons who already possess a license that is similar in effect and scope to the Texas party boat operator's license. The proposed provision also would create an exception to the inspection requirement of proposed new §55.405(a) for boats carrying a valid and current certificate of inspection issued pursuant to federal law. The federal inspection is sufficient to establish that a vessel is seaworthy.

Proposed new §55.403, concerning License Required, would stipulate the circumstances under which a person would be required to possess a party boat operator's license, and establish a defense to prosecution. The proposed new section is necessary to implement the provisions of H.B. 12, which define specific conditions that constitute the operation of a party boat. The proposed new section includes a defense to prosecution because it is conceivable that there could be an instance in which a person who is licensed to operate a party boat might not be in physical possession of the license.

Proposed new §55.404, concerning Party Boat Operator License--General Provisions, would prescribe the process for application for and renewal of a party boat operator license, the period of validity for a party boat operator license, duplicate licenses, and denial of license issuance. Elsewhere in this

issue of the Texas Register, the department is proposing a rule amendment to establish an application fee for the operator license of $125 for initial two-year licensure and $50 per two-year period thereafter.

Proposed new §55.404(a) would specify that a person must apply for a party boat operator license by completing a form prescribed by the department and paying an application fee. Elsewhere in this issue of the Texas Register, the department is proposing a rule amendment to establish an application fee of $125 for initial two-year licensure and $50 per two-year period thereafter. The provision is necessary to provide for a uniform process that it is easy for the department to administer and for the applicant to understand and navigate. The proposed new subsection also would require the applicant to pass a written water safety test as a condition of licensure, as required under the provisions of H.B. 12.

Proposed new §55.404(b) would establish a two-year period of validity for the party boat operator license. The two-year period of validity was chosen because a shorter period of validity would create administrative burdens for the department, inspection personnel, and law enforcement recordkeeping, while a longer period of validity would weaken the department's ability to ensure that party boat operators are in compliance with applicable law. The new provision is necessary because the legislature specifically charged the department with providing for public health and safety in the rules.

Proposed new §55.404(c) would prescribe the process for renewal of a party boat operator license. The proposed new subsection would require that the holder of a party boat operator license submit a renewal application within 60 days of the expiration of the current license (accompanied by a fee of $50) and would require re-application for all persons who fail to do so. The new provision is necessary because the department considers that continuous licensure is convenient for both the department and the regulated community, but there must also be a deadline in order to ensure that all persons operating party boats are doing so under a current license.

Proposed new §55.404(d) would set forth the conditions under which a licensee is required to obtain or may obtain a duplicate party boat operator license, and provides for the payment of a $50 application fee for a replacement license. The proposed new subsection would require a person to obtain a replacement license whenever the person changes their name or mailing address, which is necessary so that the personal information on a license is accurate. The new subsection also would provide for the replacement of damaged, lost, destroyed, or stolen licenses, which is necessary to provide a means for licensees to comply with license possession requirements.

Proposed new §55.404(e) would specify the conditions under which the department would refuse to issue a party boat operator license to an applicant. The proposed new subsection would stipulate that a person is ineligible to obtain a party boat operator license if that person had been, within five years of application for a license, finally convicted of a violation of Penal Code, Chapter 49, involving operation of a motorboat, or a violation of Parks and Wildlife Code, Chapter 31, involving reckless or negligent behavior or behavior that placed passengers in peril. Penal Code, Chapter 49, governs offenses involving intoxication and alcoholic beverages. Parks and Wildlife Code, Chapter 31, governs water safety. The department believes it is necessary to prevent licensure of persons with recent criminal convictions involving either the operation of a motorboat while intoxicated or in such a fashion as to be a danger to passengers. The new subsection also would prevent any person from being issued a license if the person is prohibited from holding a similar license in another state. The proposed new subsection is necessary because the legislature specifically charged the department with providing for public health and safety in the rules.

Proposed new §55.405, concerning Employer/Owner Responsibilities, would prescribe the obligations of persons who own a party boat or employ persons to operate a party boat.

Proposed new §55.405(a) would prohibit the operation of any party boat unless it has undergone and passed an annual safety inspection conducted or authorized by the department. The proposed new subsection is necessary because the terms of H.B.12 require that a party boat may not be operated unless it has passed an annual safety inspection conducted by the department or a person under contract with the department.

Proposed new §55.405(b) would require the owner of a party boat to obtain a minimum of $300,000 in liability insurance. The department obtained this value by surveying similar requirements in other states in order to determine a suitable level of insurability. The proposed new subsection is necessary because the provisions of H.B. 12 require the owner of a party boat to obtain liability insurance in an amount established by the commission.

Proposed new §55.405(c) prohibits the owner of a party boat from knowingly allowing the operation of the party boat by any person prohibited from doing so by statute or regulation, and from training a person to operate a party boat unless the person is employed by the owner and has passed an approved boater safety course. The proposed new subsection is necessary because the provisions of H.B. 12 specifically charge the department with providing for public health and safety in the rules. The department considers that is a danger to public health and safety for the owner of a party boat to allow the operation of the party boat by a person known to be prohibited by law from doing so. For the same reason, the department also considers that a party boat operator trainee should be an employee of the party boat owner and should have the same water safety training required of any other boat operator while being trained.

Proposed new §55.405(d) would require that a list of safety procedures be posted in a conspicuous location on a party boat vessel at all times that paying passengers are on board. The proposed new subsection is necessary because the provisions of H.B. 12 require that each passenger on a party boat be provided with written and verbal safety information; the proposed new subsection enumerates the items of greatest importance that passengers should be aware of while they are on board.

Proposed new §55.405(e) would provide three methods for determining the maximum number of passengers that may be aboard a party boat. The proposed new subsection is necessary because the provisions of H.B. 12 stipulate that a party boat may not carry more than the maximum number of passengers the boat may safely accommodate, as determined by the department on inspection. The department considers that the vessel capacity plate is one standard, but in the absence of the vessel capacity plate, there should be some method of determining the capacity of the vessel. Therefore, the department has decided to employ additional methods approved by the USCG.

Proposed new §55.406, concerning Violations and Penalties, recapitulates the provisions of Parks and Wildlife Code, §31.127,

which prescribes the penalties for violations of Chapter 31 or regulations adopted under the authority of Chapter 31.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years the rule as proposed is in effect, there will be no net fiscal implications to the department as a result of enforcing or administering the rules. The proposed rules are required by H.B. 12. The department does not anticipate incurring costs in addition to those anticipated in H.B. 12. Also, the department estimates that the cost of inspections, inspector training, and administrative overhead will be offset by the fees collected for license and license renewal applications. Elsewhere in this issue of the Texas Register, the department is proposing the rule that would establish the fees for a party boat operator license application, renewal, and replacement, as well as the fee for an annual safety inspection of each party boat. Although the fees are addressed in a separate rulemaking, an analysis of the economic impact is included here to ensure a comprehensive analysis.

There will be no fiscal implications for other units of state or local government as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the enhanced health and safety of the public.

The rules will result in adverse economic costs to businesses, microbusinesses, or persons required to comply with the rules. Although the proposed rule would establish the specific fee amounts, the provisions of H.B. 12 require the department to establish the party boat operator license and the annual inspection of party boats by the department.

Any person operating a party boat on the public inland waters of the state will be required to obtain a party boat operator license. Elsewhere in this issue of the Texas Register, the department is proposing a rule amendment to establish an application fee for the operator license of $125 for the initial application for two-year licensure, $50 per two-year period thereafter. Additionally, the owner of a party boat will be required to have the boat inspected annually. Elsewhere in this issue of the Texas Register, the department is proposing a rule amendment to establish a fee of $125 for the annual inspection. The proposed rules would also require the owner of a party boat to maintain liability insurance of at least $300,000. Although the license application fee and the inspection fee are addressed in a separate rulemaking, the economic impact of the fees is included here to ensure a comprehensive analysis.

Boat insurance rates are not regulated in Texas; thus there are no required rate filings with the Texas Department of Insurance that could be used to determine an approximate range of costs. The average annual cost of a $300,000 liability policy is dependent upon a number of variables, including the number of party boats covered by the policy, the location, size, age, and power type of the boat(s), ownership and operating experience, the types of activities allowed, and size of deductible. Consultation with persons presently operating party boats in this state indicate that the cost of maintaining liability insurance in the amount of $300,000 could range from $1,000 to $7,500 per year for a single boat, depending on the factors previously mentioned; however, the cost of insuring multiple vessels would result in a cheaper per vessel cost. Therefore, the department has used the maximum estimated insurance cost to prepare this analysis.

If a business employed one employee, the per vessel cost of compliance would be $7,750 per employee for the first year of licensure (initial license plus inspection plus the cost of liability insurance); $7,625 per employee for the second year of licensure (annual inspection only, plus the cost of liability insurance); and $15,375 per employee per two-year period thereafter (one license renewal plus two annual inspections, plus the cost of liability insurance). If a business employed 20 employees, the per vessel cost of compliance would be $387.50 per employee the first year (initial license plus inspection plus the cost of liability insurance); $381.25 per employee for the second year of licensure (annual inspection only plus the cost of liability insurance); and $768.75 per employee per two-year period thereafter (one license renewal plus two annual inspections plus the cost of liability insurance). If a business employed 100 employees, the per vessel cost of compliance would be $77.50 per employee the first year (initial license plus inspection plus the cost of liability insurance); $76.25 per employee for the second year of licensure (annual inspection only plus the cost of liability insurance); and $153.75 per employee per two-year period thereafter (one renewal license plus two inspections plus the cost of liability insurance). The proposed rules would affect the smallest and largest businesses equally, since the fee applies irrespective of the size of the operation.

In the case of persons who obtain a party boat operator license but do not own a party boat, the rules will result in a cost of $125 for the first year and $50 per two-year period thereafter.

In the case of persons who own a party boat(s) and do not pay for the party boat operator license, the rules will result in an annual cost of $125 per boat for the annual safety inspection. For a business employing one person, this will result in a cost of $125 per employee per year. For a business employing 20 persons, this will result in a cost of $6.25 per year. For a business employing 100 persons, this will result in a cost of $1.25 per year.

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

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

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

Comments on the proposed rules may be submitted to Major Alfonso Campos, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4624 (e-mail: alfonso.campos@tpwd.state.tx.us).

The new rules are proposed under the provisions of House Bill 12, §19A, enacted by the 80th Texas Legislature, which added new Subchapter G to Parks and Wildlife Code, Chapter 31, requiring the commission to adopt and enforce rules necessary to implement that subchapter.

The proposed new rules affect Parks and Wildlife Code, Chapter 31.

§55.401. Definitions.

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

(1) Livery vessel--a vessel rented out for profit under a written contract by a vessel livery, as defined by Parks and Wildlife Code, §31.003(8), where all responsibility and liability for operating and provisioning the vessel is assumed by the party renting the vessel.

(2) Inland waters--all public waters of this state on the landward side of the coastal waters boundary as defined in §65.3(15) of this title (relating to Definitions).

(3) Party boat--a vessel meeting the definition of "party boat" established in Parks and Wildlife Code, §31.171(2).

(4) Passenger--a person carried on board a party boat, but does not include:

(A) the vessel owner or the owner's agent;

(B) the vessel's operator or crew members, if they have not provided a consideration for their transportation before, during, or after the voyage; or

(C) a person being trained for the purposes of acquiring a party boat operator's license.

§55.402. Applicability and Exceptions.

(a) This subchapter applies to a party boat that operates on inland waters of this state.

(b) The annual water safety inspection required by §55.405(a) of this title (relating to Employer/Owner Responsibilities) is not required for a vessel that:

(1) is carrying passengers for hire; and

(2) carries a valid and current certificate of inspection issued pursuant to federal law.

(c) A person is not required to obtain a party boat operator's license if that person possesses:

(1) a valid and current federal pilot's or captain's license issued by the United States Coast Guard or other federal agency; or

(2) a valid license, issued by a state that shares a body of water with Texas, that is substantively similar in effect and scope to the party boat operator license required by this subchapter, provided:

(A) the issuing state allows Texas vessels to operate in the shared waters under the same conditions; and

(B) the party boat is operated only in waters shared by the issuing state and the state of Texas.

(d) This subchapter does not apply to:

(1) a boat that is less than 30 feet in length;

(2) a sailboat;

(3) a livery vessel; or

(4) any vessel used for training or instructional purposes while it is not being used as a party boat.

§55.403. License Required.

(a) A person may not operate a party boat unless the person:

(1) has in the person's immediate possession a party boat operator's license issued by the department;

(2) is learning to operate the party boat for the purpose of acquiring a party boat operator's license and:

(A) is an employee of the owner of the party boat or the owner's agent; and

(B) is accompanied by a holder of a party boat operator's license issued by the department and the license holder occupies a space beside the unlicensed operator for the purpose of giving instruction on operating the party boat.

(b) It is a defense to prosecution under subsection (a)(1) of this section that the person charged produces in court:

(1) a party boat operator's license that was issued to the person and was valid when the offense was committed; or

(2) a valid license, issued by a state that shares a body of water with Texas, that is substantively similar in effect and scope to the party boat operator license required by this subchapter, provided:

(A) the issuing state allows Texas vessels to operate in the shared waters under the same conditions; and

(B) the party boat is operated only in waters shared by the issuing state and the state of Texas.

§55.404. Party Boat Operator License--General Provisions.

(a) Application.

(1) A person may apply for a party boat operator license by submitting a completed department-supplied application to the department, accompanied by the fee specified by Chapter 53, Subchapter A of this title (relating to Fees).

(2) The department will not issue a party boat operator license to any person who has not passed a department-approved written examination on safe party boat operation.

(b) Period of validity. A party boat operator license is valid for two years from the date of issuance.

(c) Renewal.

(1) A party boat operator license may be renewed by submitting a completed department-supplied renewal application to the department within 60 days of the expiration date of the license, accompanied by the fee specified by Chapter 53, Subchapter A of this title (relating to Fees).

(2) If a party boat operator license has not been renewed by the 60th day following the expiration date of the license, it cannot be renewed and an application for a new party boat operator license must be completed and submitted.

(d) Replacement license.

(1) The holder of a party boat operator license who changes name or mailing address shall submit a completed department-supplied application for a replacement license, accompanied by the fee specified in Chapter 53, Subchapter A of this title, by not later than the 30th day after the date of the change.

(2) The department shall replace a damaged, destroyed, lost, or stolen party boat operator license upon payment of the fee specified in Chapter 53, Subchapter A of this title.

(e) Denial of license issuance.

(1) The department will not issue a party boat operator license to any person who has, within the five-year period preceding an application for a party boat operator license, been convicted of:

(A) a violation of Penal Code, Chapter 49 involving the operation of a motorboat; or

(B) a violation of Parks and Wildlife Code, Chapter 31, involving reckless or negligent behavior, or behavior that placed passengers in peril.

(2) The department will not issue a party boat operator license to a person who is prohibited from holding an equivalent license in another state.

§55.405. Employer/Owner Responsibilities.

(a) The owner of a party boat may not operate or allow the operation of a boat as a party boat unless it has passed an annual water safety inspection conducted or authorized by the department within the previous 12 months.

(b) The owner of a party boat must maintain at least a minimum of $300,000 of liability insurance from an insurer licensed to do business in this state.

(c) The owner of a party boat may not knowingly:

(1) permit a person to operate a party boat at any time that the person is prohibited under the provisions of this subchapter from operating a party boat; or

(2) train a person to operate a party boat for purposes of obtaining a party boat operator's license unless the person is employed by the owner and has completed a boating safety course approved by the department. This paragraph does not apply if six or fewer passengers are aboard at the time a person is being trained.

(d) The owner of a party boat shall ensure that a list of emergency procedures is posted in a conspicuous location on a party boat at all times that paying passengers are aboard the vessel. The list shall set forth, at a minimum, procedures or instructions for the following:

(1) use of radio-telephone, if the vessel is equipped with a radio-telephone;

(2) man overboard;

(3) fire or explosion;

(4) leaks or damage control;

(5) location of personal flotation devices;

(6) location of escape hatches and escape routes;

(7) abandoning ship; and

(8) location of first-aid kit.

(e) On vessels that do not have or are not required to have a vessel capacity plate, the passenger capacity may be determined from the application of any one of the following formulae to the vessel:

(1) one passenger per 30 inches of rail space available to passengers at the vessel's sides and across the transom;

(2) one passenger per 10 square feet of deck area available for passenger use, not including concession stands, toilets, washrooms, companionways, or stairways; and

(3) one passenger per 18 inches of width of fixed seating area provided.

§55.406. Violations and Penalties.

A violation of any provision of this subchapter is punishable as prescribed by Parks and Wildlife Code, §31.127.

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

Filed with the Office of the Secretary of State on September 21, 2007.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

CHAPTER 60. MAINTENANCE REVIEWS
SUBCHAPTER A. MAINTENANCE EQUIPMENT REVIEW

31 TAC §§60.2 - 60.4

The Texas Parks and Wildlife Department proposes new §§60.2 - 60.4, concerning Maintenance Equipment Review System.

Section 18 of House Bill 12, enacted by the 80th Texas Legislature (2007), amended the Parks and Wildlife Code by adding §11.251, which requires the department to establish by rule an equipment review system through which the department annually determines whether any of the department's maintenance equipment has become outdated equipment. The proposed new rules implement the requirements of H.B. 12.

Proposed new §60.2, concerning Definitions, would set forth the meanings of the words and terms used in the subchapter. The definitions of "commission," "department," "department purpose," "operational," and "replacement cost" are self-explanatory.

The proposed definition of "capitalized personal property" refers to personal property having an acquisition value of $5,000 or more. This definition is intended to be consistent with the term as used in reference to personal property in the State Comptroller's State Property Accounting Process User's Guide. As required by this guide, the department systematically tracks the acquisition and disposition of capitalized personal property. The department may replace or otherwise acquire capitalized personal property to the extent the department has sufficient capital budget authority provided in the biennial general appropriations act. Therefore, the term "capitalized personal property" is defined to distinguish capitalized maintenance equipment from lower cost maintenance equipment such as hand tools, various kinds of hardware, and small-engine equipment such as push lawn mowers, and welders, that can be more easily repaired or replaced. The maintenance equipment review system as described in the proposed rules would only apply to capitalized maintenance equipment. The department will periodically evaluate the system to determine if there are types of non-capitalized maintenance equipment that should be included in the review system.

The proposed definition of "fair market value" is based on the definition contained in other law, specifically Internal Revenue Service regulations located at 26 C.F.R.§20.2031-1(b).

The proposed definition of "maintenance equipment" is the same as the definition contained in Section 11.251(a)(1) as added by H.B. 12. The definition is set out in the rule for ease of reference.

The proposed definition of "maintenance cost" is intended to include the cost of keeping a piece of maintenance equipment in working order, but does not include the cost of routine service. Normally, the manufacturer of any piece of equipment provides instructions for scheduled, periodic care intended to preserve the functionality of the equipment over its designed lifespan. The

costs associated with routine service are part of the normal, expected and routine costs of ownership. The definition of "maintenance cost" is intended to address those costs over and above those associated with routine service.

The proposed definition of "outdated equipment" is based on the definition in §11.251(a)(2) as added by H.B. 12.

Proposed new §60.3, concerning Maintenance Equipment Review System, would establish the methodology and procedures the department will follow in determining whether capitalized maintenance equipment is outdated and should be sold.

Proposed new §60.3(a) would require that the department prepare an annual report for all capitalized maintenance equipment in the department's inventory. The report would indicate each piece of equipment's fair market value, maintenance costs, and operational status. For each piece of equipment that is not operational, the report would indicate whether it could reasonably be made operational and whether it continues to serve the department's purposes.

Proposed new §60.3(b) would require the department, within 60 days after completing the annual report required under subsection (a), to initiate the process to sell or otherwise dispose of outdated equipment that meets any of the following three criteria: (1) the equipment is not operational and cannot reasonably be made operational, (2) the equipment no longer serves a department purpose, or (3) the equipment has a fair market value that is less than the maintenance cost of the equipment and the cost to replace the equipment is less than the annual maintenance cost of the equipment and both sufficient funds and capital budget authority are appropriated and available to replace the equipment without unduly impairing other department operations. The third criteria is intended to address situations in which a critical piece of capitalized maintenance equipment is in need of significant repairs that may exceed the fair market value of the equipment, but the repair costs are less than the cost to replace the equipment and the agency lacks sufficient capital budget authority to replace the equipment without unduly impairing other department operations. Although such a situation may not be common in the future, such a provision will enable the department to repair and continue using such equipment.

Proposed new §60.4, concerning Sale of Outdated Equipment, would set forth the provisions governing the sale or disposal of capitalized maintenance equipment the department has determined is outdated.

Proposed new §60.4(a) would require the sale or disposal of outdated equipment to be in accordance with applicable law.

Proposed new §60.4(b) would provide that the department may dispose of surplus property by methods other than those described in the rule, provided the disposal is conducted according to applicable law. Other provisions of this rule provide for the mandatory sale or disposition of certain maintenance equipment. Therefore, proposed new §60.4(b) is intended to acknowledge that there are situations in which the department is permitted, but not required to sell or dispose of maintenance equipment.

Brenda Dille, Deputy Director of Administrative Resources, has determined that for each of the first five years that the rules as proposed are in effect, there will be no additional estimated costs to state government as a result of enforcing or administering the rules. The equipment review system described in the rule is required by H.B. 12; thus, the department does not anticipate incurring costs in addition to those anticipated in H.B. 12. Although the department may incur costs in the form of additional staff time associated with creating and operating the maintenance equipment review system such as costs associated with recordkeeping and analysis, it is anticipated that the department's current system of tracking capitalized equipment can be modified to produce the desired outputs without having to design or purchase new systems and that the recordkeeping and analysis can be handled with existing staff.

There will be no fiscal implications for other units of state or local government.

Ms. Dille also has determined that for each of the first five years the rules as proposed are effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the establishment of system to ensure that maintenance equipment is regularly evaluated to ensure its continued value to the department as directed by the Texas Legislature.

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

The department has determined that the rules will not affect local economies; accordingly, no local employment impact statement has been prepared.

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

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rules.

Comments on the proposed rule may be submitted to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558 (e-mail: ann.bright@tpwd.state.tx.us).

The new sections are proposed under the authority of Section 18, House Bill 12, 80th Texas Legislature (Regular Session) which amended Parks and Wildlife Code, Chapter 11, to add §11.251 requiring the department by rule to establish an equipment review system through which the department annually determines whether equipment has become outdated.

The proposed new sections affect Parks and Wildlife Code, Chapter 11.

§60.2. Definitions.

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

(1) Capitalized personal property--personal property having an acquisition value of $5,000 or more.

(2) Commission--Texas Parks and Wildlife Commission.

(3) Department--Texas Parks and Wildlife Department.

(4) Department purpose--any function of the department required or authorized by state or federal law.

(5) Fair market value--the price at which a piece of maintenance equipment would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(6) Maintenance cost--the annual cost to repair or otherwise keep a piece of maintenance equipment in working order, but does

not include routine maintenance, such as oil changes, tire replacement, and lubrication, that are part of a scheduled regime of equipment care.

(7) Maintenance equipment--personal property owned by the department that is used to administer, operate, preserve, repair, expand, or otherwise maintain real property, including improvements and fixtures, owned or operated by the department.

(8) Operational--the condition of being currently in use or functionally capable of being used.

(9) Outdated equipment--maintenance equipment that:

(A) has a fair market value that is less than the maintenance cost;

(B) is not operational and cannot reasonably be made operational; or

(C) no longer serves a department purpose.

(10) Replacement cost--the cost of replacing maintenance equipment with maintenance equipment having similar functionality.

§60.3. Maintenance Equipment Review System.

(a) For each piece of capitalized maintenance equipment in the department's inventory, the department shall prepare an annual report containing the following:

(1) the fair market value;

(2) the maintenance cost for the equipment for the preceding twelve months;

(3) whether the equipment is operational or can reasonably be made operational; and,

(4) whether the equipment continues to serve a department purpose.

(b) Within 60 days after the completion of the report described in subsection (a) of this section, the department shall initiate the process to sell or otherwise dispose of capitalized outdated equipment that meets any of the following three criteria:

(1) the equipment is not operational and cannot reasonably be made operational;

(2) the equipment longer serves a department purpose

(3) the equipment has a fair market value that is less than the maintenance cost of the equipment and both of the following apply:

(A) The cost to replace the equipment is less than the annual maintenance cost of the equipment;

(B) Sufficient funds and capital budget authority are appropriated and available to replace the equipment without unduly impairing other department operations.

§60.4. Sale of Outdated Equipment.

(a) The department shall sell or dispose of outdated equipment identified for sale or disposition pursuant to this subchapter in accordance with applicable law.

(b) The provisions of this subchapter do not prevent the department from disposing of any property as otherwise may be provided for 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.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

SUBCHAPTER B. MAINTENANCE PROVIDER REVIEW

31 TAC §60.10, §60.11

The Texas Parks and Wildlife Department proposes new §60.10 and §60.11, concerning Maintenance Provider Review System.

House Bill 12, enacted by the 80th Texas Legislature, amended the Parks and Wildlife Code by adding new §11.252, which requires the department to establish by rule a maintenance provider review system through which the department annually determines whether a maintenance task performed by the department could be performed by a third-party contractor in a manner that is more cost-effective than that used by the department and yields a result that is equal to or greater than the quality of the result produced by the department. The provisions of H.B 12 require the department to contract with a third party for the performance of any maintenance task if the department determines that a third-party contractor could perform a maintenance task in a more cost-effective manner that is equal to or greater than the quality performed by the department, and allows the department to consider the cost of administering a contract. The department notes that the maintenance provider review system will track only those costs associated with maintenance currently performed by department personnel.

Proposed new §60.10, concerning Definitions, would set forth the meanings of the following words and terms used in the subchapter: "capitalized personal property;" "commission," "department," "department facility," and "maintenance service."

The proposed definition of "capitalized personal property" refers to property having an acquisition value of $5,000 or more. Since the types of facilities that require maintenance are generally larger items of personal property, the rule limits the types of personal property covered by the rule to capitalized personal property, which is personal property having an acquisition value of $5,000 or more. This definition is intended to be consistent with the term as used in reference to personal property in the State Comptroller's State Property Accounting Process User's Guide. The definitions of "commission" and "department" are self-explanatory.

The proposed definition of "department facility" is intended to identify the specific types of facilities operated by the department that would be affected by the requirements of the subchapter, specifically, wildlife management areas, fish hatcheries, state parks, and state historic sites. The definition is necessary because the provisions of H.B. 12 require that the maintenance provider review system encompass the administration, operation, preservation, repair, and expansion of real property owned or operated by the department.

The proposed definition of "maintenance service" would include the administration, operation, preservation, repair, and expansion of capitalized personal property or real property owned or operated by the department, and is based on the statutory definition of "maintenance" in H.B. 12.

Proposed new §60.11, concerning Maintenance Provider Review System, would establish the methodology and procedures the department will follow in determining whether maintenance activities and services should be contracted to a third party.

Proposed new §60.11(a)(1) would require the department to prepare an annual report identifying the maintenance cost of performing groundskeeping, janitorial services, minor repairs, and solid waste collection and removal on each facility operated by the department. These are the maintenance tasks that are most commonly performed by department personnel. Also, given the often unique nature of department facilities and for ease of implementation, the report will identify the maintenance costs for each facility. The department operates many facilities across the state. These facilities are in urban, suburban, rural, and remote environments. Therefore, the local cost of providing a specific maintenance service may vary widely. The department's intent in structuring the review system to operate on a facility-by-facility basis is to ensure that the potential costs of third-party performance are accurately determined at a local level.

Proposed new §60.11(a)(2) would require the annual report to identify the cost of performing the maintenance service by the department, the estimated cost of performing the maintenance service by a third-party contractor (including anticipated contract management costs), and whether the quality of the maintenance service performed by the third party contractor will be equal to or greater than the quality of the maintenance service performed by the department personnel.

Proposed new §60.11(a)(3) would specify that the annual report identify those maintenance services for which the cost of performing the maintenance service by department personnel exceeds the estimated cost of performing the maintenance service by a third party contractor (including the department's anticipated contract management cost) and whether the quality of the maintenance service performed by the third-party contractor will be equal to or greater than the quality of the maintenance service performed by department personnel.

Proposed new §60.11(c) would require the department, within 60 days of the annual report, to begin the process of contracting with a third party to perform maintenance services if the annual report reveals that the maintenance services that could be performed for a price that is less than the cost the department incurs in performing the service using department personnel, and the quality of the third-party service is equivalent or better than that of the department, taking into consideration the anticipated cost to the department of administering the contract.

Mr. Steve Schroeter, Support Services Branch Head, has determined that for each of the first five years that the rules as proposed are in effect, there will be no additional estimated costs to state government as a result of enforcing or administering the rules. The maintenance provider review system described in these rules is required by H.B. 12; thus, the department does not anticipate incurring costs in addition to those anticipated in H.B. 12. Although the department may incur costs in the form of additional staff time associated with the collection and analysis of data and the preparation of the required annual report, it is anticipated these tasks can be performed by existing staff.

If the annual report required by the rules identifies efficiencies or cost-savings that may occur by contracting with a third-party to perform maintenance services, there could be a cost savings to the department.

There will be no fiscal implications for other units of state or local government.

Mr. Schroeter also has determined that for each of the first five years the rules as proposed are effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the establishment of system to ensure that maintenance activities are regularly evaluated to ensure that they are cost effective, as directed by the Texas Legislature.

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

The department has determined that the rules will not affect local economies; accordingly, no local employment impact statement has been prepared.

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

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rules.

Comments on the proposed rules may be submitted to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558 (e-mail: ann.bright@tpwd.state.tx.us).

The new sections are proposed under the authority of Section 18, House Bill 12, 80th Texas Legislature (Regular Session) which amended Parks and Wildlife Code, Chapter 11, to add §11.252 requiring the department by rule to establish an equipment provider review system through which the department annually determines whether maintenance can be more cost-effectively provided by third party contractors.

The proposed new sections affect Parks and Wildlife Code, Chapter 11.

§60.10. Definitions.

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

(1) Capitalized personal property--personal property having an acquisition value of $5,000 or more.

(2) Commission--Texas Parks and Wildlife Commission.

(3) Department--Texas Parks and Wildlife Department.

(4) Department facility--a wildlife management area, fish hatchery, state park, or state historic site operated by the Department.

(5) Maintenance service--the administration, operation, preservation, repair, and expansion of capitalized personal property or real property owned or operated by the department.

§60.11. Maintenance Provider Review System.

(a) Annual report.

(1) The department shall prepare an annual report on the cost of obtaining the following maintenance services:

(A) groundskeeping and landscaping services (such as mowing, trimming, and vegetation control and removal);

(B) janitorial services;

(C) minor repairs; and

(D) solid waste collection, removal, and disposal services.

(2) For each maintenance service listed in paragraph (1) of this subsection that is performed by department personnel at the time of the annual report, the annual report shall identify:

(A) the cost of performing the maintenance service by department personnel for the period covered by the report;

(B) the estimated cost of performing the maintenance service by a third-party contractor, including the department's anticipated contract management costs; and

(C) whether the quality of the maintenance service performed by the third-party contractor will be equal to or greater than the quality of the maintenance service performed by department personnel.

(3) The annual report shall identify those maintenance services that meet the following criteria:

(A) the cost of performing the maintenance service by department personnel exceeds the estimated cost of performing the maintenance service by a third-party contractor, including the department's anticipated contract management costs; and

(B) the quality of the maintenance service performed by the third-party contractor will be equal to or greater than the quality of the maintenance service performed by department personnel.

(b) Contract with third party. Within 60 days of completion of the report required by subsection (a) of this section, the department shall begin the process of contracting with a third party to perform the maintenance services meeting the criteria listed in subsection (a)(3) of this section.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704457
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 389-4775

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 519. TECHNICAL ASSISTANCE

SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM

31 TAC §519.8

The Texas State Soil and Water Conservation Board (State Board) proposes an amendment to Title 31 of the Texas Administrative Code, Part 17, Chapter 519, Subchapter A, Technical Assistance Program, §519.8, Eligible Pay Rates, concerning the rate of pay that may be reimbursed to districts for technical assistance provided by their personnel. Specifically, this proposed amendment establishes an increased pay rate, from $10.00 per hour to $15.00 per hour, as a maximum that may be reimbursed to a soil and water conservation district for technical assistance and eliminates the yearly cap that had been imposed on total earnings. The amendment maintains the maximum of 40 hours that may be worked per week, but rewords the limitation. The amendment is made so that districts may provide a pay rate that is competitive with the general work force.

Mr. Kenny Zaijcek, Fiscal Officer, State Board has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering this amended rule.

Mr. Zaijcek has also determined that for the first five year period this amended rule is in effect, the public benefit anticipated as a result of administering this rule will be the ability of districts to hire an adequately skilled work force necessary to provide technical assistance to agricultural landowners and operators.

There are no anticipated costs to small businesses or individuals resulting from this amended rule.

Comments on the proposed amendment may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 ext.231.

The amendment is proposed under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

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

§519.8. Eligible Pay Rates.

The State Board hereby establishes a maximum pay rate [~~rates~~] of $15.00 [~~$10.00~~] per hour not to exceed a [~~or $20,773 per year and~~] maximum [~~hours per week~~] of 40 hours per week. With the prior approval of the State Board a district may exceed the maximum pay rate or maximum hours per week. Expenditures for wages or salaries that are above the maximum pay rate or expenditures for hours over the maximum hours per week will not otherwise be eligible for reimbursement.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704388
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: November 4, 2007
For further information, please call: (254) 773-2250 x252

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER I. FEES FOR COPIES OF RECORDS

37 TAC §1.125

(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 Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §1.125, concerning Fees For Copies Of Accident Records. Repeal of the section is necessary due to the transfer of the powers and duties for accident reports from the Texas Department of Public Safety (TxDPS) to the Texas Department of Transportation (TxDOT).

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications to state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to inform the public of the transfer of the powers and duties for accident reports from TxDPS to TxDOT. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the repeal may be submitted to Monica Ogilvie, Staff Attorney, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5231.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and S.B. 766, Acts 2007, 80th Legislature, Regular Session.

Texas Government Code, §411.004(3) and S.B. 766, Acts 2007, 80th Legislature, Regular Session are affected by this proposal.

§1.125. Accident Records Bureau 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 September 20, 2007.

TRD-200704344
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 424-2135

37 TAC §1.127

(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 Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §1.127, concerning Fees for Search for Record. Repeal of the section is necessary due to the section having been superseded by the Public Information Act.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications to state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the repeal may be submitted to Monica Ogilvie, Staff Attorney, Driver License Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0300, (512) 424-5231.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work.

Texas Government Code, §411.004(3) is affected by this proposal.

§1.127. Fees for Search for 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.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

CHAPTER 3. TEXAS HIGHWAY PATROL

SUBCHAPTER A. CRASH INVESTIGATIONS

37 TAC §§3.1 - 3.9

The Texas Department of Public Safety proposes to amend §§3.1 - 3.9, concerning Crash Investigations. Amendments to the title and sections of Subchapter A are necessary in order to update terminology. Due to a nationwide industry standard, the word "accident" is changed to "crash." Additional amendments to the sections are necessary in order to correct a reference to statute and to change the name of the division within the department responsible for investigating and reporting crashes.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding these rules.

Comments on the proposal may be submitted to Major David Baker, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.004(3), and §411.006(4) are affected by this proposal.

§3.1. Responsibility and Reporting.

(a) Officers of the department are charged with the responsibility of investigation and properly reporting rural motor vehicle crashes [~~accidents~~] occurring upon public highways or other ways or places open to the use of the public without regard as to severity of the crash [~~accident~~].

(b) Officers of the department will, insofar as practicable, make an on-the-scene investigation and properly report rural motor vehicle crashes [~~accidents~~] of which they are made aware.

§3.2. Establishing Priority in Crash [~~Accident~~] Investigation.

Simultaneous crashes [~~accidents~~] reported. In the event an officer is notified of more than one crash [~~accident~~] at about the same time discretion will be exercised as to the priority of investigation. Consideration will be given to factors such as severity of crash [~~accident~~], highway blockage, failure to stop and render aid, amount of traffic at location, potential for the crash [~~accident~~] to become worse, danger of fire or explosion, and any other information that is available.

§3.3. Classification of Hit-and-Run Crashes [~~Accidents~~] as Felony or Misdemeanor.

Classification of crashes [~~accidents~~] for severity of offense committed. The following injuries to persons involved in crashes [~~accidents~~] will be deemed sufficient for the filing of felony charges:

(1) death;

(2) incapacitating injury;

(3) nonincapacitating injury or minor visible injury.

§3.4. Crashes [~~Accidents~~] and Violations--Private Ways and Places.

(a) Department interpretations. Department interpretations of territorial applicability of this Act are as follows.

(1) Law applies--ways--reportable but safety responsibility does not apply:

(A) business-owned access way, road, or street open to the public;

(B) hotel and motel driveway;

(C) hospital, airport, arena, cemetery, etc., driveways not restricted;

(D) nonresidential roads on military bases where the state has jurisdiction;

(E) oil lease and irrigation roads open to the public;

(F) private school not restricted; and

(G) filling station driveways.

(2) Law does not apply--ways--not reportable:

(A) residential driveways--includes single unit, duplex, and apartment;

(B) farm and ranch roads not open to the public;

(C) restricted roads on military bases or on roads where jurisdiction has not been ceded;

(D) posted roads--restricted by signs or barricades;

(E) loading dock areas;

(F) car repair areas; or

(G) racetracks.

(3) Law applies--parking areas--reportable but safety responsibility does not apply:

(A) areas provided for customers by a business;

(B) state-owned (all government-owned) where public parking is committed;

(C) free parking lots;

(D) drive-in customer parking;

(E) private schools;

(F) hospital, airport, arena, cemetery, etc., when no fee is charged;

(G) shopping center; or

(H) hotel, motel, where parking is done by customers.

(4) Law does not apply--not reportable:

(A) private residence garages--single unit, duplex, and apartment;

(B) business areas exclusively for employees--includes governmental, also commercial--where fee is charged;

(C) drive-in theaters;

(D) motor vehicle sale lots; or

(E) garage storage and repair areas.

(b) Guide. If the owner or person in control of the way or area does not intend to be open for public use, then this Act has no application.

(c) Investigation. In investigating crashes [~~accidents~~] coming within the provisions of this Act, the investigating officer will follow regular crash [~~accident~~] investigation procedure as though the crash [~~accident~~] occurred on a rural highway.

(d) Traffic law violations applicable on private ways and parking areas. The interpretation of the department is that the groups of offenses enumerated herein are the only traffic offenses applicable to privately owned access ways and parking areas:

(1) Texas Transportation Code, Chapter 550 and Section 545.401 [~~Civil Statutes, Article 6701d, §§38-51~~]; and

(2) traffic offense not limited to a public highway by statute.

§3.5. Crash [~~Accident~~] Investigation Information.

Release of information. Members of the department will release information to those persons or agencies having a legitimate interest in a crash [~~an accident~~] or incident, to the extent of that interest, including but not necessarily limited to:

(1) drivers and passengers and their representatives such as insurance adjusters, attorneys, friends, or relatives who are attending to the affairs of a crash [~~an accident~~] victim;

(2) owners of vehicles or other damaged property or their representatives;

(3) employer or employee of a crash [~~an accident~~] victim;

(4) news media;

(5) interested government agencies;

(6) prosecutors; or

(7) courts.

§3.6. Crash [~~Accident~~] Investigation Policy.

(a) Responsibility. The Texas Highway Patrol [~~traffic law enforcement~~] division of the department is assigned the responsibility of investigating and properly reporting crashes [~~accidents~~] involving motor vehicles which occur outside the city limits of an incorporated city upon a public road, highway, or other way or place open to the use of the public.

(b) Investigating and reporting. Upon notification of such crash [~~accident~~], officers of the department will, insofar as practicable, make an on-the-scene investigation and properly report the results of their investigation without regard to the severity of the crash [~~accident~~].

(c) Crashes [~~Accidents~~] in cities.

(1) The department will not investigate motor vehicle crashes [~~accidents~~] which occur in cities except in emergencies or where prior arrangements have been approved.

(2) Any commissioned member of the department who witnesses or comes upon a motor vehicle traffic crash [~~accident~~] within the city limits will notify local officers and turn all information and control of the investigation over to them as soon as possible. Pending the arrival of the local officers, such department members will seek to protect the scene, render first aid or summon medical aid, detain involved drivers when necessary, and take any other action immediately needed for the public safety for which he has been trained and is equipped to perform.

§3.7. Definitions and Classifications.

The "Manual on Classification of Motor Vehicle Traffic Crashes [~~Accidents~~] in Texas," effective January 1, 1983, and as it may hereafter be modified as administratively necessary, containing definitions and examples based on Texas Civil Statutes and the "Manual on Classification of Motor Vehicle Traffic Crashes [~~Accidents~~]" (American National Standards Institute D16.1) as amended, published by the National Safety Council, is adopted as the source of definitions and classifications of crashes [~~accidents~~] involving motor vehicles in Texas, except as hereinafter provided. The latest edition of said manual is available for inspection at the headquarters of the Texas Department of Public Safety headquarters, 5805 North Lamar Boulevard, Austin, Texas 78752.

(1) To maintain uniformity with crash [~~accident~~] records statistics maintained by the US Department of Transportation and the majority of other states, only those deaths that occur within 30 days after a motor vehicle crash [~~accident~~] and result from such crash [~~accident~~] will be counted as motor vehicle traffic crash [~~accident~~] fatalities.

(2) Motor vehicle traffic crash [~~accident~~] statistics for each calendar year will be closed on the last day of February of the following year.

§3.8. Reporting by Involved Drivers.

(a) Reports required from drivers involved in motor vehicle crashes [~~accidents~~] will be submitted on the driver's confidential crash [~~accident~~] report, commonly known as the blue form.

(b) The driver's confidential crash [~~accident~~] report effective January, 1986, and as it may hereafter be modified as administratively necessary is adopted by reference and lists sufficiently detailed information regarding involvement in a traffic crash [~~accident~~]. Copies of this form are available for inspection at the headquarters of the Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin, Travis County, Texas 78752.

§3.9. Reporting by Investigating Officers.

(a) Reports required will be submitted on the Texas Peace Officers Crash [~~Accident~~] Report and the Commercial Motor Vehicle Supplement to the Texas Peace Officers Crash [~~Accident~~] Report by officers who investigate motor vehicle crashes [~~accidents~~] and will be in accordance with Department of Public Safety publication, Instructions to Police Officers for Reporting Crashes [~~Accidents~~].

(b) The Texas Peace Officers Crash [~~Accident~~] Report effective September 1993 and the Commercial Motor Vehicle Supplement to the Texas Peace Officers Crash [~~Accident~~] Report effective January 1991, and as they may hereafter be modified as administratively necessary, are adopted by reference and list sufficiently detailed information regarding investigation of a traffic crash [~~accident~~]. Copies of the reports are available for inspection at the headquarters of the Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin, Travis County, Texas 78773.

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

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TRD-200704340
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

37 TAC §3.10

(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 Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes to repeal §3.10, concerning DWI Accident Response Cost Recovery--Billing for Services. Repeal of the section is necessary because the department has discontinued the Billing for Services process.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the repeal may be submitted to Major David Baker, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115.

The repeal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.004(3), and §411.006(4) are affected by this proposal.

§3.10. DWI Accident Response Cost Recovery--Billing for Services.

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

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TRD-200704341
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER D. TRAFFIC SUPERVISION

37 TAC §3.52

The Texas Department of Public Safety proposes to amend §3.52, concerning Police Traffic Supervision on Interstate Highways in Cities of Over 50,000 Population. Amendment to the section is necessary because the name of the division was changed from Traffic Law Enforcement to Texas Highway Patrol due to some reorganization within the department.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Major David Baker, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.004(3), and §411.006(4) affected by this proposal.

§3.52. Police Traffic Supervision on Interstate Highways in Cities of Over 50,000 Population.

Police traffic activities. Local agencies will be encouraged to conduct all police traffic supervision activities on all interstate highways within their jurisdiction.

(1) Officers of the department will not be routinely assigned traffic supervision duties on these sections of the interstate systems. Officers will handle major dangerous violations they observe while traveling such sections, but will refrain from taking routine enforcement action.

(2) There are occasions when it may become highly desirable for units to be routinely assigned to an interstate system within a city of more than 50,000 population.

(3) Requests for permission to assign units to these systems should be submitted through channels to the Office of Chief of Texas Highway Patrol [~~Traffic Law Enforcement~~].

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

Filed with the Office of the Secretary of State on September 20, 2007.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 424-2135

SUBCHAPTER J. PROTECTION OF STATE BUILDINGS AND GROUNDS

37 TAC §3.144

The Texas Department of Public Safety proposes to amend §3.144, concerning Emergency Evacuations. Amendments to the section are necessary in order to correct an error in the title of the section and to correct the name of the state agency which the department is required to notify in case of an evacuation.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be current and updated rules. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Major David Baker, Texas Department of Public Safety, Texas Highway Patrol Division, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2115.

The amendments are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department; and Texas Government Code, §411.062, which authorizes the department to adopt rules relating to the security of persons and property within the Capitol Complex.

Texas Government Code, §§411.004(3), 411.006(4), and 411.062 are affected by this proposal.

§3.144. Emergency Evacuations [~~Evaluations~~].

(a) Evacuation order. The commander of the Capitol Regional Command Office, or the ranking department officer on duty, may order evacuation of all or any part of the Capitol Building or other state buildings in the event of a fire, bomb threat, or any other threat to life and/or property. In the event of a potentially harmful situation at the Capitol Building which does not pose an imminent threat to the health or safety of the occupants and visitors nor to the buildings or grounds themselves, the department shall inform the board and take such action as approved by the board.

(b) Floor managers. A floor manager shall be appointed for each floor in each state building in the Capitol Complex. Occupying state agencies shall make their appointments in cooperation with the Highway Patrol Service and with other agencies and these floor managers shall assist Highway Patrol Service in clearing the buildings during emergency evacuations.

(c) Use of elevators. No elevators shall be used during an emergency evacuation except to transfer handicapped persons from areas to be evacuated to places of safety and only then with the approval of a member of the Highway Patrol Service or a fire official.

(d) Evacuation of building floors. No one shall be allowed on floors to be evacuated during the period of the threat except department officers, floor managers, and duly authorized peace officers and firemen.

(e) Readmission to evacuated areas. A department officer shall give the all-clear signal and permit readmission to the evacuated areas only when the threat has passed.

(f) Notification. In all instances enumerated in subsection (a) of this section, the Fire and Safety Office of the State Preservation Board [~~Building and Procurement Commission~~] will immediately be notified by the Capitol Regional Command Office and should be represented at the scene.

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

Filed with the Office of the Secretary of State on September 20, 2007.

TRD-200704343
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 424-2135

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, by amending in §211.1, Definitions, the definitions of "active," "background investigation," "basic licensing course," "chief administrator," "contract jail," "endorsement," "experience," "hearings examiner," "jailer," "license," "reserve," "successful completion," and "training hours." The definitions were amended for clarification. Subsection (b) is amended to reflect the effective date for these proposed changes.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the amended section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, this change will benefit the public by clarifying the definitions and the rules promulgated by the Commission.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority.

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

§211.1. Definitions.

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

(1) Academic provider--A school, accredited by the Southern Association of Colleges and Schools and the Texas Higher Education Coordinating Board, which has been approved by the commission to provide basic licensing courses.

(2) Academic alternative program--A program for college credit offered by a training provider recognized by the Southern Association of Colleges and Schools and the Higher Texas Education Board, authorized by the commission to conduct preparatory law enforcement training as part of a degree plan program, and consisting of commission-approved curricula.

(3) Accredited college or university--An institution of higher education that is accredited or authorized by the Southern Association of Colleges and Schools, the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Commission on Colleges and Universities, or the Western Association of Schools and Colleges.

(4) Active--A license issued by the commission that meets the current requirements of licensure and training as determined by the Commission.[~~, including those legislatively required.~~]

(5) Agency--A law enforcement unit or other entity, whether public or private, authorized by Texas law to appoint a person licensed or certified by the commission.

(6) ALJ or Administrative law judge-- See "Hearings Examiner" defined below.

(7) Alternative delivery--A learning event characterized by a separation of place or time between the instructor and student, the students, and/or the student and learning resources; and in which the interaction between these is conducted through one or more media.

(8) Appointed--Elected or commissioned by an agency as a peace officer, reserve or otherwise selected or assigned to a position governed by the Occupations Code, Chapter 1701, without regard to pay or employment status.

(9) Background investigation--A pre-employment background investigation that is designed to satisfy: [~~May include:~~]

(A) that an applicant is in compliance with all minimum standards for employment, and

(B) that an applicant is screened out, who, based on their past history or other relevant information, is found to be unsuitable for the position in question.

(C) The background investigation consists of a report that documents, but is not limited to the following:

(i) A review of all previous law enforcement employment, including contacting all former law enforcement employers,

(ii) [~~(A)~~] an investigation looking specifically at a person's dependability; integrity; initiative; situational reasoning ability; self-control; writing skills; reading skills; oral communications skills; interpersonal skills; and physical ability; and

(iii) [~~(B)~~] a report that documents an investigation into an applicant's suitability for licensing and appointment which includes: biographical data; scholastic data; employment data; criminal history data; interviews with references, supervisors, and other people who have knowledge of the person's abilities, skills, and character; and a summary of the investigator's findings and conclusions regarding the applicant's moral character and suitability.

(10) Basic licensing course-- Any current commission developed course that is required before an individual may be licensed by the commission. [~~The courses include: Peace, Academic Alternative and County Corrections.~~]

(11) Basic peace officer course--The current commission developed course(s) required for licensing as a peace officer, taught at a licensed law enforcement academy in accordance with commission requirements.

(12) Certified copy--A true and correct copy of a document or record certified by the custodian of records of the submitting entity.

(13) Chief administrator--The head or designee of a law enforcement agency [~~an agency~~].

(14) Commission--The Texas Commission on Law Enforcement Officer Standards and Education.

(15) Commissioned--Has been given the legal power to act as a peace officer or reserve, whether elected, employed, or appointed.

(16) Commissioners--The nine commission members appointed by the governor and, where appropriate, the five ex-officio members.

(17) Contract jail--A correctional facility, operated by a county, municipality or private vendor, operating under a contract with a county or municipality, to house inmates convicted of offenses committed against the laws of another state of the United States, as provided by Texas Government Code, §511.0092[~~§511.092~~].

(18) Contractual training provider--A law enforcement agency, a law enforcement association, or alternative delivery trainer that conducts specific education and training under a contract with the commission.

(19) Convicted--Has been adjudged guilty of or has had a judgment of guilt entered in a criminal case that has not been set aside on appeal, regardless of whether:

(A) the sentence is subsequently probated and the person is discharged from probation;

(B) the charging instrument is dismissed and the person is released from all penalties and disabilities resulting from the offense;

(C) the cause has been made the subject of an expunction order; or

(D) the person is pardoned, unless the pardon is expressly granted for subsequent proof of innocence.

(20) Court-ordered community supervision--Any court-ordered community supervision or probation resulting from a deferred adjudication or conviction by a court of competent jurisdiction. However, this does not include supervision resulting from a pretrial diversion.

(21) Distance education--The enrollment and study with an educational institution, which provides lesson materials prepared in a sequential and logical order for study by students on their own.

(22) Duty ammunition-- Ammunition required or permitted by the agency to be carried on duty.

(23) Endorsement-- An official document stating that an individual has met the minimum training standards appropriate to the type of examination sought as determined by the Commission.

(24) Executive director--The executive director of the commission or any individual authorized to act on behalf of the executive director.

(25) Experience--Includes each month, or part thereof, served as a peace officer, reserve, jailer, [~~or~~] telecommunicator, or federal officer. Credit may, at the discretion of the executive director, be awarded for relevant experience from an out-of-state agency.

(26) Firearms--Any handgun, shotgun, precision rifle, patrol rifle, or fully automatic weapon that is carried by the individual officer in an official capacity.

(27) Firearms proficiency-- Successful completion of the annual firearms proficiency requirements.

(28) Field training program--A program intended to facilitate a transition from the academic setting to the performance of the general duties of the appointing agency.

(29) Governing body resolution--A formal expression or action by a governing body authorizing a particular act, transaction, appointment, intention, or decision.

(30) Hearings examiner [~~or Judge~~]--An administrative law judge appointed by the chief administrative law judge of the State Office of Administrative Hearings pursuant to the Texas Government Code, Ch. 2003, or a person appointed by the executive director to conduct administrative hearings for the commission.

(31) High school diploma--High school diploma is a document issued by a school district or a school accredited by the Texas Private School Accreditation Commission verifying that the recipient has successfully completed the course of study prescribed by the school district and accepted by the Texas Education Agency.

(32) Individual--A human being who has been born and is or was alive.

(33) Jailer--A person employed or appointed as a jailer under the provisions of the Local Government Code, §85.005, or Government Code §511.0092 [~~§511.092~~].

(34) Killed in the line of duty--A Texas peace officer killed as a directly attributed result of a personal injury sustained in the line of duty.

(35) Law--Including, but not limited to, the constitution or a statute of this state, or the United States; a written opinion of a court of record; a municipal ordinance; an order of a county commissioners' court; or a rule authorized by and lawfully adopted under a statute.

(36) Law enforcement academy--A school operated by a governmental entity that has been licensed by the commission, which may provide basic licensing courses and continuing education.

(37) Law enforcement automobile for training--A vehicle equipped to meet the requirements of an authorized emergency vehicle as identified by Transportation Code Secs. 546.003 and 547.702.

(38) Lesson plan--Detailed guides from which an instructor teaches. The plan includes the goals, specific content and subject matter, performance or learning objectives, references, resources, and method of evaluating or testing students.

(39) License--A license[~~, certificate, registration, permit, or other form of authorization~~] required by law or a state agency rule that must be obtained by an individual to engage in a particular business.

(40) Licensee--An individual holding a license issued by the commission.

(41) Line of duty--Any lawful and reasonable action, which a Texas peace officer is required or authorized by rule, condition of employment, or law to perform. The term includes an action by the individual at a social, ceremonial, athletic, or other function to which the individual is assigned by the individual's employer.

(42) Moral character--The propensity on the part of a person to serve the public of the state in a fair, honest, and open manner.

(43) Officer--A peace officer or reserve.

(44) Patrol rifle-- Any magazine-fed repeating rifle with iron/open sights or with a frame mounted optical enhancing sighting device, 3 power or less, that is carried by the individual officer in an official capacity.

(45) Peace officer--A person elected, employed, or appointed as a peace officer under the Code of Criminal Procedure, Article 2.12, or under other statute.

(46) Placed on probation--Has received an adjudicated, unadjudicated or deferred adjudication probation for a criminal offense.

(47) POST--State or federal agency with jurisdiction similar to that of the commission, such as a peace officer standards and training agency.

(48) Precision rifle--Any rifle with a frame mounted optical sighting device greater than 3 power that is carried by the individual officer in an official capacity.

(49) Proprietary training contractor--An approved training contractor operated for a profit.

(50) Public security officer--A person employed or appointed as an armed security officer by this state or a political subdivision of this state. The term does not include a security officer employed by a private security company that contracts with this state or a political subdivision of this state to provide security services for the entity.

(51) Reactivate--To make a license issued by the commission active after at least a two-year break in service.

(52) Resigned/Terminated--an explanation of the circumstances under which the individual resigned (retired, honorably discharged), was terminated (dishonorably discharged, generally discharged), or other (killed in the line of duty, died, or disabled) in accordance with §1701.452.

(53) Reinstate--To make a license issued by the commission active after disciplinary action or after expiration of a license due to failure to obtain required continuing education.

(54) Renew--Continuation of an active license issued by the commission.

(55) Reserve--A person appointed as a reserve law enforcement officer under the provisions of the Local Government Code, §85.004, §86.012, [~~or~~] §341.012, or §60.0775.

(56) Self-assessment--Completion of the commission created process, which gathers information about a training or education program.

(57) SOAH--The State Office of Administrative Hearings.

(58) Successful completion--A minimum [~~result~~] of:

(A) 70 percent or better; or

(B) C or better; or

(C) pass, if offered as pass/fail.

(59) Telecommunicator--A dispatcher or other emergency communications specialist appointed under or governed by the provisions of the Occupations Code, Chapter 1701.

(60) Texas peace officer--For the purposes of eligibility for the Texas Peace Officers' Memorial, an individual who had been elected, employed, or appointed as a peace officer under Texas law; an individual appointed under Texas law as a reserve peace officer, a commissioned deputy game warden, or a corrections officer in a municipal, county, or state penal institution, a federal law enforcement officer or special agent performing duties in this state, including those officers under Article 2.122, Code of Criminal Procedure, or any other officer authorized by Texas law.

(61) Training coordinator--An individual, appointed by a commission-recognized training provider, who meets the requirements of §215.9.

(62) Training cycle--A 48-month period as established by the commission. Each training cycle is composed of two contiguous 24-month units.

(63) Training hours--Classroom[~~Actual classroom~~] or distance education hours reported in one-hour increments.

(64) Training program--An organized collection of various resources recognized by the commission for providing preparatory or continuing training. This program includes, but is not limited to, learning goals and objectives, academic activities and exercises, lesson plans, exams, skills training, skill assessments, instructional and learning tools, and training requirements.

(65) Training provider--A governmental body, law enforcement association, alternative delivery trainer, or proprietary entity credentialed by the commission to provide preparatory or continuing training for licensees or potential licensees.

(66) Verification (verified)--The confirmation of the correctness, truth, or authenticity of a document, report, or information by sworn affidavit, oath, or deposition.

(b) The effective date of this section is March 1, 2008. [~~June 1, 2006.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704428
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 936-7722

37 TAC §211.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §211.19. Subsection (d) is amended to require law enforcement agencies to keep on file signed and dated printouts of applications and forms submitted via TCLEDDS and in a format readily accessible to the Commission. Subsection (g) is amended to reflect the effective date for these proposed changes.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the amended section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, this change will benefit the public by requiring validated information in paper format in addition to electronic.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.153, Reports From Agencies and Schools.

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

§211.19. Forms and Applications.

(a) On applications or other forms required by the commission, the applicant or the individual on whose behalf the form is being submitted is responsible for reviewing the entire document and any attachments to attest to the accuracy and truthfulness of all information on and attached to the document.

(b) A person who fails to comply with the standards set forth in these rules shall not accept the issuance of a license and shall not accept any appointment.

(c) If an application is found to be false or untrue, any license or certificate issued to the applicant by the commission will be subject to cancellation and recall.

(d) Agencies must keep on file and in a format readily accessible to the commission a copy of the documentation required by the commission. If the form or application is submitted via TCLEDDS, the agency must keep on file, and in a format readily accessible to the

commission, a signed and dated printout of the electronically submitted form or application.

(e) An agency must retain required records for a minimum of five years after the licensee's termination date with that agency.

(f) An agency must report to the commission any failure to appoint an individual in the reported capacity within 30 days of the reported date of appointment. Such report must be made in the currently prescribed commission format for termination.

(g) The effective date of this section is March 1, 2008. [March 1, 2001.]

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

Filed with the Office of the Secretary of State on September 21, 2007.

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Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7722

37 TAC §211.23

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, by amending §211.23, Date of Licensing or Certification, by striking certification from the title. Proposed amendments to subsections (a) and (b) have been made to clarify the rule stating the date of a licensee's official license date through the Commission. Subsection (d) is amended to reflect the effective date for these changes.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will no fiscal implications as a result of administering the amended section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, this change will benefit the public by clarifying and simplifying the licensing process.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.151, General Powers of Commission; Rulemaking Authority; §1701.301, License Required; §1701.302, Certain Elected Law Enforcement Officers; License Required; §1701.303, License Application; Duties of Appointing Entity; and §1701.307, Issuance of License.

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

§211.23. Date of Licensing [or Certification].

(a) If an application is required, the date of licensing is the day that proof of all required standards is received and accepted by the commission. [, or certification, will be either the receipt date or the acceptance date of the application, whichever is later:]

[(1) the receipt date is the day the completed application is received by the commission and will be used if the commission has already received proof before that date that the applicant has met the required standards; and]

[(2) the acceptance date is the day proof of all required standards is received and accepted by the commission and will be used if no application is required.]

(b) A person is licensed [or certified] by the commission on the date of acceptance of the application for licensing. [such act by the commission whether or not:]

[(1) any physical document has been or ever is issued; or]

[(2) the person has such physical document in his possession.]

(c) Any such document may expire or be cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated. Mere possession of the physical document does not necessarily mean that the person:

(1) currently holds, has ever held, or has any of the powers of the office indicated on the document; or

(2) still holds an active, valid license or certificate.

(d) The effective date of this section is March 1, 2008. [March 1, 2001.]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704430
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7722

37 TAC §211.25

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, by amending §211.25, Date of Appointment. The rule is amended and sets out the procedure for which the date of appointment of a peace officer or county jailer is determined for calculating service time and for proficiency certificates. Subsections (a) and (b) are eliminated specifically to provide clarity and guidance for maintaining licensee record accuracy. New subsection (b) is amended to reflect the effective date for these proposed changes.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be some fiscal implications as a result of administering the amended section. The Commission will be charged with reviewing appli-

cations and accompanying documentation as a result of this proposed amendment.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, this change will benefit the public by ensuring that peace officer and county jailers meet or exceed the minimum standards for licensure.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.152, Rules Relating to Hiring Date of Peace Officer.

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

§211.25. Date of Appointment.

[~~(a) To determine experience for purposes of proficiency certification, the commission must use the date of appointment.~~]

[~~(b) A person is licensed only if that person still holds a license that has not expired or been cancelled, surrendered, suspended, revoked, deactivated, or otherwise invalidated.~~]

(a) [~~(c)~~] If a proper report of appointment is received by the commission for the appointment as a peace officer and/or county jailer, the commission shall [~~must~~] accept the date of appointment that is reported to the commission by the appointing agency.

(b) [~~(d)~~] The effective date of this section is March 1, 2008. [~~March 1, 2001.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704431
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 936-7722

37 TAC §211.27

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.27, concerning Reporting Responsibilities of Individuals. Subsection (e) is added to require a report from any licensee who enters the military after licensing and receives a dishonorable discharge. Subsection (f) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, this change will benefit the public by identifying officers that no longer meet the standards.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.153, Reports From Agencies and Schools.

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

§211.27. Reporting Responsibilities of Individuals.

(a) When a licensee is arrested, charged, or indicted for a criminal offense above the grade of Class C misdemeanor or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, that person must report such fact to the commission in writing within 30 days, including the name of the arresting agency, the style, court, and cause number of the charge or indictment, if any, and the address to which notice of any commission action will be mailed.

(b) A person to whom this section applies must also report to the commission the final disposition of the criminal action within 30 days of the effective date of the disposition.

(c) A licensee must report any name change to the commission within 30 days.

(d) A licensee must report to the commission a permanent mailing address other than an agency address and must report to the commission any change within 30 days.

(e) A licensee must report all subsequent DD214's to the Commission indicating any military discharge other than under honorable or general-under-honorable conditions within 30 days.

(f) [~~(e)~~] The effective date of this section is March 1, 2008. [~~June 1, 2006.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704432

Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 936-7722

37 TAC §211.28

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes new §211.28, concerning Responsibility of a Law Enforcement Agency to Report an Arrest of a Peace Officer or County Jailer. The new rule sets out the procedure for which the arrest of a peace officer or county jailer is reported by an arresting agency. This rule is created specifically to provide notification to the Commission of the arrest of a peace officer or county jailer if such fact is discovered by an arresting agency.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be some fiscal implications to state government as a result of administering the section. The Commission will be charged with reviewing notifications and accompanying documentation as a result of this new rule. There will be no fiscal implication to local government.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, this change will benefit the public by ensuring that peace officer and county jailers meet or exceed the minimum standards for licensure.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

The new section is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The new rule as proposed is in compliance with Texas Occupations Code, §1701.202, Complaints.

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

§211.28. Responsibility of a Law Enforcement Agency to Report an Arrest of a Peace Officer or County Jailer.

(a) When a peace officer or county jailer is arrested for a criminal offense above the grade of Class C misdemeanor or for any Class C misdemeanor involving the duties and responsibilities of office or family violence, the chief administrator of an arresting agency or their designee must report such fact to the commission in writing within 30 business days of the arrest, including:

(1) the name, date of birth and Personal Identification Number (PID), or social security number of the licensee (if available);

(2) the name, address, and telephone number of the arresting agency;

(3) the date and nature of the arrest;

(4) the arresting agency incident, booking, or arrest number; and

(5) the name, address, and telephone number of the court in which such charges are filed or such arrest is filed.

(b) The effective date of this section is March 1, 2008.

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

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TRD-200704433
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7722

37 TAC §211.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §211.29, concerning Responsibilities of Agency Chief Administrators. Subsection (e) is amended to include TCLEOSE PID number. Subsection (f) is amended by H.B. 2445, which requires the chief administrator of a law enforcement agency to report to the Commission within 7 business days the departure of a licensee that resigned or was terminated. Subsections (i) and (j) requires a chief administrator of a law enforcement agency to notify the Commission of their appointment as administrator and to notify the Commission of their departure of that respective position. Subsection (k) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be some fiscal implications to state government as a result of administering the section. There will be no fiscal implication to local government.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, this change will benefit the public by ensuring that law enforcement administrators adhere to statutes and commission rules in the administration of their duties.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.303, License Application; Duties of Appointing Entity, and Amended §1701.452, Employment Termination Report.

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

§211.29. Responsibilities of Agency Chief Administrators.

(a) An agency chief administrator is responsible for making any and all reports and submitting any and all documents required of that agency by the commission.

(b) An agency appointing a person who does not hold a commission license must file an application for the appropriate license with the commission.

(c) Before an agency appoints any licensee to a position requiring a commission license it shall complete the reporting requirements of Texas Occupations Code §1701.451.

(d) An agency shall notify the commission, electronically or in writing, within 30 working days, when it receives information that a person under appointment with that agency has been arrested, charged, indicted, or convicted for any offense above a Class C misdemeanor, or for any Class C misdemeanor involving the duties and responsibilities of office or family violence.

(e) Except in the case of a commission error, an agency that wishes to report a change to any information within commission files about a licensee shall do so in a request to the commission, containing:

(1) the licensee's name and social security number TCLEOSE or PID number;

(2) the requested change; and

(3) the reason for the change.

(f) An agency must notify the commission, electronically or in writing, following the requirements of Texas Occupations Code §1701.452 within 7 business [30] days, when a person under appointment with that agency resigns or is terminated.

(g) An agency chief administrator must comply with orders from the commission regarding the correction of a report of resignation/termination or request a hearing from SOAH.

(h) Line of duty deaths shall be reported to the commission in current peace officers' memorial reporting formats.

(i) An individual who is appointed or elected to the position of the chief administrator of a law enforcement agency shall notify the Commission of the date of appointment and title, through a form prescribed by the Commission within 30 business days of such appointment.

(j) An individual who vacates an appointed or elected position of the chief administrator of a law enforcement agency shall notify the Commission of the date the position was terminated, through a form prescribed by the Commission within 7 business days of vacating that position.

(k) [(i)] The effective date of this section is March 1, 2008. [June 1, 2006.]

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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Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7722

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §215.5, concerning Contractual Training. Subsection (a) is amended to identify a propriety training contractor. Subsection (d) is added in order to allow for a distance education contractual provider type and identifies the requirements for distance education courses. The inspection requirements of subsection (g)(3) is amended to allow for different types of training providers. The reporting requirements of subsection (g)(3) is also amended to reflect the revised deadline for reporting to the Commission. Subsection (j) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications to state or local governments as a result of these amendments as the distance education requirements were already in place.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, this change will benefit the public by allowing differing inspection requirements for providers and decreasing the reporting time.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission;

Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.251, Training Programs; Instructors.

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

§215.5. Contractual Training.

(a) The commission may, at the discretion of the executive director, enter into a contract with a law enforcement agency, a law enforcement association, [or] alternative delivery trainer, or proprietary training contractor to conduct training for licensees.

(b) Any such contract is limited to those terms expressly included in the contract or incorporated by reference and must be dated [and]:

(1) on the currently prescribed commission format;

(2) signed by the executive director;

(3) signed by the chief administrator or head of the sponsoring organization; and

(4) signed by the training coordinator responsible for the administration of that training.

(c) A contract may approve a specific course(s) and the number of times it will be offered. These contracts are for a stated period of time, or five [two] years, whichever is less, but may be terminated within 10 days by written notice on the part of either party to the contract. A contract may incorporate by reference a law, rule, or any other document, however, any waiver, exception, or deletion must be expressed.

(d) A contract to provide distance education courses may be approved if the contractual training provider:

(1) submits a request in accordance with the commission's Distance Education Guidelines before the course is offered. The commission may charge a cost recovery fee for reviewing these submissions.

(2) ensures that each course will have one or more sponsors assigned, who shall be responsible both for the conduct of the course, and for proctoring any examination during the course.

(3) ensures that the student, without the use of deceitful means, completes each required unit, and receives a passing grade on any examination, course work, or evaluation required by the lesson guide or learning objectives.

(4) ensures that the student's assigned work is corrected, graded, and reviewed by qualified instructors. Corrected assignments are returned to the student via an exchange that provides a personalized student-teacher relationship.

(e) [(d)] The executive director may terminate a contract if no training is conducted within each calendar year unless the chief administrator has petitioned the executive director for a waiver, and the waiver has been granted. The executive director may suspend a contract, until compliance, for any violation of its terms or of any commission rule or law. Any party may terminate, upon written notice to all other parties, received by either the executive director, the coordinator, or any other named person or office.

(f) [(e)] The applicant for a training provider contract must provide a comprehensive needs assessment to the executive director justifying the need for a contract. The needs assessment must include at a minimum:

(1) the names of the licensed academies located in the council of governments or regional planning commission area of the applicant;

(2) a description of the existing law enforcement training programs in the area;

(3) what specific training need(s) are to be addressed by the proposed contract; and

(4) the number and types of courses that will be offered during the first quarter of the executed contract;

(g) [(f)] If the commission determines that the needs assessment justifies a contract, the chief administrator of the contractual training provider must:

(1) appoint and maintain an advisory board as required by law and rule;

(2) follow the current requirements set by its advisory board;

(3) select a training facility that meets any [all] inspection requirements identified in §215.3, as determined by the commission;

(4) select any instructional material, equipment, or resources necessary for the course(s);

(5) forward for approval, upon the executive director's request, at least one copy of the learning objectives of each course covered by the contract;

(6) appoint and maintain the appointment of a training coordinator;

(7) ensure the training coordinator discharges any responsibilities required by law, rule, or contract, including §215.9; and

(8) report in writing to the commission within 30 days:

(A) any change in chief administrator;

(B) any change in training coordinator;

(C) any substantial failure to meet commission rules and standards;

(D) any rule violation by it or by its training coordinator, instructors, or advisory board;

(E) when non-compliance with ADA or any other federal or state requirements is discovered; or

(F) any change in provider name, physical location, mailing address, electronic mail address, or telephone number.

(h) [(g)] By entering into any such contract the commission approves specific training which will be fully credited to each licensee, unless:

(1) the training was not conducted in compliance with the contract; or

(2) the advisory board, training coordinator or instructor substantially failed to discharge any responsibility required by commission rule; [,] or

(3) the credit was claimed by deceitful means.

(i) [(h)] Once the contract has been executed, the contractual trainer may be evaluated periodically by the commission as determined by the executive director. The evaluation may be accomplished by commission staff or by training professionals selected and trained by the executive director.

(j) [~~(i)~~] The effective date of this section is March 1, 2008. [~~June 1, 2006.~~]

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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Timothy Braaten
Executive Director
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37 TAC §215.17

(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 Commission on Law Enforcement Officer Standards and Education or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of §215.17, concerning Distance Education. The guidelines for distance education will be incorporated into §215.5, concerning Contractual Training in order to allow for a distance education contractual provider type.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications to state or local governments as a result of the incorporation of this rule into §215.5.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, this change will benefit the public by clearly identifying a distance education provider type.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

The repeal is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The repeal as proposed is in compliance with Texas Occupations Code, §1701.251, Training Programs; Instructors.

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

§215.17. Distance Education.

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

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CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.1, Minimum Standards for Initial Licensure. Subsection (a) is amended for clarification purposes. Subsection (a)(1)(A) - (C) are amended for clarification of the rule and to be aligned with §215.15, Enrollment Standards and Training Credits. Subsection (j) corrects the month from January to September. Subsection (n) removes the re-issuance of temporary jailer licenses. Subsection (o) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will some fiscal implications as a result of administering the section. The Commission will be required to review applications that are submitted as well as maintain records for each individual licensee.

The Commission has determined that for each year of the first five years the section as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, this change will benefit the public by ensuring that peace officers, county jailers, temporary jailers, and public security officers meet or exceed the minimum standards for initial licensure.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.301, License Required; §1701.307, Issuance of License; and §1701.309, Age Requirement.

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

§217.1. Minimum Standards for Initial Licensure.

(a) The commission shall issue a peace officer, county jailer, temporary jailer, or public security officer license to an applicant who meets the following standards:

(1) minimum educational requirements:

(A) a high school diploma; or

(B) a high school equivalency certificate and evidence of successful completion of at least 12 hours from an institution of higher education with at least a 2.0 grade point average on a 4.0 scale; or

(C) an honorable discharge from the armed forces of the United States after at least 24 months of active duty service.

[(A) has passed a general educational development (GED) test indicating high school graduation level;]

[(B) is a high school graduate; or]

[(C) has 12 semester hours credit from an accredited college or university.]

(2) age requirements:

(A) for peace officers and armed public security officers, is:

(i) 21 years of age, or

(ii) 18 years of age if the applicant has received an associate's degree or 60 semester hours of credit from an accredited college or university, or

(iii) has received an honorable discharge from the armed forces of the United States after at least two years of active service;

(B) for jailers is 18 years of age;

[(2) for peace officers and armed public security officers, is 21 years of age, or 18 years of age if the applicant has received an associate's degree or 60 semester hours of credit from an accredited college or university or has received an honorable discharge from the armed forces of the United States after at least two years of active service; for jailers is 18 years of age;]

(3) is fingerprinted and is subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(4) community supervision history:

(A) has not ever [have] been on court-ordered community supervision or probation for any criminal offense above the grade of Class B misdemeanor, or a Class B misdemeanor within the last ten years from the date of the court order; but

(B) the commission may approve the application of a person who received probation or court-ordered community supervision for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(5) is not currently under indictment for any criminal offense;

(6) conviction history:

(A) has not ever been convicted of an offense above the grade of a Class B misdemeanor, or a Class B misdemeanor within the last ten years; but

(B) the commission may approve the application of a person who was convicted for a Class B misdemeanor at least five (5) years prior to application if an agency administrator sufficiently demonstrates in writing with supporting documentation that mitigating circumstances exist with the case and with the individual applying for licensure, and that the public interest would be served by reducing the waiting period;

(7) has never been convicted of any family violence offense;

(8) is not prohibited by state or federal law from operating a motor vehicle;

(9) is not prohibited by state or federal law from possessing firearms or ammunition;

(10) has been subjected to a background investigation and has been interviewed prior to appointment by representatives of the appointing authority;

(11) has been examined by a physician, selected by the appointing or employing agency, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought and appointment to be made. The appointee must be declared in writing by that professional within 180 days before the date of appointment by the agency to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and

(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test; and

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory medical exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(12) has been examined by a psychologist, selected by the appointing or employing agency, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought and appointment to be made. This examination may also be conducted by a psychiatrist. The appointee must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought within 180 days before the date of appointment by the agency. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; and

(B) the examination may be conducted by a qualified psychologist exempt from licensure by the Psychologist Certification and Licensing Act, Section 22, who is recognized under exceptional circumstances; [and]

(C) for the purpose of meeting the requirements for initial licensure, an individual's satisfactory psychological exam that is conducted as a requirement of a basic licensing course may remain valid for 180 days from the individual's date of graduation from that academy, if accepted by the appointing agency;

(13) has not been discharged from any military service under less than honorable conditions including, specifically;

(A) under other than honorable conditions;

(B) bad conduct;

(C) dishonorable; or

(D) any other characterization of service indicating bad character;

(14) has not had a commission license denied by final order or revoked;

(15) is not currently on suspension, or does not have a voluntary surrender of license currently in effect;

(16) meets the minimum training standards and passes the commission licensing examination for each license sought;

(17) has not violated any commission rule or provision of Occupations Code, Chapter 1701; and

(18) is a U.S. citizen.

(b) A person who fails to comply with the standards set forth in this section shall not accept the issuance of a license and shall not accept any appointment. If an application for licensure is found to be false or untrue, it is subject to cancellation or recall.

(c) For the purposes of this section, the commission will construe any court-ordered community supervision, probation or conviction for a criminal offense to be its closest equivalent under the Texas Penal Code classification of offenses if the offense arose from:

(1) another penal provision of Texas law; or

(2) a penal provision of any other state, federal, military or foreign jurisdiction.

(d) A classification of an offense as a felony at the time of conviction will never be changed because Texas law has changed or because the offense would not be a felony under current Texas laws.

(e) An agency must retain records required under this section for a minimum of five years after the licensee's termination date with that agency. These records must be maintained in a format readily accessible to the commission.

(f) An agency must report to the commission any failure to appoint an individual in the reported capacity within 30 days of the reported date of appointment. Such report must be made in the currently prescribed commission format for termination.

(g) A person must successfully complete the minimum training required for the license sought:

(1) training for the peace officer license consists of:

(A) the current basic peace officer course; or

(B) successful completion of a commission recognized, POST developed, basic law enforcement training course, to include:

(i) out of state licensure or certification; and

(ii) submission of the current eligibility application and fee; or

(C) as an alternative to the current basic peace officer course taken at a licensed academy, the commission may approve an academic alternative program that is part of a degree plan program and consists of the commission-approved transfer curriculum, the commission-approved peace officer sequence courses, and after September 1, 2003, at least an associate's degree;

(2) training for the jailer license consists of the current basic county corrections course(s);

(3) training for the public security officer license consists of the current basic peace officer course;

(4) passing any examination required for the license sought prior to the expiration of the endorsement, and

(5) the licensing application must be submitted to the commission by a law enforcement or other appointing agency in the completed application format currently prescribed by the commission for the license sought.

(h) The commission shall issue a peace officer or jailer license to any person who is otherwise qualified for that license, even if that person is not subject to the licensing law or rules by virtue of election or appointment to office under the Texas Constitution.

(i) A sheriff who first took office on or after January 1, 1994, must be licensed by the commission not later than two years after taking office.

(j) A constable who first took office on or after September [~~January~~] 1, 1985, must be licensed by the commission not later than two years after taking office. A constable taking office after August 30, 1999, must be licensed by the commission not later than 270 days after taking office.

(k) The commission may issue a provisional license, consistent with Occupations Code §1701.311, to an agency for a person to be appointed by that agency. An agency must submit all required applications currently prescribed by the commission and all required fees before the individual is appointed. Upon the approval of the application, the commission will issue a provisional license.

(l) A provisional license is issued in the name of the applicant; however, it is issued to and shall remain in the possession of the agency. Such a license may neither be transferred by the applicant to another agency, nor transferred by the agency to another applicant.

(m) A provisional license may not be reissued and expires:

(1) 12 months from the original appointment date;

(2) on leaving the appointing agency;

(3) on the date the holder fails the peace officer licensing examination for the third time; or

(4) on failure to comply with the terms stipulated in the provisional license approval.

(n) A temporary jailer license [~~may not be reissued and~~] expires:

(1) 12 months from the original appointment date;

(2) on completion of training and passing of the jailer licensing examination; or

(3) on the date the holder fails the jailer licensing examination for the third time.

(o) The effective date of this section is March 1, 2008. [~~September 1, 2007.~~]

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

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Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7722

37 TAC §217.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.3, Application for License and Initial Report of Appointment. Subsection (b) is amended to ensure that the rule is compliant with statute language. Subsection (g) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will no fiscal implications as a result of administering the section.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed amendment. There will be no cost to individuals who are required to comply with the rule as proposed.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, this change will benefit the public by ensuring that emergency telecommunicators application will be approved prior to appointment.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.405 Telecommunicators.

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

§217.3. Application for License and Initial Report of Appointment.

(a) An agency appointing an individual who does not hold a commission license must file an application for the appropriate license with the commission. The application must be approved with a license issuance date before the individual is appointed or commissioned. The application must be completed, signed, and filed with the commission by the agency's chief administrator or designee.

(b) Except for an agency that has 20 or fewer employees or an agency that provides less than 24-hours-a-day service, an agency appointing an individual as a temporary emergency telecommunicator must file an application with the commission. [~~The application must be approved with an appointment date before the individual is appointed.~~] The application must be completed, signed, and filed with the commission by the agency's chief administrator or designee.

(c) An application for a license or initial report of appointment must be submitted in an application format currently accepted by the commission.

(d) An agency that files an application for licensing must keep on file and in a format readily accessible to the commission a copy of the documentation necessary to show each licensee appointed by that agency met the minimum standards for licensing, including weapons proficiency for peace officers.

(e) An agency must retain records required under subsection (d) of this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(f) An agency which submits an application for an individual must report to the commission any failure to appoint that individual in the reported capacity within 30 days of the reported date of appointment. Such report must be made in a currently accepted commission format that reports termination.

(g) The effective date of this section is March 1, 2008. [~~June 1, 2004.~~]

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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37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §217.7(c)(1) and §217.7(c)(2) and adding language which requires a law enforcement agency to keep on file documentation that complies with §1701.451 of the Texas Occupations Code. Subsection (g) is amended to reflect amendments to the Texas Occupations Code that requires the law enforcement agencies to submit the F-5 Employment Termination Report to the Commission and to the licensee within 7 business days after the date of separation. Subsection (i) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for each year of the first five years the amendment as proposed will be in effect there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed amendment. There will be no cost to individuals who are required to comply with the rule as proposed.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, this change will benefit the public by requiring law enforcement agencies to maintain documentation of thorough background checks on law enforcement officers.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Amended §1701.451 Preemployment Request for Employment Termination Report and Submission of Background Check Confirmation Form, and Amended §1701.452 Employment Termination Report.

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

§217.7. Reporting the Appointment and Termination of a Licensee.

(a) Before hiring or appointing a licensee, an agency shall contact the commission, electronically or in writing, to determine whether the commission has employment history records on that individual. If employment history records exist, then the agency shall contact the previous employing agency(ies) in writing to request employment information. [~~to comply with the reporting requirements of Texas Occupations Code, §1701.451.~~]

(b) In order to receive information and/or a copy of the termination form from employment history records regarding the reasons for resignation or termination, the inquiring agency must request the information in writing on the agency's letterhead. The request must be signed by the agency chief administrator or designee. The request must be accompanied by a commission form that authorizes release of that information. This form must be signed and sworn to by the individual who is the subject of the report.

[~~(b) A commission member or other individual may not release the contents of a report or statement submitted unless the request meets the requirements of Subchapter J, Texas Occupations Code, Chapter 1701. The commission is not liable for civil damages for providing information contained in a report or statement maintained by the commission under Subchapter J if the commission released the information as prescribed by Subchapter J.~~]

(c) An agency that appoints an individual who already holds a valid, active license appropriate to that position must notify the commission of such appointment not later than 30 days after the date of appointment. The appointing agency must have on file documentation that the licensee is compliant with weapons qualification according to §217.21 within the last 12 months. Before the law enforcement agency may hire a person licensed under this chapter, the agency head or designee must: [~~This notification must be made in the currently prescribed commission format that reports appointment. This format must be completed, and filed with the commission by the agency's chief administrator.~~]

(1) make a written request to the commission for any employment termination report regarding the person that is maintained by the commission; and

(2) submit to the commission on a form prescribed by the commission confirmation that the agency;

(A) conducted in the prescribed by the commission a criminal background check regarding the person;

(B) obtained the individual's written consent on a form prescribed by the commission for the agency to view the person's employment records;

(C) obtained from the commission all records relevant for employment on the individual, that is maintained by the commission; and

(D) contacted each of the individual's previous law enforcement employers.

(d) Before appointing a licensee whose license has expired, an agency shall ensure that the individual meets the current minimum standards for licensure.

(e) If the appointment is made after a 180-day break in service, the agency must have the following on file and readily accessible to the commission:

(1) a new criminal history check by name, sex, race and date of birth from both TCIC and NCIC;

(2) a new declaration of psychological and emotional health;

(3) a new declaration of lack of any drug dependency or illegal drug use; and

(4) one completed applicant fingerprint card or, pending receipt of such card, an original sworn, notarized affidavit by the applicant of his or her complete criminal history; such affidavit to be maintained by the agency while awaiting the return of completed applicant fingerprint card; and

(5) for peace officers, weapons qualification according to §217.21 within the last 12 months.

(f) An agency must retain records kept under this section for a minimum of five years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(g) When an individual licensed by the commission resigns from appointment or employment with an agency or if an individual's appointment or employment is terminated for any reason, the agency shall submit a report to the commission in the currently prescribed commission format that reports resignation or termination, including all emergency telecommunicators. The report shall be submitted within 7 business [~~30~~] days following the date of resignation or termination. If a licensee has filed a timely grievance or appeal within the personnel policies of the agency, the agency shall not be required to file the F-5 until all administrative remedies have been exhausted. The report shall include an explanation of the circumstances under which the individual resigned, was terminated, or other and one of the following designations: retired, honorably discharged, dishonorably discharged, generally discharged, killed in the line of duty, died, or disabled. The agency shall provide the individual who is the subject of the report a copy of the report within 7 business days after the date of separation. The individual may submit a petition to the commission to contest the information included in the report not later than the 30th day after they receive a copy of the report. They must also submit a copy of the petition to the law enforcement agency.

(h) A report or statement submitted under this section is exempt from disclosure under the Public Information Act, Chapter 552, Government Code, unless the individual resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, and is subject to subpoena only in a judicial proceeding.

(i) The effective date of this section is March 1, 2008. [~~June 1, 2007.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

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Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 936-7722

37 TAC §217.8

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.8, concerning Contesting an Employment Termination Report in accordance with Texas Occupations Code §1701.4525. This amendment changes subsection (e) by transferring the burden of proof by preponderance of the evidence from the individual requesting a hearing for a correction of report to the chief administrative officer of the law enforcement agency. Subsection (f) amends language from proposal for decision to final order. Subsection (j) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, this change will benefit the public by holding law enforcement agencies responsible by providing good information to prospective hiring law enforcement agency administrators of a licensee.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Amended §1701.4525, Request for Correction of Report; Administrative Penalty; Hearing; Appeal.

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

§217.8. Contesting an Employment Termination Report.

(a) A person who is the subject of an employment termination report described in §217.7(g) [~~of this subchapter~~] is entitled to file a petition contesting information included in the employment termination report. The petition for correction of the report must be filed with the executive director and a copy must be served on the law enforcement agency.

(b) A petition described in subsection (a) of this section must be received by the executive director not later than the 30th day after the person receives a copy of the report, and must be accompanied by any evidence offered by the person in support of the requested correction.

(c) The law enforcement agency may submit rebutting evidence not later than the 20th day after the agency receives a copy of the petition.

(d) Upon review of the petition and any rebutting evidence offered by the law enforcement agency, the executive director may either:

(1) recommend that the commission order the chief administrative officer of the law enforcement agency to correct the report; or

(2) refer the dispute to the State Office of Administrative Hearings.

(e) A proceeding conducted pursuant to subsection (d)(2) of this section is a contested case under Chapter 2001, Government Code. The parties to the proceeding shall be the person contesting the employment termination report, the chief administrative officer of the law enforcement agency, and the executive director. The chief administrative officer of the law enforcement agency [~~The person contesting the employment termination report~~] shall have the burden of proof by a preponderance of the evidence. Following the contested case hearing, the administrative law judge shall issue a final order on the petition [~~proposal for decision to the commission~~].

(f) Any party to a proceeding described in subsection (e) of this section may file exceptions to the administrative law judge's final order [~~proposal for decision~~] in accordance with State Office of Administrative Hearings rules and procedures [~~section 223.11(b) of this title~~].

(g) A final order issued by the commission under subsection (d)(1) of this section, or after a hearing described in subsection (e) of this section is enforceable by the commission pursuant to Chapter 1701, Texas Occupations Code and Chapter 2001, Government Code.

(h) A final order issued by the commission under subsection (d)(1) of this section, or after a hearing described in subsection (e) of this section is appealable in accordance with Chapter 2001, Government Code.

(i) A chief administrative officer of a law enforcement agency who fails to comply with a final order issued by the commission under subsection (d)(1) of this section, or after a hearing described in subsection (e) of this section is subject to disciplinary action pursuant to Chapter 1701, Texas Occupations Code, and Chapter 223 of this title.

(j) The effective date of this section is March 1, 2008 [~~June 1, 2006~~].

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

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TRD-200704440

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 4, 2007

For further information, please call: (512) 936-7722

37 TAC §217.11

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.11, concerning Legislatively Required Continuing Education for Licensees. Amendments to subsection (e) eliminate language regarding civil process, and placing the language in §217.15 and new subsection (e) to include the legislatively mandated training requirements for police chiefs that is currently located in the Education Code. This amendment would also include a change addressing training for elected and appointed constables. This change is necessary to ensure that Commission rules remain in compliance with statutory requirements. Subsection (o) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be some fiscal implications to state government as a result of administering the section. The Commission will be charged with reviewing applications and accompanying documentation as a result of this amendment. There will be no fiscal implication to local government.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be some benefit to the public by enabling the chief administrators of municipal police departments, and elected and appointed constables ready access to commission rules pertaining to the legislatively mandated training that they must attend.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of the Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.354, Continuing Education for Deputy Constables, and §1701.3545, Initial Training and Continuing Education for Constables.

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

§217.11. Legislatively Required Continuing Education for Licensees.

(a) Each agency that appoints or employs peace officers, reserve law enforcement officers, jailers, or public security officers shall provide each peace officer, reserve law enforcement officer, jailer, or public security officer it appoints or employs a continuing education program at least once every 24 month unit of a training cycle.

(b) The legislatively required continuing education program for individuals licensed as peace officers shall consist of 40 hours of training every 24 month unit of a training cycle. This rule does not limit the number of hours of continuing education an agency may provide to each peace officer, reserve law enforcement officer, jailer, or public security officer it appoints or employs.

(c) Part of the legislatively required peace officer training must include the curricula and learning objectives developed by the commission, to include:

(1) civil rights, racial sensitivity, and cultural diversity during each current training cycle;

(2) the recognition and documentation of cases that involve child abuse or neglect, family violence, sexual assault, issues concerning sex offender characteristics during each current training cycle. If an agency chief administrator determines these subjects to be inconsistent with the peace officer's assigned duties, the chief administrator may substitute other training determined to be consistent with the officer's assigned duties and report the substitution to the commission; and

(3) supervision issues for each peace officer appointed to their first supervisory position, this training must be completed within 24 months following the date of appointment as a supervisor.

(d) Individuals licensed as reserve law enforcement officers, jailers, or public security officers shall meet the requirements in subsection (c)(1) of this section.

(e) For appointed or elected constables:

(1) An individual appointed or elected to that individual's first position as constable must complete at least 40 hours of initial training for new constables in accordance with Texas Occupations Code, §1701.3545(c).

(2) Each constable must complete at least 40 hours of continuing education in accordance with Texas Occupations Code, §1701.3545(b), each 48-month period.

(f) [~~(e)~~] Each constable and deputy constable shall also complete a 20 hour course of training in civil process during each current training cycle. [~~The commission may waive the requirement for civil process training if:~~]

[~~(1) the constable requests a waiver for the deputy constable based on a representation that the deputy constable's duty assignment does not involve civil process responsibilities; or~~]

[~~(2) the constable or deputy constable requests a waiver because of hardship and the commission determines that a hardship exists.~~]

(g) For individuals appointed as "chief" or "police chief" of a police department:

(1) A newly appointed or elected police chief shall complete the initial training program for new chiefs not later than the second anniversary of that individual's appointment or election as chief.

(2) Each police chief must receive at least 40 hours of continuing education provided by the Bill Blackwood Law Enforcement Management Institute, as per §96.641, Education Code, each 24-month period.

(h) [(f)] The commission shall provide adequate notice to agencies and licensees of impending non-compliance with the legislatively required continuing education.

(i) [(g)] The chief administrator of an agency that has licensees who are in non-compliance shall, within 30 days of receipt of notice of non-compliance, submit a report to the commission explaining the reasons for such non-compliance.

(j) [(h)] The commission may suspend or deny renewal of a license for failure to complete the legislatively required continuing education program at least once every training unit.

(k) [(i)] The commission may take action against a licensee for failure to complete the required training in either or both of the 24 month units within a training cycle.

(l) [(j)] Individuals licensed as peace officers shall complete the legislatively required continuing education program required under this section beginning in the first complete 24 month unit immediately following the date of licensing.

(m) [(k)] All peace officers must meet all continuing education requirements except where exempt by law.

(n) [(l)] Licensees who have met the current legislatively required continuing education will have their license(s) automatically renewed on the last day of the training unit.

(o) [(m)] The effective date of this section is March 1, 2008. [December 1, 2006.]

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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Timothy Braaten
Executive Director
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For further information, please call: (512) 936-7722

37 TAC §217.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §217.15, concerning Waiver of Legislatively Required Continuing Education. Subsections (e)(1) and (e)(2) are added to include a waiver for civil process for deputy constables. Subsection (h) is added to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there be will some fiscal implications to state government as a result of administering the section. The Commission will be charged with reviewing applications and accompanying documentation as a result of this amendment. There will be no fiscal implication to local government.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying rules and including procedures for deputy constables.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.351, Continuing Education Required for Peace Officers.

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

§217.15. Waiver of Legislatively Required Continuing Education.

(a) The executive director may waive the legislatively required continuing education for a licensee, as required by the Occupations Code, Chapter 1701, if the licensee demonstrates the existence of mitigating circumstances justifying the licensee's failure to obtain the legislatively required continuing education.

(b) Mitigating circumstances are defined as:

(1) catastrophic illness or injury that prevents the licensee from performing active duty for longer than 12 months; or

(2) active duty with the armed forces of the United States, or a reserve component of the armed forces of the United States for a time period in excess of 12 months.

(c) A request for a waiver of the legislatively required continuing education under this section shall be in writing, accompanied by verifying documentation, and shall be submitted to the executive director with a copy to the chief administrator of the licensee's appointing agency not less than 30 days prior to the expiration of the license.

(d) Absent exigent circumstances, a request for a waiver under this section shall be submitted to the executive director not less than 90 days prior to expiration of the license.

(e) The commission may waive the requirement for civil process training if:

(1) the constable requests a waiver for the deputy constable based on a representation that the deputy constable's duty assignment does not involve civil process responsibilities, or

(2) the constable or deputy constable requests a waiver because of hardship and the commission determines that a hardship exists.

(f) [(e)] Within 20 days of receiving a request for a waiver under this section, the executive director shall notify the licensee and the chief administrator of the licensee's appointing agency as to whether the request has been granted or denied.

(g) [(f)] A licensee, whose request for a waiver under this section is denied, is entitled to a hearing in accordance with Texas Government Code, Chapter 2001. The licensee must request a hearing within

20 days of the waiver being denied. In a hearing pursuant to this subsection, the licensee is the petitioner and the executive director is the respondent. The burden of proof shall be on the licensee to show why he or she is entitled to a waiver of the legislatively required continuing education requirement.

(h) [~~(g)~~] The effective date of this section is March 1, 2008. [~~March 1, 2001.~~]

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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Timothy Braaten
Executive Director
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CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS

37 TAC §219.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §219.1, concerning Eligibility to Take State Examinations. Amendments to subsection (a) changes the language of student to individual. Amendments to subsection (b) include an individual not licensed in Texas who qualifies with training from accepted federal positions, military police, and TDCJ corrections training. In subsections (j) and (k), the expiration of endorsement is removed to allow an individual who did not use their three exam attempts in the 180-day time frame. This allows the individual to pay a fee and apply for their final attempts after meeting requirements. Subsection (k) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will no fiscal implications to state or local governments as a result of administering the proposed section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by better identifying individuals qualified to apply for the state exam endorsement.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.304, Examination.

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

§219.1. Eligibility to Take State Examinations.

(a) To be eligible to take a state licensing examination, an individual [~~a student~~] must have a valid endorsement.

(b) A valid endorsement is based on:

(1) a previously completed commission approved basic licensing course; [~~.~~]

(2) [~~(3)~~] an expired commission licensing examination result,[~~;~~] over two years old; [~~.~~]

(3) reactivating a Texas license under §217.19;

(4) [~~(2)~~] out of state training, licensing, or certification the Commission accepts as a peace officer, federal or military training; or

(5) county corrections training accepted from Texas Occupations Code Chapter 1701, §1701.310.

(c) A valid endorsement shall:

(1) be in the approved commission format;

(2) be a completed original document bearing all required signatures;

(3) state that the examinee has met the current minimum training standards appropriate to the license sought; and

(4) include a date of issue and an expiration date.

(d) For an endorsement to be or remain valid:

(1) it must not be issued in error or based on false or incorrect information; specifically, the applicant must meet the current enrollment standards; or if previously licensed, have met the enrollment standards at initial licensure; and

(2) it must be presented before its expiration date.

(e) An endorsement to take an examination is issued by a training coordinator, the registrar of a licensed academic alternative provider, the executive director of the commission, or a person authorized by the executive director. Duplicate endorsements may only be issued by the executive director of the commission.

(f) In order to issue the endorsement, the person issuing such an endorsement, other than a commission employee, must have on file for the person to whom it is issued, written documentation of successful completion of the basic licensing course for the license sought; and

(1) written documentation that the person to whom it is issued was previously licensed by the commission, or

(2) if the person is not currently licensed by the commission, written documentation that the applicant meets the current enrollment standards.

(g) In order to receive an endorsement from the commission, individuals must meet all current requirements, to include submitting any required application currently prescribed by the commission, requested documentation, and any required fee.

(h) An examination may not be taken by an individual who already holds an active license or certificate to be awarded upon passing that examination.

(i) Once an [~~initial~~] endorsement is issued, an examinee will be allowed three opportunities to pass the examination while the examinee's endorsement remains valid. After three failures [~~or expiration of the endorsement~~], the examinee must re-qualify by repeating the entire training course for the license sought. If an attempt is invalidated for any reason, except for a commission error, that attempt will count as one of the three opportunities.

(j) Once an [~~initial~~] endorsement from an academic alternative provider expires after three failures [~~or expiration of the endorsement~~] individuals will be required to re-qualify by completing the standard coursework for the license sought.

(k) The effective date of this section is March 1, 2008. [~~June 1, 2006.~~]

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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Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7722

37 TAC §219.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §219.3, concerning Examination Administration. Amendments to subsection (b)(11) for exam administration changes are due to the electronic testing eliminating the paper answer sheets. Subsection (c) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by grading of exams is immediate and individual do not have to wait for results.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.305, Examination Results.

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

§219.3. Examination Administration.

(a) Each examination may be given by a test administrator or by one or more proctors under the direction of the test administrator. Each administrator or proctor shall be either:

(1) a member of the commission staff; or

(2) another person designated by the executive director.

(b) A member of the commission staff, a test administrator, or a proctor shall:

(1) set the date, time, and location of any examination;

(2) ensure that the examination remains secure and is conducted under conditions warranting honest results;

(3) monitor the examination while in progress;

(4) control entrance to and exit from the examination site;

(5) permit no one in the room while the examination is in progress except proctors, examinees, and commission staff;

(6) assign or re-assign seating;

(7) bar admission to or dismiss any examinee who is not qualified or eligible to sit for the examination;

(8) collect all examination materials from anyone who is dismissed;

(9) comply with any testing agreements;

(10) record the fact of examination on the endorsement and collect any fraudulent or questionable endorsement; and

(11) collect all endorsements and return them to the commission [~~along with all completed answer sheets~~].

(c) The effective date of this section is March 1, 2008. [~~June 1, 2004.~~]

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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Timothy Braaten
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37 TAC §219.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to §219.7, concerning Scoring of Examinations. Amendments remove wording in subsection (a) that no longer applies after moving to electronic testing: results are immediate. Subsection (h) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications to state or local governments as a result of administering the proposed section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public eliminating the need to notify training coordinators or chief administrators. Results are immediate for administrators.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rule as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

The amendment is proposed under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.305, Examination Results.

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

§219.7. Scoring of Examinations.

(a) All official grading and notification shall come from the Austin office of the commission. A notice containing the results will be mailed to the examinee or faxed to the training coordinator or chief administrator [~~, upon request, as soon as possible. If there is a delay, the commission will notify the examinee (the training coordinator or chief administrator, if known), electronically or in writing of the reasons for the delay~~].

(b) The examination results forwarded to training coordinators shall include analyses of the examinees' performances.

(c) For a score to be or remain valid the examinee must:

(1) complete the answer sheet, or otherwise record the answers, as instructed; and

(2) continue to meet current enrollment standards.

(d) An examination score expires two years from the date of its entry into commission records.

(e) The commission may deny, revoke, or suspend any license or certificate held by a person who violates or attempts to violate any provisions of this section.

(f) If the commission invalidates an examination score for any reason, it may also, in the discretion of the executive director and for good cause shown, require a reexamination to obtain a substitute valid score.

(g) Unless provided otherwise by rule, the minimum passing percentage on each examination shall be 70. The commission may, in its discretion, invalidate any question.

(h) The effective date of this section is March 1, 2008. [~~March 1, 2003.~~]

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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Timothy Braaten
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For further information, please call: (512) 936-7722

CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.1, Proficiency Certificate Requirements. Proposed amendments were made to set out the procedure for which a peace officer or county jailer is determined for calculating service time and proficiency certificates. This rule proposal is created specifically to provide clarity and guidance for maintaining licensee record accuracy. Subsection (f) is amended to reflect the effective date for these changes.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be some fiscal implications as a result of administering the amended section. The Commission will be charged with reviewing applications and accompanying documentation as a result of this proposed amendment.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the amended section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that peace officer and county jailers meet or exceed the minimum standards for licensure.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rules as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.304, Examination.

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

§221.1. Proficiency Certificate Requirements.

(a) To qualify for proficiency certificates, applicants must meet all the following proficiency requirements:

(1) submit any required application currently prescribed by the commission, requested documentation, and any required fee;

(2) have an active license or appointment for the corresponding certificate (not a requirement for Mental Health Officer Proficiency, Homeowners Insurance Inspector Proficiency, Firearms Instructor Proficiency, Firearms Proficiency for Community Supervision Officers, or Instructor Proficiency);

(3) officers licensed after the effective date of this rule must not currently have license(s) under suspension by the Commission; [~~not ever have had a license or certificate issued by the commission suspended or revoked;~~]

(4) meet the continuing education requirements for the previous training cycle; and

[~~(5) officers licensed after the effective date of this rule must meet the current enrollment standards; and~~]

(5) [~~(6)~~] for firearms related certificates, not be prohibited by state or federal law or rule from attending training related to firearms or from possessing a firearm.

(b) The commission may refuse an application if:

(1) an applicant has not been reported to the commission as meeting all minimum standards, including any training or testing requirements;

(2) an applicant has not affixed any required signature;

(3) required forms are incomplete;

(4) required documentation is incomplete, illegible, or is not attached; or

(5) an application contains a false assertion by any person.

(c) The commission shall cancel and recall any certificate if the applicant was not qualified for its issue and it was issued:

(1) by mistake of the commission or an agency; or

(2) based on false or incorrect information provided by the agency or applicant.

(d) If an application is found to be false, any license or certificate issued to the appointee by the commission will be subject to cancellation and recall.

(e) Academic degree(s) must be issued by an accredited college or university.

(f) The effective date of this section is March 1, 2008. [~~March 1, 2002.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704446
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 936-7722

37 TAC §221.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.3, Peace Officer Proficiency. Proposed amendments were made to subsection (b)(3) to include crisis intervention/de-escalation training required by §1701.402(g) as amended by H.B. 1473, 79th Texas Legislature, Regular Session. Subsection (c)(3) is added as required by §1701.402 (g), H.B. 1473, 79th Texas Legislature, Regular Session. Subsection (e) is amended to reflect the effective date for these proposed changes.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no fiscal implications as a result of administering the amended section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the amended section.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by requiring peace officers to receive training in crisis intervention and de-escalation techniques to facilitate interaction with persons with mental impairments to receive these proficiency certificates.

The Commission has determined that, for each year of the first five years the section as proposed will be in effect, there be will no additional cost to individuals required to comply with the rules as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.402, Proficiency Certificates.

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

§221.3. Peace Officer Proficiency.

(a) To qualify for a basic peace officer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) one year experience as a peace officer; and

(2) successful completion of a field training course and a course that includes instruction provided by the employing agency on federal and state statutes that relate to employment issues affecting peace officers, including:

(A) civil service;

(B) compensation, including overtime compensation, and vacation time;

(C) personnel files and other employee records;

(D) management-employee relations in law enforcement organizations;

(E) work-related injuries;

(F) complaints and investigations of employee misconduct; and

(G) disciplinary actions and the appeal of disciplinary actions.

(b) To qualify for an intermediate peace officer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) a basic peace officer certificate;

(2) one of the following combinations of training hours or degrees and peace officer experience:

(A) 400 training hours and eight years;

(B) 800 training hours and six years;

(C) 1200 training hours and four years or an associate's degree and four years; or

(D) 2400 training hours and two years or a bachelor's degree and two years.

(3) if the basic peace officer certificate was issued or qualified for on or after January 1, 1987, the licensee must also complete all of the current intermediate peace officer certification courses, which include:

(A) Child Abuse Prevention and Investigation;

(B) Crime Scene Investigation;

(C) Use of Force;

(D) Arrest, Search and Seizure;

(E) Spanish for Law Enforcement;

(F) Asset Forfeiture;

(G) Racial Profiling; [and]

(H) Identity Theft; and

(I) Crisis Intervention Techniques.

(c) To qualify for an advanced peace officer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) an intermediate peace officer certificate; [and]

(2) one of the following combinations of training hours or degrees and peace officer experience:

(A) 800 training hours and 12 years;

(B) 1200 training hours and nine years or an associate's degree and six years;

(C) 2400 training hours and six years or a bachelor's degree and five years; and

(3) If an Intermediate proficiency certificate was earned before September 1, 2006, complete the commission approved course of instruction in crisis intervention techniques.

(d) To qualify for a master peace officer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) an advanced peace officer certificate; and

(2) one of the following combinations of training hours or degrees and peace officer experience:

(A) 1200 training hours and 20 years or an associate's degree and 12 years;

(B) 2400 training hours and 15 years or a bachelor's degree and nine years;

(C) 3300 training hours and 12 years or a master's degree and seven years, or

(D) 4000 training hours and 10 years or a doctoral degree and five years.

(e) The effective date of this section is March 1, 2008. [June 1, 2004.]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704447
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 936-7722

37 TAC §221.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.5, Jailer Proficiency. Amendments were made to subsection (b)(1) - (4) to allow proficiency certificate application for licensees who have had a suspension and who have fulfilled their suspension term and completed reinstatement requirements. Subsection (e) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be minimal fiscal implications as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that county jailers will have the proper credentials for receiving proficiency certificates.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rules as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.402, Proficiency Certificates.

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

§221.5. Jailer Proficiency.

(a) To qualify for a basic jailer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) one year of experience as a jailer; and

(2) successful completion of a field training course and a course that includes instruction provided by the employing agency on federal and state statutes that relate to employment issues affecting jailers, including:

(A) civil service;

(B) compensation, including overtime compensation, and vacation time;

(C) personnel files and other employment records;

(D) management-employee relations in law enforcement organizations;

(E) work-related injuries;

(F) complaints and investigations of employee misconduct; and disciplinary actions and the appeal of disciplinary actions.

(b) To qualify for an intermediate jailer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) a basic jailer certificate;

(2) [~~(1)~~] training related to the management and operation of a correctional facility (including county jails); and

(3) [~~(2)~~] one of the following combinations of training hours or degrees and jailer experience:

(A) 400 training hours and six years;

(B) 800 training hours and four years;

(C) 1200 training hours and two years or an associate's degree and two years; or

(D) 2400 training hours and one year or a bachelor's degree and one year.

(4) [~~(3)~~] if the basic jailer certificate was issued or qualified for on or after March 1, 1993, the applicant must also complete all of the current intermediate jailer certification courses, which include:

(A) Suicide Detection and Prevention in Jails;

(B) Inmate Rights and Privileges;

(C) Interpersonal Communications in the Correctional Setting;

(D) Use of Force in a Jail Setting; and

(E) Spanish for Law Enforcement.

(c) To qualify for an advanced jailer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) an intermediate jailer certificate; and

(2) one of the following combinations of training hours or degrees and jailer experience:

(A) 800 training hours and eight years;

(B) 1200 training hours and six years or an associate's degree and six years; or

(C) 2400 training hours and four years or a bachelor's degree and four years.

(d) To qualify for a master jailer proficiency certificate, an applicant must meet all proficiency requirements including:

(1) an advanced jailer certificate; and

(2) one of the following combinations of training hours and jailer experience:

(A) 1200 training hours and 20 years, or an associate's degree and 12 years;

(B) 2400 training hours and 15 years, or a bachelor's degree and nine years;

(C) 3300 training hours and 12 years, or a master's degree and seven years; or

(D) 4000 training hours and 10 years, or a doctoral degree and five years.

(e) The effective date of this section is March 1, 2008. [~~June 1, 2004.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704448
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 936-7722

37 TAC §221.23

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.23, Academic Recognition Award. Amendments were made to subsection (a)(2) by including an associate's degree to be added for recognition. Subsection (d) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by including and recognizing an associate's degree as a higher education for peace officers and the public will have a more educated officer.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rules as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.402, Proficiency Certificates.

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

§221.23. Academic Recognition Award.

(a) To qualify, an applicant for an academic recognition award must meet all proficiency requirements including:

(1) at least two years experience as either a peace officer, reserve, jailer, or a telecommunicator; and

(2) graduation from an accredited college or university with at least an associate's [~~a bachelor's~~] degree.

(b) The award consists of a certificate and a uniform ribbon, pin, or other insignia.

(c) The commissioning agency retains authority to permit the wearing and placement of the ribbon, pin, or other insignia.

(d) The effective date of this section is March 1, 2008. [~~March 1, 2001.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704449

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 4, 2007

For further information, please call: (512) 936-7722

37 TAC §221.31

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §221.31, Retired Peace Officer Firearms Proficiency. Amendments were made to subsection (a) by providing clarification to the rule. Subsection (d) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be some fiscal implications as a result of administering the proposed section. The Commission will be charged with reviewing applications and accompanying documentation as a result of this amendment.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by clarifying Commission rules.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rules as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.357, Weapons Proficiency for Certain Retired Peace Officers and Federal Criminal Investigators.

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

§221.31. Retired Peace Officer Firearms Proficiency.

(a) The head of a state or local law enforcement agency [~~sheriff's office, constable's office, city marshal, municipal department, or the Parks and Wildlife Commission~~] may issue a proficiency certificate to an honorably retired peace officer in accordance with the Occupations Code 1701.357.

(b) The head of a state law enforcement agency may issue a proficiency certificate to an honorably retired special agent from the Federal Bureau of Investigation or Federal Drug Enforcement Agency in accordance with Occupations Code 1701.357.

(c) The minimum qualification requirements shall be the same as §217.21(c).

(d) The effective date of this section is March 1, 2008. [~~June 1, 2004.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704450

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7722

CHAPTER 223. ENFORCEMENT

37 TAC §223.17

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §223.17, Reinstatement of a License. Amendments were made to subsection (a) to delete language in regard to expiration of the license. Subsection (c) is amended to reflect the effective date of these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be some fiscal implications as a result of administering this section. The Commission will be charged with reviewing applications and accompanying documentation as a result of this proposed amendment.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that individuals that have not completed the legislatively mandated continuing education may reinstate their license.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rules as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.351, Continuing Education Required for Peace Officers.

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

§223.17. Reinstatement of a License.

(a) In order to reinstate a suspended or probated license, or a license that has been suspended due to lack of meeting the legislative required continuing education, a licensee must complete the following requirements:

(1) make application, in the format currently prescribed by the commission;

(2) submit the reinstatement fee; and

(3) meet the current continuing education requirements.

(b) If the suspension results in a break in service of over two years, then the reinstatement procedure includes the following requirements for attempting the licensing exam:

(1) make application, in the format currently prescribed by the commission;

(2) submit any required fee(s); and

(3) upon approval of the application, the commission will issue the holder of a suspended license an endorsement of eligibility to take the required licensing examination. If failed three times, the applicant may not be issued another endorsement of eligibility until successful completion of the current licensure course.

(c) The effective date of this section is March 1, 2008. [~~March 1, 2001.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704451

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: November 4, 2007

For further information, please call: (512) 936-7722

CHAPTER 225. SPECIALIZED LICENSES

37 TAC §225.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §225.1, Issuance of Jailer License through a Contract Jail Facility. Amendments were made to subsection (e) to reflect the original appointment date of a jailer instead of the date the license was issued. Subsection (g) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section as no procedural changes are required.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by applying Texas Occupation Code 1701.152 (utilize agency appointment date) to jailers.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rules as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law En-

forcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.307 Issuance of License, and §1701.310 Appointment of County Jailer; Training Required.

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

§225.1. Issuance of Jailer License through a Contract Jail Facility.

(a) The commission shall issue a jailer license to an individual appointed by a contract jail facility who meets all the minimum standards for jailer licensure, and submits both the current commission application and any required fees.

(b) A contract jail facility that appoints an individual who already holds a valid, active jailer license shall meet the appointment requirements of §217.7, including submitting any required fee.

(c) Before appointing a licensee whose license has expired, a contract jail facility shall meet the appointment requirements of §217.7, including submitting any required fee, and ensure that the individual meets the current minimum standards for licensure.

(d) A contract jail facility that appoints an individual with a 180-day break in service shall meet the appointment requirements of §217.7, including submitting any required fee.

(e) The commission shall issue a temporary jailer license to an individual appointed by a contract jail facility who meets all the minimum standards for licensure except for training and testing, and submits both the current commission application and any required fees. A temporary jailer license expires 12 months from the appointment date. [~~original issue date, and may not be reissued.~~]

(f) Individuals licensed as jailers appointed by a contract jail facility shall meet the continuing education requirements in §217.11.

(g) The effective date of this section is March 1, 2008. [~~June 1, 2004.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704452
Timothy Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 936-7722

37 TAC §225.3

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code, §225.3. Issuance of Peace Officer License through a Medical Corporation. Amendments were made to subsection (c) to reflect changes in licensing terminology currently used by the Commission. Subsection (f) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will not be fiscal implications to state or local governments as a result of administering the proposed section as no procedural changes are required.

The Commission has determined that for the each year of the first five years the section as proposed will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the proposed section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by updating subsection (c) to reflect changes in licensing terminology currently used by the Commission.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rules as proposed.

Comments may be submitted in writing to Mr. Timothy A. Braaten, Executive Director, Texas Commission on Law Enforcement Officer Standards and Education, 6330 U.S. Highway 290 East, Suite 200, Austin, TX 78723.

This section is proposed for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers of Commission; Rulemaking Authority, which authorizes the Commission to promulgate rules for administration of this chapter.

The rule amendment as proposed is in compliance with Texas Occupations Code, §1701.303 License Application; Duties of Appointing Entity.

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

§225.3. Issuance of Peace Officer License through a Medical Corporation.

(a) The commission shall issue a peace officer license to an individual appointed by a medical corporation who meets all the minimum standards for peace officer licensure, and submits both the current commission application and any required fees.

(b) A medical corporation that appoints an individual who already holds a valid, active peace officer license shall meet the appointment requirements of §217.7, including submitting any required fee.

(c) Before appointing a licensee whose peace officer license that is not currently active, [~~has expired,~~] a medical corporation shall meet the appointment requirements of §217.7, including submitting any required fee, and ensure that the individual meets the current minimum standards for licensure.

(d) A medical corporation that appoints an individual with a 180-day break in service shall meet the appointment requirements of §217.7, including submitting any required fee.

(e) Individuals licensed as peace officers appointed by a medical corporation shall meet the continuing education requirements in §217.11.

(f) The effective date of this section is March 1, 2008. [~~June 1, 2004.~~]

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704453
Timothy Braaten
Executive Director
Texas Commission on Enforcement Officer Standards and Education
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 936-7722

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 5. TEXAS VETERANS LAND BOARD

CHAPTER 176. VETERANS HOMES

40 TAC §176.1

The State of Texas Veterans Land Board (TVLB) proposes an amendment to 40 Texas Administrative Code (TAC) §176.1 to update the reference to the state agency that regulates the Texas State Veterans Home program. As currently written, this rule proposal refers to the Texas Department of Human Services or TDHS. The 78th Legislature reorganized TDHS. The organization that now regulates the nursing home industry under Chapter 242, Human Resources Code, is known as the Texas Department of Aging and Disability Services or DADS. The proposed amendment to 40 TAC §176.1 reflects that name change.

Larry Laine, Chief Clerk, has determined that, during the first five-year period the proposed rule amendment is in effect, there will be no negative fiscal implications for state or local government or small businesses.

Mr. Laine has also determined that, during the first five-year period the rule proposal is in effect, the public will benefit as these rules allow for otherwise eligible veterans residing outside the State of Texas the opportunity to reside in the Texas State Veterans Homes, enabling such veterans to be closer to their families during this time of need.

Comments may be submitted to Walter Talley, Legal Services Division, General Land Office of the State of Texas, 1700 N. Congress Avenue, Austin, Texas 78701 or by facsimile (512) 463-6311, by no later than 30 days after publication in the *Texas Register*.

Amendments to 40 TAC §176.1 are proposed under Texas Natural Resources Code, §164.004, which provides the TVLB with the authority to adopt rules necessary and convenient to administer Chapter 164, §§164.001 - 019, Texas Natural Resources Code.

The proposed amendment to §176.1 will affect §164.005 of the Texas Natural Resource Code.

§176.1. Definitions.

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

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

(10) DADS--Texas Department of Aging and Disability Services [~~TDHS--The Texas Department of Human Services~~].

(11) (No change.)

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

Filed with the Office of the Secretary of State on September 17, 2007.

TRD-200704297
Trace Finley
Deputy Commissioner, Policy and Environmental Affairs
Texas Veterans Land Board
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 305-8598

40 TAC §176.7

The Texas Veterans Land Board (VLB) proposes the amendments to 40 Texas Administrative Code (TAC) §176.7 regarding the admissions requirements to the Texas State Veterans Homes Program. The amendments clarify the admission criteria and allow for the admission of otherwise eligible residents currently residing outside of the state of Texas.

The amendments proposed to subsection (a) deletes language that has been determined no longer necessary for admission requirements. The added language proposed to this subsection clearly identifies the purpose for this rule. The proposed amendments also re-designate the subsequent subsections to add to the overall clarity of this rule proposal.

The amendments proposed to new designated subsection (c) deletes redundant language that defines the term veteran for the purpose of this rule. In newly designated subsection (b), veteran is defined in accordance with Texas Natural Resources Code, §161.001(a)(7). Utilizing this definition continues to make uniform the term "veteran" throughout the VLB's programs.

The proposed amendments add new subsection (c)(4) that provides for the admission of otherwise eligible veterans who currently reside outside the state of Texas. Under the current rule §176.7, the residency requirement for admission into the Homes requires that the applicant is "a bona fide resident of Texas at the time of application for admission or was a bona fide resident of Texas at the time of enlistment, induction, commissioning, appointment or drafting, or who has resided in Texas continuously for at least one year immediately before applying for admission." The VLB received several inquiries from families residing in Texas who sought admission into the Texas State Veterans Homes (Homes) for veteran family members residing outside of the state of Texas. These veterans met all eligibility requirements for admission into the Homes except for the residency requirement established under §176.7. The families were requesting admission to bring their family member closer to home for the provision of the veteran's skilled nursing care needs. Approximately a year ago, the Veterans Land Board (Board) passed a Resolution allowing the Texas State Veterans Home Program (Program) to waive the residency requirement for applicants residing out of state that would otherwise be eligible to reside in the Homes. The Board wanted to ensure that the Program would utilize this provision before making the waiver of residency part of the admission criteria as established in §176.7 under the rules.

Over the past year, the Program has admitted 12 residents under the Resolution's provisions. The Board concluded that this

represented a great need for the change in the residency requirements under certain circumstances. The proposed amendment for subsection (c)(4) fulfills that need.

Finally the proposed amendments delete current subsection (c)(9). The Program staff determined that criteria no longer applied to Program's admission policy.

Larry Laine, Chief Clerk, has determined that, during the first five-year period the proposed rule amendment is in effect, there will be no negative fiscal implications for state or local government or small businesses.

Mr. Laine has also determined that, during the first five-year period the proposed rule amendment is in effect, the public will benefit as these rules allow for otherwise eligible veterans residing outside the State of Texas the opportunity to reside in the Texas State Veterans Homes, enabling such veterans to be closer to their families during this time of need.

Comments may be submitted to Walter Talley, Legal Services Division, General Land Office of the State of Texas, 1700 N. Congress Avenue, Austin, Texas 78701 or by facsimile (512) 463-6311, by no later than 30 days after publication in the *Texas Register*.

Proposed amendments to 40 TAC §176.7 are proposed under Texas Natural Resources Code, §164.004, which provides the TVLB with the authority to adopt rules necessary and convenient to administer Chapter 164, §§164.001 - 164.019, Texas Natural Resources Code.

§176.7. Admissions Requirements.

(a) The purpose of this section is to set forth the requirements for admittance of applicants to a SVH. [~~The Board finds that it protects the best interests of the State Veterans Homes Program to qualify the program for all available funding from the USDVA.~~]

[~~(1)~~] USDVA requires that the program only admit to a SVH those applicants who satisfy all medical, financial, and military service requirements set forth in USDVA regulations, as they are amended from time-to-time.

(b) [~~(2)~~] For purposes of this section, the term "veteran" means a person who meets the requirement of veteran as defined in §161.001(a)(7) Texas Natural Resources Code.

(c) [~~(b)~~] To be eligible for admission to a SVH, an applicant must satisfy one of the following:

(1) be a veteran who:

[~~(A) is at least eighteen years of age;~~]

[~~(B) is a bona fide resident of Texas at the time of application for admission;~~]

[~~(C) was a bona fide resident of Texas at the time of enlistment, induction, commissioning, appointment or drafting, or who has resided in Texas continuously for at least one year immediately before applying for admission;~~]

(A) [~~(D)~~] satisfies the USDVA guidelines and regulations relating to the need for nursing home care; and

(B) [~~(E)~~] is in one of the following categories:

(i) veterans with service-connected disabilities;

(ii) veterans who are former prisoners of war;

(iii) veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;

(iv) veterans who receive disability compensation under 38 U.S.C.A. §1151;

(v) veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;

(vi) veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C.A. §1151, but only to the extent that such veterans' continuing eligibility for nursing home care is provided for in the judgment or settlement described in 38 U.S.C.A. §1151;

(vii) veterans who USDVA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C.A. §1722(a);

(viii) veterans of the Mexican border period or of World War I;

(ix) veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Persian Gulf War, as provided in 38 U.S.C.A. §1710(e); or

(x) veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C.A. §1710(f) and §1710(g).

(2) is a spouse, or surviving spouse, of a veteran if the spouse is at least eighteen (18) years of age and has been a bona fide resident of Texas continuously for at least one (1) year immediately before applying for admission; or

(3) is a parent, all of whose children died while serving in the armed forces of the United States, and who has resided in Texas continuously for at least one year immediately before applying for admission.

(4) is a veteran residing out of state who:

(A) resides currently at an out-of-state nursing home;

(B) desires transfer to a SVH;

(C) is otherwise an eligible veteran under this section but for the fact that they reside out-of-state;

(D) has not lived in Texas continuously for at least one year immediately before applying for admission to a SVH; and can be accommodated with a space in the desired SVH.

(d) [~~(c)~~] The Board may establish, by resolution from time-to-time, procedures for processing applications for admission to each SVH. Based on the availability of space, the Board may also establish a priority system for admitting applicants according to one or more factors, including, but not limited to:

(1) the priority of a veteran over the spouse or parent of a veteran;

(2) the necessity to comply with USDVA regulations governing a SVH, including, but not limited to, the requirement that 75 percent (75%) of a SVH's residents be veterans. However, if the facility was constructed or renovated solely with State funds, only 50 percent (50%) of the residents must be veterans;

(3) whether an applicant meets the eligibility criteria in 40 TAC, Part 5, Chapter 175, §175.2 relating to Loan Eligibility Requirements, and is thereby eligible for other Board benefits;

(4) the date upon which the application for admission was made;

(5) whether the applicant's spouse is also an applicant or a current resident of a SVH;

(6) a request to transfer a resident from one SVH to another to be nearer to family members;

(7) the level of medical treatment and care required by the applicant;

(8) the characteristics and extent of financial resources available to the applicant; and

[~~(9) whether the applicant would otherwise meet institutional Medicaid eligibility criteria, as determined by the TDHS, but state Medicaid payments will not be used as part of the applicant's payment for care and residence costs; and~~]

(9) [~~(10)~~] such other criteria as the Board may determine are in the best interest of 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 September 17, 2007.

TRD-200704298
Trace Finley
Deputy Commissioner, Policy and Environmental Affairs
Texas Veterans Land Board
Earliest possible date of adoption: November 4, 2007
For further information, please call: (512) 305-8598

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 of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 255. FINANCE

1 TAC §255.4

The Commission on State Emergency Communications (CSEC) adopts amendments to §255.4, defining the terms "local exchange access line" and "equivalent local exchange access line," with non-substantive changes to the proposed figure that is part of the rule but without changes to the proposed text as published in the March 23, 2007, issue of the *Texas Register* (32 TexReg 1691). CSEC has determined that changes to the proposed text do not require that the section be re-proposed as they do not (1) change the nature or scope of the rule so much that it could be deemed a different rule; (2) affect individuals who would not have been impacted by the rule as proposed; or (3) impose more stringent requirements for compliance.

As a result of public comment, CSEC adopts proposed §255.4 by replacing the proposed figure at the end of §255.4(c). Replacement of the proposed figure does not warrant re-proposing the section as the replacement figure merely quantifies into ranges the formulas that were in the published figure and sets a maximum number of fees to be paid in each range by using a predetermined midpoint for purposes of applying the formulas. As adopted with the replacement figure, the rule's scope has not changed, does not impact additional individuals, and compliance therewith is less stringent than the rule as published. Accordingly, republishing the rule is not required under the Texas Administrative Code.

COMMENTS

Written comments were received from the following: GTE Southwest Incorporated d/b/a Verizon Southwest ("Verizon"), the Texas 9-1-1 Alliance (the "Alliance"), AT&T Communications of Texas L.P, and Southwestern Bell Telephone, L.P., d/b/a AT&T Texas (collectively, "AT&T").

Verizon commented that it currently does not have a billing code that represents telephone numbers or the ability to use a billing calculator to calculate 9-1-1 fees based on telephone numbers. Accordingly, Verizon advocated that the proposed formulas be simplified to a step-counter method.

The Alliance and AT&T commented in support of the proposed rule stating that the formulas are intended to ensure that the number of 9-1-1 fees remitted is essentially the same regardless of whether service is provided via traditional wireline or Voice over Internet Protocol ("VoIP"). Regarding VoIP provided service, the concept of call paths traditionally used in determining the number of local exchange access lines, does not exist due to the nature of the transmission facilities. Accordingly, the Alliance and AT&T assert that the proposed "methodology provides a reasonably equivalent proxy for VoIP business customers where the number of access lines and simultaneous call paths cannot be readily determined due to the nature of VoIP facilities."

CSEC RESPONSE

CSEC's general counsel reviewed and prepared the following response to comments, which CSEC reviewed and accepted in adopting amendments to published §255.4.

Following publication of amended §255.4, CSEC's general counsel and the commenters began discussions to consider incorporating Verizon's request to add a step-counter. Thereafter, AT&T and the Alliance worked to devise a step-counter that approximated the number of fees owed were the customer using traditional wireline service in which the number of simultaneous call paths, and therefore the number of local exchange access lines, is more readily identifiable. As a result, a step-counter containing ranges and a midpoint for calculations within each range was developed. The benefits of a step-counter are greater certainty in the application of the formulas, ease of computation of 9-1-1 fees to be remitted, and minimal, if any, changes to service providers billing and reporting systems.

The amendments are adopted pursuant to Texas Health and Safety Code, §§771.051, 771.063, 771.071, 771.0711, and 771.075 which authorize CSEC to define local exchange access line and equivalent local exchange access line for purposes of imposing landline 9-1-1 emergency service fees throughout the state. No other code, article, or statute is affected by this amendment.

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

(a) The terms "local exchange access line" or "equivalent local exchange access line" mean the physical voice grade telecommunications connection or the cable or broadband transport facilities, or any combination of these facilities, owned, controlled, or relied upon by a service provider, between an end user customer's premises and a service provider's network that, when the digits 9-1-1 are dialed, provides the end user customer access to a public safety answering point through a permissible interconnection to the dedicated 9-1-1 network. In the case of multi-channel services or offerings, channelized by a service provider, each individual channel provided to an end user customer shall constitute a separate "local exchange access line" or "equivalent local exchange access line" (e.g., ISDN-PRI service consists of 24 individual channels.) The terms "local exchange access line" or "equivalent local exchange access line" include lines as defined above that a service provider offers at a fully or partially discounted rate from the provider's base rate to a class of end users (e.g., the service provider's employees/retirees). Such discounting is not a basis for eliminating or reducing the 9-1-1 emergency service fee on such lines, except in the

instance of an Emergency Communication District imposing its 9-1-1 emergency service fee based on a percentage in lieu of a flat rate.

(b) The terms "local exchange access line" or "equivalent local exchange access line" do not include coin-operated public telephone equipment, public telephone equipment operated by card reader, commercial mobile radio service that provides access to a paging or other one-way signaling service, a communication channel suitable only for data transmission, a line from a telecommunications service provider to an Internet service provider for the Internet service provider's data modem lines used only to provide its Internet access service and that are not capable of transmitting voice messages, a wireless roaming service or other nonvocal commercial mobile radio service, a private telecommunications system, or a wireless telecommunications connection subject to Texas Health and Safety Code §771.0711.

(c) A service provider using one or more facilities with multiple calling capabilities to serve a single end user customer location that cannot determine the actual number of local exchange access lines or equivalent local exchange access lines being served by such facilities (e.g., Enterprise Voice over Internet Protocol applications), shall assess the 9-1-1 emergency service fee as follows:
Figure: 1 TAC §255.4(c)

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704427
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: October 11, 2007
Proposal publication date: March 23, 2007
For further information, please call: (512) 305-6930

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 43. TUBERCULOSIS

SUBCHAPTER A. CATTLE AND BISON

4 TAC §43.2

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 43, §43.2, concerning Tuberculosis, without changes to the proposed text as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3085) and will not be republished.

This adoption adds a new subsection (n) in §43.2 regarding dairy cattle moving intrastate.

The Commission adopts a new subsection (n) which is entitled "intrastate movement of dairy cattle". The requirement provides that all dairy cattle being transported within Texas shall be identified by official identification or identification approved by the commission. The reasons for the requirement are to provide a means for tracing animals that have been exposed to or are infected with tuberculosis and to provide a means to reduce the risk of tuberculosis exposure from untested dairy cattle.

The United States Department of Agriculture (USDA) recently re-approved the State of Texas tuberculosis designation as being accredited-free. The classification designation by USDA declaring Texas as an accredited free state removes the tuberculosis testing requirements for Texas cattle moving interstate. However, to re-attain that status the Commission required all dairy cattle herds in Texas to be tested for Tuberculosis. To aid the state in maintaining a Tuberculosis Accredited Free Status the Commission has imposed a tuberculosis test requirement for dairy cattle entering Texas. In recent years several states, including California, New Mexico, Arizona and Michigan have identified tuberculosis infected dairy herds raising the risk and concern for Texas dairy cattle. Animal identification and traceability are two of the keys to an effective surveillance system for tuberculosis . Effective identification and traceability provisions significantly reduce the potential for extensive spread of tuberculosis, should it be reintroduced into Texas dairy cattle. For these purposes the Commission is proposing that all dairy cattle being transported within Texas shall be identified by official identification or identification approved by the Commission.

The Commission received over thirty comment letters or e-mails on the proposal. Response to the comments is provided below but no changes were made to the proposal.

Response to Comments:

Tuberculosis Eradication Program: In 1917, the United States initiated a cattle tuberculosis (TB) control program to reduce the impact of bovine tuberculosis on human health and to tackle the five-percent tuberculosis herd infection rate in cattle. This control program was expanded into the National Bovine Tuberculosis Eradication Program. By November of 2000, all of the states of the United States, with the exception of Texas' El Paso and Hudspeth Counties, and the state of Michigan, were recognized by the USDA as tuberculosis accredited free. However in 2001 two Texas herds were diagnosed with TB and Texas lost its Accredited-Free status in 2002. In response to the loss of status Texas tested all of the 831 active dairies as well as 2,500 of the state's estimated 7,500 purebred, or seedstock herds.

The effort took over two years and cost millions of dollars.

In the past two decades, TB has been detected in 15 Texas dairies and six purebred cattle herds in nine counties, including El Paso, Karnes, Comanche, Pecos, Uvalde, Fayette, Culberson, Grayson, Zavala and Hamilton counties. After being nearly eradicated, TB is regaining a "hoof-hold" in the country. TB infection can be "silent" in a herd, as newly infected animals often do not exhibit the dramatic signs of illness or death. Nevertheless, TB must be finally wiped out to protect human and animal health, and avoid interstate and international trade restrictions or embargoes. Two infected herds within a 48-month period, and a state loses its TB-free status.

Testing is inconvenient and costly, because it requires that animals be held for 72 hours from the time an accredited veterinarian (or a state or federal animal health veterinarian) injects tuberculin into the skin under the animal's tail until the site is examined for swelling that indicates the animal has had exposure to the TB bacteria. Interstate movement requirements for states not Tuberculosis Accredited-Free include identification and testing of test eligible cattle and could require identification of some classes of cattle not test eligible.

By 2004, additional cases of TB had been detected, and three more states had lost their TB-free status: all of Texas, New Mexico and California. Kansas, and most recently, Arizona, also detected TB in dairy cattle. Texas, New Mexico, California and Michigan have developed individual TB plans for regaining TB-free status, including, targeted herd testing to ensure adequate disease surveillance and to detect any remaining infection. California, which lost TB-free status in 2003, tested nearly a million cattle in a three-county dairy area, prior to regaining free status in April 2005. New Mexico regained TB-free status in July 2005, with the exception of Roosevelt and Curry Counties along the state's eastern border, where testing still is being conducted. Texas regained TB Accredited-Free status in September 2006.

The role of the Commission is to protect the various livestock industries from diseases that affect their animals. Texas has tested all dairy cattle herds in the state and also tested over 2500 purebred and seed stock herds. More than 335,000 cattle in the state's 812 dairies were tested for TB during the effort to regain our TB Accredited-Free status.

The Realities: Infected cattle can expose herd mates to the TB bacteria by coughing or contaminating feed or water with saliva or nasal discharge. In confined operations, like dairies, TB can spread more readily than is normally seen with beef herds. Infected animals can develop the characteristic internal lesions in the lungs, lymph nodes and other organs, and transmit the disease to other animals. Texas is a very large state with a large number of dairy cattle. There are numerous entry points for animals entering and transiting the state. Because of the current interstate movement capabilities animals can quickly move from the border of the state into the interior. The Texas Animal Health Commission currently does not have, nor can it acquire the infrastructure necessary for checking all animals coming into Texas.

Additionally, large numbers of dairy cattle move in intrastate commerce from dairy producer to market, calf raiser, heifer raiser to dairy or feedlot. Often dairy cattle will move six or more times, from the farm or origin to final destination at slaughter.

Reason for Identification: Texas has developed stringent requirements for entry of dairy cattle into the state. Those requirements provide that dairy breed animals must be officially identified before they enter Texas. However without an intrastate identification requirement in place it is difficult to determine when an animal is an out of state origin animal which entered without official identification or an animal from which official identification was removed. This problem is compounded by the inability of the Commission to fully monitor or inspect all movements of cattle into Texas. The agency does have inspectors perform road block activities to check animals coming into Texas as workload permits, however, these activities do not cover all of the large number of animals coming into Texas. This problem is compounded by the fact that if the animals are taken to a Texas livestock market without any official identification then the animals could be considered Texas animals and move through trading channels as Texas cattle and not comply with the entry requirements. The challenge becomes even more sensitive if one of those animals is disclosed as having TB .Texas would then be the state held responsible for that animal having TB and affect our status. Without Id there is no way to trace back a positive animal and deal with the problem. Additionally, as described above, Texas origin dairy cattle are often moved numerous times before final disposition of the animal at slaughter. Recent efforts to trace dairy calves, that were implicated as the possible source of bovine tuberculosis, back to the dairy farm of origin were disappointing. Approximately half of the calves were untraceable. The end result is that Texas could have an undetected tuberculosis infected herd that will continue to sell calves and potentially spread disease. An effective animal identification system is critical to effective disease control efforts.

New Mexico is experiencing serious Tuberculosis problems in their dairy cattle. There is a great amount of movement of dairy cattle between dairies in one state (Texas or New Mexico) and calf or heifer raisers in the other state (Texas or New Mexico). The establishment of new dairies in the Panhandle has changed the complexion of the livestock industry in the area. Dairy calf ranchers and heifer raisers have been established and move animals frequently from one facility to another, raising the risk for disease transmission. Nearly 1,000 dairy animals imported to Texas currently are untraceable. Currently, Texas has over 200 open TB traces on which TAHC and USDA staff are working. Many of these involve dairy cattle. With TB concerns on the rise, the TAHC has worked closely with the Texas Association of Dairymen (TAD) to develop a plan for identifying dairy animals imported or moved within the state. Keeping a TB-free designation is particularly important for Texas, because it allows ranchers to move cattle across state lines without having them tested for tuberculosis. Most of the comments sent on this proposal had two themes contained in their comment. The first was concern that related to the National Animal Identification System (NAIS). The second was regarding the use of other types of identification devices.

NAIS: Regarding NAIS the theme of the comments is indicated by this statement from this comment: "Because of the agency's policy of promoting the National Animal Identification System (NAIS), I am concerned that the agency will connect the official identification device required under the new regulation to the NAIS."

The following comment also reiterartes that point. "We interpret this as a step towards device-tagging all farm animals and poultry, registering farms by GPS, and indeed, a step towards NAIS. If TAHC is truly interested in keeping TB from entering the state of Texas, then test all animals coming in. Tags do not announce, prevent or cure disease. Get to the root of the problem, please."

In responding to the concern it is critical to understand that the rule under consideration for adoption is a rule governing animal identification for disease control. This rule neither endorses not deters from NAIS. TAHC has imposed testing requirements on dairy cattle imported into the state. However, current TB testing methods are not infallible. Texas dairy producers, calf raisers and heifer raisers produce thousands of dairy cattle each year, many of which are moved in commerce around the state. If these animals are not identified and some of them are exposed to and become infected with TB from imported animals, the Texas animals would be untraceable and could continue to spread disease.

Regarding the comments promoting other types of identification devices there were a number of comments that promoted that theme. A number of commenters made the same statement that "(t)he proposed regulation mentions only identification devices and does not include forms of identification such as tattoos and brands. This is a stark contrast to the existing regulation for identifying cattle tested for tuberculosis, which specifically lists identification devices, tattoos, and brands. The new regulation provides fewer options for identifying untested cattle than for identifying tested animals, which does not make sense." Those comments went on to state that "I urge the Commission

not to adopt the proposed §43(n). At a minimum, the language of the proposed regulation should be changed to expressly allow for inexpensive, non-electronic forms of identification (such as tattoos and brands) that are not connected to the National Animal Identification System."

As a primary response the Commission would note that the commenter appear to have not noted §43.2(e) or understand the meaning of the provisions, which provides for identification with "an official registration tattoo or an official registration brand". Both of these methods of identification are available to producers of cattle which are identified with a breed registry tattoo or a breed registry brand. These two methods of identification have historically been utilized as official identification since they are unique to the animal. A very high percentage of the dairy cattle in the state of Texas are dairy cattle of the Holstein breed. Registered Holsteins are generally identified by color pattern - not be registry tattoo or registry brand. Therefore, these identification methods are not applicable to Holstein cattle. Thus the requirement for identification "with official identification device or identification device approved by the commission."

There was also a comment that stated that the rule proposal "Intentionally violate my 4th Amendment protection against unreasonable search and seizure set forth in the Constitution of the United States. That protection, along with Article VI of the Constitution which decrees no law or statute may infringe upon any of the rights of the People set forth in the Constitution, should seem to anyone involved in government to be enough to make them dismiss such an idea out of hand." In response the Commission would note that this rule proposal does not in any way impinge upon a citizens 4th Amendment rights, nor does it attempt to abridge any rights protected by that Amendment.

Fiscal Note/Cost: One Commenter made a number of specific comments regarding the sufficiency of the Fiscal Note for this rule action. The Commenter states that "(y)our claim "that for the first five-year period the amendments are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the amended rule" does not make sense."

The Commenter went on to say that "If you impose a new rule, you will obviously have to inspect cattle being moved inside Texas to insure that the new rule is being followed. Inspections take time and inspectors, and result in reports being written, reviewed, and filed. None of those are free, therefore the new inspections resulting from the new rules will obviously cost the government money, unless you eliminate a like amount of current inspections, reports, etc. That must not be the case, otherwise I am sure you would have reported what it is you are now doing that you will not do in the future, so you can make the new inspections".

The same Commenter stated that the "(f)iscal Note is wrong when it states: "The agency's regulatory functions pose no significant fiscal costs to individuals; it will recur de minimis costs, but such costs are ordinary costs of commerce and doing intra- and interstate commerce." "When you impose new requirements on individuals/businesses, you increase costs. The time taken to adjust business operations to your new rule will require time, tags, recording, filing, and probably, reporting. Your claim that these represent "no significant fiscal costs" is ludicrous."

The Commission responds to these comments as follows. Commission staff prepares analysis of fiscal impact per the guidelines of the Legislative Budget Board (LBB) published at http://www.lbb.state.tx.us/Fiscal_Notes/Fiscal-Notes_80R_AgencyGuide_1206.pdf. The LBB specifically instructs state agencies to exclude costs due to inflation and to exclude the costs of secondary impacts. Fiscal analysis includes, but is not limited to, the following: 1) Analyzing the costs, savings, gains, and losses to the state directly resulting from the legislation or proposed rule; 2) Analyzing the impact on the agency's appropriated funds directly related to the legislation or proposed rule; 3) Analyzing the potential impact on the agency's staffing level, whether an increase, decrease, or neutral that is directly related to the legislation or proposed rule; 4) Analyzing the potential impact of other expenses, such as professional services, travel, rent, other operating expenses, or equipment directly related to the legislation or proposed rule; 5) Analyzing the impact on the agency's technology resources directly related to the legislation or proposed rule; 6)_Analyzing the potential fiscal impact on local units of government directly related to the legislation or proposed rule.

During the five year period from the implementation date of the proposed rule change, there is no significant fiscal impact to the Commission. No additional Commission resources have been appropriated nor are any needed to implement the proposed rule. No adjustment to the Commission's budget is necessary to implement the proposed rule. No changes to the Commission's current staffing level, or number of full-time equivalent employees, is needed to implement the proposed rule. No significant additional Commission expenses, including technology costs, are needed to implement the proposed rule. All regulatory requirements directly related to implementing the proposed rule will be performed by Commission staff with existing, or current, resources and staffing levels. Commission inspectors already perform regulatory functions at livestock markets and these same inspectors can perform any regulatory function directly related to implementation of the proposed rule.

The Commission anticipates no increase in costs, nor any reduction in costs, directly related to implementation of the proposed rule both for the Commission and for local units of government. Similarly, the Commission anticipates neither a loss nor an increase in revenue directly related to implementation of the proposed rule, both for the Commission and for local units of government.

The Commenter also stated that "(y)our Fiscal Note statement that 'There will be no effect on small or micro businesses' is wrong, unless you exempt them from the requirement. Since you have not done so, your Fiscal Note is wrong. Small operators will not have the economies of scale to absorb your new costs, making your new rules even more harmful to small Texas businesses."

The Commission and its staff continue to concede that a direct de minimis cost of procuring and affixing an identification device to an animal is a direct cost of implementing the proposed rule. A de minimis cost is one that is so small as to be insignificant or negligible. In the context of this proposed rule, the cost of an identification device is a negligible cost of doing business; it is a de minimis operating cost, similar to those common in all trades and professions in which such de minimis costs diminish operating cost. These are typically passed on to the consumer and are generally recorded and reported as expenses by an entity to reduce its federal income tax liability on federal income tax returns. The cost of an identification device required by the proposed rule is not prohibitive and does not impose an undue burden requiring an economy of scale. The fiscal analysis provided

by the Commission recognizes the de minimis costs associated with implementing the proposed rule and Commission staff continues to assert that there is no significant fiscal impact to the Commission, to local units of government, and to regulated entities, including micro businesses.

STATUTORY AUTHORITY

Chapter 43 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by Section 161.041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in Section 161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. An agent of the Commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the Commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704472

Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: October 14, 2007
Proposal publication date: June 8, 2007
For further information, please call: (512) 719-0714

CHAPTER 47. APPROVED PERSONNEL

4 TAC §47.2

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 47, §47.2, concerning Approved Personnel without changes to the proposed text as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3086) and will not be republished.

This adoptions amends the general requirements in §47.2. The amendment authorizes an approved veterinarian's technician or other approved employee to operate under the general supervision of a TAHC approved veterinarian to perform testing for brucellosis at a livestock market. This corresponds to the current authorization found in the rules for the Texas Board of Veterinary Medical Examiners (TBVME). TBVME has a rule located in 22 TAC §573.10 which provides that "(a)n approved veterinarian's technician or other approved employee under the general supervision of a TAHC approved veterinarian may perform testing for brucellosis at a livestock market." This adoption will make commission rule consistent with the TBVME rule.

The Commission received two comments and provides a response below.

One commenter expressed some concern about the application of the rule, under the general supervision of a TAHC-approved veterinarian is and asked how it was to be interpretive. The commenter wanted to know "was it to be interpreted as an accredited practicing veterinarian or a veterinarian that is employed by the TAHC?" The commenter thinks a plausible solution to this interpretation would be to change the wording to, "under the general supervision of a TAHC accredited veterinarian," as all veterinarians that perform the sale barn work are specifically accredited. The second commenter was against this proposal because it is opening the door to allowing any lay person to perform those tasks.

In response to both comments there seems to be some misunderstanding regarding how the rule is applied. First, the proposed rule is specifically intended to allow a technician or other approved employee of a TAHC approved practicing veterinarian to perform testing for brucellosis at livestock markets under general supervision of the TAHC approved practicing veterinarian. The rule does not allow a TAHC employed veterinarian to provide general supervision to a private technician. TAHC strongly supports the function of practicing veterinarians at livestock markets. There is evidently a misunderstanding of terms relative to understanding the rule. In order for a practicing veterinarian to perform testing, etc. at a livestock market the veterinarian must be licensed in the state of Texas to practice veterinary medicine, accredited by USDA, and approved by TAHC to perform livestock market functions. That is the program that this regulatory chapter program supports. The personnel who perform this function are supervised by the private veterinarian. This is a modification that was made several years ago in response to the difficulties of some livestock markets to obtain a private veterinarian

to fully perform all those functions or personally supervise that activity. The personnel who perform specified tasks under this program must also be approved by the Commission and supervised by a private veterinarian.

STATUTORY AUTHORITY

The amendment to §47.2 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by Section 161.041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. In Chapter 163 there is section 163.064, and entitled "Testing and Vaccination", which provides that "(o)nly a person approved by the commission may perform testing and vaccinating for brucellosis, regardless of whether the person is a veterinarian."

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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Gene Snelson
General Counsel
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CHAPTER 49. EQUINE

4 TAC §49.4

The Texas Animal Health Commission (Commission) adopts new §49.4 regarding reporting and handling requirements for equine carriers of Equine Viral Arteritis (EVA), without changes to the proposed text as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3087) and will not be republished.

Texas equine producers, veterinarians and livestock health officials have become increasingly concerned about EVA, which has recently been detected in New Mexico and Utah this year. EVA is an infectious viral disease of horses that causes a variety of clinical symptoms, most significantly abortions. The disease is transmitted through both the respiratory and reproductive systems. Many horses are either asymptomatic or exhibit flu-like symptoms for a short period of time. An abortion in pregnant mares is often the first, and in some cases, the only sign of the disease. EVA has been confirmed in a variety of horse breeds, with the highest infection rate found in adult Standardbreds.

Breeders, racehorse owners, and show horse owners all have strong economic reasons to prevent and control this disease. While it does not kill mature horses, EVA can eliminate an entire breeding season by causing numerous mares to abort. In addition, U.S. horses that test positive for EVA antibodies and horse semen from EVA-infected horses can be barred from entering foreign countries. While some infected equine exhibit no signs of disease, owners should be alert and notify their accredited private veterinary practitioner if horses or foals develop signs of EVA, including fever, depression, diarrhea, coughing or nasal discharge, or swelling of the legs, body or head.

An Equine Working Group, with representatives of the Quarter Horse and Thoroughbred industries, the Texas Veterinary Medical Association, the Texas Racing Commission, equine practitioners, along with Commission staff met to discuss and make recommendations relative to EVA. The Equine Working Group made recommendations to add some specific requirements for breeding of stallion carriers of EVA.

The Commission adopts new §49.4, to be entitled, "Equine Viral Arteritis (EVA): Reporting and Handling of Infected Equine". In subsection (a) there are EVA classifications for reporting purposes. The rule then provides three objective standards for reporting an equine as being EVA positive. EVA was recently proposed as a disease, to be reported to the commission. Texas Agriculture Code Chapter 161, Section 161.101 has requirements for a veterinarian, veterinary diagnostic laboratory or a person having care, custody, or control of an animal to report specified animal health diseases. The Commission has reporting requirements and specifies specific reportable diseases in Chapter 45 of the Commission rules. The adoption of §45.2 was published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3172).

The rule in subsection (b) provides that the owners, managers or caretakers of Equine Viral Arteritis (EVA) carrier stallions shall provide written notification to owners of mares that are to be bred to the EVA carrier stallion, either by live cover or artificial insemination, that the stallion is an EVA carrier and that the mare could become infected with EVA through breeding to the carrier stallion. Also, the rule provides that the Executive Director may restrict movement of equine epidemiologically deemed to be a high risk for the spread of EVA.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

The new section is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. Chapter 49 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by Section 161.041 (b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in Section 161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in Section 161.061.

As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in Section 161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public

health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Section 161.061 provides that if the Commission determines that a disease listed in Section 161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place.

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

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §§51.3, 51.8, 51.9, 51.13, 51.15

The Texas Animal Health Commission (commission) adopts amendments to Chapter 51, Entry Requirements, §§51.3, 51.8, 51.9, 51.13 and 51.15, without changes to the proposed text as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3088) and will not be republished.

The purpose of the amendments to Chapter 51 is to provide new entry requirements as well as clarify existing entry requirement for animals entering Texas from out of state.

The Commission did receive three comments regarding adoption of the rules.

The first comment was support of the recommend changes to §51.15 regarding poultry. The rule is being changed regarding the proper reference test for avian influenza.

The second comment was regarding the change to the entry requirements for dairy cattle in §51.8 for dairy animals two months of age or less and the associated permit requirement. The commenter interprets the requirements to be limited going to a quarantine facility. The actual requirement has been in place for over a year and does not limit it to going to a quarantine facility but rather is focused on a designated facility which is generally the dairy that imported the dairy heifers into Texas.

The last commenter indicated support for the proposed changes to §§51.3, 51.8 and 51.9.

The Commission adds the term "beef" to §51.3(a) which has exceptions for having an entry permit and a certificate of veterinary inspection. The term is added to subsection (a)(2), (4), (5) and (8) to clarify and ensure that only beef cattle, not dairy cattle, qualify for the exceptions.

The Commission is amending entry requirements regarding cattle as found in §51.8(a). In subsection (a) there are entry requirements for Brucellosis. The Commission recently amended the requirements for brucellosis to provide that all cattle being shipped to a feedyard prior to slaughter shall be officially individually identified with a permanent identification device prior to leaving the state of origin. However, the entry requirement is focused on cattle which are Brucellosis test eligible. Test eligible cattle are cattle which are parturient or postparturient 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers. The Commission is adding that definition to clarify the entry requirement.

Also in §51.8(b)(3) there are entry requirements for all sexually intact dairy cattle. The requirements are focused on tuberculosis test for entry into Texas. The Commission put these requirements in place in order to protect the Texas dairy cattle industry where Tuberculosis is a risk. This risk and concern is further demonstrated by the fact that several other states have recently disclosed tuberculosis in dairy herds. The greatest concern is New Mexico with a significant amount of movement of cattle between both states. The Commission has in place a tuberculosis test requirement with the test eligible age as indicated at six months. However, the tuberculosis test can be done on an animal from two months of age and up. There is a fairly significant amount of movement of animals which are less than six months of age. Dairies located in the Texas Panhandle and in New Mexico will ship their baby heifers to a facility where they can be grown as replacement heifers and return to their dairy farm of origin. These animals may go from one state to another before the age of two months. Because these animals are co-mingled with other heifers from other facilities it creates a risk for tuberculosis spread. It is imperative that the animals be tested prior to return. To address this issue and concern the Commission is lowering the test eligible age for tuberculosis testing from six months to two months.

Also, the Commission is adding a new test requirement for M branded roping steers entering from another state. The Commission currently requires that all M branded roping steers have an annual test with them when participating in shows, fairs and exhibitions. However, the animals are not currently required to have a tuberculosis test when entering Texas from another state. The Commission is adding a new subsection (b)(4) which will provide that "all "M" brand steers, which are recognized as potential rodeo and/or roping stock, being imported into Texas from another state shall be accompanied by a certificate of veterinary inspection which indicates that the animal(s) were tested negative for tuberculosis within twelve months prior to entry into the state."

In §51.9 the Commission is clarifying the requirement that exotic swine must be tested for brucellosis and pseudorabies.

Regarding §51.13 the Commission is adding entry requirements for equine or semen of equine which are positive for Equine Viral Arteritis (EVA). The Commission is currently amending Chapter

45 concerning Reportable Diseases to require the reporting of known positives for EVA and Equine Herpes Virus-1 (EHV-1). Texas Agriculture Code Chapter 161, Section 161.101 provide requirements related to the duty of a veterinarian, veterinary diagnostic laboratory or a person having care, custody, or control of an animal to report specified animal health diseases. The Commission has promulgated reporting requirements and specifies specific reportable diseases in Chapter 45 of the Commission rules.

Texas equine producers, veterinarians and livestock health officials have become increasingly concerned about EVA, which has recently been detected in New Mexico and Utah this year. EVA is an infectious viral disease of horses that causes a variety of clinical symptoms, most significantly abortions. The disease is transmitted through both the respiratory and reproductive systems. Many horses are either asymptomatic or exhibit flu-like symptoms for a short period of time. An abortion in a pregnant mares is often the first, and in some cases, the only sign of the disease. EVA has been confirmed in a variety of horse breeds, with the highest infection rate found in adult Standardbreds.

Breeders, racehorse owners, and show horse owners all have strong economic reasons to prevent and control this disease. While it does not kill mature horses, EVA can eliminate an entire breeding season by causing numerous mares to abort. In addition, U.S. horses that test positive for EVA antibodies and horse semen from EVA-infected horses can be barred from entering foreign countries. While some infected equine exhibit no signs of disease, owners should be alert and notify their accredited private veterinary practitioner if horses or foals develop signs of EVA, including fever, depression, diarrhea, coughing or nasal discharge, or swelling of the legs, body or head.

An Equine Working Group, with representatives of the Quarter Horse and Thoroughbred industries, the Texas Veterinary Medical Association, the Texas Racing Commission, equine practitioners, along with commission staff met to discuss and make recommendations relative to EVA. The Equine Working Group made recommendations to add some specific requirements for equine and semen of equine which are positive or potentially exposed to EVA and want to enter Texas.

The recommendations, as they relate to entry requirements are: 1.) develop importation regulations that require persons selling EVA carrier stallions from another state or country to a buyer in Texas, or a person otherwise importing a carrier stallion into Texas to notify the buyer or receiver of the stallion, in writing, that the stallion is an EVA carrier stallion; 2.) develop importation regulations to require owners of EVA carrier stallions who ship semen from the carrier stallion into Texas to notify, in writing, the owners or managers of mares to be inseminated that the semen is from an EVA carrier stallion and that the mare could become EVA infected through insemination with infective semen; and 3.) develop importation regulations which prohibit entry of equine that originate from a quarantined area, assure that equine being imported do not exhibit clinical signs of EVA, and equine being imported have a rectal temperature of 101° F or less at the time of examination for entry. The Commission adds those recommendations to §51.13 by adding a new subsection (c) with those specific requirements.

Regarding §51.15 which has test requirements for Poultry. Currently the Commission has avian influenza test requirements for poultry entering Texas. The Commission is deleting the test term Directigen as the designated test and replacing it with the RRT-PCR test.

Although never approved for detecting avian influenza virus in poultry, the Directigen test, a test designed for use in human testing, was the only alternative to serology for determining the avian influenza health status of poultry, prior to the development of the RRT-PCR test. The RRT-PCR is a reliable test and is approved for detecting the virus in poultry. Therefore, the TAHC is proposing to delete the reference to Directigen in §51.15 and add RRT-PCR as an approved test.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the Commission, by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the Commission may authorize the executive director or another employee to sign written instruments on behalf of the Commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire Commission.

Section 161.061 provides that if the Commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. Section 161.101 provides that the Commission may require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report the existence of specific diseases among livestock, exotic livestock, bison, domestic fowl, or exotic fowl.

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

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CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.8

The Texas Animal Health Commission ("TAHC" or "Commission") adopts the repeal of §59.8, concerning Memorandum of Understanding (MOU) with Travis County, without changes to the proposal as published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3093) and will not be republished.

The Commission terminates the MOU. The MOU was for the purpose of Travis County Sheriff's checking health certificates during the performance of other duties. The MOU is specifically authorized by §161.052 of the Texas Agriculture Code. The MOU was originally executed at the request of the Travis County Sheriff's Department in 2000. The statute requires that both entities reaffirm the MOU on an annual basis. During the renewal process the Travis County Sheriff's Department determined that they did not want to maintain the MOU and asked to have it rescinded. The Travis County Commissioner's Court at their February 6, 2007 meeting voted to terminate the MOU. That action can be found in the Travis County Minutes. They can be found at the following web site, http://www.co.travis.tx.us/commissioners_court/minutes/2007/02/070206vs.pdf. It is Item Number 23.

No comments were received regarding adoption of the repeal.

STATUTORY AUTHORITY

The repeal is adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.052 authorizes the Commission to adopt a joint memorandum of understanding that includes provisions under which the sheriff of that county or the sheriff's deputies are to check for health papers and permits.

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

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

The Public Utility Commission of Texas (commission) adopts an amendment to §25.74, relating to Report on Change in Control, Sale of Property, Purchase of Stock, or Loan, with changes to the proposed text, and the repeal of §25.75, relating to Reports on Sale of 50% or More of Stock, without changes, as published in the April 13, 2007, issue of the *Texas Register* (32 TexReg 2080). The amendment and repeal will require an electric utility to report to the commission in advance of the closing of certain transactions. The amendment and repeal will enable the commission to better regulate and supervise the business of each electric utility. This amendment and repeal are adopted under Project Number 34038.

The commission received comments from AEP Texas Central Company, AEP Texas North Company, and Southwestern Electric Power Company (collectively AEP), CenterPoint Energy Houston Electric, LLC (CenterPoint), El Paso Electric Company (EPE), Entergy Gulf States, Inc. (EGSI), Lower Colorado River Authority Transmission Services Corporation (LCRA), Oncor Electric Delivery Company (Oncor), Texas Industrial Energy Consumers (TIEC), TXU Cities Steering Committee (TXU Cities), and Xcel Energy, Inc. on behalf of Southwestern Public Service Company (Xcel). TIEC and TXU Cities supported the adoption of the amendment of §25.74 and repeal of §25.75. AEP, CenterPoint, EPE, LCRA, Oncor, and Xcel opposed the adoption of the amendment of §25.74. However, CenterPoint agreed that if §25.74 is amended, the repeal of §25.75 is appropriate. EGSI stated that, while the amendment may be premature, §25.74 should be clarified to specifically exclude a jurisdictional separation pursuant to Public Utility Regulatory Act (PURA) §39.452(e).

EPE, Oncor, and Xcel commented that because the Texas legislature was considering changes to PURA concerning notice and approval of certain transactions, the commission should delay consideration of the amendment and repeal until the legislature completed its work.

CenterPoint objected that the amendment of §25.74, specifically the requirement of reporting certain transactions "not later than six months prior to the earliest date the transaction could occur," should comport with the form of the bill enacted by the legislature. That bill read "within 180 days" in the House versions of the Senate bills 482 and 483, and not "six months" as it did in the proposed amendment. TIEC disagreed with CenterPoint, stating that the commission has the authority to adopt the amendment without any further legislative changes.

Several commenters disputed the commission's statutory authority to adopt the amendment. AEP asserted that the commission's statutory authority to require the reporting of sale, transfer, and merger transactions six months prior to closing is uncertain. AEP cited to PURA §14.101, which provides that such transac-

tions must be reported within "a reasonable time," but does not, in its view, authorize the commission to delay the closing of such transactions. EPE agreed with AEP's argument. Oncor also objected to the amendment on statutory grounds, stating that extending the reach of PURA to "direct or indirect" transfers of controlling interests in "direct or indirect" owners of an electric utility exceeds the statute's reach. LCRA agreed with Oncor's objection. TXU Cities disagreed with these comments, and stated that the amendment to §25.74 grants invaluable time to ensure that the commission can adequately review details of complex financial transactions that have potentially long-term public interest implications. In addition, TXU Cities disagreed with AEP's claim that PURA §14.101 does not give the commission authority to interpret "within a reasonable time," stating that while the legislature did not expressly limit the commission's authority in this regard, it did expressly provide broad authority to the commission to do "anything . . . necessary and convenient" to exercise its regulatory power. TIEC agreed that the commission has this power.

AEP and Xcel further objected to the amendment requiring pre-closing filing on the grounds that many entities already elect to seek voluntary pre-approval of sale, transfer, and merger transactions. TXU Cities disagreed with Xcel and AEP, stating that if entities already engage in pre-reporting as part of their business practice, memorializing the requirement will not impose any additional burden.

Oncor and LCRA argued that the six-month advance notice requirement would create an unreasonable burden effectively preventing certain transactions from occurring. Oncor asserted that the current timeframes offer entities necessary flexibility while also giving the commission adequate review time. LCRA agreed. AEP added that not only could the amendment delay a wide range of transactions, but also it could add damaging costs and impair the ability and willingness of parties to enter into many smaller transactions. TIEC disagreed with these objections, stating that the consumers' interests mandate that the commission have the authority to ensure that a transaction is consistent with the public interest. TXU Cities agreed with TIEC.

Commission response

Since the publication of the proposed amendment and repeal, Texas House Bill 624 §1, 80th Legislature, Regular Session (2007) (HB 624; effective June 15, 2007; to be codified at PURA §39.262(l) - (o)) and Texas House Bill 3693 §25, 80th Legislature, Regular Session (2007) (HB 3693; effective September 1, 2007; to be codified at PURA §39.915), have been adopted, and both will be in effect by the time the rule amendments take effect. PURA §39.262(l) - (o) and §39.915 require the commission to approve or deny certain transactions involving the merger, consolidation, stock, or control of an electric utility. The commission has changed the amendment to conform to these PURA provisions, and they are specifically addressed in adopted subsections (a) and (f). These PURA provisions refer to an electric utility or transmission and distribution utility. The amendment refers only to an electric utility, because the term "electric utility" includes a transmission and distribution utility. Many of the commenters' concerns about the proposed amendment were resolved by the adoption of these PURA provisions.

Adopted subsection (b) requires that the electric utility report a transaction addressed by PURA §14.101(a)(1) at least one commission working day before the transaction closes. However, adopted subsection (b) also references PURA §37.154, which requires that an electric utility obtain commission approval of a transfer of a certificate of convenience and necessity. For a transaction reported pursuant to adopted subsection (b) that is also subject to PURA §37.154, PURA effectively requires commission review of the transaction before it closes. In contrast, for a transaction reported pursuant to adopted subsection (b) that is not also subject to PURA §37.154, PURA does not require commission review of the transaction before it closes. The commission concludes that adopted subsection (b) appropriately distinguishes between those transactions that should be reviewed by the commission before they close and those for which commission review before closing should not be categorically required.

Subsections (c) and (d) address transactions that are less likely to have substantial and prompt impacts on utilities' service in comparison to transactions addressed by subsection (a) or transactions addressed by subsection (b) and subject to PURA §37.154. As a result, adopted subsections (c) and (d) require that a utility report a transaction addressed by subsections (c) or (d) at least one commission working day before the transaction closes, instead of not later than six months prior to the earliest date that the transaction could occur as provided in the proposed amendment. In addition, the commission has added a 5% stock ownership materiality threshold to adopted subsection (d).

LCRA objected to proposed §25.74(a) requiring transactions involving "more than $100,000" be reported, stating that a more objective transaction dollar value allowing oversight over more significant transactions would be appropriate and would cause ratepayers to bear fewer costs. AEP agreed, noting that $100,000 is a relatively small amount in the electric business.

Commission response

The threshold for review specified by PURA §14.101(a)(1) is $100,000.

Oncor argued that the commission should not adopt any rule amendment that would apply retroactively to any transaction reported to the commission, stating that such an action would amount to "changing the rules in the middle of the game." TIEC disagreed and argued that the commission is well within its power to modify procedural requirements and apply them to pending transactions.

Commission response

With one exception, PURA §39.262(l) - (o) apply to any transaction described by subsection (l) that had not closed before June 15, 2007, the effective date of HB 624. The exception, pursuant to subsection (n), is a transaction for which a definitive agreement was executed before April 1, 2007, if the electric utility or a person seeking to acquire or merge with the electric utility made a filing for review of the transaction under PURA §14.101 before May 1, 2007, and the resulting proceeding is not withdrawn. PURA §39.915 contains the same provisions, but is effective on September 1, 2007. Proposed subsection (i), now adopted subsection (f), has been changed to conform to these new PURA provisions. The commission has also deleted proposed subsection (g), which provided that a transaction like those addressed by PURA §39.262(l) shall not occur before the commission completes its review of the transaction as proposed, regardless of the amount of time that has transpired since the report of the transaction to the commission was made. Any issue concerning the closing of a transaction addressed by PURA §39.262(n) can be addressed in the pending commission proceeding in which the

transaction is being considered, including whether the commission has authority to delay or prohibit the closing of the transaction.

EGSI recommended that the proposed rule be clarified to specifically exclude jurisdictional separation and certain Chapter 39-related transactions from the scope of the rule. TXU Cities disagreed with EGSI's proposal, stating that jurisdictional separation transactions could have a significant impact on consumers in Texas and should be subject to oversight. TIEC, on the other hand, replied that the rules do not implicate EGSI's jurisdictional separation issue and need not be specifically addressed in the rule.

Commission response

The commission agrees that the rule should not apply to activities covered by PURA §14.101(d) and §39.452(e), and has amended the rule accordingly. PURA §14.101(d) lists activities that are excluded from PURA §14.101. In addition, PURA does not contemplate mandatory, pre-closing review by the commission of the reasonableness of the manner in which jurisdictional separation done pursuant to PURA §39.452(e) is accomplished.

LCRA asserted that §25.74(i) is unclear as to when a "transaction" actually occurs, arguing that the proposed rule could be interpreted to mean a point in time when a contract for sale is executed or a later point in time, when actual title is set to transfer.

Commission response

The rule has been amended to refer to when a transaction closes, which is consistent with HB 624 and HB 3693.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting amended §25.74, the commission makes other changes to clarify its intent and conform the rule to current law.

16 TAC §25.74

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically PURA §14.001, which gives the commission the general power to regulate and supervise the business of each electric utility; PURA §14.201, which requires the commission to keep itself informed as to the manner and method in which each electric utility is managed and its affairs are conducted; PURA §14.101, which requires the commission to review certain transactions of electric utilities; PURA §37.154, which requires the commission to review the transfer of a certificate of convenience and necessity of an electric utility; and Texas House Bill 624 §1, 80th Legislature, Regular Session (2007) (effective June 15, 2007; to be codified at PURA §39.262(l) - (o)) and Texas House Bill 3693 §25, 80th Legislature, Regular Session (2007) (effective September 1, 2007; to be codified at PURA §39.915), which require an electric utility to report to and obtain approval of the commission before closing certain transactions.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.101, and 37.154; Texas House Bill 624 §1, 80th Legislature, Regular Session (2007) (effective June 15, 2007; to be codified at PURA §39.262(l) - (o)); and Texas House Bill 3693 §25, 80th Legislature, Regular Session (2007) (effective September 1, 2007; to be codified at PURA §39.915).

§25.74. Report on Change in Control, Sale of Property, Purchase of Stock, or Loan.

(a) Pursuant to Public Utility Regulatory Act (PURA) §39.262(l) - (m) and §39.915, an electric utility must report to and obtain approval of the commission before closing any transaction in which:

(1) the electric utility will be merged or consolidated with another electric utility;

(2) at least 50% of the stock of the electric utility will be transferred or sold; or

(3) a controlling interest or operational control of the electric utility will be transferred.

(b) Pursuant to PURA §14.101(a)(1), an electric utility shall not sell, acquire, or lease a plant as an operating unit or system in the State of Texas for a total consideration of more than $100,000 unless the electric utility reports such transaction to the commission at least one commission working day before the transaction closes. Pursuant to PURA §37.154, if the transaction involves the sale, assignment, or lease of a certificate of convenience and necessity (CCN) or a right obtained under a CCN, the electric utility must obtain commission approval of such CCN transfer.

(c) An electric utility shall not purchase voting stock in another public utility doing business in the State of Texas unless the electric utility reports such purchase to the commission at least one commission working day before the transaction closes.

(d) An electric utility shall not loan money, stocks, bonds, notes, or other evidence of indebtedness to any person who directly or indirectly owns or holds 5% or more of the stock of the electric utility unless the electric utility reports such transaction to the commission at least one commission working day before the transaction closes. A properly filed tariff or energy efficiency plan with respect to energy conservation loans available to customers will be considered adequate reporting to the commission.

(e) This section does not apply to activities addressed by PURA §14.101(d) and §39.452(e).

(f) This section applies to any transaction addressed by this section that has not closed, except for a transaction addressed by PURA §39.262(n) or §39.915(c).

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

Filed with the Office of the Secretary of State on September 18, 2007.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

16 TAC §25.75

This repeal is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to

make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically PURA §14.001, which gives the commission the general power to regulate and supervise the business of each electric utility; PURA §14.201, which requires the commission to keep itself informed as to the manner and method in which each electric utility is managed and its affairs are conducted; PURA §14.101, which requires the commission to review certain transactions of electric utilities; PURA §37.154, which requires the commission to review the transfer of a certificate of convenience and necessity of an electric utility; and Texas House Bill 624 §1, 80th Legislature, Regular Session (2007) (effective June 15, 2007; to be codified at PURA §39.262(l)-(o)) and Texas House Bill 3693 §25, 80th Legislature, Regular Session (2007) (effective September 1, 2007; to be codified at PURA §39.915), which require an electric utility to report to and obtain approval of the commission before closing certain transactions.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 14.101, and 37.154; Texas House Bill 624 §1, 80th Legislature, Regular Session (2007) (effective June 15, 2007; to be codified at PURA §39.262(l)-(o)); and Texas House Bill 3693 §25, 80th Legislature, Regular Session (2007) (effective September 1, 2007; to be codified at PURA §39.915).

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

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 82. BARBERS

16 TAC §§82.10, 82.20 - 82.22, 82.29, 82.31, 82.40, 82.50 - 82.54, 82.70, 82.71, 82.80, 82.106, 82.110, 82.114, 82.120

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code ("TAC"), Chapter 82, §§82.10, 82.20 - 82.22, 82.29, 82.31, 82.40, 82.50, 82.52, 82.53, 82.54, 82.70, 82.71, 82.106, 82.110, 82.114, and 82.120, regarding the regulation of barbering as published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5134), without changes, and will not be republished. Sections 82.51 and 82.80 are adopted with changes from the rules as published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5134) and are republished.

These adopted rule changes are necessary to implement changes in law enacted by House Bill 2106, 80th Legislature, and to make certain clean-up changes in the rules for barbering. The provisions of House Bill 2106 became effective on June 15, 2007 and require the Commission to adopt rules necessary to implement the new legislation by January 1, 2008. These rule changes were recommended by the Advisory Board on Barbering at its meeting on July 30, 2007.

In §82.10, definitions are added for "hair braider," "hair weaver," and "weaving." House Bill 2106 creates two new certificate types in the barber program, the hair braiding specialty certificate of registration and the hair weaving specialty certificate of registration. The new rule definitions are necessary to clarify the scope of practice of these certificate holders.

In §82.20 adopted amendments are made to specify the eligibility requirements for a hair braiding specialty certificate of registration and a hair weaving specialty certificate of registration. The hair weaving certificate requires 300 hours of instruction and a written and practical examination, while the hair braiding certificate requires 35 hours of instruction and no examination. These are the requirements that the Advisory Board considered appropriate for these certificate types. The requirements are consistent with the requirements for similar certificate types in the cosmetology program.

New language as adopted in §82.21(c) implements a change in law made by House Bill 2106, to eliminate the minimum passing grade for the barber examination that was previously set in statute at 75 percent. The adopted amendment sets the passing score at 70 for all examinations in the barber program. This passing score is more consistent with that for other types of Texas Department of Licensing and Regulation (Department) examinations.

The heading of §82.22 and subsections (a) and (c) are amended to implement a change in law made by House Bill 2106, that specialty shop permits may be obtained for hair weaving and hair braiding shops in addition to manicurist shops. Subsection (d) is amended to add hair weaving and hair braiding specialty certificates to the list of license types that are eligible to obtain a booth rental permit. This adopted change is necessary because the Department anticipates that hair weavers and hair braiders may work as independent contractors renting space in a shop. Subsection (e) is deleted to implement a change in law made by House Bill 2106, that barbershops and specialty shops are no longer required to be inspected by the Department before opening for business.

Section 82.29(b) is amended to implement a change in law made by House Bill 2106 by specifying that relocated barbershops and specialty shops are no longer required to be inspected by the Department before opening for business. Relocated barber schools must still be inspected prior to opening. Additionally, in subsection (c) a clean-up change is made to clarify that the list of events that constitute a change of ownership is not an exhaustive list.

In §82.31, hair braiding specialty certificates, hair weaving specialty certificates, hair weaving specialty shop permits, and hair braiding specialty shop permits are added to the list of license types with a two-year term.

In the General Appropriations Act, the 80th Legislature appropriated money to the Department from the Barber School Tuition Protection Account for the 2008-09 biennium. In response, the Department updates the rules related to claims against the account to ensure that there is a clear process for handling claims. In §82.40(f), the dollar limit for each claim is lowered to $1,000. This amount is set in view of the $5,000 annual amount that the Legislature has appropriated for payment of claims. A limit of $2,500 is placed on the total of claims that may be paid against one school. This limit is intended to avoid having the entire

amount of appropriated funds being exhausted by claims against one closed school. Subsection (g) is added to list the requisites for payment of a refund to a student. Subsection (h) specifies that claims will be paid on a pro rata basis if all claims cannot be satisfied. Subsection (i) requires that the Department provide notice of a claim to the affected school and gives the school 20 days from the date of the notice to dispute the claim. Subsection (j) identifies the consequences of a payment from the account, including that the closed school must repay the account and that the school is subject to administrative sanctions and penalties. New language also provides that the Department is subrogated to the rights of a student against a school to the extent of the amount paid to the student from the account. To be eligible for payment from the account, the student must assign to the Department his or her rights against the school to the extent of the amount paid to the student from the account. These provisions will enable the Department to seek reimbursement to the account from the closed school, as part of the Department's statutory duty to administer claims made against the account under §1601.3571, Occupations Code. The Department's interpretation of the statute is that the school is primarily responsible for payment of refunds to students, with the Tuition Protection Account as an option if the school fails or is unable to fulfill its responsibility to students. These adopted rule provisions reflect that interpretation.

Sections 82.50 and 82.51 are amended to recognize that initial inspections are now required only of barber schools and not shops. In a change from the proposed version of §82.51, the word "permit" is removed in reference to the fee that must be paid by a school for an initial inspection. This is a technical change to be consistent with proposed changes to §82.80 that separate the school permit fee from the inspection fee and will not result in any change to the total amount of fees paid by schools.

Section 82.52(a) is amended to implement a change in law made by House Bill 2106 to increase the frequency of periodic inspections of barber schools to at least twice per year.

The changes in §82.53 remove barber schools from Tiers 1 and 2 of the risk-based inspection schedule, in light of the increased frequency of periodic inspections for schools. Additional relevant factors are added that would place a barber school in Tier 3.

Section 82.54(a) is amended to add a deadline by which an establishment owner shall complete all corrective modifications and provide written verification of the corrective modifications to the Department. The deadline is 10 calendar days after receiving the Department's list of required corrective modifications. This deadline is necessary to ensure that establishments correct violations, such as health and safety violations, within a reasonable period of time.

Section 82.70 is amended to delete the word "manicurist" in reference to specialty shops. In subsection (b) hair weavers and hair braiders are added to the requirement that license holders comply with health and safety standards. In subsection (f), hair weavers and hair braiders are added to the requirement to obtain a booth rental permit if the license holder leases space on the premises of a barbershop or specialty shop as an independent contractor.

Section 82.71 is amended to add specific requirements for hair weaving specialty shops and hair braiding specialty shops. The primary difference is that hair braiding specialty shops are not required to provide shampoo bowls or dryers because hair braiding practice does not include shampooing.

Section 82.80 is amended to add application and renewal fees for hair weaving and hair braiding specialty certificates. Both the application fee and the renewal fee are $53, including a $10 newsletter fee. These fees are consistent with the fees in the cosmetology program for similar certificate types and should be sufficient to cover the Department's additional costs. The rule is also amended to make clean-up changes regarding the fees for a barber school. For clarity, the permit fee of $500 is separated from the inspection fee of $500. The overall fees paid by a school will not change as a result of this adopted rule change. In a change from the proposed version of the rule, the inspection fee is described as a fee for an "initial inspection" rather than an inspection "prior to operation." This is a technical correction to recognize that not all initial inspections of schools will occur prior to the school opening for business.

Section 82.106 is amended to implement a change in law enacted by House Bill 2106. Under Texas Occupations Code, Section 1603.352, as amended by House Bill 2106, the requirement to sterilize instruments used in nail services applies to metal instruments.

In §82.110, the heading is amended to add hair braiding services to the health and safety standards. Hair weavers and hair braiders are specifically listed in the requirement for licensees to wash their hands before performing services on a client.

Section 82.114(f) is amended to clarify that preparation of food or beverages on licensed premises for sale is prohibited, but preparation of food or beverages not for sale is not prohibited by the adopted rule amendment. For example, a barber establishment would not violate the rule by offering a cup of coffee to a customer without charge. The language of the current rule, strictly interpreted, could be read to prohibit a barber establishment from preparing a cup of coffee for a customer. This is not the intent of the rule and was never the Department's interpretation. The intent of the rule is to prohibit, due to health concerns, the operation of a food or drink establishment on the same premises as a barber establishment.

Section 82.120 is amended to add the 35-hour curriculum for the hair braiding specialty certificate and the 300-hour curriculum for the hair weaving specialty certificate. The adopted rule amendment specifies the topics that must be covered and the number of hours that must be devoted to each topic. These are the topics that the Advisory Board considered relevant to the practice of the certificate holder and are consistent with the curricula for similar certificate types in the cosmetology program.

The Department drafted and distributed the proposed rule to persons internal and external to the agency. The proposal was published in the *Texas Register* on August 17, 2007. The comment period closed on September 17, 2007. No public comments were received in response to the proposal.

The amendments are adopted under Texas Occupations Code, Chapters 51, 1601, and 1603, which authorize the Department to adopt rules as necessary to implement those chapters and any other law establishing a program regulated by the Department. In particular, many of these adopted rule changes implement the provisions of House Bill 2106, 80th Legislature.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the adoption.

§82.51. Initial Inspections--Inspection of Barber Schools Before Operation.

(a) Any new or relocated barber school must be inspected and approved by the department before it may operate. Additionally, a barber school that has changed ownership must be inspected and approved by the department, but may continue to operate prior to inspection.

(b) The barber school owner shall request an initial inspection from the department and pay the fee required by §82.80. In order for the department to schedule the initial inspection in a timely manner, the initial inspection request and fee should be submitted to the department no later than forty five (45) calendar days prior to the opening date of the school.

(c) Upon receipt of the owner's request and the fee, the department shall schedule the initial inspection date and notify the owner.

(d) Upon completion of the initial inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the barber school meets or does not meet the minimum requirements of the Act and this chapter.

(e) For barber schools that do not meet the minimum requirements, the report will reflect those minimum requirements that remain to be addressed by the owner.

(f) A barber school that does not meet the minimum requirements on initial inspection must be reinspected. The barber school owner must submit the request for reinspection along with the fee required by §82.80, before the department will perform the reinspection.

§82.80. Fees.

(a) Application Fees:

(1) Class A Registered Barber License--$90 (includes $10 newsletter fee)

(2) Barber Teacher Certificate--$70

(3) Barber Technician License--$40 (includes $10 newsletter fee)

(4) Manicurist License--$40 (includes $10 newsletter fee)

(5) Student Permit--$35 (includes $10 law and rules book fee)

(6) Hair Weaving Specialty Certificate of Registration--$53 (includes $10 newsletter fee)

(7) Hair Braiding Specialty Certificate of Registration--$53 (includes $10 newsletter fee)

(8) Registered Examination Proctor--$25

(9) Barbershop Permit--$60

(10) Specialty Shop Permit--$50

(11) Booth Rental Permit--$50

(12) School Original Permit--$500

(b) Renewal Fees:

(1) Class A Registered Barber License--$90 (includes $10 newsletter fee)

(2) Barber Teacher Certificate--$70

(3) Barber Technician License--$90 for licenses expiring on or before May 31, 2006; $40 for licenses expiring on or after June 1, 2006 (includes $10 newsletter fee)

(4) Manicurist License--$40 (includes $10 newsletter fee)

(5) Student Permit--No charge

(6) Hair Weaving Specialty Certificate of Registration--$53 (includes $10 newsletter fee)

(7) Hair Braiding Specialty Certificate of Registration--$53 (includes $10 newsletter fee)

(8) Registered Examination Proctor--$25

(9) Barbershop Permit--$60

(10) Specialty Shop Permit--$50

(11) Booth Rental Permit--$50

(12) School Permit--$300

(c) License by Reciprocity or Endorsement--$100

(d) Issuance of a revised or duplicate license, certificate or permit--$25

(e) Verification of license, permit or certificate to other states--$25

(f) Law and Rules Book Fee--$10

(g) Registered Examination Proctor Department Training Course--$50

(h) Late renewals fees for licenses, certificates and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(i) Inspection Fees (for each occurrence):

(1) Initial Inspection or Reinspection of school--$500

(2) Risk-based Inspection Fees for schools and shops--$150

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

Filed with the Office of the Secretary of State on September 21, 2007.

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Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.20, 83.22, 83.23, 83.25, 83.26, 83.29, 83.31, 83.40, 83.50 - 83.54, 83.71, 83.80, 83.106, 83.110, 83.114, 83.120

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code ("TAC"), Chapter 83, §§83.10, 83.22, 83.23, 83.25, 83.26, 83.29, 83.31, 83.40, 83.50 - 83.54, 83.71, 83.80, 83.106, 83.110, 83.114, and 83.120, regarding the regulation of cosmetologists as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4861), without changes, and will not be republished. Section 83.20 is adopted with changes from the rules as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4861) and is republished.

These adopted rule changes are necessary to implement changes in law enacted by House Bill 2106, 80th Legislature, and to make certain clean-up changes in the rules for cosmetologists. The provisions of House Bill 2106 became effective on June 15, 2007 and require the Commission to adopt rules necessary to implement the new legislation by January 1, 2008. These rule changes, with the exception of a clean-up change in §83.114, were recommended by the Advisory Board on Cosmetology at its meeting on July 9, 2007.

In §83.10 the definition of "hair weaver" is amended to recognize that shampooing clients' hair is a customary part of hair weaving services.

Section 83.20 is reorganized to implement a change in law made by House Bill 2106, that applicants for a specialty certificate are no longer required to have a high school diploma or equivalent.

Section 83.22 is amended to implement a change in law made by House Bill 2106, that new beauty shops and specialty shops are no longer required to be inspected by the Department before opening for business.

Section 83.23 is amended to implement a change in law made by House Bill 2106, that applicants for a beauty culture school license are no longer required to submit a floor plan.

In §83.25 a clean-up change is made to subsection (c) to recognize that a hair braiding specialty certificate is distinct from a hair weaving specialty certificate. Subsection (f) is amended to remove a time frame that no longer applies. Subsection (k) is added to implement a provision of House Bill 2106 that restricts the number of continuing education hours required of cosmetologists who are at least 65 years of age and have held a license for at least 15 years. The Commission may require these licensees to complete not more than four hours in health and safety courses. Upon the recommendation of the Advisory Board on Cosmetology, the rule requires the licensees to complete two hours in a Sanitation course. The Department believes that two hours of Sanitation is a sufficient amount of continuing education, considering the amount of experience that these licensees have.

In §83.26, a technical correction is made to recognize that a hair braiding specialty certificate is distinct from a hair weaving specialty certificate.

Section 83.29(b) is amended to implement a change in law made by House Bill 2106 by specifying that relocated beauty shops and specialty shops are no longer required to be inspected by the Department before opening for business. Relocated beauty culture schools must still be inspected prior to opening. Similarly, subsection (c) is amended to clarify that beauty shops and specialty shops are not required to be inspected on a change of ownership; only beauty culture schools require such inspection. Additionally, in subsection (c) a clean-up change is made to clarify that the list of events that constitute a change of ownership is not an exhaustive list.

In §83.31, a clean-up change is made to list the hair braiding specialty certificate separately from the hair weaving specialty certificate.

In the General Appropriations Act, the 80th Legislature appropriated money to the Department from the Private Beauty Culture School Tuition Protection Account for the 2008-09 biennium. In response, the Department proposes to update the rules related to claims against the account to ensure that there is a clear process for handling claims. Section 83.40(a) is amended to recognize that, under Chapter 1602, Occupations Code, there are two purposes of the account: to refund tuition and fees to students who are owed a refund by a closed school and to pay expenses incurred by a private beauty culture school in providing training directly related to educating a student from a closed school. A limit of $100,000 is placed on the total of claims that may be paid against one school. This limit is intended to avoid having the entire account exhausted by claims against one closed school. Subsections (g) and (h) list the requisites for payment of a claim. Subsection (i) specifies that claims will be paid on a pro rata basis if all claims cannot be satisfied. Subsection (j) requires that the Department provide notice of a claim to the affected school and gives the school 20 days from the date of the notice to dispute the claim. Subsection (k) identifies the consequences of a payment from the account, including that the closed school must repay the account and that the school is subject to administrative sanctions and penalties. New language also provides that the Department is subrogated to the rights of a student against a school to the extent of the amount paid to the student from the account. To be eligible for payment from the account, the student must assign to the Department his or her rights against the school to the extent of the amount paid to the student from the account. These provisions will enable the Department to seek reimbursement to the account from the closed school, as part of the Department's statutory duty to administer claims made against the account under §1602.464(b), Occupations Code. The Department's interpretation of the statute is that the school is primarily responsible for payment of refunds to students, with the Tuition Protection Account as an option if the school fails or is unable to fulfill its responsibility to students. These rule provisions reflect that interpretation.

Sections 83.50 and 83.51 are amended to recognize that initial inspections are now required only of beauty culture schools and not shops.

Section 83.52(a) is amended to implement a change in law made by House Bill 2106 to increase the frequency of periodic inspections of beauty culture schools to at least twice per year. The changes to §83.53 remove beauty culture schools from Tiers 1 and 2 of the risk-based inspection schedule, in light of the increased frequency of periodic inspections for schools. Additional relevant factors are added that would place a beauty culture school in Tier 3.

Section 83.54(a) is amended to add a deadline by which an establishment owner shall complete all corrective modifications and provide written verification of the corrective modifications to the Department. The deadline is 10 days after receiving the Department's list of required corrective modifications. This deadline is necessary to ensure that establishments correct violations, such as health and safety violations, within a reasonable period of time.

Section 83.71(f) is amended to make a clean-up change to separate the requirements for hair weaving specialty shops and hair braiding specialty shops. Hair braiding specialty shops are not required to provide shampoo bowls or dryers because hair braiding practice does not include shampooing.

Section 83.80 is amended to make clean-up changes to separate the fees for hair weaving specialty shops and hair braiding specialty shops.

Section 83.106 is amended to implement a change in law enacted by House Bill 2106. Under Texas Occupations Code,

§1603.352, as amended by House Bill 2106, the requirement to sterilize instruments used in nail services applies to metal instruments.

A clean-up change is made to §83.110 to clarify that hair braiders, in addition to the other license types mentioned, must wash their hands before performing services on a client.

Section 83.114(f) is amended to clarify that preparation of food or beverages on licensed premises for sale is prohibited, but preparation of food or beverages not for sale is not prohibited by the rule. For example, a cosmetology establishment would not violate the rule by offering a cup of coffee to a customer without charge. The language of the current rule, strictly interpreted, could be read to prohibit a cosmetology establishment from preparing a cup of coffee for a customer. This is not the intent of the adopted rule and was never the Department's interpretation. The intent of the rule is to prohibit, due to health concerns, the operation of a food or drink establishment on the same premises as a cosmetology establishment.

Section 83.120(d) is amended to require that the beauty culture school, rather than the student, is responsible for keeping a record of the practical applications completed by each student. Because the school reports this information to the Department, the Department believes that it is more appropriate for the school to be responsible for tracking the information.

Department drafted and distributed the proposed rules to persons internal and external to the agency. The proposal was published in the *Texas Register* on August 10, 2007. The comment period closed on September 10, 2007. Three public comments were received in response to the proposal and are summarized below. The Advisory Board on Cosmetology met on September 10, 2007 to consider public comments and make a final recommendation on the rule proposal to the Commission. The Advisory Board recommended the proposed rules for adoption with no changes based on the public comments that had been received. The Advisory Board did recommend one minor change to the proposed version of the rules. In §83.20(a) language is added to clarify that a vocational cosmetology program is now typically referred to as a "career and technical" program.

One commenter stated that §83.10 and §83.20 should stay as is. The commenter does not explain or give reasons for the comment. The Department notes that the changes to §83.10, which emphasize that a hair weaver may shampoo, are consistent with the current curriculum for hair weavers. The curriculum includes shampooing as a significant component. Furthermore, the changes to §83.20 merely reflect the change in law made by House Bill 2106, that applicants for a specialty certificate are no longer required to have a high school diploma or equivalent. No change is made from the rule as proposed.

Another commenter expressed that a cosmetologist with more than 20 years of experience, regardless of age, should not be required to complete more than two hours of continuing education in sanitation. The proposed changes to §83.25 follow the language of House Bill 2106, which is limited to licensees who are at least 65 and have been licensed for at least 15 years. No change is made from the proposed rule language.

Another commenter, a continuing education provider, requested that the number of continuing education hours for cosmetologists not be reduced. This comment seems to relate more to Phase 2 of the cosmetology rule changes which have not yet been published for public comment. No change is made to the rule, based on the comment received.

The amendments are adopted under Texas Occupations Code, Chapters 51, 1602, and 1603, which authorize the Department to adopt rules as necessary to implement those chapters and any other law establishing a program regulated by the Department. In particular, many of these rule changes implement the provisions of House Bill 2106, 80th Legislature.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1602, and 1603. No other statutes, articles, or codes are affected by the adoption.

§83.20. License Requirements--Individuals.

(a) To be eligible for an operator license, facialist specialty license, or manicurist specialty license, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 17 years of age;

(4) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the person's ability to benefit from training;

(5) have completed the following hours of cosmetology curriculum in a beauty culture school:

(A) for an operator license, one of the following:

(i) 1500 hours of instruction in a beauty culture school; or

(ii) 1000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the department in a vocational or career and technical cosmetology program in a public school.

(B) for a facialist specialty license, 750 hours of instruction.

(C) for a manicurist specialty license, 600 hours of instruction; and

(6) pass a written and practical examination required under §83.21.

(b) To be eligible for hair weaving specialty certificate, hair braiding specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate, an applicant must:

(1) submit a completed application on a department-approved form;

(2) pay the fee required under §83.80;

(3) be at least 17 years of age;

(4) have completed the following hours of cosmetology curriculum in a beauty culture school:

(A) for a hair weaving specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment;

(B) for a hair braiding specialty certificate, 35 hours of instruction;

(C) for a wig specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment; or

(D) for a shampoo/conditioning specialty certificate, 150 hours of instruction completed in not less than four weeks from date of enrollment; and

(5) for a hair weaving specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate, pass a written and practical examination required under §83.21. No examination is required for a hair braiding specialty certificate.

(c) To be eligible for an instructor license, facial instructor specialty license or manicure instructor specialty license, an applicant must:

(1) pass a written examination and practical demonstration of teaching skills required under §83.21;

(2) be at least 18 years of age;

(3) have completed the 12th grade or its equivalent;

(4) pay the fee required under §83.80; and

(5) meet the following requirements:

(A) for an instructor license, hold an active operator license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of working experience in a licensed beauty salon.

(B) for a facial instructor specialty license, hold an active operator or facialist specialty license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of facial experience in a licensed beauty salon or facial specialty salon.

(C) for a manicure instructor specialty license, hold an active operator or manicurist specialty license and have completed one of the following:

(i) 750 hours of instruction in cosmetology courses and methods of teaching in a department-approved school or program, or

(ii) 250 hours in methods of teaching the student, if the applicant can verify two years of manicure experience in a licensed beauty salon or manicure specialty salon.

(d) To be eligible for a shampoo apprentice permit, an applicant must:

(1) be at least 16 years of age; and

(2) submit a completed application on a department-approved form.

(e) To be eligible for a student permit, an applicant must:

(1) submit a completed application on a department-approved form; and

(2) pay the fee required under §83.80.

(f) To be eligible for a registered examination proctor registration, an applicant must:

(1) have held an active instructor license for at least two of the five years preceding the application;

(2) hold an active instructor license;

(3) obtain a certificate of completion from a department-approved training course;

(4) submit a completed application on a department-approved form; and

(5) pay the applicable fee under §83.80.

(g) A license application is valid for one year from the date it is filed with the department.

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-200704411
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Executive Director
Texas Department of Licensing and Regulation
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Proposal publication date: August 10, 2007
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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER E. BOOKS AND RECORDS

16 TAC §402.500

The Texas Lottery Commission (Commission) adopts the repeal of Title 16, Part 9, Chapter 402, Subchapter E, §402.500 (relating to General Audit Rule), without changes to the proposal as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4868).

By separate action, the Commission will publish adopted new Title 16, Part 9, Chapter 402, Subchapter G, §402.715 (relating to Compliance Audit). The Commission is repealing the old rule and adopting the new rule, rather than amending the old rule, because the format and substantive provisions of the new rule are changed significantly. The adopted new rule is written in a question and answer format. The new rule is also being assigned a new rule number within Chapter 402.

A public comment hearing was held on August 21, 2007. One member of the public, representing the Bingo Interest Group, was present and commented in favor of the repeal. No written comments were received.

The repeal is adopted under the Texas Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act. The repeal is also adopted under Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704477
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

16 TAC §402.708

The Texas Lottery Commission (Commission) adopts new Title 16, Part 9, Chapter 402, Subchapter G, §402.708 (relating to Dispute Resolution), with changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4868). Specifically, the changes include: (1) clarification that the new rule applies to all licensees; (2) change in the language at subsection (c)(4) to "15 working days" and addition of language to clarify that the 15 working days begin from the latest date of receipt; (3) addition of "as required in subsection (c)(4) of this section" to subsection (d)(2); (4) clarification in subsection (e)(3) that in the event of unforeseen events, upon agreement of the parties, a dispute resolution conference may be rescheduled; and (5) change in the language at subsection (l) from "will proceed" to "may proceed".

The purpose of the adopted new rule is to provide an informal process to resolve disputed issues and enforcement actions related to bingo operations as an alternative to the formal process described in the Bingo Enabling Act, Occupations Code Chapter 2001 and the Administrative Procedures Act, Government Code Chapter 2001. The adopted new rule is not intended to supersede the formal process. Instead, it is an alternative way to resolve disputed issues and enforcement actions relating to the identification of violations of the Bingo Enabling Act and/or administrative rules. The new rule is written in a question and answer format. Specifically, the rule sets out definitions for terms used in the rule, identifies who can request a dispute resolution conference, how to request a conference, the circumstances in which a request for a conference will be denied, the time and place of the conference, what will happen in the event of not attending a previously scheduled conference or not rescheduling a conference, who must attend the conference as well who can attend on behalf of the licensee or unit, who will attend the conference on behalf of the Charitable Bingo Operations Division, what happens at the conference, what information must be provided in advance of the conference, what happens if an agreement is reached at the conference, and what happens if an agreement is not reached at the conference.

A public comment hearing was held on August 21, 2007. One member of the public, representing the Bingo Interest Group, was present and commented generally in favor of the new rule. The commenter did make some suggested changes. No written comments were received.

Comment: At subsection (a)(1), the commenter suggested adding language such as "or other action" or "if any".

Agency Response: The Commission disagrees with the commenter and prefers to keep the language in the rule consistent with the language in §2001.603 of the Bingo Enabling Act.

Comment: The commenter stated that it appears only licensed authorized organizations can use dispute resolution, and would like the rule to apply to all licensees.

Agency Response: The Commission agrees and has clarified the language in the rule where appropriate to indicate that it applies to all licensees.

Comment: At subsection (c)(4), the commenter suggested changing "20 calendar days from the date you receive a…" to a more certain time period.

Agency Response: The Commission agrees and has changed the language to "15 working days" and has added language to clarify that the 15 working days begin from the latest date of receipt.

Comment: At subsection (d)(1), the commenter inquired whether it was limited to licensed authorized organizations.

Agency Response: The Commission agrees and has clarified language in the rule where appropriate to indicate that it applies to all licensees.

Comment: At subsection (d)(2), the commenter stated that the timelines must be clear.

Agency Response: The Commission agrees and has added the language, "as required in subsection (c)(4)" to subsection (d)(2).

Comment: At subsection (e)(3), the commenter suggested deleting, "within 24 hours" because unforeseen events may occur in less than 24 hours.

Agency Response: The agency agrees. The rule now allows for a dispute resolution conference to be rescheduled at any time upon occurrence of unforeseen events and agreement of the parties.

Comment: At subsection (g), the commenter inquired about the meaning of "regulatory classification". Also, the commenter suggested that the phrase, "at least 24 hours" could disqualify certain valuable persons.

Agency Response: The term "regulatory classification" refers to the license type the licensee holds and whether or not the licensee participates in unit accounting. The figure 16 TAC §402.708(g) lists the various types of regulatory classifications. Twenty-four hours prior to the scheduled conference time is a reasonable deadline for providing the Director with notice of who is attending the dispute resolution conference.

Comment: At subsection (k)(2)(A), the commenter suggested adding the words "if any", or suggested striking subparagraph (A)(2) and adding "if any" after subparagraph (C).

Agency Response: The Commission disagrees. If there were no violations identified then there would be no need for a Dispute Resolution Settlement Agreement.

Comment: At subsection (l), the commenter suggested changing "will proceed" to "may proceed".

Agency Response: The Commission agrees and has changed "will proceed" to "may proceed".

The new rule is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.708. Dispute Resolution.

(a) What are the definitions for the terms used in this rule?

(1) Determination letter--A notice issued by the director stating the basis for the conclusion that a violation occurred, recommending that an administrative penalty be imposed on the person alleged to have committed the violation, and recommending the amount of the proposed penalty. The notice must include a brief summary of the alleged violation; include the amount of the administrative penalty recommended; and inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(2) Dispute resolution--An informal process available to licensees to resolve regulatory disputes in a fair, competent, and consistent manner.

(3) Dispute resolution conference--An informal meeting to resolve a disputed issue(s) related to an audit finding(s) contained within a final audit report or a disputed issue(s) contained within a notice of opportunity to show compliance letter.

(4) Dispute resolution officer--The Director or his designee who will facilitate or manage the dispute resolution conference and guide and assist the participants.

(b) Who may request a dispute resolution conference? A licensee that does not agree with the findings in its final audit report or the information in a notice of opportunity to show compliance letter may request a dispute resolution conference.

(c) How do I request a dispute resolution conference?

(1) You may request a dispute resolution conference by completing and submitting a Request for Informal Dispute Resolution Form to the Director.

(2) Disputed issues must be identified on the form.

(3) The form must be signed by:
Figure: 16 TAC §402.708(c)(3)

(4) You must submit the completed Request for Informal Dispute Resolution Form no later than 15 working days from the latest date of receipt of a determination letter, the final audit report, or notice of opportunity to show compliance letter.

(5) You may provide supporting documentation related to your position with your request.

(d) Under what circumstances will the Director deny a request for a dispute resolution conference? The Director will not grant a request for a dispute resolution conference if:

(1) You are not a licensee that disputes the findings in the final audit report or the information in a notice of opportunity to show compliance letter;

(2) You fail to timely submit the completed Request for Informal Dispute Resolution Form as required in subsection (c)(4) of this section; or

(3) A dispute resolution conference has been held previously on the disputed issue(s).

(e) When and where will the Dispute Resolution Conference be held?

(1) Charitable Bingo Operations Division staff will contact you within 15 calendar days from the date we receive a Request for Informal Dispute Resolution Form, in order to schedule a mutually agreeable date, time, and location for the dispute resolution conference.

(2) The dispute resolution conference may be held in person, by video conference, or by telephone conference call. The date, time, and location of the conference must be agreeable to all parties.

(3) You must contact the Commission at least 24 hours prior to the scheduled conference time to reschedule a dispute resolution conference. However, in the event of unforseen events, upon agreement of the parties, a dispute resolution conference may be rescheduled.

(f) What happens if I don't attend or reschedule a Dispute Resolution Conference? The dispute resolution process will end. The administrative process will continue and a formal hearing will proceed. We will notify you of the date of the administrative hearing.

(g) Who attends the Dispute Resolution Conference? Depending on your regulatory classification, certain individuals from your organization must attend the dispute resolution conference. You must notify the Director at least 24 hours before the scheduled dispute resolution conference of who is attending.
Figure: 16 TAC §402.708(g)

(h) Who will represent the Charitable Bingo Operations Division at a Dispute Resolution Conference?

(1) Appropriate Commission staff from the Charitable Bingo Operations Division, Legal Services Division, and/or Enforcement Division will attend and participate in the dispute resolution conference to provide relevant information and documentation regarding the disputed issues and to attempt to reach a resolution of the dispute.

(2) The dispute resolution officer and dispute resolution support staff will facilitate the dispute resolution process but will not advocate on behalf of any party.

(i) What happens at the Dispute Resolution Conference?

(1) Each party states their position related to the disputed issues and presents appropriate documentation to substantiate their position on all disputed issues.

(2) The dispute resolution officer works with the parties to reach a settlement.

(3) Any resolution reached as a result of the dispute resolution conference will be through voluntary agreement of the parties.

(j) Do I need to provide any information prior to the Dispute Resolution Conference? If the Dispute Resolution Conference is conducted via telephone or video conferencing, you must provide to the Director a copy of any documentation you plan to present at least 48 hours prior to the conference. If the basis of the dispute involves an audit finding, the Director will provide the dispute resolution officer with the information submitted by the organization, the final audit report, and the determination letter. If the basis of the dispute is other than an audit finding, the Director will provide the dispute resolution officer the notice of opportunity to show compliance letter and the underlying report that is the basis for the notice of opportunity to show compliance letter. The dispute resolution officer may contact both parties and request additional information be submitted to him prior to the dispute resolution conference.

(k) What happens if an agreement is reached at the dispute resolution conference?

(1) If the parties agree to a resolution of disputed issues, the dispute resolution officer will prepare a Dispute Resolution Settlement Agreement for review, approval, and signature by both parties at the dispute resolution conference.

(2) The Agreement will include:

(A) the violation(s);

(B) the resolution of the disputed issues(s); and

(C) corrective action you must take.

(3) The Agreement must be signed by an officer, director, or bingo chairperson and the primary operator.

(l) What happens if an agreement is not reached at the dispute resolution conference? The matter may proceed to a formal administrative hearing.

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704478
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

16 TAC §402.715

The Texas Lottery Commission (Commission) adopts new Title 16, Part 9, Chapter 402, Subchapter G, §402.715 (relating to Compliance Audit), with changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4870). Specifically, the Commission has changed the language in subsections (m)(1) and (r)(1) to indicate individuals that may be required to attend the entrance and exit conferences, has added the language "within 28 calendar days of receipt of the licensee's response" to subsection (v), has added the language "14 days after receipt" to subsection (y)(2), has added the language "representing the licensee" to subsection (r)(2) to clarify who may also attend the exit conference, has changed "10 calendar days" to "15 working days" in subsection (s), and has added language to clarify the definition of an audit finding in subsection (a)(1).

The adopted new rule is written in plain language in a question and answer format. The new rule sets out definitions for terms used in the rule, describes what a compliance audit is, identifies the objectives of a compliance audit, describes how a licensee is selected for a compliance audit, describes how a licensee is notified that it has been selected for a compliance audit, sets out the time period the compliance audit will typically cover, identifies the information that will need to be provided and when it will need to be provided, sets out the effect of not providing the requested records, describes what an entrance conference is, what will occur during the entrance conference, when and where the entrance conference will occur, who must attend the entrance conference as well who can attend the conference, where the audit will be conducted, how long the audit will take, when the audit findings will be available, what is an exit conference, who must attend the exit conference, what happens if the licensee does not agree with the draft audit report or the audit findings, whether the licensee will be able to respond to the draft audit report, what information must be included in the response, what will happen after the response, what will happen if the licensee does not respond, who will receive the final audit report, what will happen after the issuance of the final audit report, and what the licensee can do if the licensee disagrees with the determination letter.

A public comment hearing was held on August 21, 2007. One member of the public, representing the Bingo Interest Group, was present and commented generally in favor of the new rule. The commenter did make some suggested changes. No written comments were received.

Comment: At subsection (a)(1), the commenter suggested adding the word "alleged" before the word "non-compliance" because the audit finding at that point is an alleged instance of non-compliance.

Agency Response: The Commission disagrees. The Commission has added language to clarify that an audit finding is a statement of an instance of non-compliance with the Bingo Enabling Act or Charitable Bingo Administrative Rules that may or may not be a final determination of a violation.

Comment: At subsection (m), the commenter suggested that the phrase, "required to attend" would tie the hands of the agency as well as the licensees, and that the language, "may be required to attend" should be used instead.

Agency Response: The Commission agrees and has changed the language in subsection (m)(1) to "The Commission may require the following individuals from the organization to attend the entrance conference: (A) bingo chairperson; (B) primary operator; (C) unit manager or designated agent, if applicable; and (D) any other officer or director."

Comment: At subsection (r), the commenter suggested that "may be required" should be substituted for "required to".

Agency Response: The Commission agrees and has changed the language in subsection (r)(1) to "The Commission may require the following individuals from the organization to attend the exit conference: (A) bingo chairperson; (B) primary operator; (C) unit manager or designated agent, if applicable; and (D) any other officer or director."

Comment: At subsection (s), the commenter suggested that "20 work days" should be substituted for "10 calendar days".

Agency Response: The Commission agrees with the commenter that more time may be necessary for the licensee to make the decision to request a meeting with the audit manager. The language in the rule has been changed from "10 calendar day" to "15 working days".

Comment: At subsection (v), the commenter suggested that the Commission state "when" the final audit report would be issued.

Agency Response: The Commission agrees with the commenter and has added the suggested language, "within 28 calendar days of receipt of the licensee's response".

Comment: At subsection (y)(2), the commenter suggested that "14 days after the date" be changed to "14 days after receipt".

Agency Response: The Commission agrees and has made the suggested change.

The new rule is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.715. Compliance Audit.

(a) What are definitions for the terms used in this rule?

(1) Audit Finding--A statement of an instance of non-compliance with Occupations Code Chapter 2001, Bingo Enabling Act (Act) or Charitable Bingo Administrative Rules (Rules) identified in a compliance audit that may or may not be a final determination of a violation.

(2) Licensee--A licensed authorized organization that holds a license to conduct bingo under the Act or a group of licensed authorized organizations operating under a unit agreement.

(b) What is a compliance audit?

(1) An official examination of the licensee's bingo operations to:

(A) determine compliance with the Act and Rules;

(B) provide objective information to the licensee's management and those persons responsible for the governance and oversight of the licensee; and

(C) contribute to public accountability.

(2) A compliance audit may include physically inspecting bingo equipment and premises, observing the conduct of the bingo game, inquiry of management and staff, reviewing the licensee's financial accounts and records, or any other activity necessary to meet the compliance audit objectives.

(3) Compliance audits are conducted in accordance with the Generally Accepted Government Auditing Standards promulgated by the Government Accountability Office and Commission policies and procedures.

(c) What are the objectives of a compliance audit? The activities of an audit are designed to accomplish the following objectives:

(1) determine whether the licensee is in compliance with the Act and Rules;

(2) determine whether the information reported to the Commission is accurate; and

(3) determine whether proceeds from the conduct of bingo are used for authorized purposes.

(d) How is a licensee selected for a compliance audit? A licensee may be selected for an audit based on any of the following:

(1) a statewide risk assessment;

(2) a request by Charitable Bingo Operations Division management;

(3) a request by another division of the Commission;

(4) in conjunction with or as a result of a complaint; or

(5) a request by the licensee's management or its oversight authorities.

(e) How is the licensee notified that it has been selected to be audited? The licensee will receive written notification of an audit in order to allow time to gather any requested information.

(f) What time period will the audit cover? Typically the audit will cover the most recently completed calendar year; however, the audit period may be extended.

(g) What information does the licensee need to provide for the audit? The licensee must provide:

(1) the records identified on the records request form that is attached to the notification letter;

(2) the completed internal control questionnaire that is provided with the notification letter; and

(3) any additional records or information requested by the auditor.

(h) When does the licensee need to provide the records and the completed internal control questionnaire? The requested records and the internal control questionnaire must be provided to the auditor before or at the entrance conference.

(i) Does the licensee need to provide original records? No. The licensee may provide the auditor with copies of records. If original records are supplied, the auditor will provide a receipt to the licensee.

(j) What if the licensee does not provide the requested records?

(1) The Commission will send the licensee a demand letter requesting the records.

(2) If the licensee does not respond to the demand letter or provides insufficient records, the audit will be conducted using any information that the auditor is able to get from other sources.

(3) The audit report will discuss efforts to collect records necessary to conduct the audit.

(4) Administrative enforcement action may result when requested records are not provided.

(k) What is an entrance conference? An entrance conference is a meeting at which the audit team leader will collect the required records and discuss:

(1) the audit process;

(2) what the audit will cover;

(3) how the results of the audit will be shared;

(4) a planned date for finishing fieldwork; and

(5) the completed internal control questionnaire.

(l) When and where will the entrance conference be held?

(1) The audit team leader will contact the licensee to schedule a mutually agreeable time and place for the entrance conference.

(2) The entrance conference is held at a convenient location, for example, the bingo hall, the bookkeeper's office, the licensee's primary business office, or the regional audit office.

(m) Who attends the entrance conference?

(1) The Commission may require the following individuals from the organization to attend the entrance conference:

(A) bingo chairperson;

(B) primary operator;

(C) unit manager or designated agent, if applicable; and

(D) any other officer or director.

(2) The organization may designate any other individual(s) to attend the conference also, including any other officer, an accountant, a bookkeeper, or an attorney.

(n) Where will the audit be conducted? The audit is typically conducted at the Commission's regional office or at a location the licensee provides. The location should include office furniture and equipment that allows the audit staff to efficiently perform audit activities.

(o) How long will the audit take? An audit may take a few weeks to several months to complete depending upon several factors such as the time period the audit covers, scope of the audit, completeness of the records, licensee's cooperation, availability and condition of the licensee's records, and availability of agency records.

(p) When will the audit results be given? Audit results will be given to the licensee at the exit conference. However, the audit team will discuss any issues found throughout the audit, and the licensee may ask about this information at any time during the audit.

(q) What is an exit conference? An exit conference is a meeting at which the audit team leader will discuss the results of the audit included in the draft audit report. The exit conference is an additional opportunity for the licensee to provide records that may resolve audit findings.

(r) Who attends the exit conference?

(1) The Commission may require the following individuals from the organization to attend the entrance conference:

(A) bingo chairperson;

(B) primary operator;

(C) unit manager or designated agent, if applicable; and

(D) any other officer or director.

(2) Any other individual(s) representing the licensee may attend the conference also, including an officer, an accountant, a bookkeeper, or an attorney.

(s) What if the licensee disagrees with the draft audit report or findings? Within 15 working days from the date of the exit conference, the licensee may request in writing a meeting with the audit manager to discuss any concerns about the audit report or findings. The results of the meeting with the audit manager will be considered in the preparation of the final audit report.

(t) Is there an opportunity to respond to the draft audit report? Yes. Although no response is required, if the licensee wants to respond, the response must be in writing and be sent to the auditor no later than 20 calendar days from the date of the exit conference. It would be beneficial to include any documentation to support the response.

(u) What information must be included in a response to the draft audit report? If the licensee chooses to respond, the response must include:
Figure: 16 TAC §402.715(u)

(v) What happens after the licensee responds to the draft audit report? The responses will be reviewed, and, if appropriate, changes will be made to the draft audit report. The responses will be included in the final audit report. The final audit report will be mailed to the licensee within 28 calendar days of receipt of the licensee's response.

(w) What happens if the licensee does not respond to the draft audit report? The final audit report will be issued. The final audit report will include a statement that the licensee did not provide a written response to the audit findings and recommendations.

(x) Who receives the final audit report? The final audit report is sent to the following individuals:

(1) two officers, including the bingo chairperson;

(2) primary operator; and

(3) unit manager or designated agent, if applicable.

(y) What happens after the licensee receives the final audit report?

(1) If there are no audit findings, no further action is required.

(2) If there are audit findings, a Determination Letter outlining the next steps will be sent to the licensee no later than 14 calendar days after receipt of the final audit report.

(z) What if the licensee disagrees with the Determination Letter? The licensee may request a dispute resolution conference or request a hearing no later than 20 calendar days after the licensee receives the Determination Letter. For more information, see §402.708 of this chapter pertaining to dispute resolution.

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704479
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: October 14, 2007
Proposal publication date: August 10, 2007
For further information, please call: (512) 344-5012

TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 213. PRACTICE AND PROCEDURE

22 TAC §§213.20, 213.27 - 213.30, 213.33

The Texas Board of Nursing adopts amendments without changes to 22 Texas Administrative Code §§213.20, 213.27, 213.28, 213.29, 213.30 and 213.33 pertaining to Practice and Procedure. Sections 213.20, 213.28, 213.29, and 213.33 are adopted for amendment pursuant to the changes to the Nursing Practice Act, Texas Occupations Code ch. 301, during the 80th Legislative Session (the Board's Sunset Review). The adopted amendments to §213.27 and §213.30 are for the purpose of deleting obsolete portions of the rules. The adopted amendments to §§213.28, 213.29 and 213.33 were reviewed by the Board's Eligibility and Disciplinary Task Force during a July 13, 2007, meeting and the task force subsequently recommended their approval by the Board at its July 2007 board meeting. The proposed amendments were published in the August 17, 2007, edition of the *Texas Register* (32 TexReg 5143).

No comments were received during the comment period in response to the proposed amendments.

The adopted amendments are pursuant to the authority of Texas Occupations Code §301.151 which authorizes the Texas Board of Nursing to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. Texas Occupations Code §301.452 and §301.4535 are affected by these adopted amendments.

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

Filed with the Office of the Secretary of State on September 20, 2007.

TRD-200704346
Katherine Thomas
Executive Director
Texas Board of Nursing
Effective date: October 10, 2007
Proposal publication date: August 17, 2007
For further information, please call: (512) 305-6823

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §501.52

The Texas State Board of Public Accountancy adopts an amendment to §501.52 concerning Definitions with changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4710). The Board is replacing the proposed definition of "principal office" with the Uniform Accountancy Act's definition of the term.

The amendment will add definitions for the terms "principal office" and "practice privilege."

The amendment will function by clarifying the terms "principal office" and "practice privilege" as those terms are found in the Public Accountancy Act.

One comment was received regarding adoption of the rule from Nancy Wolven-Juron.

Ms. Wolven-Juron suggests that the Board incorporate the Uniform Accountancy Act (UAA) definition for "principal office" in the Board's definitions. She also suggests that the Board not use the term "home office" to define "principal office."

The Board agrees that the UAA definition would be a good definition, but the term "home office" should remain in use because it is still referenced in one section of the Public Accountancy Act.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

§501.52. Definitions.

The following words and terms, when used in title 22, part 22 of the Texas Administrative Code relating to the Texas State Board of Public Accountancy, shall have the following meanings, unless the context clearly indicates otherwise. The masculine shall be construed to include the feminine or neuter and vice versa, and the singular shall be construed to include the plural and vice versa.

(1) "Act" means the Public Accountancy Act, Chapter 901, Occupations Code;

(2) "Advertisement" means a message which is transmitted to persons by, or at the direction of, a certificate or registration holder and which has reference to the availability of the certificate or registration holder to perform Professional Services;

(3) "Affiliated entity" means an entity controlling or being controlled by or under common control with another entity, directly or indirectly, through one or more intermediaries;

(4) "Attest Service" means:

(A) an audit or other engagement required by the board to be performed in accordance with the auditing standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;

(B) a review, compilation or other engagement required by the board to be performed in accordance with standards for accounting and review services adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;

(C) an engagement required by the board to be performed in accordance with standards for attestation engagements adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board; or

(D) any other assurance service required by the board to be performed in accordance with professional standards adopted by the American Institute of Certified Public Accountants or another national accountancy organization recognized by the board;

(5) "Board" means the Texas State Board of Public Accountancy;

(6) "Certificate or registration holder" the holders of all currently valid:

(A) certificates issued to individuals who have been awarded the designation certified public accountant by the board pursuant to the Act, or pursuant to corresponding provisions of a prior Act;

(B) registrations with the board under §901.355 of the Act; and

(C) firm licenses or registrations;

(7) "Charitable Organization" means an organization which has been granted tax-exempt status under the Internal Revenue Code of 1986, §501(c), as amended;

(8) "Client" means a person who enters into an agreement with a license holder or a license holder's employer to receive a professional accounting service;

(9) "Client Practice of Public Accountancy" is the offer to perform or the performance by a certificate or registration holder for a client or a potential client of a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:

(A) the issuance of reports on, or the preparation of, financial statements, including historical or prospective financial statements or any element thereof;

(B) the furnishing of management or financial advisory or consulting services;

(C) the preparation of tax returns or the furnishing of advice or consultation on tax matters;

(D) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations routinely require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting; and/or

(E) the performance of litigation support services;

(10) "Commission" means compensation for recommending or referring any product or service to be supplied by another person;

(11) "Contingent fee" means a fee for any service where no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, a certificate or registration holder's non-Contingent fees may vary depending, for example, on the complexity of the services rendered. Fees are not contingent if they are fixed by courts or governmental entities acting in a judicial or regulatory capacity, or in tax matters if determined based on the results of judicial proceedings or the findings of governmental agencies acting in a judicial or regulatory capacity, or if there is a reasonable expectation of substantive review by a taxing authority;

(12) "Financial Statements" means a presentation of financial data, including accompanying notes, derived from accounting records and intended to communicate an entity's economic resources or obligations at a point in time, or the changes therein for a period of time, in accordance with generally accepted accounting principles. Incidental financial data to support recommendations to a client or in documents for which the reporting is governed by Statements or Standards for Attestation Engagements and tax returns and supporting schedules do not constitute financial statements for the purposes of this definition;

(13) "Firm" means a proprietorship, partnership, limited liability partnership, limited liability company, or professional or other corporation, or other business engaged in the practice of public accountancy;

(14) "Good standing" means compliance by a certificate with the board's licensing rules, including the mandatory continuing education requirements and payment of the annual license fee, and any penalties and other costs attached thereto. In the case of board-imposed disciplinary or administrative sanctions, the certificate or registration holder must be in compliance with all the provisions of the board order to be considered in good standing;

(15) "Licensee" means the holder of a license issued by the board to a certificate or registration holder pursuant to the Act, or pursuant to provisions of a prior Act;

(16) "Peer review" or "Quality Review" means the study, appraisal, or review of the professional accounting work of a public accountancy firm that performs attest services by a certificate holder who is not affiliated with the firm;

(17) "Person" means an individual, partnership, corporation, registered limited liability partnership, or limited liability company;

(18) "Principal office" means the location specified by the client as the address to which a service described in §517.1(a)(2) is directed and is synonymous with Home Office where it appears in the Act;

(19) "Practice unit" means an office of a firm required to be licensed with the board for the purpose of practicing public accountancy;

(20) "Practice privilege" means the privilege for an out of state Firm or individual to provide certain Professional Services in Texas to the extent permitted under Chapter 517 of the board rules;

(21) "Professional services" or "professional accounting work" means services or work that requires the specialized knowledge or skills associated with certified public accountants, including:

(A) issuing reports on financial statements;

(B) providing management or financial advisory or consulting services;

(C) preparing tax returns; and

(D) providing advice in tax matters;

(22) "Report" means, when used with reference to financial statements, either an engagement performed through the application of procedures under the Statement on Standards for Accounting and Review Services or any opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and/or includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any assurance as to the reliability of the financial statements to which reference is made. It also includes any form of language conventionally used with respect to a compilation or review of financial statements, and any other form of language that implies such special knowledge or competence;

(23) Interpretive Comment: The practice of public accountancy is defined in §901.003 of the Act (relating to the Practice of Public Accountancy).

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704373
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

CHAPTER 502. PEER ASSISTANCE

22 TAC §502.1

The Texas State Board of Public Accountancy adopts new rule §502.1 concerning Peer Assistance to Licensees without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4711). The text of the rule will not be republished.

The new rule will establish when the Board can refer a licensee to a peer assistance program.

The new rule will function by providing greater access to peer assistance for professionals with alcohol or chemical dependency problems.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

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J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7848

CHAPTER 511. CERTIFICATION AS A CPA
SUBCHAPTER H. CERTIFICATION
22 TAC §511.168

The Texas State Board of Public Accountancy adopts the repeal of §511.168 concerning Reinstatement of a Certificate or of a Registration without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4712).

The repeal will repeal the rule concerning the reinstatement of a certificate or of a registration.

The repeal will function by eliminating a redundant rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704375
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
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For further information, please call: (512) 305-7848

CHAPTER 513. REGISTRATION
SUBCHAPTER A. REGISTRATION OF CPAS OF OTHER STATES AND PERSONS HOLDING SIMILAR TITLES IN FOREIGN COUNTRIES
22 TAC §513.4

The Texas State Board of Public Accountancy adopts the repeal of §513.4 concerning Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4713).

The repeal will repeal the rule concerning the registration of out-of-state practitioners with substantially equivalent qualifications.

The repeal will function by eliminating a redundant rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704376
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

22 TAC §513.5

The Texas State Board of Public Accountancy adopts the repeal of §513.5 concerning Notice for Registration of Out-of-State Practitioners with Substantially Equivalent Qualifications without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4714).

The repeal will repeal the rule concerning the notice for registration of out-of-state practitioners with substantially equivalent qualifications.

The repeal will function by eliminating a redundant rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704377
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

22 TAC §513.6

The Texas State Board of Public Accountancy adopts the repeal of §513.6 concerning Board Acceptance of Out-of-State Practitioner Registration without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4714).

The repeal will repeal the rule concerning Board acceptance of out-of-state practitioner registration.

The repeal will function by eliminating a redundant rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704378
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

CHAPTER 515. LICENSES

22 TAC §515.5

The Texas State Board of Public Accountancy adopts an amendment to §515.5 concerning Reinstatement of a License without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4715). The text of the rule will not be republished.

The amendment will revise the procedures a former license holder must follow in order to obtain a new license, if that former license holder failed to renew his license and has moved out of state.

The amendment will function by reducing the licensing fee for former license holders who have moved out of state and maintained their license in the other state.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704379
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

22 TAC §515.11

The Texas State Board of Public Accountancy adopts an amendment to §515.11 concerning Exemption from Payment of the Professional Fee for Other than State of Texas Government Employees without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4716). The text of the rule will not be republished.

The amendment will expand the professional fee exemption to include state, municipal, and county government employees.

The amendment will function by increasing the number of CPAs who qualify for exemptions.

One comment was received regarding adoption of the rule from Pamela Conlan, CPA.

Ms. Conlan finds no reason to make an exemption from the professional fee for government employees. The Board does not have the authority to exclude the exemption. The exemption is legislative and not a decision of the Board.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704380
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

CHAPTER 517. TEMPORARY PRACTICE IN TEXAS

22 TAC §§517.1 - 517.3

The Texas State Board of Public Accountancy adopts the repeal of §§517.1 - 517.3 concerning Temporary Practice, Application for Temporary Permit, and Individuals Practicing under a Temporary Permit Holder, respectively without changes to the proposal as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4717).

The repeal will remove the rules concerning temporary practice, the application for a temporary permit, and the individuals practicing under a temporary permit holder.

The repeal will function by eliminating redundant rules.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704381
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

CHAPTER 517. PRACTICE BY CERTAIN OUT OF STATE FIRMS AND INDIVIDUALS

22 TAC §517.1

The Texas State Board of Public Accountancy adopts new §517.1 concerning Practice by Certain Out of State Firms without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4717). The text of the rule will not be republished.

The new rule will establish the circumstances under which an out-of-state firm must obtain either a firm license or practice privilege.

The new rule will function by increasing the number of out-of-state firms under the Board's jurisdiction.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704382
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

22 TAC §517.2

The Texas State Board of Public Accountancy adopts new §517.2 concerning Practice by Certain Out of State Individuals without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4718). The text of the rule will not be republished.

The new rule will describe the conditions under which a CPA licensed in another state can practice in this state.

The new rule will function by providing greater clarity regarding the requirement to practice in this state.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704383
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

22 TAC §517.3

The Texas State Board of Public Accountancy adopts new §517.3 concerning Conditions of Practice of Out of State Firms and Individuals without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4719). The text of the rule will not be republished.

The new rule will outline the conditions that out-of-state CPAs must comply with in order to practice in this state.

The new rule will function by providing greater clarity regarding an out-of-state CPA's obligations towards the Board while practicing in this state.

No comments were received regarding adoption of the rule.

The new rule is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704384
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

CHAPTER 521. FEE SCHEDULE

22 TAC §521.5

The Texas State Board of Public Accountancy adopts the repeal of §521.5 concerning Temporary Firm Practice Permit Fee without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4720).

The adoption will repeal the rule concerning the temporary firm practice permit fee.

The adopted repeal will function by eliminating a redundant rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Public Accountancy Act ("Act"); Texas Occupations Code, §901.151, which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704385
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

22 TAC §521.14

The Texas State Board of Public Accountancy adopts an amendment to §521.14 concerning Eligibility Fee without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4721). The text of the adopted rule will not be republished.

The adopted amendment will reduce the eligibility fee from $70.00 to $35.00 for each section of the CPA exam.

The adopted amendment will function by reducing the fee for taking the CPA exam.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt, and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute, or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704386
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

CHAPTER 527. PEER REVIEW

22 TAC §527.4

The Texas State Board of Public Accountancy adopts an amendment to §527.4 concerning Enrollment and Participation without changes to the proposed text as published in the August 3, 2007, issue of the *Texas Register* (32 TexReg 4722). The text of the rule will not be republished.

The amendment will require out-of-state firms with practice privileges in this state to comply with peer review programs in their home states.

The amendment will function by providing higher quality service from firms practicing in Texas.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

No other article, statute or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704387
J. Randel (Jerry) Hill
General Counsel
Texas State Board of Public Accountancy
Effective date: October 11, 2007
Proposal publication date: August 3, 2007
For further information, please call: (512) 305-7848

TITLE 25. HEALTH SERVICES

PART 15. COUNCIL ON CARDIOVASCULAR DISEASE AND STROKE

CHAPTER 1051. RULES

25 TAC §1051.1

The Texas Council on Cardiovascular Disease and Stroke (council) adopts new §1051.1, concerning the conduct of its meetings. The section is adopted without changes to the proposed text as published in the May 18, 2007, issue of the *Texas Register* (32 TexReg 2744) and, therefore, the section will not be republished.

BACKGROUND AND PURPOSE

The new section complies with the Health and Safety Code, Chapter 93, §93.012, which requires the council to adopt rules for the conduct of its meetings. The new section outlines the council's organization and rules of conduct for meetings.

SECTION-BY-SECTION SUMMARY

In accordance with Health and Safety Code, Chapter 93, new §1051.1 defines the council's officers and their duties, meetings, quorums, and its voting membership.

COMMENTS

The council did not receive any comments regarding the proposed rule during the comment period.

STATUTORY AUTHORITY

The new section is authorized by Health and Safety Code, Chapter 93, §93.012, which requires the council to adopt rules for the conduct of its meetings.

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704470
Michael M. Hawkins, M.D.
Chair
Council on Cardiovascular Disease and Stroke
Effective date: October 14, 2007
Proposal publication date: May 18, 2007
For further information, please call: (512) 458-7111 x6972

TITLE 28. INSURANCE

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

CHAPTER 120. COMPENSATION PROCEDURE--EMPLOYERS

28 TAC §120.2

The Texas Department of Insurance, Division of Workers' Compensation, adopts amendments to §120.2 concerning an employer's first report of injury and adopts by reference the Office of Injured Employee Counsel (OIEC) "Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System" publication. The amendments are adopted with changes to the proposed text published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 3964).

The adopted amendments to §120.2 are necessary to implement Labor Code §409.005 and to provide for the distribution of the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice of Rights and Responsibilities) contemplated by Labor Code §404.109. In response to written comments received from interested parties, the Division has changed some of the proposed language in the text of the rule as adopted. These changes, however, do not introduce new subject matter or affect persons in addition to those subject to the proposal as published. The amendments are summarized as follows. The specific language of the summary of injured employee rights and responsibilities has been removed and replaced with a reference to the "Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System" publication. Subsections (a) and (c) contain minor grammatical changes. Subsection (b) clarifies what the report should contain. Subsection (d) requires the employer to provide a copy of the report as well as the employee rights and responsibilities publication to the injured employee at the time the first report of injury is filed with the carrier. In response to comments, the proposed text of subsection (f) was omitted and subsections (f) through (h) were relettered accordingly. Subsection (h) is amended to remove language regarding penalties to comply with amendments to Labor Code that remove specific classification of such a violation. Other subsections are amended to clarify instructions, to update references to reflect organizational changes and to update legal references. The title of the rule is also amended.

The amendment to subsection (a) modifies the language of the subsection to improve its clarity and readability; the amendment does not change the subsection's substantive requirements.

The amendments to subsection (b) clarify what the employer's first report of injury must contain. This includes the information required by §120.1(a), any additional information prescribed by the Division, and the information necessary for an insurance carrier to electronically transmit a first report of injury to the Division.

The amendment to subsection (c) clarifies that it is the employee's absence from work for more than one day due to an injury that triggers the employee's requirement to file with the carrier a first report of injury. The amendment to subsection (d) clarifies the requirement that an employer provide the employee with a copy of the rights and responsibilities publication at the time the written report of injury is provided to the employee. The specific language of the publication is removed from §120.2 and replaced with a reference to the OIEC Notice of Rights and Responsibilities. The amendment to subsection (f) notes that the employer should maintain a record of both the date the Notice of Rights and Responsibilities is given to the employee and the date the report of injury is filed with the insurance carrier. The requirement that the employer maintain a record of the date the report is filed with the insurance carrier is not a substantive change, as this requirement is present in the currently enacted version of §120.2. The amendment to subsection (g) modifies the language of the subsection to improve its clarity and readability; the amendment does not change the subsection's substantive requirements. Subsection (h) notes that failure to comply with this section is an administrative violation, but removes language regarding penalties in order to comply with amendments to the Labor Code that remove specific classification of such a violation.

General: Two commenters agree with the rule as written.

Agency response: The Division appreciates the comments.

Comment: A commenter suggests that the rule include a provision requiring employers to provide each injured employee with copies of the Division's Employer Rights and Employer Responsibilities fact sheets. The commenter also suggests that employers provide this document when distributing the Office of Injured Employee Counsel's "Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System" publication.

Agency response: Section 409.011(c) of the Texas Labor Code requires that the Division provide employers with information regarding its rights and responsibilities at least once during a calendar year. There is no statutory authority, however, for requiring an employer to provide employer fact sheets to injured employees.

In addition to complying with §409.011(c), the Division has added its Employer Rights and Employer Responsibilities fact sheets to the employee section of its website. The Office of Injured Employee Counsel will also update the "Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System." The new Notice will contain information regarding the choice of a treating doctor by injured employees who are receiving non-network medical treatment after the subsections providing for the Division's Approved Doctor List expire on September 1, 2007. The inactivation of the Approved Doctors List is mandated by §408.023(k) of the Labor Code.

Comment: A commenter suggested that §120.2(d) provide for the provision of electronic notice to the injured employee if the employee has an email address.

Response: The Division agrees and the appropriate changes will be made.

Comment: A commenter said that §120.2(f) is overly burdensome to the employer. Commenter reasons that the Division is disregarding its own threshold for reporting and placing an administrative burden on employers that go beyond anything contemplated by the statute. The commenter concluded that this section should be deleted in its entirety.

Response: It was the Division's intent through proposed subsection (f) to promote the legislative goals established by Labor Code §402.021 and distribute the OIEC publication to all injured employees regardless of whether an employee is absent from work for a day and a first report of injury was required to be filed by the employer. However, in order to alleviate a potential administrative burden on employers, the Division omitted the provision.

Comment: A commenter said that inclusion of record maintenance in §120.2(g) is an unnecessary administrative burden for the employer, and that the Notice of Rights and Responsibilities is readily available from numerous sources.

Response: The Division agrees in part; the Notice of Rights and Responsibilities is readily available from numerous sources, but we must ensure that it reaches all of the injured employees. It is the responsibility of the employer to prove that this has been accomplished.

Comment: A commenter writes that number 3 of the Rights portion of the "Notice of Injured Employee Rights and Responsibilities" publication disregards the existence of health care networks and is confusing.

Response: Division disagrees. The information in this section addresses the selection of a doctor for network claims as well as non-network claims.

For: The Boeing Company, Office of Injured Employee Counsel

For, with changes: Service Group, Inc.

Against: Lockheed Martin Aeronautics Company

The amendments are adopted under the Texas Labor Code §§402.021, 404.109, 409.005, 402.00111, and 402.061. Section 404.109 calls for the Public Counsel to prepare and provides for the Commission of Workers' Compensation and the Commissioner of Insurance to distribute by rule a notice of injured employee rights and responsibilities. Section 409.005 provides the procedure for filing a report of injury, the format to be used, and authorizes the adoption of rules that must be included in the report and implementation of electronic filing of the reports. Section 402.0011 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Labor Code and §402.021 establishes basic goals for the workers compensation system of Texas. Section 402.061 provides the Commissioner with the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following sections are affected by this proposal: Labor Code §404.109 and §409.005.

§120.2. Employer's First Report of Injury and Notice of Injured Employee Rights and Responsibilities.

(a) The employer shall report to the employer's insurance carrier each death, each occupational disease of which the employer has received notice of injury or has knowledge, and each injury that results

in more than one day's absence from work for the injured employee. As used in this section, the term "knowledge" includes receipt of written or oral information regarding diagnosis of an occupational disease, or the diagnosis of an occupational disease through direct examination or testing by a doctor employed by the employer.

(b) The Division shall prescribe the form, format, and manner of the employer's first report of injury (report). The report shall contain:

(1) the information required by §120.1(a) of this title (relating to Employer's Record of Injuries);

(2) any additional information prescribed by the Division in accordance with the Labor Code §402.00128(b)(10); and

(3) the information necessary for an insurance carrier to electronically transmit a first report of injury to the Division.

(c) The report shall be filed with the insurance carrier not later than the eighth day after having received notice of or having knowledge of an occupational disease or death, or not later than the eighth day after the employee's absence from work for more than one day due to a work-related injury. For purposes of this section, a report is filed when personally delivered, mailed, reported via tele-claims, electronically submitted, or sent via facsimile.

(d) The employer shall provide a written copy of the report and a written copy of the Notice of Injured Employee Rights and Responsibilities in the Texas Workers' Compensation System (Notice of Rights and Responsibilities) to the injured employee by personal delivery, mail, electronic submission or facsimile. The Notice of Rights and Responsibilities shall be in English and Spanish, or in English and any other language common to the employee. The written report may be the report specified in subsection (b) of this section, or at a minimum shall contain the information listed in §120.1(a) of this title (relating to Employer's Record of Injuries).

(e) The Notice of Rights and Responsibilities is adopted by reference and may be obtained from:

(1) the department's website at www.tdi.state.tx.us;

(2) the Office of Injured Employee Counsel's website at www.oiec.state.tx.us; or

(3) Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas, 78744-1609.

(f) The employer shall maintain a record of the date the copy of the report of injury and the date the Notice of Rights and Responsibilities were provided to the employee. The employer shall also maintain a record of the date the report of injury is filed with the insurance carrier.

(g) If the insurance carrier has not received the report, the employer has the burden of proving that the report was filed within the required time frame. If the carrier receives the report by mail, it will be presumed that the report was mailed four days prior to the date received by the carrier. The employer has the burden of proving that good cause exists if the employer failed to timely file or provide the report.

(h) A party who fails to comply with this section commits an administrative violation.

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704464
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: October 14, 2007
Proposal publication date: June 29, 2007
For further information, please call: (512) 804-4715

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 50. ACTION ON APPLICATIONS AND OTHER AUTHORIZATIONS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §50.31 and §50.131 *without changes* to the proposed text as published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2819) and, therefore will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In 1998, the commission entered into a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency (EPA) related to the Texas Pollutant Discharge Elimination System (TPDES) program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the United States under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. This rulemaking removes references to concentrated animal feeding operations under Chapter 321 that are obsolete and no longer applicable.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 321, Control of Certain Activities by Rule and 30 TAC Chapter 305, Consolidated Permits.

SECTION BY SECTION DISCUSSION

This adopted rulemaking amends §50.31(c)(9) to remove the references to concentrated animal feeding operations (CAFOS) under Chapter 321, Subchapter K from the list of applications that are subject to §50.31. Section 50.31(c)(10) has been renumbered accordingly.

The adoption amends §50.131(c)(7) to remove the references to concentrated animal feeding operations (CAFOS) under Chapter 321, Subchapter K from the list of things excluded from coverage under §50.131. Section 50.131(c)(8) has been renumbered accordingly.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments are not subject to §2001.0225 because they do not meet the criteria for 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 that may adversely affect in a material way the economy, a sector of the economy,

productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The adopted amendments remove obsolete references to concentrated animal feeding operations in Chapter 321. Chapter 321, Subchapters G, H, J, K, M, and O are specified for repeal because they are inactive, obsolete, and have been replaced by TPDES general permits. Therefore, it is not anticipated that the adopted amendments will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these adopted amendments do not meet the definition of a "major environmental rule."

Furthermore, even if the adopted amendments did meet the definition of a major environmental rule, the adopted amendments are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted amendments to §50.31 or §50.131 will not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted amendments do not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission solicited public comment regarding the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these amendments and performed an assessment of whether the adopted amendments constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to remove references to inactive and obsolete sections that have been replaced by general permits. The adopted amendments would substantially advance this stated purpose. Promulgation and enforcement of these adopted amendments would be neither a statutory nor a constitutional taking of private real property because the adopted amendments do not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted amendments would eliminate an unnecessary reference to an obsolete rule that is being repealed. Because the amendments do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the amendment. Therefore, these amendments will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the adopted amendments, which are procedural mechanisms for removing references to subchapters no longer applicable, are consistent with CMP goals and policies and will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies. The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

PUBLIC COMMENT

The proposal was published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2819). The comment period closed on June 25, 2007. The commission received no comments on the proposed rulemaking.

SUBCHAPTER C. ACTION BY EXECUTIVE DIRECTOR

30 TAC §50.31

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; and §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704390
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 11, 2007
Proposal publication date: May 25, 2007
For further information, please call: (512) 239-6087

SUBCHAPTER G. ACTION BY THE EXECUTIVE DIRECTOR

30 TAC §50.131

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; and §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

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: May 25, 2007
For further information, please call: (512) 239-6087

CHAPTER 305. CONSOLIDATED PERMITS
SUBCHAPTER O. ADDITIONAL CONDITIONS AND PROCEDURES FOR WASTEWATER DISCHARGE PERMITS AND SEWAGE SLUDGE PERMITS

30 TAC §305.539

The Texas Commission on Environmental Quality (TCEQ or commission) adopts an amendment to §305.539 *without changes* to the proposed text as published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2821) and, therefore will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

In 1998, the commission entered into a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency (EPA) related to the Texas Pollutant Discharge Elimination System (TPDES) program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the United States under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. This rulemaking removes references to Chapter 321 that are obsolete and no longer applicable.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 50, Action on Applications and Other Authorizations and 30 TAC Chapter 321, Control of Certain Activities by Rule.

SECTION BY SECTION DISCUSSION

The commission adopted amendment to §305.539(a)(1) and (a)(2) remove the obsolete references to 30 TAC §321.271 that are no longer applicable.

The commission adopted amendment to §305.539(a)(4)(B) and (D) and §305.539(a)(5) and (6) update the agency's name.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the amendments are not subject to §2001.0225 because they do not meet the criteria for 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 that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The adopted amendments remove obsolete references to Chapter 321. Chapter 321, Subchapters G, H, J, K, M, and O are specified for repeal because they are inactive, obsolete, and have been replaced by TPDES general permits. Therefore, it is not anticipated that the adopted amendments will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these adopted amendments do not meet the definition of a "major environmental rule."

Furthermore, even if the adopted amendments did meet the definition of a major environmental rule, the adopted amendments are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted amendment to §305.539(a)(1) and (2) or §305.539(a)(4)(B) and (D) or §305.539(a)(5) and (6) will not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted amendments do not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission solicited public comment regarding this draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted amendments and performed an assessment of whether the rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to remove references to inactive and obsolete sections that have been replaced by general permits. The adopted amendments would substantially advance this stated purpose. Promulgation and enforcement of these adopted amendments would be neither a statutory nor a constitutional taking of private real property because the adopted amendments do not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted amendments would eliminate an unnecessary reference to an obsolete rule. Because the amendments do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of amendments. Therefore, these adopted amendments will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the adopted amendments, which are procedural mechanisms for removing references to subchapters no longer applicable, are consistent with CMP goals and policies and will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

PUBLIC COMMENT

The proposal was published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2821). The comment period closed on June 25, 2007. The commission received no comments on the proposed rulemaking.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; and §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state.

The adopted amendment implements TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, and 26.011.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704392
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 11, 2007
Proposal publication date: May 25, 2007
For further information, please call: (512) 239-6087

CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the repeal of §§321.101 - 321.109, 321.131 - 321.138, 321.151 - 321.159, 321.181 - 321.198, 321.231 - 321.240, and 321.271 - 321.280 *without changes* to the proposed text as published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2824), and therefore , will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Chapter 321 authorizes the discharge of wastewater from certain activities into or adjacent to water in the state. In 1998, the commission entered into a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency (EPA) related to the Texas Pollutant Discharge Elimination System (TPDES) program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the United States under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. Certain subchapters of Chapter 321 are now obsolete and/or do not meet the federal requirements for discharges into waters of the United States as required by the TPDES program. This rulemaking repeals the subchapters that have been replaced by general permits and coverage is also available under a TPDES individual permit.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 50, Action on Applications and other Authorizations and 30 TAC Chapter 305, Consolidated Permits.

SECTION BY SECTION DISCUSSION

The adopted rulemaking would repeal Subchapter G, Subchapter H, Subchapter J, Subchapter K, Subchapter M, and Subchapter O in their entirety, in accordance with the directive indicated by the 1998 MOU between the TCEQ and EPA. These subchapters are no longer applicable and they have been replaced by

the following TPDES general permits: Subchapter G is replaced by TPDES General Permit TXG670000; Subchapter H is replaced by TPDES General Permit TXG830000; Subchapter J is replaced by TPDES General Permit TXG110000; Subchapter K is replaced by TPDES General Permit TXG920000; Subchapter M is replaced by TPDES General Permit TXG340000; and Subchapter O is replaced by TPDES General Permit TXG130000.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to §2001.0225 because they do not meet the criteria for 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 that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 321, Subchapters G, H, J, K, M, and O are specified for repeal because they are inactive, obsolete, and have been replaced by TPDES general permits. Therefore, it is not anticipated that the adopted repeals will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these adopted repeals do not meet the definition of a "major environmental rule."

Furthermore, even if the adopted repeals did meet the definition of a major environmental rule, the adopted repeals are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The adopted repeals of §§321.101 - 321.109, 321.131 - 321.138, 321.151 - 321.159, 321.181 - 321.198, 321.231 - 321.240, and 321.271 - 321.280 will not cause any of the results listed in Texas Government Code, §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the adopted repeals do not constitute a major environmental rule, a regulatory impact analysis is not required. The commission solicited public comment regarding this draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these adopted repeals and performed an assessment of whether the adopted repeals constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the action is to repeal inactive and obsolete subchapters that have been replaced by general permits. The adopted repeals would substantially advance this stated purpose. Promulgation and enforcement of these adopted repeals would be neither a statutory nor a constitutional taking of private real property because the adopted repeals do not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted repeals would eliminate unnecessary and obsolete rules. Because the adopted repeals do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, these adopted repeals will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission determined that the repeals, which are procedural mechanisms for removing subchapters no longer applicable, are consistent with CMP goals and policies and will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation of the repeals will not violate (exceed) any standards identified in the applicable CMP goals and policies. The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

PUBLIC COMMENT

The proposal was published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2824). The comment period closed on June 25, 2007. The commission received no comments on the proposed rulemaking.

SUBCHAPTER G. HYDROSTATIC TEST DISCHARGES

30 TAC §§321.101 - 321.109

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by

the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704393
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: October 11, 2007
Proposal publication date: May 25, 2007
For further information, please call: (512) 239-6087

SUBCHAPTER H. DISCHARGE TO SURFACE WATERS FROM TREATMENT OF PETROLEUM SUBSTANCE CONTAMINATED WATERS

30 TAC §§321.131 - 321.138

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704394
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

SUBCHAPTER J. DISCHARGES TO SURFACE WATERS FROM READY-MIXED CONCRETE PLANTS AND/OR CONCRETE PRODUCTS PLANTS OR ASSOCIATED FACILITIES

30 TAC §§321.151 - 321.159

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

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

Filed with the Office of the Secretary of State on September 21, 2007.

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SUBCHAPTER K. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §§321.181 - 321.198

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

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SUBCHAPTER M. DISCHARGES TO SURFACE WATERS FROM PETROLEUM BULK STATIONS AND TERMINALS

30 TAC §§321.231 - 321.240

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

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SUBCHAPTER O. DISCHARGES FROM AQUACULTURE PRODUCTION FACILITIES

30 TAC §§321.271 - 321.280

STATUTORY AUTHORITY

The repeals are adopted under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The adopted repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The adopted repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

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

31 TAC §53.2, §53.5

The Texas Parks and Wildlife Commission (commission) adopts amendments to §53.2, concerning License Issuance Procedures, Fees, Possession, and Exemption Rules, and §53.5, concerning Recreational Hunting License, Stamps, and Tags, without changes to the proposed text as published in the July 20, 2007, issue of the *Texas Register* (32 TexReg 4522).

The adopted amendment to §53.2(c) is necessary to clarify terminology and eliminate confusion. The current rules provide that "persons may acquire recreational hunting and/or fishing licenses and stamps electronically (including by telephone) from the Texas Parks and Wildlife Department (department) or its designated representatives by agreeing to pay a convenience fee of up to $5 per license in addition to the normal license or stamp fee." The adopted amendment eliminates the phrase "(including by telephone)," which is redundant, since a sale over the telephone is by definition electronic in nature. Almost all licenses and stamps sold by the department are sold electronically via telephone, the Internet, or the department's automated point-of-sale system.

The adopted amendment to §53.5(b) is necessary to clarify that the Federal Migratory Bird Hunting and Conservation Stamp, commonly referred to as the "federal duck stamp," is one of the stamps sold electronically by the department.

Under federal law, no person 16 years of age or older may hunt waterfowl in the United States without having acquired a federal duck stamp. For many years, the federal duck stamp had to be physically purchased at certain federal offices and department law enforcement offices. The U.S. Fish and Wildlife Service recently made it possible for individual states to enter into agreements with the federal government to sell the federal duck stamp electronically (Electronic Duck Stamp Act of 2005, P.L. 109-266). With the passage of Senate Bill 1668 by the 80th Legislature, the department received the statutory authority to sell the federal duck stamp through the use of automated equipment and point-of-sale system; and the department, therefore, has chosen to enter into an agreement with the federal government to sell the federal duck stamp through the department's license deputies and website beginning with the 2007-2008 license year. The cost of the federal duck stamp will be $17, which includes the $15 federal fee, a $1 federal fee for the cost of mailing a physical stamp to the customer, and a $1 fee to cover the agency's transaction costs and commissions to license deputies.

The adopted amendment to §53.2 will function by clarifying terminology.

The adopted amendment to §53.5 will function by establishing the fee for the electronic purchase of the federal duck stamp.

The department received two comments opposing adoption of the amendment to §53.2. Of those comments, one commenter provided an explanation or elaboration for opposing adoption. The commenter stated that he was able buy anything on-line with efficiency except a permit to fish/hunt in his home state. The department disagrees with the comment and responds that the department has sold hunting and fishing licenses on-line or by phone for several years. No changes were made as a result of the comment.

The department received five comments opposing adoption of the amendment to §53.5. Of those comments, three commenters offered an explanation or elaboration for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that the department should remove the $1 fee. The department disagrees with the comment and responds that, in addition to the $15 fee for the purchase of the duck stamp, federal law imposed an additional fee of $1 to cover the cost of mailing the physical stamp to the purchaser; and the department imposes a $1 fee to cover the department's expenses related to the transaction cost of using the department's point-of-sale system. The department cannot rescind the $1 federal fee and is unable to absorb the fiscal cost of selling the duck stamp at no charge without impacting other department programs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there is no need to sell the duck stamp for more than $15. The department disagrees with the comment and responds that the additional $2 in fees for the purchase of the duck stamp apply only to duck stamps purchased electronically from the department; otherwise, the $15 fee applies. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department should not enter into agreements with the federal government. The department disagrees with the comment and responds that the partnership with the federal government for the electronic sale of the federal duck stamp will result in greater convenience for hunters in Texas. No changes were made as a result of the comment.

The department received 33 comments supporting adoption of the proposed amendments.

The Texas Wildlife Association commented in support of adoption of the proposed amendments.

The amendments are adopted under the provisions of Senate Bill 1668 as enacted by the 80th Texas Legislature, which amended Parks and Wildlife Code, §12.703, to authorize the department to issue a license, stamp, tag, permit, or another similar item authorized by the Parks and Wildlife Code or federal law through the use of automated equipment and a point-of-sale system; Parks and Wildlife Code, §12.701, which allows the department to authorize the issuance of a license, stamp, permit, or tag by a license deputy; Parks and Wildlife Code, and §12.702, which authorizes the commission to set collection and issuance fees by rule for a license, stamp, tag, permit, or other similar item issued under any chapter of the code.

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

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31 TAC §53.18

The Texas Parks and Wildlife Commission (commission) adopts new §53.18, concerning Other Fees, without change to the proposed text as published in the July 20, 2007, issue of the *Texas Register* (32 TexReg 4523).

The adopted new rule is necessary to provide for electronic registration of vessels by credit card and to establish a fee for validation card/decals sets that permit the limited and temporary use of untitled vessels for recreational purposes or participation in contests or events under a marine dealer, distributor, or manufacturer license.

In the future, the Texas Parks and Wildlife Department (department) will be able to provide boat registration renewal services over the Internet if the customer agrees to pay a convenience fee for handling payments made by credit card. Adopted new §53.18(a) would allow the electronic payment of vessel registration renewal fees, including any handling fees assessed by the credit card company. The new subsection is necessary to provide greater customer service to the general public and alleviate the longer wait times at department offices prior to holidays.

House Bill 3764, as enacted by the 80th Texas Legislature, amended Parks and Wildlife Code, §31.041, to authorize the department to establish rules concerning the issuance and price of validation cards permitting the limited and temporary use of untitled vessels for recreational purposes or participation in contests or events under a marine dealer, distributor, or manufacturer license.

One validation card and decal (card/decal set) is included at no additional cost with the purchase of a marine dealer, distributor, or manufacturer license. Adopted new §53.18(b) would establish the fee for additional card/decal sets at $120 per set. The fee for replacing a lost or destroyed validation card would be $10.

The department received no comments concerning adoption of the proposed rule.

The new section is adopted under the authority of Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the code, and to set and charge a fee for the use of a credit card to pay a fee assessed by the department in an amount reasonable and necessary to reimburse the department for the costs involved in the use of the card; and under House Bill 3764, 80th Texas Legislature, Regular Session, which amended Parks and Wildlife Code, §31.041, to authorize the commission to establish rules concerning the issuance and price of validation cards permitting the limited and temporary use of vessels for recreational purposes or participation in contests or events and to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

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

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CHAPTER 55. LAW ENFORCEMENT
SUBCHAPTER E. SHOW, TEST, AND DEMONSTRATION OF VESSELS

31 TAC §55.130

The Texas Parks and Wildlife Commission (commission) adopts new §55.130, concerning Show, Test, or Demonstration of Vessel, without change to the proposed text as published in the July 20, 2007, issue of the *Texas Register* (32 TexReg 4524).

In general, the adopted new rule is necessary to allow the limited and temporary use of non-registered vessels by dealers, distributors, and manufacturers for recreational purposes or for participation in contests or events. House Bill 3764, enacted by the 80th Texas Legislature, amended Parks and Wildlife Code, Chapter 31, to allow the Texas Parks and Wildlife Commission to establish rules concerning the issuance and price of validation cards permitting the limited and temporary use of vessels for recreational purposes or participation in contests or events. Prior to the passage of House Bill 3764, a dealer, distributor, or manufacturer of vessels was able to show, demonstrate, or test a vessel without securing a certificate of number for the vessel;

but the showing, testing, or demonstration could not involve the use of the vessel for recreational purposes or for participation in a contest or event.

Specifically, the adopted new rule is necessary in order to delineate the circumstances under which a dealer, distributor, or manufacturer may show, test, or demonstrate a vessel for recreational purposes or for participation in a contest or event. Under the terms of H.B. 3764, the rule must allow for the "limited and temporary use of vessels for recreational purposes or participation in contests or events" as authorized. The Texas Parks and Wildlife Department (department) considered that "limited and temporary," in the absence of a statutory definition, must be understood in the context of preventing the full-time, permanent use of an untitled or unregistered vessel for recreational purposes or for participation in contests or events. The department then considered that the most likely show, test, or demonstration uses of vessels for recreational purposes or for participation in a contest or events would be for fishing tournaments, "poker runs," water-skiing competitions, and similar events that typically do not last longer than a holiday weekend. The department concluded that the six-consecutive-day limit, coupled with a limit on the maximum number of days of use per month, is sufficient to allow for thorough showing, testing, or demonstration of a vessel for a potential buyer, while still satisfying the legislative requirement for "limited and temporary" character.

It is also necessary that the adopted new rule provide a method for enforcement and administrative personnel to quickly determine if a person operating an untitled or unregistered vessel is in fact authorized to do so. Therefore, the new rule provides for the issuance of decals and validation cards to allow the department to quickly and easily determine if someone is authorized to use a vessel to show, test, or demonstrate by participation in a recreational activity, competition, or event.

The department determined that it was necessary for the adopted new rule to include provisions to allow the department to determine compliance with the maximum use provisions of no more than six consecutive days and no more than 12 days in a calendar month. Therefore, the rule requires that a daily log be kept, that the log be retained on premises for not less than two years, and that it be made available upon the request of any peace officer, marine safety enforcement officer, or department employee acting within the scope of official duties.

New §55.130(a) as adopted will function by restating the statutory provision allowing the show, test, or demonstration of a vessel by a licensed dealer, distributor, or manufacturer.

New §55.130(b) as adopted will function by prohibiting the use of a dealer, distributor, or manufacturer license to show, test, or demonstrate a vessel for recreational purposes or for participation in a contest or event except as provided in the subchapter.

New §55.130(c) as adopted will function by allowing a dealer, distributor, or manufacturer to use an untitled or unregistered vessel for recreational purposes or for participation in a contest or event, provided the licensee has a validation card/decal set issued by the department, displays them in the prescribed manner, and does not use a card/decal set for more than six consecutive days or more than 12 days in any calendar month.

New §55.130(d) as adopted will function by requiring a validation card to be made available upon the request of any peace officer, marine safety enforcement officer, or department employee acting within the scope of official duties.

New §55.130(e) as adopted will function by providing that one validation card/decal set be included at no additional cost to the purchaser of a dealer, distributor, or manufacturer license, and for the purchase or replacement of additional card/decal sets.

New §55.130(f) as adopted will function by requiring licensees to maintain a daily log accounting for all usage of validation decals and cards under a license.

New §55.130(g) as adopted will function by establishing the conditions and period of validity for validation card/decal set.

New §55.130(h) as adopted will function by providing that nothing in the rule authorizes the use of a licensee's number or a validation card and validation decals for purposes not related to the legitimate business activities of the licensee. The adopted new subchapter would define "legitimate business activities" to mean the sale, transfer, exchange, service, or transportation of a vessel or outboard motor.

The department received four comments opposing adoption of the proposed new rule. None of the commenters offered an explanation or rationale for opposing adoption. No changes were made as a result of the comments.

The department received 13 comments supporting adoption of the proposed new rule.

The new section is adopted under the authority of House Bill 3764, 80th Texas Legislature, Regular Session, which amended Parks and Wildlife Code, §31.041(d), to authorize the commission to establish rules concerning the issuance and price of validation cards and decals permitting the limited and temporary use of vessels for recreational purposes or participation in contests or events and to adopt rules regarding dealer's, distributor's, and manufacturer's licenses, including application forms, application and renewal procedures, and reporting and recordkeeping requirements.

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CHAPTER 65. WILDLIFE
SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.318, 65.320, 65.321

The Texas Parks and Wildlife Commission (commission) adopts amendments to §§65.318, 65.320, and 65.321, concerning the Migratory Game Bird Proclamation. Section 65.318, concerning Open Seasons and Bag and Possession Limits--Late Season Species, is adopted with changes to the proposed text as published in the May 25, 2007, issue of the *Texas Register* (32

TexReg 2832). Sections 65.320, concerning Extended Falconry Season--Late Season Species, and 65.321, concerning Special Management Provisions, are adopted without changes and will not be republished.

The adopted change to §65.318 increases the bag limit for dark geese in the western goose zone and alters both the general and youth-only seasons for ducks, coots, and mergansers in the High Plains Mallard Management Unit (HPMMU).

The Texas Parks and Wildlife Department (department) proposed a daily bag limit of four dark geese in the western goose zone; however, the U.S. Fish and Wildlife Service (Service) has authorized a bag limit of five. In keeping with the commission's long-standing policy to adopt the most liberal regulations possible under the federal frameworks, the department is adopting the five-bird bag limit in order to provide the greatest hunter opportunity possible.

The department proposed a general season for ducks, coots, and mergansers in the HPMMU, consisting of two segments, October 27 - 28, 2007 and November 2, 2007 - January 27, 2008. The season as adopted will be October 20 - 21, 2007 and October 26, 2007 - January 27, 2008. By federal law, the number of days in the September teal season count against the total number of days allowed by the Service for hunting ducks, coots, and mergansers. When the Service authorized a 16-day September teal season earlier this year, the department decided to retain a 9-day teal season in the HPMMU and shift the seven remaining days to the general duck season. The department's reasoning in doing so is that the September teal-only season provides no opportunity to take other species of ducks, whereas the general season offers hunting opportunity for at least seven species, including teal. Therefore, by shifting seven days from the teal season to the beginning of the general duck season, the department is able to provide better hunting opportunity in the HPMMU. Because of this change (adding more days to the beginning of the general duck season), the dates for the youth-only season for ducks, coots, and mergansers also had to be changed. The proposed dates for the youth-only season were October 20 - 21, 2007; the season as adopted will be October 13 - 14, 2007.

The adopted amendment to §65.318, concerning Open Seasons and Bag and Possession Limits - Late Season Species, adjusts the season dates for late-season species of migratory game birds to account for calendar-shift. The amendment also allows for the take of geese during the special youth-only season. Until this year, the special youth-only season was restricted to ducks. The amendment is necessary to provide the greatest opportunity possible, particularly to youth.

The adopted amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates for the take of late-season species of migratory game birds by means of falconry, also to reflect calendar shift. The amendment is necessary to provide continued hunting opportunity to persons hunting migratory game birds by means of falconry.

The adopted amendment to §65.321, concerning Special Management Provisions, adjusts the dates for the conservation season on light geese to account for calendar shift and inserts language to prevent conflicts with §65.310, concerning Means and Methods.

The adopted amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service.

The department received 37 comments opposing adoption of the proposed amendment that established seasons and bag limits for ducks, mergansers, and coots. Of those comments, 34 articulated an explanation or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

Ten commenters disagreed with adoption and stated that the splits in the north and south zones should not be concurrent so that hunters have the opportunity to hunt every weekend. The department disagrees with the comments and responds that taking into consideration the maximum season length allowed by the Service (74 days) and hunter preference for both the latest season possible (i.e., running to the last day of framework) and a minimum 12-day split (to maximize weekend and holiday hunting opportunity), the season as adopted is the best option. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the season in the north zone should open later and close later because the winters are getting warmer and the birds are migrating later each year. The department disagrees with the comments and responds that delaying the season in the north zone would not allow the department to provide the maximum hunting opportunity possible under the federal frameworks. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that duck season should not open on the same day as deer season. The department disagrees with the comments and responds that under federal frameworks, the department is authorized to provide 74 days of duck hunting opportunity between September 22 and January 27. Hunter surveys and public comment indicate a preference for: (1) a split season, to allow duck populations to congregate without being subjected to hunting pressure; (2) hunting opportunity over the Thanksgiving and Christmas holiday seasons; and (3) a winter segment that runs to the final day of the framework. The rule as adopted represents the department's best effort to satisfy these criteria. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that the season begins too early and that "weather and migration patterns are not this far south" at that time. The department disagrees with the comments and responds that migration chronologies vary from year to year and from species to species; therefore, the department adopts the longest season allowed under the federal frameworks in order to provide the maximum hunter opportunity. No changes were made as a result of the comments.

Five commenters opposed adoption and stated that there should be a six-bird limit. The department disagrees with the comments and responds that the Hunter's Choice structure, including bag limits and bag composition, is required under federal frameworks issued by the Service. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the split should be eliminated. The department disagrees with the comments and responds that hunter preference is for a split of at least 12 days. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season is too long and should be cut back to be consistent with rest

of state. The department disagrees with the comment and responds that it is the policy of the commission to provide the most hunting opportunity possible under the frameworks issued by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the split should occur after Thanksgiving. The department agrees with the comment if the commenter is referring to the north or south zones and responds that the split occurs after Thanksgiving in both. If the commenter is referring to the High Plains Mallard Management Unit, the department disagrees with the comment and responds that delaying the split would result in fewer days of total hunting opportunity. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the department should do away with the "Hunter's Choice." The department disagrees with the comments and responds that the Hunter's Choice structure, including bag limits and bag composition, is required under federal frameworks issued by the Service. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the aggregate limit is not fair. The department disagrees with the comments and responds that the bag limits and bag composition adopted are the maximum allowed under federal frameworks issued by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be one statewide duck season from November 3 - 25 and December 8 - Jan 27. The department disagrees with the comment and responds that, by having different zones, the department is able to select opening and closing dates, season lengths, and splits that are more compatible with migration behavior and hunter preference in different parts of the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should be longer and the bag limits should be lowered. The department disagrees with the comment and responds that, unlike dove seasons, the department has no option of choosing a longer season with a reduced bag limit. In keeping with commission policy to provide maximum hunter opportunity, the season lengths are the longest possible under federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that pintail and canvasback numbers have increased over the last ten years. The commenter also stated that the aggregate bag limit is detrimental to the sport because it will cause many hunters to stop hunting and putting money into the economy of waterfowling. The department disagrees with the comment and responds that the aggregate bag limit is required by federal law under the Hunter's Choice structure. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the seasons on pintail and canvasback should be curtailed in order to retain the six-bird bag limit. The department disagrees with the comment and responds that a season-within-a-season structure is not possible, because the Hunter's Choice structure, including bag limits and bag composition, is required under federal frameworks issued by the Service. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be seven birds and the season should be longer. The department disagrees with the comment and responds that the season lengths and bag limits as adopted are the maximum allowed under federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit should be increased for teal, widgeon, and other species. The department disagrees with the comment and responds that the bag limits as adopted for all species are the maximum allowed under federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the starting dates for the north and south zones should not be the same. The department disagrees with the comment and responds that, in each zone the department has selected season dates on the basis of surveys and public comment indicating a preference for: (1) a split season, to allow duck populations to congregate without being subjected to hunting pressure; (2) hunting opportunity over the Thanksgiving and Christmas holiday seasons; and (3) a winter segment that runs to the final day of the framework. The rule as adopted represents the department's best effort to satisfy these criteria. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the fewer birds harmed and killed, the better. The department disagrees with the comment and responds that the hunting of migratory game birds is legally authorized in Texas, so long as it is consistent with state and federal regulations. The department is charged with enacting hunting regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be an earlier split in the South Zone. The department disagrees with the comment and responds that an earlier split in the South Zone would result in fewer total days of hunting opportunity. No changes were made as a result of the comment.

The department received 110 comments supporting adoption of the rules establishing seasons and bag limits for ducks, mergansers, and coots.

The department received 26 comments opposing adoption of the proposed amendment that established seasons and bag limits for geese. Of those comments, 23 articulated an explanation or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that dark goose limits should be reduced to two Canada and one white-fronted per day in the Eastern Zone. The department disagrees with the comment and responds that the federal frameworks under which the state regulations are formulated are based on extensive surveys of populations, habitat conditions on breeding and wintering grounds, harvest data, and estimates of harvest across the flyway, and are reliable in terms of preventing overharvest. No changes were made as a result of the comment.

One commenter opposed adoption and stated that hunters in the Eastern Zone should be allowed to hunt white-fronted for the same amount of time as Canada geese because it is allowed in the Western Zone and in Louisiana. The department disagrees with the comment and responds that the season length for the take of white-fronted geese is the maximum allowed under the federal frameworks. No changes were made as a result of the comment.

Seven commenters opposed adoption and stated that the seasons for white-fronted and Canada should be concurrent in the

Eastern Zone. The department disagrees with the comment and responds that, since the maximum season length for white-fronted geese under the federal framework is shorter than that for other species, making the seasons concurrent would result in a loss of hunting opportunity. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the bag limits should be reduced in the Western Zone to be consistent with the rest of the state. The department disagrees with the comment and responds that it is commission policy to provide the maximum hunting opportunity allowed under the federal frameworks. Reducing the bag limit in the Western Zone would result in loss of hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for white-fronted geese and Canada geese should be reduced to one of each in the Eastern Zone. The department disagrees with the comment and responds that it is commission policy to provide the maximum hunting opportunity allowed under the federal frameworks. Reducing the bag limit in the Eastern Zone would result in loss of hunting opportunity No changes were made as a result of the comment.

One commenter opposed adoption and stated that the goose seasons should be longer, but with lower bag limits. The department disagrees with the comment and responds that, unlike dove seasons, the department has no option of choosing a longer season with a reduced bag limit. In keeping with commission policy to provide maximum hunter opportunity, the season lengths are the longest possible under federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there are tens of thousands of white-fronted geese in the southwestern part of the state, but no other species. The commenter stated that the bag limit should be increased. The department disagrees with the comment and responds that the bag limits as adopted are the maximum bag limits possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should be no closed season and no bag limits for snow geese, and that unplugged shotguns should be legal. The department disagrees with the comment and responds that all hunting of snow geese must take place under the federal frameworks and the light goose conservation season and that, by federal law, unplugged shotguns are lawful for the take of light geese only during the light goose conservation season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limits for dark geese should be increased. The department disagrees with the comment and responds that the bag limits as adopted are the maximum possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for Canada geese in the Western Zone should be increased to five birds. The department disagrees with the comment and responds that the bag limits as adopted are the maximum possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for snow geese in the Western Zone should be increased to 40 birds. The department disagrees with the comment and responds that the bag limits as adopted are the maximum possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season closure for white-fronted geese should be concurrent with duck season in the South Zone. The department disagrees with the comment and responds that ending the season for white-fronted geese at the same time that the duck season ends would result in the loss of hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag composition for dark geese should be three Canada geese and one white-fronted goose or four Canada geese. The department disagrees with the comment and responds that the bag composition for geese is established under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for white-fronted geese should be three birds. The department disagrees with the comment and responds that the bag limit as adopted is the maximum possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for white-fronted geese in the Western Zone should be at least two birds. The department disagrees with the comment and responds that the bag limit as adopted is the maximum possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit is too high. The department disagrees with the comment and responds that the policy of the commission is to adopt the most liberal seasons and bag limits possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the bag limit for Canada geese should be higher in the Panhandle. The department disagrees with the comment and responds that the bag limit as adopted is the maximum possible under the federal frameworks. No changes were made as a result of the comment.

The department received 112 comments supporting adoption of the proposed amendments governing the seasons and bag limits for geese.

The department received nine comments opposing adoption of the proposed amendment that established seasons and bag limits for sandhill cranes. Of those comments, all nine articulated an explanation or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that the season should begin later and end later in Zone A, because that is when the birds are there. The department disagrees with the comment and responds that migration chronologies indicate that, although birds begin arriving in Zone A in mid-October, the bulk of migration does not occur until the first week of November. The season as adopted has the additional benefit of offering additional hunting opportunity for other species of waterfowl. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the season should begin earlier in Zone C. The department disagrees with the comment and responds that the department is compelled under the Endangered Species Act to limit any human activity

considered hazardous to endangered species, including recreational hunting of similar-appearing migratory game birds. A significant number of endangered whooping cranes, which have characteristics similar to sandhill cranes, are typically still in migration to the Aransas National Wildlife Refuge through the third week of November. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that there should be a uniform statewide bag limit of four birds. The department disagrees with the comments and responds that the bag limits as adopted are the maximum possible under the federal frameworks. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the season dates for sandhill crane should be the same statewide. The department disagrees with the comment and responds that, because of the migrations chronology of sandhill cranes, hunter preference in various parts of the state, and concerns over accidental killing of whooping cranes, the department has chosen the dates as adopted to provide the greatest hunting opportunity possible under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open later. The department disagrees with the comment and responds that the season as adopted was selected to provide the most hunting opportunity for all species of migratory birds while offering protection to migrating whooping cranes. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season should open earlier. The department disagrees with the comment and responds that the season as adopted was selected to provide the most hunting opportunity for all species of migratory birds while offering protection to migrating whooping cranes. No changes were made as a result of the comment.

The department received 74 comments supporting adoption of the portion of the proposed amendment that established seasons and bag limits for sandhill crane.

The department received 12 comments opposing adoption of the proposed amendment that established seasons and bag limits for the light goose conservation season. Of those comments, 11 articulated an explanation or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that the national wildlife refuges should be opened for the conservation season. The department neither agrees nor disagrees with the comment and responds that it has no authority to compel hunting activities on federal lands. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the season for snow geese should be opened year-round. The department disagrees with the comment and responds that all hunting of snow geese must take place under the federal frameworks and the light goose conservation season. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the conservation zone in the Western Zone should open earlier. The department disagrees with the comment and responds that the conservation season cannot be opened unless all other seasons for migratory birds are closed. The current policy is to open the conservation season after all other seasons have closed, in order to provide the maximum hunting opportunity for all species under the federal frameworks. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the conservation season should open on January 1. The department disagrees with the comment and responds that the conservation season cannot be opened unless all other seasons for migratory birds are closed. The current policy is to open the conservation season after all other seasons have closed, in order to provide the maximum hunting opportunity for all species under the federal frameworks. No changes were made as a result of the comment.

Four commenters opposed adoption and stated that the conservation season should be eliminated. The department disagrees with the comment and responds that the conservation season is part of the department's participation in the international effort to control snow goose numbers in an effort to protect their Arctic breeding grounds. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the conservation season should take place during the split in the waterfowl season. The department disagrees with the comment and responds that geese may be hunted during the split in the duck seasons. If the department opened a conservation season during that time, by federal law all other waterfowl seasons would have to be closed, which would constitute a reduction in total hunting opportunity. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the less hunting there was, the better. The department disagrees with the comment and responds that the hunting of migratory game birds is legally authorized in Texas, so long as it is consistent with state and federal regulations. The department is charged with enacting hunting regulations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the conservation season should be closed at the end of waterfowl season. The department disagrees with the comment and responds that the entire purpose of the conservation season is to offer additional hunting opportunity after the traditional seasons have closed. No changes were made as a result of the comment.

The department received 90 comments supporting adoption of the portion of the proposed amendment that established seasons and bag limits for the light goose conservation season.

The department received six comments opposing adoption of the proposed amendment that established seasons and bag limits for the youth-only waterfowl season. Of those comments, five articulated an explanation or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that youth-only hunts are discriminatory. The department disagrees with the comment and responds that the youth-only waterfowl hunt is a specific provision of federal law that the department has adopted and does not violate state or federal anti-discrimination laws. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the youth-only season should be eliminated. The department disagrees with the comment and responds that reserving a weekend to give adult hunters the opportunity to guide and mentor young

hunters is beneficial for all concerned and that public comment has been overwhelmingly supportive of the youth-only seasons. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the youth-only season is abused by adults. The department disagrees with the comment and responds that unscrupulous behavior on the part of a small minority of persons is not a sufficient reason to eliminate the benefits and enjoyment of the season to families, youth, and mentors. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the youth-only season should be expanded. The department disagrees with the comment and responds that a longer youth-only season would count against the maximum number of days for waterfowl hunting under the federal frameworks. No changes were made as a result of the comment.

The department received 94 comments supporting adoption of the portion of the proposed amendment that established seasons and bag limits for the youth-only waterfowl season.

The department received four comments opposing adoption of the proposed amendment that established seasons and bag limits for the take of late-season species by falconry. Of those comments, one articulated an explanation or rationale for opposing adoption. Those comments, accompanied by the department's response to each, are as follows.

One commenter opposed adoption and stated that there should be a season in the High Plains Mallard Management Unit because resource impacts from falconry are almost nonexistent. The department disagrees with the comment and responds that, although there is no special season in the High Plains Mallard Management Unit (HPMMU) during which means are restricted to falconry, it is still lawful to hunt by means of falconry during the general season. There is no special season in the HPMMU because the time would have to be subtracted from the general season, which is much more popular and has much greater participation. No changes were made as a result of the comment.

The department received 30 comments supporting adoption of the portion of the proposed amendment that established seasons and bag limits for the take of late-season species of migratory game birds by means of falconry.

The Texas Wildlife Association commented in support of adoption of the amendments as adopted.

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

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

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

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is five, which may include no more than two scaup, two redheads, two wood ducks, and no more than one (in the aggregate) of the following: mallard hen, pintail, canvasback, or dusky duck (mottled duck, black duck, Mexican duck, or hybrid of those species). The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than two hooded mergansers.

(A) High Plains Mallard Management Unit: October 20 - 21, 2007 and October 26, 2007 - January 27, 2008.

(B) North Zone: November 3 - 25, 2007 and December 8, 2007 - January 27, 2008.

(C) South Zone: November 3 - 25, 2007 and December 8, 2007 - January 27, 2008.

(2) Geese.

(A) Western Zone.

(i) Light geese: November 3, 2007 - February 5, 2008. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 3, 2007 - February 5, 2008. The daily bag limit for dark geese is five, which may not include more than four Canada geese or more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 3, 2007 - January 27, 2008. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) white-fronted geese: November 3, 2007 - January 13, 2008. The daily bag limit for white-fronted geese is two.

(II) Canada geese: November 3, 2007 - January 27, 2008. The daily bag limit for Canada geese is three.

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

(A) Zone A: November 3, 2007 - February 3, 2008. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 23, 2007 - February 3, 2008. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 22, 2007 - January 27, 2008. The daily bag limit is two. The possession limit is four.

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

(A) High Plains Mallard Management Unit: October 13 - 14 , 2007;

(B) North Zone: October 27 - 28, 2007; and

(C) South Zone: October 27 - 28, 2007.

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

Filed with the Office of the Secretary of State on September 19, 2007.

TRD-200704329

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: October 9, 2007
Proposal publication date: May 25, 2007
For further information, please call: (512) 389-4775

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 517. FINANCIAL ASSISTANCE

SUBCHAPTER B. COST-SHARE ASSISTANCE FOR BRUSH CONTROL

31 TAC §517.30

The Texas State Soil and Water Conservation Board (State Board) adopts an amendment to §517.30(h), concerning the agency's ability to individually consider alternative resource treatment plans as an acceptable brush control plan. The amendment is adopted without changes to the proposed text as published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5155) and will not be republished.

Specifically, the amendment provides the agency some flexibility in accepting an alternative brush control plan that may better suit landowner management plans.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code and under §203.012, which authorizes the board to adopt reasonable rules to carry out the chapter.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704389
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Effective date: October 11, 2007
Proposal publication date: August 17, 2007
For further information, please call: (254) 773-2250 x252

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER JJ. CIGARETTE AND TOBACCO PRODUCTS REGULATION

34 TAC §3.1202

The Comptroller of Public Accounts (comptroller) adopts an amendment to §3.1202, concerning warning notice signs, without changes to the proposed text as published in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5156).

Subsection (d) is being amended pursuant to Senate Bill 91 and Senate Bill 143, 80th Legislature, 2007. Senate Bill 91 and Senate Bill 143 both amended the health warning notice signs to include wording informing the public of the health risks to women who smoke while pregnant and the possible effects smoking can have on babies born to women who smoke while pregnant. Subsection (b) is amended to delete reference to the telephone numbers for Telecommunication Device for the Deaf (TDD). Non-substantive changes are also made to improve grammar and general readability.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The adopted amendment implements Health and Safety Code, §161.084.

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

Filed with the Office of the Secretary of State on September 21, 2007.

TRD-200704404
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: October 11, 2007
Proposal publication date: August 17, 2007
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.13

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code, §221.13, Emergency Telecommuni-

cations Proficiency. This adoption is without changes to the proposed text as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4207), and will not be republished.

An amendment to subsections (a) - (c) require TDD/TTY training within previous six months to qualify for basic, intermediate, or advanced proficiency certificates. Subsection (d) is amended to reflect the effective date for these changes.

The Commission has determined that for each year of the first five years the section as adopted will be in effect, there will not be fiscal implications to state or local governments as a result of administering the section.

The Commission has determined that for the each year of the first five years the section as adopted will be in effect, there will be no anticipated economic cost to large, small, or micro businesses as a result of the adopted section.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the hearing impaired public by ensuring that all emergency telecommunication operators are in compliance with mandated TDD/TTY requirements as set out in federal regulations allowing individuals to meet or exceed the minimum standards established by the Commission, to receive this proficiency certificate. Since changes to this rule are the result of current required training, there is no increase in costs to effected agencies.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be no additional cost to individuals required to comply with the rules as proposed.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151 General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with the Texas Occupations Code, §1701.404, Telecommunicators.

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

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

Filed with the Office of the Secretary of State on September 24, 2007.

TRD-200704462

Timothy Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: October 14, 2007

Proposal publication date: July 6, 2007

For further information, please call: (512) 936-7722

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

State Employee Charitable Campaign

Title 34, Part 12

TRD-200704405
Filed: September 21, 2007

Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 33 continue to exist.

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-200704522
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 26, 2007

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 157, Hearings and Appeals, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 157 are organized under the following subchapters: Subchapter A, General Provisions for Hearings Before the State Board of Education, and Subchapter D, Independent Hearing Examiners.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 157, Subchapters A and D, continue to exist.

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-200704523
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 26, 2007

The Texas Education Agency (TEA) proposes the review of rules in 19 TAC Chapter 157, Hearings and Appeals, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 157 are organized under the following subchapters: Subchapter AA, General Provisions for Hearings Before the Commissioner of Education; Subchapter BB, Specific Appeals to the Commissioner; Subchapter CC, Hearings of Appeals Arising Under Federal Law and Regulations; and Subchapter DD, Hearings Conducted by Independent Hearing Examiners.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 157, Subchapters AA - DD, continue to exist.

The public comment period on the review of 19 TAC Chapter 157, Subchapters AA - DD, begins October 5, 2007, and ends November 4, 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-200704524
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 26, 2007

The Texas Education Agency (TEA) proposes the review of rules in 19 TAC Chapter 176, Driver Training Schools, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 176 are organized under the following subchapters: Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools; Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers; Subchapter CC, Commissioner's Rules on Minimum Standards for Operation of Texas Drug and Alcohol Driving Awareness Programs; and

Subchapter DD, Commissioner's Rules on Hearings Held Under the Texas Education Code, Chapter 1001.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 176, Subchapters AA - DD, continue to exist.

The public comment period on the review of 19 TAC Chapter 176, Subchapters AA - DD, begins October 5, 2007, and ends November 4, 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-200704525
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 26, 2007

State Employee Charitable Campaign

Title 34, Part 12

The State Policy Committee of the State Employee Charitable Campaign will review the following rules for re-adoption, repeal or amendment beginning immediately in accordance with Government Code, §2001.039. The rules to be reviewed are located at Texas Administrative Code, Title 34, Part 12, Chapters 325 - 327 and Chapters 329 - 334. The review will include consideration as to whether the reasons for which they were originally adopted continue to exist.

Written comments to this review must be submitted no later than November 2, 2007. Comments may be submitted to: Roxanne Jones, State Campaign Manager, United Way of Texas, 1122 Colorado, Suite 101, Austin, Texas 78701.

The committee will consider comments received in response to this notice at its next meeting following the publication of this notice. Changes to the rules that the committee may propose after considering comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

TRD-200704406
Kevin Van Oort
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Filed: September 21, 2007

Texas Lottery Commission

Title 16, Part 9

The Texas Lottery Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Title 16, Part 9, Chapter 401, relating to Administration of the State Lottery Act. This review is done pursuant to Texas Government Code §2001.039.

The Commission will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Commission, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

Comments on the review may be submitted to Sarah Woelk by mail at P.O. Box 16630, Austin, Texas 78711; by facsimile at (512) 344-5189; or by e-mail at www.txlottery.org. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-200704418
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 21, 2007

The Texas Lottery Commission (Commission) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Title 16, Part 9, Chapter 402, relating to Charitable Bingo Administrative Rules. This review is done pursuant to Texas Government Code §2001.039.

The Commission will assess whether the reasons for adopting or re-adopting this chapter continue to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Commission, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedures Act).

Comments on the review may be submitted to Sandra Joseph by mail at P.O. Box 16630, Austin, Texas 78711; by facsimile at (512) 344-5189; or by e-mail at www.txlottery.org. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-200704419
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 21, 2007

Texas Board of Nursing

Title 22, Part 11

The Texas Board of Nursing (Board) will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapter 220, relating to Nurse Licensure Compact. This review is done pursuant to Texas Government Code, §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to E. Joy Sparks, Assistant General Counsel, 333 Guadalupe St., Suite 3-460, Austin, Texas 78701; Fax: (512) 305-8101; or joy.sparks@bon.state.tx.us. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed

Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-200704351
Katherine Thomas
Executive Director
Texas Board of Nursing
Filed: September 20, 2007

The Texas Board of Nursing will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapter 224, relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to E. Joy Sparks, Assistant General Counsel, 333 Guadalupe St., Suite 3-460, Austin, Texas 78701; Fax: (512) 305-8101; or joy.sparks@bon.state.tx.us. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-200704352
Katherine Thomas
Executive Director
Texas Board of Nursing
Filed: September 30, 2007

The Texas Board of Nursing will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapter 225, relating to Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to E. Joy Sparks, Assistant General Counsel, 333 Guadalupe St., Suite 3-460, Austin, Texas 78701; Fax: (512) 305-8101; or joy.sparks@bon.state.tx.us. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-200704353
Katherine Thomas
Executive Director
Texas Board of Nursing
Filed: September 20, 2007

The Texas Board of Nursing will review and consider whether to re-adopt, re-adopt with amendments, or repeal Chapter 226, relating to Patient Safety Pilot Programs on Nurse Reporting Systems. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. Each section of the chapter will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, reflects current general provisions in the governance of the Board, and/or whether it is in compliance with Chapter 2001 of the Texas Government Code (Administrative Procedure Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to E. Joy Sparks, Assistant General Counsel, 333 Guadalupe St., Suite 3-460, Austin, Texas 78701; Fax: (512) 305-8101; or joy.sparks@bon.state.tx.us. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or adoption.

TRD-200704354
Katherine Thomas
Executive Director
Texas Board of Nursing
Filed: September 20, 2007

Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 of the Texas Administrative Code, Part 1, Chapter 3, Public Information; Chapter 4, Employment Practices; Chapter 6, State Infrastructure Bank; Chapter 9, Contract Management; Chapter 13, Materials Quality; Chapter 22, Use of State Property; Chapter 23, Travel Information (see also proposed changes to Chapter 23 published in the September 7, 2007, issue of the *Texas Register* (32 TexReg 6114)); Chapter 25, Traffic Operations; and Chapter 29, Maintenance.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days, beginning with the publication of this notice of intention to review.

Comments regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-200704491
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: September 25, 2007

Adopted Rule Reviews

Texas Board of Nursing

Title 22, Part 11

The Texas Board of Nursing (Board) adopts the review of Chapter 211, relating to General Provisions, done pursuant to Texas Government Code §2001.039. The proposed review was published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4454).

The Board determined that the original reason for adopting this chapter continues to exist.

No comments were received in response to the publication of the proposed rule review.

TRD-200704347
Katherine Thomas
Executive Director
Texas Board of Nursing
Filed: September 20, 2007

The Texas Board of Nursing (Board) adopts the review of Chapter 217, relating to Licensure, Peer Assistance and Practice, done pursuant to Texas Government Code, §2001.039. The proposed review was published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4454).

The Board determined that the original reason for adopting this chapter continues to exist.

No comments were received in response to the publication of the proposed rule review.

TRD-200704348
Katherine Thomas
Executive Director
Texas Board of Nursing
Filed: September 20, 2007

The Texas Board of Nursing (Board) adopts the review of Chapter 219, relating to Advanced Nurse Practitioner Program, done pursuant to Texas Government Code, §2001.039. The proposed review was published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4455).

The Board determined that the original reason for adopting this chapter continues to exist.

No comments were received in response to the publication of the proposed rule review.

TRD-200704349
Katherine Thomas
Executive Director
Texas Board of Nursing
Filed: September 20, 2007

The Texas Board of Nursing adopts the review of Chapter 223, relating to Fees, done pursuant to Texas Government Code, §2001.039. The proposed review was published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4455).

The Board determined that the original reason for adopting this chapter continues to exist.

No comments were received in response to the publication of the proposed rule review.

TRD-200704350
Katherine Thomas
Executive Director
Texas Board of Nursing
Filed: September 20, 2007

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §255.4(c)

Where the number of 9-1-1 capable telephone numbers (TNs) is:	The Midpoint (MP) is:	The applicable formula is: [(MP-10)/4]+10	Number of Fees to be Remitted
1-10			# of TNs
11-20	15	11	11
21-40	30	15	15
41-60	50	20	20
61-80	70	25	25
81-100	90	30	30
		The applicable formula is: [(MP-10)/3]+10	
101-125	113	44	44
126-150	138	53	53
151-175	163	61	61
176-200	188	69	69
201-250	225	82	82
251-300	275	98	98
301-400	350	123	123
401-500	450	157	157
501-600	550	190	190
601-700	650	223	223
701-800	750	257	257
801-900	850	290	290
901-1000	950	323	323

Figure: 10 TAC §53.31(j)

AMFI	Rehabilitation or Reconstruction
≤30% AMFI	0% interest, 5-year deferred, forgivable Loan.
>30% and ≤50% AMFI	0% interest, 20-year term Loan. Repayable for first 10 years on 50-year amortization schedule and annual forgiveness of balance from years 11-20.
>50% and ≤60% AMFI	0% interest, 20-year term Loan. Repayable for over 20 years on 40-year amortization schedule and forgiveness of balance upon maturity.
>60% and ≤80% AMFI	0% interest, 20-year term repayable Loan.

Figure: 10 TAC §53.32(j)

AMFI	MHU Replacement with Stick Built or Alternate Site
≤30% AMFI	0% interest, deferred, forgivable loan based on federal affordability requirements as defined in 24 CFR §92.254.
>30% and ≤50% AMFI	0% interest, 20-year term Loan. Repayable for first 10 years on 50-year amortization schedule and annual forgiveness of balance from years 11-20.
>50% and ≤60% AMFI	0% interest, 20-year term Loan. Repayable for over 20 years on 40-year amortization schedule and forgiveness of balance upon maturity.
>60% and ≤80% AMFI	0% interest, 20-year term repayable Loan.

Figure: 10 TAC §53.85(a)(4)

OCC	Reconstruction	Rehabilitation
Project or Administrative Cost		
Application intake and processing	$350	$350
Appraisal (limited to 2 at $500 max each)	$1,000	N/A
Construction and disbursement documentation preparation	$50	$50
Environmental review	$300	$300
Exempt administrative environmental	$50	$50
Final inspection	$200	$200
Information services	$50	$50
Initial inspection	$500	$500
Procurement of contractor	$300	$300
Progress inspections (limited to 4 at $200 max each)	$800	$800
Pre-construction conference	$200	$200
Project document preparation	$50	$50
Punch list verification inspection	$200	$200
Schedule of values	$100	$100
Work write-up	N/A	$500
Work write-up summary/cost estimate	$400	$400
Administrative Cost Only		
Affirmative marketing plan	$50	$50
Financial management	$75	$75
Procurement of professional service provider	$300	$300
Recordkeeping	$75	$75
Project Cost Only		
Plans (market value)	N/A	$200
Plans and specification manual (market value)	$1,500[1]	N/A
Specification manual	N/A	$200

[1] Plans and specifications are not an allowable cost when a housing unit is replaced with a MHU.

HBA	
Project or Administrative Cost	
Application intake and processing	$350
Preparation of loan documents	$100
Environmental Review	$300
Exempt administrative environmental	$50
Information services	$50
Project document preparation	$50
Property Inspection	$350
Schedule of values	$100
Administrative Cost Only	
Affirmative marketing plan	$50
Financial management	$75
Procurement of professional service provider	$300
Recordkeeping	$75
Project Cost Only	
Credit Report	$50
Homebuyer Counseling	$300

Figure: 10 TAC §53.85(c)

Type of Activity		Max Percentage for Soft Costs based on Hard Costs or Project Costs
	Max Assistance	
OCC – Reconstruction (includes MHU to site-built and contract for deed conversions)	$60,000	10%
	$67,500	9%
	$75,000	8%
OCC or HBA – Rehabilitation only		18%
OCC – Reconstruct (replacement) with MHU		5%
HBA – Acquisition only for contract for deed conversion		10%
HBA – Downpayment and closing costs only		10%

Figure: 16 TAC §402.708(c)(3)

If:	Then:
Licensee	Officer/director or bingo chairperson
Unit with Trustee Organization	Trustee organization officer/director or bingo chairperson and designated agent
Unit with Designated Agent	Designated agent and officer/director or bingo chairperson for each member organization
Unit with Unit Manager	Unit manager
Commercial Lessor	Officer, Director, or Owner

Figure: 16 TAC §402.708(g)

If:	Required to attend:	May attend:
Licensee	Officer, director or bingo chairperson and primary operator	Any officer or director, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Unit with Trustee Organization	Trustee organization officer, director or bingo chairperson, primary operator, and designated agent	Other member organizations' bingo chairperson, any officer or director, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Unit with Designated Agent	Designated agent, officer, director or bingo chairperson for member organizations, primary operators for member organizations.	Any officer or director for member organizations, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Unit with Unit Manager	Unit manager	Bingo chairperson, primary operator and any officer or director for member organizations, other persons designated by the licensee including legal counsel, bookkeeper, or accountant
Commercial Lessor	Officer, director, or owner	Other persons designated by the licensee including legal counsel, bookkeeper, or accountant

Figure: 16 TAC §402.715(u)

If:	Then:
Agree with the audit findings	Statement of agreement. Corrective actions to be taken to ensure the bingo operations are in compliance with the Act and Rules. Expected date of completion of corrective actions.
Disagree with the audit findings	Statement of disagreement. Supporting documentation that supports statement of disagreement, if applicable.

Figure: 28 TAC §134.203(c)(1)

Service Categories	Conversion Factors
Evaluation and Management	$52.93
General Medicine	$52.93
Physical Medicine and Rehabilitation	$52.93
Radiology	$52.93
Pathology	$52.93
Anesthesia	$52.93
Surgery when performed in an office setting	$52.93
Surgery when performed in a facility setting	$66.45

Figure: 30 TAC §17.14(a)

Equipment and Categories List
Part A

Part A of the Equipment and Categories List is a list of property that the executive director has determined is used either wholly or partly for pollution control purposes. The items listed are described in generic terms without the use of brand names or trademarks and includes a defined use percentage. The commission will review and update the list at least once every three years. Items may be added only if there is compelling evidence to support the conclusion that the item provides pollution control benefits and a justifiable pollution control percentage is calculable. Items may be removed from the list only if there is compelling evidence to support the conclusion that the item does not render pollution control benefits. Property used solely for product collection is not eligible for a positive use determination. Property used solely for worker safety or fire protection does not qualify as pollution control property. Part A was formerly referred to as the Predetermined Equipment List. Part A is a list adopted under TTC, §11.31(g).

Air Pollution Control Equipment

No.	Media	Property	Description	%
		Particulate Control Devices		
A-1	Air	Baghouse Dust Collectors	Structures containing filters, blowers, ductwork - used to remove particulate matter from exhaust gas streams.	100
A-2	Air	Demisters or Mist Eliminators Added	Mesh pads or cartridges - used to remove entrained liquid droplets from exhaust gas streams.	100
A-3	Air	Electrostatic Precipitators	Wet or dry particulate collection by creating an electric field between positive or negative electrodes and collection surface.	100
A-4	Air	Dry Cyclone Separators	Single or multiple inertial separators, with blowers, ductwork, etc. used to remove particulate matter from exhaust gas streams.	100
A-5	Air	Scrubbers	Wet collection device using spray chambers, wet cyclones, packed beds, orifices, venturi, or high-pressure sprays to remove particulates and chemicals from exhaust gas streams. System may include pumps, ductwork, blowers, etc. needed for the equipment to function.	100
A-6	Air	Water/Chemical Sprays and Enclosures for Particulate Suppression	Spray nozzles, conveyor and chute covers, windshields, piping, pumps, etc. - used to reduce fugitive particulate emissions.	100
A-7	Air	Smokeless Ignitors	Installed on electric generating units in order to control particulate emissions and opacity on start-up.	100
		Combustion Based Control Devices		
A-20	Air	Thermal Oxidizers	Thermal destruction of air pollutants by direct flame combustion.	100
A-21	Air	Catalytic Oxidizer	Thermal destruction of air pollutants that uses a catalyst to promote oxidation.	100
A-22	Air	Flare/Vapor Combustor	Stack, burner, flare tip, blowers, etc. - used to destroy air contaminants in a vent gas stream.	100
		Non-Volatile Organic Compounds Gaseous Control (VOC) Devices		
A-40	Air	Molecular Sieve	Microporous filter used to remove Hydrogen Sulfite (H_2S) or Nitrogen Oxides (NO_x) from a waste gas stream.	100
A-41	Air	Strippers Used in Conjunction with Final Control Device	Stripper, with associated pumps, piping - used to remove contaminants from a waste gas stream or waste liquid stream. Stripper associated with product or by-product improvement does not qualify.	100
A-42	Air	Chlorofluorocarbon (CFC) Replacement Projects	Projects to replace one CFC with an environmentally cleaner CFC or other refrigerant where there is no increase in the cooling capacity or the efficiency of the unit. Includes all necessary equipment needed to replace the CFC and achieve the same level of cooling capacity.	100

No.	Media	Property	Description	%
A-43	Air	Refrigerant Recycling Equipment	Equipment used to recover and recycle CFC's and halocarbons.	50
A-44	Air	Halogen Replacement Projects	All necessary equipment needed to replace the Halogen in a fire suppression system with an environmentally cleaner substance.	100
Monitoring and Sampling Equipment				
A-60	Air	Fugitive Emission Monitors	Organic vapor analyzers - used to discover leaking piping components.	100
A-61	Air	Continuous & Noncontinuous Emission Monitors	Monitors, analyzers, buildings, air conditioning equipment, gas find Infrared (IR) Cameras, etc. constituting a monitoring system required to demonstrate compliance with emission limitations of regulated air contaminants. (Including flow and diluent gas monitors and dedicated buildings).	100
A-62	Air	Monitoring Equipment on Final Control Devices	Temperature monitor or controller, flow-meter, pH meter, etc. for a pollution control device. Monitoring of production equipment or processes is not included.	100
A-63	Air	On or Off-Site Ambient Air Monitoring Facilities	Towers, structures, analytical equipment, sample collectors, monitors, power supplies, etc.	100
A-64	Air	Noncontinuous Emission Monitors, Portable	Portable monitors, analyzers, structures, trailers, air conditioning equipment, gas find IR Cameras, etc. used to demonstrate compliance with emission limitations.	100
A-65	Air	Predictive Emission Monitors	Monitoring of process and operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-66	Air	Sampling Ports	Construction of stack or tower sampling ports used for emission sampling or for the monitoring of process or operational parameters that are used to calculate or determine compliance with emission limitations.	100
A-67		Automotive Dynamometers	Automotive dynamometers used for in-house emissions testing of fleet vehicles in order to reduce emissions.	100
Control of Nitrogen Oxides				
A-80	Air	Selective Catalytic and Non-catalytic Reduction Systems	Catalyst bed, reducing agent injection and storage, monitors - used to reduce Nitrogen Oxide (NO_x) emissions from engines/boilers. Non-selective systems use a reducing agent without a catalyst.	100
A-81	Air	Catalytic Converters for Stationary Sources	Used to reduce NO_x emissions from internal combustion engines.	100
A-82	Air	Air/Fuel Ratio Controllers for Piston-Driven Internal Combustion Engines	Used to control the air/fuel mixtures and reduce NO_x formation for fuel injected, naturally aspirated, or turbocharged engines.	100
A-83	Air	Flue Gas Recirculation	Ductwork, blowers, etc. - used to redirect part of the flue gas back to the combustion chamber for reduction of NO_x formation. May include flyash collection in coal fired units.	100
A-84	Air	Water/Steam Injection	Piping, nozzles, pumps, etc. to inject water or steam into the burner flame of utility or industrial burners or the atomizer ports for gas turbines, used to reduce NO_x formation.	100
A-85	Air	Overfire Air & Combination of asymmetric over fire air with the injection of anhydrous ammonia or other pollutant-reducing agents	The asymmetric over fire air layout injects preheated air through nozzles through a series of ducts, dampers, expansion joints, and valves also anhydrous ammonia or other pollutant-reducing agent injection is done at the same level.	100

No.	Media	Property	Description	%
A-86	Air	Burners Out of Service	Staging of burner firing by not firing specific burners within a combustion unit for the purpose of eliminating hot spots to reduce NO_x emissions.	100
A-87	Air	Lean-Burn Gas-Fired Compressor Engines	Advanced ignition & combustion system that introduces excess air into a reciprocating gas-fired compressor engine to make the engine run lean thereby lowering combustion temperatures, which reduces NOx formation.	20
A-88	Air	Low-NO_x Burners	Replacement of existing incinerator, furnace or boiler burners with low-NO_x burners for pollution control purposes. The incremental cost difference between the existing burners and the new burners is eligible for a positive use determination.	100
A-89	Air	Over-Fire Air Systems	System which diverts combustion air from the burners to ports or nozzles located above the burners to reduce combustion zone temperatures thereby reduces thermal NO_x.	100
A-90	Air	Low Emissions Conversion Kit for Internal Combustion Reciprocating Compressor Engines	Installation of conversion kits to reduce NOx emissions from existing internal combustion engines used to drive natural gas compressors These kits include igniter cells or assemblies that ignite a fuel rich mixture in a pre-combustion chamber and forcing it into the power cylinder while still burning. Additional components consist of pilot gas system that delivers rich fuel to the igniter cell & power cylinders, power pistons, & power cylinder heads to replace the existing cylinders, pistons & heads.	100
A-91	Air	Water Lances	Installed in the fire box of boilers and industrial furnaces to eliminate hot spots; thereby reducing NO_x formation.	100
A-92	Air	Electric Power Generation Burner Retrofit	Retrofit of existing burners on electric power generating units with components for reducing NOx including directly related equipment.	100
A-93	Air	High-Pressure Fuel Injection System	Retrofit technology for large bore natural gas fired internal combustion engines to reduce NOx and Carbon Monoxide (CO) emissions. System includes injectors, fuel lines, and electronic controls.	40
A-94	Air	Wet or Dry Sorbent Injection Systems	Use of a sorbent for flue gas desulfurization or NOx control.	100
Volatile Organic Compounds (VOC) Control				
A-110	Air	Activated Carbon Systems	Carbon beds or liquid-jacketed systems, blowers, piping, condensers - used to remove VOCs or odors from exhaust gas streams.	100
A-111	Air	Storage Tank Secondary Seals and Internal Floating Roofs	Used to reduce VOC emissions caused by evaporation losses from above ground storage tanks.	100
A-112	Air	Replacement of existing pumps, valves, or seals in piping service	Replacement of these parts for the sole purpose of eliminating fugitive emissions of volatile organic compounds. New systems do not qualify for this item.	100
A-113	Air	Welding of pipe joints in VOC service (Existing Pipelines)	Welding of existing threaded or flanged pipe joints in order to eliminate fugitive emission leaks.	100
A-114	Air	Welding of pipe joints in VOC Service (New construction)	The incremental cost difference between the cost of using threaded or flanged joints and welding of pipe joints in VOC service.	100
A-115	Air	Carbon Absorber	Preventive abatement equipment absorbs VOCs, Freon and emission streams by using carbons atoms to combine with organic chemicals.	100

No.	Media	Property	Description	%
		Mercury Control		
A-133	Air	Sorbent Injection Systems	Sorbents sprayed into the flue gas that chemically reacts to absorb mercury. The sorbents are then removed by a particulate removal device. Equipment may include pumps, tanks, blowers, nozzles ductwork, hoppers, particulate collection devices, etc. needed for the equipment to function.	100
A-134	Air	Fixed Sorbent Systems	Equipment, such as stainless steel plate with a gold coating that is installed in the flue gas to absorb mercury.	100
A-135	Air	Mercury Absorbing Filters	Filters which absorb mercury such as those using the affinity between mercury and metallic selenium.	100
A-136	Air	Oxidation Systems	Equipment used to change elemental mercury to oxidized mercury. This can be catalysts (similar to Selective Catalytic Reduction (SCR) catalyst) or chemical additives which can be added to the flue gas or directly to the fuel.	100
A-138	Air	Photochemical Oxidation	Use of a ultraviolet light from a mercury lamp to provide an excited state mercury species in flue gas, leading to oxidation of elemental mercury.	100
A-141	Air	Chemical Injection Systems	Equipment used to inject chemicals into the combustion zone or flue gas that chemically bonds mercury to the additive which is then removed in a particulate removal device.	100
		Control of Sulfur Oxides		
A-168	Air	Wet and Dry Scrubbers	Circulating fluid bed and moving bed technologies using a dry sorbent or various wet scrubber designs that inject a wet sorbent into the scrubber.	100
		Miscellaneous Control Equipment		
A-180	Air	Hoods, Duct and Collection Systems connected to Final Control Devices	Piping, headers, pumps, hoods, ducts, etc. - used to collect air contaminants and route them to a control device.	100
A-181	Air	Stack Modifications	Construction of stacks extensions. In order to meet a permit requirement.	100
A-182	Air	New Stack Construction	The incremental cost difference between the stack height required for production purposes and the stack height required for pollution control purposes.	100
A-183	Air	Stack Repairs	Repairs made to an existing stack in order for that stack to provide the same level of pollution control as was previously provided.	100
A-184	Air	Vapor/Liquid Recovery Equipment for Fugitive Emissions	Hoods or other enclosures including piping and pumps or fans used to capture fugitive emissions from process equipment. The captured vapors are condensed or extracted for reuse or sold as product.	100
A-185	Air	Vapor/Liquid Recovery Equipment (for venting to a control device)	Piping, blowers, vacuum pumps, compressors, etc. - used to capture a waste gas or liquid stream and vent to a control device. Including those used to eliminate emissions associated with loading tank trucks, rail cars, and barges.	100
		Dry Cleaning Related Equipment		
A-200	Air	Perchloroethylene (Perc) Closed-Loop Dry Cleaning Machines	Dry-to-dry closed loop technology sealed during the entire dry cleaning sequence to eliminate solvent emissions and minimize hazardous waste disposal.	60
A-201	Air	Cartridge and Spin Disc Filtration Systems	A control device used to lessen emissions of VOC for naphtha cleaning systems.	40
A-202	Air	Petroleum Dry-to-Dry Cleaning Machines	Closed loop system using naphtha instead of perchloroethylene.	60

No.	Media	Property	Description	%
A-203	Air	Petroleum Re-claimers	A unit used to collect VOC emissions in the drying process.	60
A-204	Air	Refrigerated Vapor Condenser. (Includes only the components that recover the vapors.)	A device that uses refrigerants to condense recovered vapors to liquids. Associated with dry cleaners, degreasers, or recovery of solvents from cleaning inside bulk containers or process vessels.	90
A-205	Air	Secondary Containment	External structure or liner used to collect liquids released from dry cleaning equipment or chemical storage devices.	100
A-206	Air	Direct Coupled Solvent Delivery Systems	Replacement of solvent delivery systems at existing dry cleaning facilities.	100

Wastewater Pollution Control Equipment

No.	Media	Property	Description	%
Solid Separation and De-watering				
W-1	Water	API Separator	Separates oil, water, and solids by settling and skimming.	100
W-2	Waste water	CPI Separator	Mechanical oil, water, and solids separator	100
W-3	Waste water	Dissolved Air Flotation	Mechanical oil, water, and solids separator	100
W-4	Waste water	Skimmer	Hydrocarbon	100
W-5	Waste water	Decanter	Used to decant hydrocarbon from process wastewater	100
W-6	Waste water	Belt Press, Filter Press, Plate and Frame, etc.	Mechanical de-watering devices	100
W-7	Water	Centrifuge	Separation of liquid and solid waste by centrifugal force, typically a rotating drum.	100
W-8	Water	Settling Basin	Simple tank or basin for gravity separation of suspended solids.	100
W-9	Water	Equalization	Tank, sump, or headbox used to settle solids and equilibrate process wastewater streams.	100
W-10	Water	Clarifier	Circular settling basins usually containing surface skimmers and sludge removal rakes.	100
Disinfection				
W-20	Water	Chlorination	Wastewater disinfection treatment using chlorine.	100
W-21	Water	De-chlorination	Equipment for removal of chlorine from water or waste water.	100
W-22	Water	Electrolytic Disinfection	Disinfect water by the use of electrolytic cells.	100
W-23	Water	Ozonization	Equipment that generates ozone for the disinfection of waste water.	100
W-24	Water	Ultraviolet	Disinfection of wastewater by the use of ultraviolet light.	100
W-25	Water	Mixed Oxidant Solution	Solution of chlorine, chlorine dioxide, and ozone to replace chlorine for disinfection.	100
Biological Systems				
W-30	Water	Activated Sludge	Biologically activating carbon matter in waste water by aeration, clarification, and return of the settled sludge to aeration.	100
W-31	Water	Adsorption	Use of activated carbon to remove organic water contaminants.	100
W-32	Water	Aeration	Passing air through wastewater to increase oxygen available for bacterial activities that remove contaminants.	100
W-33	Water	Rotary Biological Contactor	Use of large rotating discs that contain a bio-film of microorganisms that promote biological purification of the wastewater.	100

No.	Media	Property	Description	%
W-35	Water	Trickling Filter	Fixed bed of highly permeable media in which wastewater passes through and forms a slime layer to remove contaminants.	100
W-36	Water	Wetlands and Lagoons (artificial)	Artificial marsh, swamp, or pond that uses vegetation and natural microorganisms as bio-filters to remove sediment and other pollutants.	100
W-37	Water	Digester	Enclosed, heated tanks for treatment of sludge that is broken down by bacterial action.	100
Other Equipment				
W-50	Water	Irrigation	Equipment that is used to disburse treated wastewater through irrigation on the site.	100
W-51	Water	Outfall Diffuser	Device used to diffuse effluent discharge from an outfall.	100
W-52	Water	Activated Carbon Treatment	Use of carbon media such as coke or coal to remove organics and particulate from waste water. May be used in either fixed or fluidized beds.	100
W-53	Water	Oxidation Ditches and Ponds	Process of pumping air bubbles into a pond to assist in oxidizing organic and mineral pollution.	100
W-54	Water	Filters: Sand, Gravel, Microbial	Passing wastewater through a sand or gravel bed to remove solids and reduce bacteria.	100
W-55	Water	Chemical Precipitation	Process used to remove heavy metals from wastewater.	100
W-56	Water	Ultra-filtration	Use of semi-permeable membrane and hydrostatic pressure to filter solids and high molecular weight solutes.	100
W-57	Water	Conveyances, Pumps, Sumps, Tanks, Basins	Used to segregate storm water from process water, control storm water runoff, or convey contaminated process water.	100
W-58	Water	Water Recycling Systems	Installed systems, excluding cooling towers, that clean, recycle, or reuse wastewater or use grey water or storm water in order to reduce the amount of a facility's discharge or the amount of new water used as process or make-up water including Zero Discharge Systems.	100
W-59	Water	Wastewater Treatment Facility/Plant	New wastewater treatment facilities constructed to process wastewater generated on-site.	100
W-60	Water	High-Pressure Reverse Osmosis	The passing of a contaminated water stream over a permeable membrane at high pressure to collect contaminants.	100
W-61	Water	Hydro-cyclone Vapor Extraction	An air-sparged hydro-cyclone for the removal of VOCs from a wastewater stream.	100
W-62	Water	Recycled Water Cleaning System	Equipment used to collect and recycle the water used in a high-pressure water system for cleaning contaminants from equipment and pavement.	100
W-63	Water	Chemical Oxidation	Use of hydrogen peroxide or other oxidants for wastewater treatment.	100
W-65	Water	Stormwater Containment Systems	Structures or liners used for containment of runoff from rainfall. The land that is actually occupied by the containment structure is eligible for a positive use determination.	100
W-66	Water	Wastewater Impoundments	Ponds used for the collection of water after use and before circulation.	100
W-67	Water	Oil/Water Separator	Mechanical device used to separate oils from stormwater.	100
Control/Monitoring Equipment				
W-70	Water	pH Meter, Dissolved Oxygen. Meter, Chart Recorder, etc.	Used for wastewater operations control and monthly reporting requirements.	100
W-71	Water	On-line Analyzer	Device that conducts chemical analysis on sample streams for wastewater operations control.	100
W-72	Water	Neutralization	Control equipment used to adjust pH of wastewater treatment components.	100
W-73	Water	Respirometer	Device used to measure oxygen uptake or Carbon Dioxide (CO_2) release in wastewater treatment systems.	100

No.	Media	Property	Description	%
W-74	Water	Diversion	Structures used for the capture and control of storm water and process wastewater or emergency diversion of process material. Land means only that land which is actually occupied by the division or storage structure.	100
W-76	Water	Building	Used for housing wastewater control and monitoring equipment.	100
W-77	Water	De-foaming Systems	Systems consisting of nozzles, pilings, spray heads, and piping used to reduce surface foam.	100

Solid Waste Management Pollution Control Equipment

No.	Media	Property	Description	%
		Solid Waste Management		
S-1	Land/ Water	Stationary Mixing and Sizing Equipment	Immobile equipment used for solidification, stabilization, grinding, etc. of self generated waste material for the purpose of disposal or in-house recycling.	100
S-2	Land/ Water	Decontamination Equipment	Equipment used to remove waste contamination or residues from vehicles which leave the facility.	100
S-3	Land/ Water	Solid Waste Incinerator (not used for energy recovery and export or material recovery)	Solid waste incinerators, feed systems, ash handling systems, controls, etc.	100
S-4	Land/ Water/ Air	Monitoring and Control Equipment	Alarms, indicators, controllers, etc., for high liquid level, pH, temperature, flow, etc. in waste treatment system (Does not include fire alarms).	100
S-5	Land/ Water	Solid Waste Treatment Vessels	Any vessel used for waste treatment.	100
S-6	Land/ Water	Secondary Containment	External structure or liner used to contain and collect liquids released from a primary containment device and/or ancillary equipment. Main purpose is to prevent ground water or soil contamination.	100
S-7	Land/ Water	Liners	A continuous layer or layers of natural and/or man-made materials that restrict downward or lateral escape of wastes or leachate in an impoundment, landfill, etc.	100
S-8	Land/ Water	Leachate Collection and Removal Systems	A system capable of collecting leachate or liquids, including suspended solids, generated from percolation through or drainage from a waste. Systems for removal of leachate may include sumps, pumps, piping, etc.	100
S-9	Land/ Water	Leak Detection Systems	A system capable of detecting the failure of a primary or secondary containment structure or the presence of a liquid or waste in a containment structure.	100
S-10	Land/ Water	Final Cover Systems for Landfills (Non-Commercial)	A system of liners and materials to provide drainage, erosion prevention, infiltration minimization, gas venting, biotic barrier, etc.	100
S-11	Land/ Water	Lysimeters	An unsaturated zone monitoring device used to monitor soil-pore liquid quality at a waste management unit. (e.g., below the treatment zone of a land treatment unit, etc.)	100
S-12	Water	Groundwater Monitoring Well and Systems	A groundwater well or system of wells designed to monitor the quality of groundwater at a waste management unit. (e.g., detection monitoring systems, compliance monitoring systems)	100
S-14	Air	Fugitive Emission Monitors	A monitoring device used to monitor or detect fugitive emissions from a waste management unit or ancillary equipment.	100
S-15	Land/ Water	Slurry Walls/Barrier Walls	A pollution control method using a barrier to minimize lateral migration of pollutants in soils and ground water.	100
S-16	Water	Groundwater Recovery or Remediation System	A groundwater remediation system used to remove or treat pollutants in contaminated groundwater or to contain pollutants. (e.g., pump-and-treat systems, etc.)	100

No.	Media	Property	Description	%
S-17	Water	Injection Wells (Including Saltwater Disposal Wells) and Ancillary Equipment	Injection well, pumps, collection tanks and piping, pretreatment equipment, monitoring equipment, etc.	100
S-18	Land/ Water	Noncommercial Landfills (used for disposal of self generated waste materials) and Ancillary Equipment	Excavation, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, waste hauling equipment, decontamination facilities, security systems, and equipment used to manage the disposal of waste in the landfill.	100
S-19	Land/ Water	Resource Conservation Recovery Act Containment Buildings (used for storage or treatment of hazardous waste)	Pads, structures, solid waste treatment equipment used to meet the requirements of Subchapter O - Land Disposal Restrictions (30 TAC §335.431).	100
S-20	Land/ Water	Surface Impoundments and Ancillary Equipment (Including Brine Disposal Ponds)	Excavation, ponds, clay and synthetic liners, leak detection systems, leachate collection and treatment equipment, monitor wells, pumps, etc.	100
S-21	Land/ Water	Waste Storage Used to Collect and/or Store Waste Prior to Treatment or Disposal	Tanks, containers and ancillary equipment such as pumps, piping, secondary containment, vent controls, etc. (e.g., Resource Conservation Recovery Act Storage Tanks, 90-Day Storage Facilities, Feed Tanks to Treatment Facilities, etc.)	100
S-22	Air	Fugitive Emission Containment Structures	Structures or equipment used to contain or reduce fugitive emissions or releases from waste management activities. (e.g., coverings for conveyors, chutes, enclosed areas for loading and unloading activities, etc.)	100
S-23	Water	Double Hulled Barge	Double hulled to reduce chance of leakage into public waters. (Incremental cost difference between a single hulled barge and a double hulled barge.)	30
S-24	Land	Composting Equipment	Used to compost material where the compost will be used on site. (Does not include commercial composting facilities.	100
S-25	Land	Compost Application Equipment	Equipment used to apply compost which has been generated on-site.	100
S-26	Land	Vegetated Compost Sock	Put in place as part of a facility's permanent Best Management Plan (BMP).	100
S-27	Air	Foundry Sand Reclamation Systems for Foundries	Components of a sand reclamation system that provide specific pollution control. Includes hooding over shaker screens vented to a dust collector, conveyor covers, and emission control devices at other points.	100
S-28	Air/Water/ Land	Concrete Reclaiming Equipment	Processes mixed, un-poured concrete batches to reclaim the sand and gravel for reuse and recycles the water in a closed loop system.	100

Miscellaneous Pollution Control Equipment

No.	Media	Property	Description	%
M-1	Air/Land/ Water	Spill Response/Cleanup Equipment Pre-positioned and Stored for Addressing Future Emergencies	Boats, barges, booms, skimmers, trawls, pumps, power units, packaging materials and containers, safety equipment, vacuum trailers, storage sheds, diversion basins, tankage, dispersants, etc.	100
M-2	Air/Land	Hazardous Air Pollutant Abatement Equipment - required removal material contaminated with asbestos, lead, or some other hazardous air pollutant.	High-Efficiency Particulate Arresting (HEPA) Vacuum Equipment, Negative Air Pressure Enclosures, Glove Bags, Personal Protection, Disposal.	100

No.	Media	Property	Description	%
M-3	Air/Land/ Water	Vacuum Trucks, Street Sweepers and Watering Trucks	Mobile Surface Cleaning Equipment - used exclusively to control particulate matter on plant roads. (Does not include sweepers or scrubbers used to control particulate matter within buildings.)	100
M-4	Land	Compactors, Barrel Crushers, Balers, Shredders	Compactors and similar equipment used to change the physical format of waste material for recycling/reuse purposes or on-site disposal of facility-generated waste.	100
M-5	Land/Air/ Water	Distillation Recycling Systems	Used to remove hazardous content from waste solvents by heat, vaporization, and condensation. The recycled solvents must be reused at the facility generating the waste.	100
M-6	Land/ Water	Boxes, Bins, Carts, Barrels, Storage Bunkers	Collection/storage containers for source-separation of materials to be recycled or reused. Does not include product storage containers or facilities.	100
M-8	Air/Land/ Water	Environmental Paving located at Industrial Facilities	Paving of outdoor vehicular traffic areas in order to meet or exceed an adopted environmental rule, regulation or law. Does not include paving of parking areas or driveways for convenience purposes. Value of the paving must be stated on a square foot basis with a plot plan provided which shows the paving in question.	100
M-9	Air/Land/ Water	Sampling Equipment	Equipment used to collect samples of exhaust gas, waste water, soil, or other solid waste to be analyzed for specific contaminants or pollutants.	100
M-10	Water	Dry Stack Building for Poultry Litter	A pole-barn type structure used to temporarily store poultry litter in an environmentally safe manner.	100
M-11	Land/ Water	Poultry Incinerator	Incinerators used to disposal of poultry carcasses.	100
M-12	Land/ Water	Structures, Enclosures, Containment Areas, Pads	Required in order to meet 'no contact' stormwater regulations.	100
M-13	Air	Methane Capture Equipment	Equipment used to capture methane generated by the decomposition of site generated waste material.	100
M-15	Land	Drilling Mud Recycling System	Consisting of only the Shaker Tank System, Shale Shakers, Desilter, Desander, & Degasser.	100
M-16	Land	Drilling Rig Spill Response Equipment	Includes only the Ram Type Blowout Preventers, Closing Unit and Choke Manifold System.	100
M-17	Air	Low NOx Combustion System	Components of power generating units designed to reduce NOx generation by operation of a drilling rig.	100
M-18	Air	Odor Neutralization and Chemical Treatment Systems	Carbon absorption, zeolite absorption, and other odor neutralizing and chemical treatment systems to meet local ordinance, or to prevent/correct nuisance odors at off-site receptors.	100
M-19	Air	Odor Dispersing and Removal Systems	Electrostatic precipitators, vertical dispersing fans, stack extensions, and other physical control equipment used to dilute, disperse, or capture nuisance odor vent streams.	100
M-20	Air	Odor Detectors	Olfactometers, gas chromatographs, and other analytical instrumentation used specifically for detecting and measuring ambient odor, either empirically or chemical specific.	100
M-21	Land	Cathodic Protection	Cathodic protection installed in order to prevent corrosion of metal tanks and piping.	100
M-22	Water	Fish and Other Aquatic Organism Protection Equipment	Equipment installed to protect fish and other aquatic organisms from entrainment or impingement in an intake cooling water structure. Equipment includes: Aquatic Filter Barrier Systems, Fine-Mesh Traveling Intake Screens, Fish Return Buckets, Sprays, Flow-Altering Louvers, Fish Trough, Fish Behavioral Deterrents, and Wetland Creation.	100

No.	Media	Property	Description	%
M-23	Water/ Land	Double-Walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges.	100
M-24	Water/ Land	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges.	100

Equipment Located at Service Stations

No.	Media	Property	Description	%
Spill and Overfill Prevention Equipment				
T-1	Water	Tight Fill Fittings	Liquid tight connections between the delivery hose and fill pipe.	100
T-2	Water	Spill Containers	Spill containment manholes equipped with either a bottom drain valve to return liquids to the tank, or a hand pump for liquid removal.	100
T-3	Water	Automatic Shut-off Valves	Flapper valves installed in the fill pipe to automatically stop the flow of product.	100
T-4	Water	Overfill Alarms	External signaling device attached to an automatic tank gauging system.	100
T-5	Water	Vent Restriction Devices	Float vent valves or ball float valves to prevent backflow through vents.	100
Secondary Containment				
T-11	Water	Double-walled Tanks	The difference between cost of single walled tanks and the cost of double-walled tanks, when the double-walled tanks are installed in order to prevent unauthorized discharges or leaks.	100
T-12	Water	Double-walled Piping	The difference between cost of single walled piping and the cost of double-walled piping, when the double-walled piping is installed in order to prevent unauthorized discharges or leaks.	100
T-13	Water	Tank Top Sumps	Liquid tight containers to contain leaks or spills that involve tank top fittings and equipment.	100
T-14	Water	Under Dispenser Sumps	Contains leaks and spills from dispensers and pumps.	100
T-15	Water	Sensing Devices	Installed to monitor for product accumulation in secondary containment sumps.	100
T-16	Land/ Water	Concrete Paving above Underground Tanks and Pipes	Required concrete paving located above underground pipes and tanks. The use determination value is limited to the difference between the cost per square foot of the concrete paving and the cost per square foot of the other paving installed at the Service Station. This item only applies to Service Stations.	100
Release Detection for Tanks and Piping				
T-21	Water	Automatic Tank Gauging	Includes tank gauging probe and control console.	100
T-22	Water	Groundwater or Soil Vapor Monitoring	Observation wells located inside the tank excavation or monitoring wells located outside the tank excavation.	100
T-23	Water	Monitoring of Secondary Containment	Liquid sensors or hydrostatic monitoring systems installed in the interstitial space for tanks or piping.	100
T-24	Water	Automatic Line Leak Detectors	Devices installed at the pump that are designed to detect leaks in underground piping. Mechanical and electronic devices are acceptable.	100
T-25	Water	Under Pump Check Valve	Valve installed to prevent back flow in the fuel dispensing line. This device is only used on suction pump piping systems.	100

No.	Media	Property	Description	%
T-26	Water	Tightness Testing Equipment	Equipment purchased to comply with tank and/or piping tightness testing requirements.	100
Cathodic Protection				
T-30	Water	Isolation Fittings	Dielectric bushings and fittings to separate underground piping from above ground tanks and piping.	100
T-31	Water	Sacrificial Anodes	Magnesium or zinc anodes packaged in low resistivity backfill to provide galvanic protection.	100
T-32	Water	Dielectric Coatings	Factory installed coal-tar epoxies, enamels, fiberglass reinforced plastic, or urethanes on tanks and/or piping. Field installed coatings limited to exposed threads, fittings, and damaged surface areas.	100
Emissions Control Equipment				
T-40	Air	Stage I or Stage II Vapor Recovery	Includes pressure/vacuum vent relief valves, vapor return piping, stage 2 nozzles, coaxial hoses, vapor processing units, and vacuum-assist units. Used for motor vehicle fuel dispensing facilities. Does not include fuel delivery components of fuel dispensing unit.	100

Part B

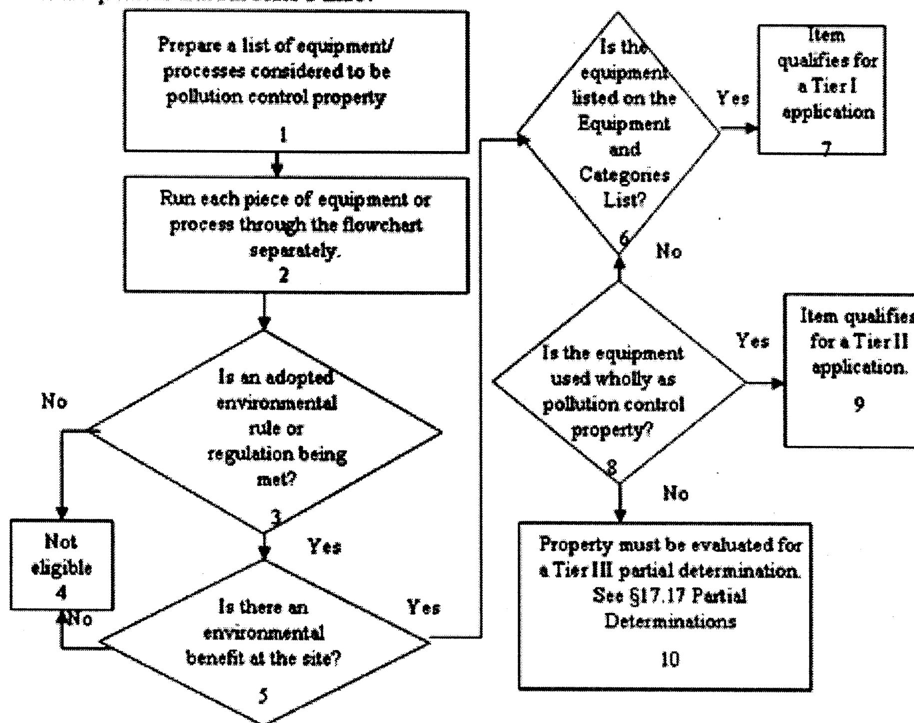
Part B of the Equipment and Categories List is a list of the pollution control property categories set forth in §11.31(k) of the Texas Tax Code. These categories are described in generic terms without the use of brand names or trademarks. Property used solely for product collection or for production purposes is not eligible for a positive use determination. The pollution control percentage for this equipment is listed as a "V", for variable, and must be calculated on an application specific basis. Part B is a list adopted under TTC, §11.31(m).

No.	Property	%
B-1	Coal Cleaning or Refining Facilities	V
B-2	Atmospheric or Pressurized and Bubbling or Circulating Fluidized Bed Combustion Systems and Gasification Fluidized Bed Combustion Combined Cycle Systems	V
B-3	Ultra-Supercritical Pulverized Coal Boilers	V
B-4	Flue Gas Recirculation Components	V
B-5	Syngas Purification Systems and Gas-Cleanup Units	V
B-6	Enhanced Heat Recovery Systems	V
B-7	Exhaust Heat Recovery Boilers	V
B-8	Heat Recovery Steam Generators	V
B-9	Super-heaters and Evaporators	V
B-10	Enhanced Steam Turbine Systems	V
B-11	Methanation	V
B-12	Coal Combustion or Gasification By-product and Co-product Handling, Storage, and Treatment Facilities	V
B-13	Biomass Cofiring Storage, Distribution, and Firing Systems	V
B-14	Coal Cleaning or Drying Processes, such as coal drying/moisture reduction, air jigging, precombustion decarbonization, and coal flow balancing technology.	V
B-15	Oxy-Fuel Combustion Technology, Amine or Chilled Ammonia Scrubbing, Catalyst based Fuel or Emission Conversion Systems, Enhanced Scrubbing Technology, Modified Combustion Technology, Cryogenic Technology	V
B-16	If the United States Environmental Protection Agency adopts a final rule or regulation regulating carbon dioxide as a pollutant, property that is used, constructed, acquired, or installed wholly or partly to capture carbon dioxide from an anthropogenic source in this state that is geologically sequestered in this state.	V
B-17	Fuel Cells generating electricity using hydrocarbon derived from coal, biomass, petroleum coke, or solid waste.	V
B-18	Any other equipment designed to prevent, capture, abate, or monitor nitrogen oxides, volatile organic compounds, particulate matter, mercury, carbon monoxide, or any criteria pollutant.	V

Figure: 30 TAC §17.15(a)

Decision Flow Chart

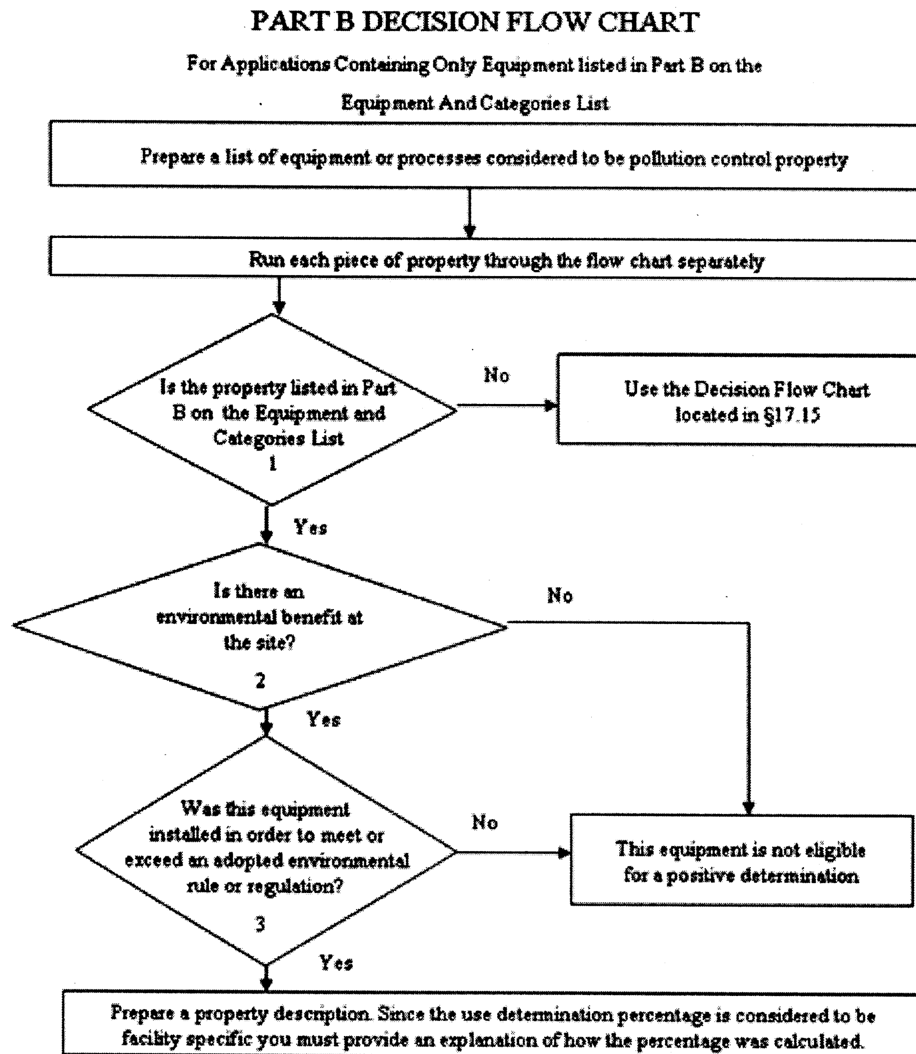
Applicants must use this flowchart for each piece of equipment or process. In order for a piece of equipment or process to be eligible for a positive use determination the item must generate 'yes' answers to the questions asked in boxes 3 and 5.



Where:

1. Prepare a list of all property that is considered to be pollution control property.
2. Process each item on the list through the flow chart separately.
3. Determine the specific state, local, or federal environmental regulation, rule or law that is being met or exceeded by the use of this property.
4. Determine the environmental benefit that this property provides at the site where it is installed.
5. If the equipment is listed in Part A on the equipment and categories list, determine the reference number for that item. Include all equipment for the project in a single list that is included with the application.
6. If the equipment is not in Part A on the list, determine whether the equipment is used wholly for pollution control.
7. If the equipment is not used wholly for pollution control then a Tier III application must be filed and the partial determination calculation detailed in §17.17 Partial Determinations must be used.

Figure: 30 TAC §17.15(b)



Where:

1. Determine if the property is listed in Part B on the Equipment and Categories List. If no then use the Decision Flow Chart.
2. Is there an environmental benefit at the site? If the answer is no then the property is not eligible for a positive use determination.
3. Determine if the equipment was installed in order to meet or exceed an adopted environmental rule or regulation. If the answer is no then the property is not eligible for a positive use determination.

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.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of September 14, 2007, through September 20, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on September 26, 2007. The public comment period for this project will close at 5:00 p.m. on October 26, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Coastal Bend Bays and Estuaries Program; Location: The project is located in Nueces Bay on the northwest side of the Indian Point Peninsula, adjacent to U.S. Highway 181, in Portland, San Patricio County, Texas. The actual work will occur in Nueces Bay, which is part of Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Portland, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 662500; Northing: 3083500. Project Description: The applicant proposes to protect existing wetlands and restore additional wetland habitat by constructing either an earthen or stone berm around a 148-acre area in Nueces Bay. Project construction would be phased depending on the construction funds that are available with the project beginning at the southwest end of the area and moving northwest. The applicant intends to fund engineering design and construction of marsh restoration via federal, state, and/or local grants, private non-profit funds, or mitigation compensation authorized by the U.S. Army Corps of Engineers (Corps) under separate permit actions. The engineering design would incorporate all requirements mandated by the Corps under any separate permit actions.

For each phase of marsh proposed to be restored, a length of berm that would extend 100 feet beyond the limits of the marsh restoration footprint would be constructed to protect the restoration area from erosional waves and currents. The berm would have approximately 50-foot-wide gaps spaced at a maximum 500 feet apart. These gaps would be sized, positioned, and spaced to optimize tidal exchange within the marsh restoration area. If the earthen berm alternative is selected, the berm would be similar in construction and elevation to the proposed terraces so that it could support low marsh planting. The berm would not be included as part of the marsh restoration acreages, although it would still provide habitat benefits. If the stone berm alternative is selected, a flotation/access channel would be dredged around the perimeter of the restoration area for that phase to allow access for construction equipment. Stone would be trucked to the site and stockpiled, and a small barge with a crane would be used to place the stone on small light barges for transport to the berm location. For the entire flotation/access channel, approximately 178,000 cubic yards of material would be hydraulically dredged to create a channel approximately 14,833 feet in length, 50 feet wide and with a depth of -5 feet mean low water (MLW). The material from this dredging would be used to form terraces and confined cells within the restoration area. The goal of the project is a combination of terraces and confined cells that provides 40 percent planting area and 60 percent open water, with a maximum open water area of 73 percent. Two alternatives are being considered for the marsh restoration; in the first, a marsh-hoe would be used to excavate material from the bay bottom and stack it into a berm. Terraces would then be located to help define the main and interior channels. These terraces could also be connected and used for planting cells. This alternative provides a low marsh to open water ratio with an open water area of 73 percent, and there would be deeper areas in the project area as a result of the excavation to form the terraces. The second alternative is a confined planting cell which consists of attaching several terraces to form a cell and pumping in dredged material to fill the cell. This material could come from the dredging of the flotation channel or from the dredging of two borrow areas located to the west of the restoration area. This alternative provides large marsh areas (only 35 percent open water) as compared to the terraces, and the channels between the cells would be at existing bay elevations. Borrow Area No. 1 is approximately 196 acres in size and Borrow Area No. 2 is approximately 85 acres in size. A small dredge would be used in these areas, and the final excavation in the borrow areas would be -4 feet (MLW). The initial height of the marsh planting shelf for either alternative would be constructed slightly higher to compensate for anticipated fill consolidation and settlement so that final elevations fall within optimal planting elevations for marsh vegetation. All final marsh elevations would target the existing local reference marsh Spartina alterniflora elevations of -1.0 to +0.7 feet NAVD. Upon completion of a phase, the restored area would be planted with S. alterniflora that is either from a donor marsh or a commercial nursery. If the plants come from a donor marsh, they would consist of three-inch diameter plugs with attached roots, soil, and a minimum of three plugs. During project bidding, the contractor would provide the location of the donor marsh and obtain any required permits from the Texas Parks and Wildlife Department and the Texas General Land Office. If a commercial nursery is to be used, the contractor would provide the name and location of the nursery; and the purchased plants would be well-rooted live plants grown in 1-gallon containers under climatic conditions similar to the project site. A maximum of 99 acres of submerged land would be covered to establish the appropriate bottom elevation for planting when the entire project is completed.

Prior to the dredging within the borrow areas or the area of the floatation/access channel, or the placement of material for the marsh restoration footprint, the applicant would have a qualified biologist characterize the proposed affected areas for existing marsh vegetation, oyster reefs, seagrasses, and any other sensitive habitats. The limits of existing marsh vegetation adjacent to the new footprint of marshes would be delineated to ensure that new work does not adversely impact existing habitat. All land-based construction equipment would access the project area via a construction access site located in the center of the

project area (shown as Construction Access Area 3 on Sheet 3 of 7 of the plans). Any equipment used from this area would operate over the shortest distance possible, and none of this equipment would operate in an area outside of the marsh restoration area. The construction access areas located at each end of the project area would be used for the loading and unloading of floating equipment. Prior to utilizing any of the construction access areas or routes, the applicant would have a qualified biologist characterize these areas for existing marsh vegetation and any other jurisdictional habitat; and these areas would be avoided or protected with appropriate best management practices. CCC Project No.: 07-0291-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-576 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200704503
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: September 26, 2007

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period August 2007, as required by Tax Code, §202.058, is $58.18 per barrel for the three-month period beginning on May 1, 2007, and ending July 31, 2007. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of August 2007, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period August 2007, as required by Tax Code, §201.059, is $5.39 per mcf for the three-month period beginning on May 1, 2007, and ending July 31, 2007. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of August 2007, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200704484
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: September 25, 2007

Correction of Error

The Comptroller of Public Accounts submitted a Notice of Contract Awards for the Request for Qualifications 178c to be published in the September 21, 2007, issue of the *Texas Register*. The notice was omitted from that issue due to an error in the submission. Instead a Notice of Request for Proposals was published twice (32 TexReg 6656.)

The Notice of Contract Awards for the Request for Qualifications 178c will be published in the In Addition section of this issue of the *Texas Register*.

TRD-200704530

Notice of Award

Pursuant to Chapter 2254, Subchapter B, Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract awards in connection with the Request for Proposals (RFP #179a) for pooled consulting services to assist the Comptroller with Appraisal Standards Reviews of Selected County Appraisal Districts.

Comptroller announces that five (5) contracts were awarded to the following:

1. Chuck Black, 3901 Hyridge Drive, Austin, Texas 78759. The total amount under all master contracts awarded is not to exceed $515,000.00. The term of this contract is September 7, 2007 through August 31, 2008;

2. Thomas Wade, 341 Jefferson, Cat Spring, Texas 78933. The total amount under all master contracts awarded is not to exceed $515,000.00. The term of the contract is September 7, 2007 through August 31, 2008;

3. O'Connor Consulting, Inc., 3817 Evesham Drive, Plano, Texas 75025-3819. The total amount under all master contracts awarded is not to exceed $515,000.00. The term of the contract is September 10, 2007 through August 31, 2008;

4. SDSM, Inc., 3702 Terrina Number One, Austin, TX 78759. The total amount under all master contracts awarded is not to exceed $515,000.00. The term of the contract is September 18, 2007 through August 31, 2008; and

5. Wiley Rudasill, 425 Oak Crest Lane, Georgetown, Texas 78628. The total amount under all master contracts awarded is not to exceed $515,000.00. The term of the contract is September 13, 2007 through August 31, 2008.

The notice of request for proposals (RFP #179a) was published in the June 29, 2007, issue of the *Texas Register* (32 TexReg 4056). The reports are due on or before August 31, 2008.

TRD-200704371
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 21, 2007

Notice of Contract Awards

Pursuant to Chapter 403 and Chapter 2254, Subchapter A of the Texas Government Code; and Chapter 111 of the Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications 178c (RFQ) related to these contract awards was published in the May 18, 2007, issue of the *Texas Register* (32 TexReg 2756).

The contractors will provide Professional Contract Auditing Services as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that 60 contracts were awarded on or after August 27, 2007, as follows:

A contract is awarded to Denise Rufus d/b/a DR Financial and Tax Services, 4904 Urban Crest Road, Dallas, Texas 75227. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to David R. Kasen, 634 10th Street #1F, Brooklyn, New York 11215. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Dibrell P. Dobbs d/b/a State Tax Consulting Group, 2906 Timber Gardens Court, Arlington, Texas 76016. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Elloine K. Andoh, 1607 Saint Charles Street, Houston, Texas 77003. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Dan A. Northern, 2201 Woodland Hills Lane, Weatherford, Texas 76087. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Carolyna Z. Cantu, 5026 W. Circle Park Street, Pasadena, Texas 77504. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Chris W. Rocco, 3600 Starline Drive, Austin, Texas 78759. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to D. Smith Consulting, 418 Sonora Drive, Garland, Texas 75043. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Cherise D. Collins, 17011 Driver Lane, Sugar Land, Texas 77478. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Carolyn J. Thacker, 143 Pinehurst Drive, Mabank, Texas 75156. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Art Koenings, Jr., 15712 Spillman Ranch Loop, Austin, Texas 78738. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Antonio V. Concepcion, 9227 Bristlebrook Drive, Houston, Texas 77083. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Casilda Julia Inniss d/b/a H & J Consulting, 2525 North Krenek Lane, Crosby, Texas 77532. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Brenda Maldonado, 2095 Savannah Trace, Beaumont, Texas 77706. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Blythe Corporation, 3002 Sugar Maple, Friendswood, Texas 77546. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Erica L. Powell, CPA, d/b/a ELP Financial, 8410 Spotsylvania, Houston, Texas 77083. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Felicia S. Ward, d/b/a Morgan, Spencer & Company, 1301 Stapleton Street, Flower Mound, Texas 75028. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Fitzgerald Healthcare Consulting Services, Inc., d/b/a Fitzgerald Consulting Services, 2110 Brundage Drive, Suite 4405, Houston, Texas 77090-6400. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Clayborn Accounting and Financial Services, Inc., 100 IH 45 North, Suite 108, Box 118, Conroe, Texas 77301. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to David Rebeles d/b/a Rebeles Consulting, 945 McKinney Street, Suite 217, Houston, Texas 77002. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Deborah A. Jones, 3818 Trappers Forest Drive, Houston, Texas 77088-7442. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Davis & Davis Professional Services Firm LLC, 12300 Ford Road, Suite 290, Dallas, Texas 75234. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Jennifer Wilmoth, 1142 Stratborough Lane, Fort Collins, CO 80525. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Jodie Moore, 2707 Bent Creek Drive, Pearland, Texas 77584. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Gilbert Zamora, 3801 Barton Creek Blvd., Austin, Texas 78735. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Mary A. Wickland, 2099 Dowlen Road, Apt. 19, Beaumont, Texas 77706. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Max Dwain Martino PC, 373 1/2 West 19th Street, Suite C-2, Houston, Texas 77008. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Louis A. Sanchez, 2314 Woodwind Drive, Richmond, Texas 77469. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Juan M. Macias, Jr., d/b/a Macias Enterprises, 3606 Braeburn, Corpus Christi, Texas 78415. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Francisco Contreras, 7964 Crescent Moon Place, El Paso, Texas 79932. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Jose E. Arrambide, LLC, 415 S. International Blvd., Weslaco, Texas 78596-9112. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Joe Wamp, 5834 Mapleshade Lane, Dallas, Texas 75252. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees

during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Jeffrey S. MacKenzie, d/b/a Texas Tax & Accounting, 11500 Northwest Freeway, Suite 200R, Houston, Texas 77092. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Ruzicka-Reed Partnership, 1555 Glenhill Lane, Lewisville, Texas 75077. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Paul D. Underwood, 3346 Meadow Oaks Drive, Garland, Texas 75043. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Maria Garcia Consulting, 10006 Erin Glen Way, Pearland, Texas 77584. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Robert J. Whorton, 23006 Red River Drive, Katy, Texas 77450. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Sonerka Mouton, d/b/a Mouton Consulting, 3230 Eagle Ridge Way, Houston, Texas 77084. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Philip E. Tan, 8815 Crazy Horse Trail, Houston, Texas 77064. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Marina Roy Buenaventura, 4042 Cheena Drive, Houston, Texas 77025-4702. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Marsha Johnson, Inc., 6205 Westwood Drive, Amarillo, Texas 79124-1212. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to State And Local Tax Group, LLC, 308 Cooper Drive, Hurst, Texas 76053. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Stephanie (Clark) Jackson, 2700 Blanchette Street, Beaumont, Texas 77701. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Ruth S. Gonzalez, LLC, 415 S. International Blvd., Weslaco, Texas 78596-9112. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Stephen T. Broad, 1218 Gordon Blvd., San Angelo, Texas 76905. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Stacie Sims, CPA, 205 Rolling Hill Drive, LaGrange, Texas 78945. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to White & Samaniego, LLP, 4510 North Mesa, El Paso, Texas 79912. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Texas Tax Consulting Group, L.C., 6116 Ayers Street, Suite 2C, Corpus Christi, Texas 78415. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Terra Hillman, 2174 E. Michael Square, Lake Charles, LA 70611. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than

$150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Anthony D. Turner, 3602 Lakearies Lane, Katy, Texas 77449. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Tamesha A. Jumper, 503 E. Ufer, Fredricksburg, Texas 78624. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to The JSO Group, Inc., 11610 Aucuba Lane, Houston, Texas 77095. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Vernice Seriale, Jr., 11612 Cross Spring Drive, Pearland, Texas 77584. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Jacqueline A. Muhammad d/b/a Alexander Consulting, 2837 Miller Ranch Road, Suite 113, Pearland, Texas 77584. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Stites Tax Consulting Group GP, LLC d/b/a Stites Pybus, LLC, 2925 Cuero Cove, Round Rock, Texas 78681. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Tarrant & Bulgherini, PC, 7109 Yucca Drive, Galveston, Texas 77551-1725. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Wayne F. Bowman, 2225C Potomac, Houston, Texas 77057. Examinations will be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Mei Kuen Tsang d/b/a TMK Consulting, 3182 Holly Hall, Houston, Texas 77054. Examinations may be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Energy Network, Inc., 4646 Highway 6 South, PMB 135, Sugar Land, Texas 77478-5214. Examinations may be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

A contract is awarded to Kim Hoi So d/b/a TexasTAX CONSULTING, 3082 Holly Hall, Houston, Texas 77054. Examinations may be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

The Comptroller announces that one (1) contract has been awarded on September 13, 2007 as follows:

A contract is awarded to Ashley & Williams International LLC d/b/a Tax Advisors Group, 2898 Holly Hall, Houston, Texas 77054. Examinations may be assigned in $60,000, $75,000, $90,000 or $120,000 increments or packages but no contract examiner shall have examination packages totaling more than $150,000 in fees during any one state fiscal year during the contract term. The term of the contract is September 1, 2007 through August 31, 2008, with two (2) one (1) year options to renew.

The Comptroller does not intend to award any additional contracts under this RFQ.

TRD-200704520
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 26, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/01/07 - 10/07/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/01/07 - 10/07/07 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-200704480

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 24, 2007

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Texas Education Agency

Request for Applications Concerning Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-116 from eligible entities to operate open-enrollment charter schools. Eligible entities include public institutions of higher education, private or independent institutions of higher education, organizations exempt from taxation under the Internal Revenue Code of 1986 (26 United States Code, §501(c)(3)), or governmental entities. At least one member of the governing board of the group requesting the charter must attend one required applicant conference. Conferences are scheduled for Monday, October 15, 2007, and Monday, December 3, 2007, in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494. Failure to attend one of the conferences will disqualify an applicant from submitting an application for an open-enrollment charter.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter school offers flexibility and choice for educators, parents, and students. An approved open-enrollment charter school may be located in a facility of a commercial or nonprofit entity or in a school district facility. If the open-enrollment charter school is to be located in a school district facility, it must be operated under the terms established by the board of trustees or governing body of the school district in an agreement governing the relationship between the charter school and the district.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade levels as provided by the charter. An open-enrollment charter school must be non-sectarian in its programs, admissions, policies, employment practices, and all other operations, and may not be affiliated with a sectarian school or religious institution. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. The completed application must be received by the TEA Document Control Center, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701-1494, on or before 5:00 p.m. (Central Time), Thursday, February 28, 2008, to be eligible for review.

Project Amount. TEC, §12.106(a), states that a charter holder is entitled to receive funding for the open-enrollment charter school under Chapter 42 as if the school were a school district without a tier one local share for purposes of §42.253 and without any local revenue for purposes of §42.302. In determining funding for an open-enrollment charter school, adjustments under §§42.102 - 42.105 and the district enrichment tax rate under §42.302 are based on the average adjustment and average district enrichment tax rate for the state. TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition and must admit students based on a lottery if more students apply for admission than can be accommodated. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There are currently 211 charters approved under §12.101 and two charters approved under §12.152. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE may approve applicants to ensure representation of urban, suburban, and rural communities; various instructional settings; innovative programs; diverse student populations and geographic regions; and various eligible entities. The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school. The SBOE may also consider the history of the sponsoring entity and the credentials and background of its board members.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Open-Enrollment Charter Guidelines and Application* (RFA #701-07-116), which includes an application and procedures, may be obtained by writing the Division of Charter Schools, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701-1494; by calling (512) 463-9575; or on the TEA website at http://www.tea.state.tx.us/charter/rfas/rfascharter.htm.

Further Information. For clarifying information about the open-enrollment charter school application, contact Mary Perry, Division of Charter Schools, Texas Education Agency, at (512) 463-9575 or mary.perry@tea.state.tx.us.

TRD-200704509

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: September 26, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. 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 **November 5, 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 November 5, 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: Billy W. Askins; DOCKET NUMBER: 2007-0898-OSI-E; IDENTIFIER: RN103306254; LOCATION: Timpson, Shelby County, Texas; TYPE OF FACILITY: on-site sewage facility (OSSF) installation business; RULE VIOLATED: 30 Texas Administrative Code (TAC) §30.5(a) and §285.50(b) and the Code, §37.003, by failing to hold an OSSF installer license prior to installing an OSSF; PENALTY: $750; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: Bayer MaterialScience LLC; DOCKET NUMBER: 2007-0116-AIR-E; IDENTIFIER: RN100209931; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), New Source Permit Number 18033, Special Condition 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions from entering the atmosphere; PENALTY: $6,350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Cantu-Alaniz-Martinez, Inc. dba Tiger Mark II; DOCKET NUMBER: 2007-0801-PST-E; IDENTIFIER: RN102433745; LOCATION: Premont, Jim Wells County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to have a release detection method capable of detecting a release from any portion of the underground storage tank (UST) system; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the USTs; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; and 30 TAC §334.74(1), by failing to investigate a suspected release of regulated substances; PENALTY: $9,000; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(4) COMPANY: Chatt Water Supply Corporation; DOCKET NUMBER: 2007-0934-PWS-E; IDENTIFIER: RN101440931; LOCATION: Hill County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of two gallons per minute (gpm) per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; and 30 TAC §290.45(b)(1)(D)(v) and THSC, §341.0315(c), by failing to provide emergency power to deliver water at a rate of 0.35 gpm per connection to the distribution system; PENALTY: $525; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Keith Boyd Martin dba Cyclone Enterprises; DOCKET NUMBER: 2007-1142-LII-E; IDENTIFIER: RN105212864; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: lawn care business; RULE VIOLATED: 30 TAC §30.5(b) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to possess a current license or registration; PENALTY: $262; ENFORCEMENT COORDINATOR: Cynthia McKaughan, (512) 239-2545; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Billy Derouen; DOCKET NUMBER: 2007-0959-PST-E; IDENTIFIER: RN103098067; LOCATION: Lumberton and Silsbee; Hardin County, Texas; TYPE OF FACILITY: UST installation/removal contractor business; RULE VIOLATED: 30 TAC §334.55(b)(5)(C)(ii) and §334.55(b)(4)(D), by failing to legibly and permanently label USTs no later than 24 hours after removal from the ground with the name of the former contents, with a flammability warning, and a warning that the tank is unsuitable for the storage of drinking water or the storage of human or animal food products; 30 TAC §30.301(b) and §334.55(a)(4) and the Code, §37.013, by failing to comply with the UST removal requirements; 30 TAC §334.55(b)(5)(C)(iii), by failing to properly plug or cap removed USTs; and 30 TAC §334.55(b)(4)(E), by failing to maintain the residual vapor levels in removed tanks at nonexplosive and non-ignitable levels for the entire time the tank is stored; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2007-0812-AIR-E; IDENTIFIER: RN102450756; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery and lubrication manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 49151, Special Condition Number 1, and

THSC, §382.085(b), by failing to comply with the permitted emission limits; PENALTY: $94,050; Supplemental Environmental Project (SEP) offset amount of $37,620 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")--Clean School Buses; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Fallbrook Enterprises, Inc. dba Fashion Cleaners; DOCKET NUMBER: 2006-1544-DCL-E; IDENTIFIER: RN104355912; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: $1,067; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Myong S. Perez dba Grace Cleaners; DOCKET NUMBER: 2006-1479-DCL-E; IDENTIFIER: RN104131628; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: dry cleaning 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: $1,185; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Harris County Municipal Utility District No. 278; DOCKET NUMBER: 2007-0913-MWD-E; IDENTIFIER: RN103177382; LOCATION: Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014289001, and the Code, §26.121(a), by failing to comply with permit effluent limits; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Jong Hwan Oh dba J.C. Phillips; DOCKET NUMBER: 2007-0285-PST-E; IDENTIFIER: RN102369261; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST system for releases; and 30 TAC §334.50(d)(4)(A)(ii)(II) and the Code, §26.3475(c)(1), by failing to perform an automatic test for substance loss; PENALTY: $2,300; ENFORCEMENT COORDINATOR: Philip DeFrancesco, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Lukes Mobile Home Park, Inc.; DOCKET NUMBER: 2007-0621-PWS-E; IDENTIFIER: RN101271245; LOCATION: Parker County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(B), by failing to provide a well casing 18 inches above the elevation of the natural ground surface with a minimum of one inch above the sealing block or pump motor foundation block; 30 TAC §290.42(k), by failing to compile and maintain an up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to ensure that the public water supply operation is under the direct supervision of a water works operator who holds a minimum of a Class "D" license; 30 TAC §290.46(n)(3), by failing to provide well completion data; 30 TAC §290.46(f)(3)(A) and (f)(4)(C), by failing to provide monthly operating reports of water works operations; 30 TAC §290.46(i), by failing to provide a plumbing ordinance, regulations, or service agreement with provisions for proper enforcement; 30 TAC §290.46(r), by failing to maintain a minimum pressure of 35 pounds per square inch; 30 TAC §290.46(m)(1)(B), by failing to inspect the pressure tank at least annually; 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the far reaches of the distribution system at a minimum of 0.2 milligrams per liter (mg/L) free chlorine; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay all public health service late fees; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2007-1017-PWS-E; IDENTIFIER: RN101380889; LOCATION: Henderson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level of total trihalomethanes; PENALTY: $740; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(14) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2007-1051-PWS-E; IDENTIFIER: RN101376283; LOCATION: Johnson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection; 30 TAC §290.42(e)(5), by failing to house the hypochlorination solution containers at plants 1, 2, 3, 4, and 5 in secure enclosures; 30 TAC §290.41(c)(3)(O), by failing to provide an intruder-resistant fence; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage, and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; and 30 TAC §290.45(b)(1)(D)(iii) and THSC, §341.0315(c), by failing to provide two or more service pumps having a total capacity of two gpm per connection; PENALTY: $2,835; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2007-1072-PWS-E; IDENTIFIER: RN101379519; LOCATION: Johnson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gpm per connection; 30 TAC §290.45(b)(1)(D)(iv) and THSC, §341.0315(c), by failing to provide a pressure tank capacity of 20 gallons per connection at the X-Cell and Space Acres pressure planes; and 30 TAC §290.42(e)(5), by failing to house the hypochlorination solution containers in a secure enclosure; PENALTY: $1,417; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Moscow Water Supply Corporation; DOCKET NUMBER: 2007-1025-MWD-E; IDENTIFIER: RN102340627; LOCATION: Moscow, Polk County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §317.3(e)(5), by failing to provide an audiovisual alarm system for the lift station; 30 TAC §317.4(j)(9) and TPDES Permit Number 11139001, Operational Requirements Number 1, by failing to maintain not less than two feet of freeboard; 30 TAC §305.125(9) and TPDES Permit Number 11139001, Monitoring and Reporting Requirements Number 7.c., by failing to submit noncompliance notifications for effluent violations more than 40% above the permitted limitation; 30 TAC §305.125(1), TPDES Permit Number 11139001, Effluent Limitations and Monitoring Requirements Number 6, and the Code, §26.121(a), by failing to comply with permitted minimum dissolved oxygen concentration of four mg/L, and 30 TAC §305.125(1) and TPDES Permit Number

11139001, Permit Conditions Number 4.a.iii, by failing to provide notification of the use of additional sludge disposal sites; PENALTY: $18,900; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Southwest Nut Company; DOCKET NUMBER: 2007-0924-IWD-E; IDENTIFIER: RN102924529; LOCATION: Fabens, El Paso County, Texas; TYPE OF FACILITY: nut and nut products manufacturing; RULE VIOLATED: the Code, §7.101 and §26.121(a)(1) and Agreed Order Docket Number 2003-0365-IWD-E, Ordering Provisions 2.a. through 2.c., by failing to prevent the unauthorized discharge of industrial wastewater; PENALTY: $18,300; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(18) COMPANY: City of Stockdale; DOCKET NUMBER: 2007-0487-MWD-E; IDENTIFIER: RN102916194; LOCATION: Wilson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010292001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits; and 30 TAC §305.125(17) and TPDES Permit Number WQ0010292001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring report data; PENALTY: $8,060; Supplemental Environmental Project (SEP) offset amount of $6,448 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")--Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2007-1139-AIR-E; IDENTIFIER: RN100212109; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 3908B, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $7,750; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Westex Capital, Ltd.; DOCKET NUMBER: 2007-0910-WQ-E; IDENTIFIER: RN102785805; LOCATION: Boerne, Kendall County, Texas; TYPE OF FACILITY: wholesale business which distributes crude petroleum and petroleum products, including liquefied petroleum gas; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: $3,210; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200704490
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 25, 2007

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapters 17 and 18

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 17, Tax Relief for Property Used for Environmental Protection, and Chapter 18, Rollback Relief for Pollution Control Requirements under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would amend Chapter 17 to add new definitions, modify the application review process to incorporate the requirements of House Bill 3732, correct incorrect references to the commission, and adopt the Equipment and Categories List into the rule. The proposed rulemaking creates Chapter 18, Rollback Relief for Pollution Control Requirements in order to implement the requirements of House Bill 3732, 80th Legislature, 2007, Regular Session.

The commission will hold a public hearing on this proposal in Austin on October 26, 2007 at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building E, Room 201S. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Kristin Smith, Office of Legal Services, at (512) 239-0177.

Comments may be submitted to Kristin Smith, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-055-117-PR. The comment period closes November 5, 2007. Copies of the proposed rule can be obtained from the commission's web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Ron Hatlett, Small Business and Environmental Assistance (512) 239-6348.

TRD-200704401
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 21, 2007

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 114 and the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony concerning proposed revisions to 30 TAC Chapter 114, Control of Air Pollution from Motor Vehicles, and to the state implementation plan under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102, of the United Stated Environmental Protection Agency concerning state implementation plans.

The proposed rulemaking would extend the expiration of prohibitions on the commission adopting rules restricting certain vehicle idling activities from September 1, 2007, to September 1, 2009. Additionally the proposed rulemaking would prohibit idling within 1,000 feet of a hospital and in residential areas. Finally, vehicles with sleeper berths would be prohibited from idling if an electrification facility that pro-

vides external heat and air conditioning hook-ups is located within two miles of their stop.

The commission will hold a public hearing on this proposal in Austin on October 22, 2007, at 10:00 a.m. at the Texas Commission on Environmental Quality Complex located at 12100 Park 35 Circle in Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff will be available to informally discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Lesley Williamson, Office of Legal Services, at (512) 239-2461.

Comments may be submitted to Lesley Williamson, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at http://www5.tceq.state.tx.us/rules/ecomments. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2007-041-114-EN. The comment period closes November 5, 2007. Copies of the proposed rules can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Theodore Kosub, Air Quality Planning, (512) 239-5609.

TRD-200704403
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 21, 2007

Notice of Water Quality Applications

The following notices were issued during the period of September 12, 2007 through September 20, 2007.

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 TCEQ, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

ARANSAS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a major amendment to TCEQ Permit No. 11624-001 to authorize a discharge of treated domestic wastewater to a receiving body of water, and an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 88,000 gallons per day via irrigation to a daily average flow not to exceed 263,000 gallons per day via discharge to a receiving body of water. The current permit authorizes the disposal of treated domestic wastewater via irrigation of 44.4 acres of public access land. The facility is located approximately 1,100 feet south of 8th Street and approximately 500 feet west of Park Road 13 (Palmetto Drive) in the Lamar Peninsula in Aransas County, Texas. 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.

BARKER UTILITIES GP, L.L.C. has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014828001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility will be located approximately 525 feet northwest of the intersection of Galveston Road and Lewis Road, approximately 1/4 mile due west of the intersection of Barker-Cypress Road and State Highway 290 eastbound feeder in Harris County, Texas.

CITY OF GARLAND which operates the C.E. Newman Electric Plant, a peaking steam electric power plant, has applied for a renewal of TPDES Permit No. WQ0003519000, which authorizes the discharge of cooling tower blowdown, low volume wastewater, and storm water on an intermittent and flow variable basis via Outfall 001; and cooling tower blowdown and low volume wastewater on an intermittent and flow variable basis via Outfall 002. The draft permit authorizes the discharge of storm water on an intermittent and flow variable basis via Outfall 001 and cooling tower blowdown, low volume waste sources, and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 525 E Avenue B, on the north side of State Highway 66, approximately 2000 feet east of the intersection of State Highway 66 and State Highway 78 in the City of Garland, Dallas County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 109 has applied for a renewal of TPDES Permit No. WQ0011533001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,000,000 gallons per day. The facility is located is 5003 Atascocita Road, Humble, approximately 0.6 mile south of Farm-to-Market Road 1960 and approximately 2.1 miles west of the intersection of Atascocita Road and Farm-to-Market Road 1960 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 344 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 13483-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located at approximately 2,500 feet east of Beltway 8 along the south boundary of Harris County Municipal Utility District No. 344, which is approximately 10,000 feet north of Mount Houston Parkway and 9,200 feet south of the Missouri Pacific Railroad in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495100, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,710,000 gallons per day. The facility is located at 303 Benmar Street on the south bank of Greens Bayou approximately 3,000 feet northeast of the intersection of Interstate Highway 45 and North Belt Freeway in Harris County, Texas.

MILLS ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 11907-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 10128 Peachridge Drive, approximately 3,000 feet southwest of the intersection of Perry Road and Mills Road, northwest of the City of Houston in Harris County, Texas.

NORTH PARK PUBLIC UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011855001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,310,000 gallons per day. The facility is located at 22971 Imperial Valley Drive approximately 2,200 feet east of Interstate Highway 45 and 2,400 feet north of Farm-to-Market Road 1960 on Imperial Valley Drive in Harris County, Texas.

PORT TERMINAL RAILROAD ASSOCIATION has applied for a renewal of TPDES Permit No. 11773-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,750 gallons per day. The facility is located inside the North Railroad Yard, approximately 400 feet east of North Wayside Drive and 600 feet north of Clinton Drive, approximately 4.5 miles due east of the downtown Houston Central Business District in Harris County, Texas.

CITY OF POST has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit to remove the irrigation option in the permit. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 700,000 gallons per day. The existing permit also authorizes the disposal of treated domestic wastewater via irrigation of 30 acres of golf course. The facility is located approximately 0.75 mile southeast of the intersection of U.S. Highway 84 and U.S. Highway 380 in Garza County, Texas.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014804001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility will be located approximately 300 yards east of the intersection of 29th Street and Avenue S, on the north side of Avenue S in Galveston County, Texas. 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.

THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TPDES Permit No. 13717-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located approximately 2 miles southwest of the intersection of Farm-to-Market Road 320 and 645; approximately 5 miles northwest of the intersection of Farm-to-Market Road 645 and U.S. Highway 84 and 79; within the boundaries of the Powledge State Prison Farm in Anderson County, Texas.

UNITED STRUCTURES OF AMERICA, INC. has applied for a renewal of TPDES Permit No. 12765-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located at 1912 Buschong in Houston in Harris County, Texas.

WLSK-PASADENA, LLC which operates a facility which manages an inactive gypsum storage pile associated with historical fertilizer manufacturing at an adjacent site, has applied for a major amendment to TPDES Permit No. WQ0003999000, to authorize the additional discharge of leachate via Outfall 001; revise the daily average flow not to exceed 72,000 gallons per day to an annual average flow not to exceed 72,000 gallons per day via Outfall 001; and remove the daily maximum flow limitation of 108,00 million gallons per day at Outfall 001. The current permit authorizes the discharge of treated gypsum pile wastewater and storm water at a daily average flow not to exceed 72,000 gallons per day via Outfall 001. The facility is located on the Houston Ship Channel, at the point where Jefferson Road terminates at the Houston Ship Channel, in the City of Pasadena, Harris County, Texas. 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.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 10 DAYS OF THE ISSUED DATE OF THE NOTICE.

Las Ventanas Land Partners, Ltd. has applied for a minor amendment to the TCEQ permit to authorize a relocation of the proposed wastewater treatment facility to a site within the proposed irrigation area. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 630,000 gallons per day via surface irrigation of 262 acres of non-public access land, which will remain the same. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 3.6 miles west-southwest of the intersection of Ranch-to-Market Road 620 and Lakeway Boulevard in Travis County, Texas.

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-200704511
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: September 26, 2007

Texas Superfund Registry

The Texas Commission on Environmental Quality, formerly known as the Texas Natural Resource Conservation Commission (commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (the Act) to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). In accordance with the Act, §361.181, the commission must update the state Superfund registry annually to add new facilities proposed for listing in accordance with the Act, §361.184(a) and listed in accordance with §361.188(a)(1) (see also 30 TAC §335.343) or to delete facilities in accordance with the Act, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

In accordance with the Act, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of hazard ranking system (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.

2. J. C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.

3. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

4. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

5. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

6. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

7. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.

8. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

9. McBay Oil & Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

10. Materials Recovery Enterprises. Located about four miles southwest of Ovalo, near U.S. 83 and Farm Road 604, Taylor County: Class I industrial waste management.

11. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.

12. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

13. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

14. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

15. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

16. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

17. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 (IH-35) in San Marcos, Hays County: contaminated groundwater plume.

18. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

19. Hall Street. Located north of the intersection of 20th Street East and California Street, north of the Dickinson city limits, Galveston County: waste disposal and landfill/open field dumping.

20. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

21. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

Pursuant to the Act, §361.181, those facilities that may pose an imminent and substantial endangerment, and which have been proposed to the state Superfund registry, are set out in descending order of hazard ranking system (HRS) scores as follows.

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of Farm-to-Market Road 1431, in the community of Kingsland, Llano County: two groundwater plumes.

2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

3. Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: former cottonseed delinting, processing.

4. ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: chemical manufacturing and recycling.

5. Hicks Field Sewer Corporation. Located approximately 2.5 miles northwest of Saginaw, southwest of Big Fossil Creek and approximately 1.8 miles west of the intersection of U.S. Highway 81-287 and Farm-to-Market Road 156, Tarrant County: former sewage treatment facility.

6. Industrial Road/Industrial Metals. Located at 3000 Agnes Street, Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

7. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of U.S. Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

8. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of Farm-to-Market Road 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

9. Sherman Foundry. Located at 532 East King Street in south central Sherman, Grayson County: cast iron foundry.

10. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.

11. Pioneer Oil and Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

12. Voda Petroleum Inc. Located at 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility.

13. Force Road Oil and Vacuum Truck Company. Located at 1722 County Road 573 (Alloy Road), approximately 1,300 feet east of the Brazoria-Fort Bend County line, Brazoria County: oily wastewater disposal and oil recovery facility.

14. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

15. Avinger Development Company (ADCO). Located on the south side of Texas 155, approximately one quarter mile east of the intersection with Texas 49, Avinger, Cass County: wood treatment.

16. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

17. American Zinc. Located approximately 3.5 miles north of Dumas on U.S. 287 and five miles east on Farm Road 119, Moore County: zinc smelter.

18. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

19. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73 approximately 5.8 miles north of Robstown, Nueces County: storage and disposal of hazardous substances.

20. Cass County Wood Treating. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

21. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

22. San Angelo Electric Service Company (SESCO). Located at 926 Pulliam Street in a residential area of northeastern San Angelo, Tom Green County: electric transformer recycling.

23. Tucker Oil Refinery/Clinton Manges Oil & Refining Company. Located on the east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

24. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

25. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.

26. Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

27. Shelby Wood Specialty, Inc., Shelby County. Located at 3295 U.S. Highway 84 East, 3 miles east of Tenaha in Shelby County: wood treating.

28. Woodward Industries, Inc., Nacogdoches County. Located on County Road 816, about 6 miles north of the city of Nacogdoches in Nacogdoches County: wood treating.

Since the last *Texas Register* publication on September 29, 2006 (31 TexReg 8265), the commission has determined that two facilities Shelby Wood Specialty, Shelby County, and Woodward Industries, Inc., Nacogdoches County, may pose an imminent and substantial endangerment to public health and safety or the environment and in accordance with the Act, §361.184(a), have been added to the list of sites proposed to the state Superfund registry. No additional sites were proposed to the state Superfund registry.

Also, the commission has determined that four sites, Aluminum Finishing Company, Harris County; Dorchester Refining Company, Titus County; Harvey Industries, Inc, Henderson County, and Poly-Cycle Industries, Jacksonville, Cherokee County no longer pose an imminent and substantial endangerment to public health or the environment and have been deleted pursuant to 30 TAC §335.344(c). Aluminum Finishing, Dorchester Refinery and Harvey Industries were referred to the Voluntary Cleanup Program.

To date, 44 sites have been deleted from the state Superfund registry in accordance with the Act, §361.189 (see also the Act §361.183(a) and 30 TAC §335.344): Aluminum Finishing Company, Harris County; Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County, Crimm-Hammett, Rusk County; Dorchester Refining Company, Titus County; Double R Plating Company, Cass County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Harvey Industries, Inc, Henderson County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; Phipps Plating, Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Poly-Cycle Industries, Jacksonville, Cherokee County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed--Farmersville, Collin County, Sampson Horrice, Dallas County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; Wortham Lead Salvage, Henderson County.

The public records for each of the sites are available for inspection and copying during regular Texas Commission on Environmental Quality's business hours at the Texas Commission on Environmental Quality's Records Management Center, Building E, North Entrance, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Handicapped parking is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files, however use of copiers to reproduce file information is subject to payment of a fee.

TRD-200704489
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 25, 2007

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: 8-Day Pre-Election Report Due October 30, 2006

Jose Menendez, P.O. Box 761780, San Antonio, Texas 78245-6780

Deadline: Monthly Report Due July 5, 2007

Jose Menendez, P.O. Box 761780, San Antonio, Texas 78245-6780

Deadline: Semiannual Report for Candidates and Officeholders Due July 16, 2007

David S. Barron, P.O. Box 2263, Bryan, Texas 77806-2263

Boyd W. Bauer, P.O. Box 1436, Beeville, Texas 78104-1436

Jack F. Borden, P.O. Box 191913, Dallas, Texas 75219-8509

Kenneth W. Bryant, P.O. Box 423, Richmond, Texas 77406-0011

Darrell R. Grear, P.O. Box 649, Rockdale, Texas 76567-0649

Jesse W. Jones, P.O. Box 41578, Dallas, Texas 75241-0578

John R. McLeod, 1307 Wilderness Street, Denton, Texas 76205-5162

Jose Menendez, P.O. Box 760115, San Antonio, Texas 78245-0115

Sergio C. Mora, 119 W. Village Boulevard, Laredo, Texas 78041-2211

Lyda Anastasia Ness-Garcia, 609 Myrtle Avenue, Suite 102, El Paso, Texas 79901-2568

Dorothy M. Olmos, 102 Funston Street, Houston, Texas 77012-1430

Bruce Priddy, P.O. Box 720130, Dallas, Texas 75372

Phillip S. Smart, P.O. Box 217, Ferris, Texas 75125-0217

Charles P. Urbina-Jones, 8000 Donore Pl. Apt. 65, San Antonio, Texas 78229-2629

Keith W. Valigura, 102 Kirkwood Lane, Conroe, Texas 77304-1724

Kathryn A. Ward, 4028 18th Street, Plano, Texas 75074-7903

Deadline: Semiannual Report for Committees Due July 16, 2007

Stanley J. Briers, Plumbing Air Conditioning Mechanical Contractors Assn. PAMCA Health & Safety Fund, 219 Whispering Oaks Drive, Taylor Lake Village, Texas 77586-4621

Ed Castillo, Stafford Parents and Community, 12342 Meadow Gate Drive, Stafford, Texas 77477-2246

James C. Eskridge, McKinney Fire Fighter's Assoc. for Responsible Government, P.O. Box 2754, McKinney, Texas 75070-8175

Karen J. Estes, Dallas Gay & Lesbian Alliance PAC, P.O. Box 190712, Dallas, Texas 75219-0712

Michael Franks, Wharton County GOP PAC, 20230 Kings Camp Drive, Katy, Texas 77450-4322

Tammy B. Gray, Texas TrueCare Pharmacy PAC, 500 W. 13th Street, Austin, Texas 78701-1827

Kati E. Hanson, Abilene PAC, P.O. Box 2482, Abilene, Texas 79604-2482

David R. Johannessen, Parents and Teachers Working Together, 1201 W. Park Row Drive, Arlington, Texas 76013-3602

Brenda A. Kindt, Dallas BOMA Political Action Committee, 2200 Ross Avenue, Suite 5400, Dallas, Texas 75201-7918

Dawn Ann Larios, Jefferson-Jackson-Johnson PAC, 4706 Paradise Woods Street, San Antonio, Texas 78249-1821

Judy K. Martin, Reno Citizens for Better Government Association, 4509 E. Highway 199, Springtown, Texas 76082-7358

Edwin D. McCrory III, Commercial Real Estate Industry of Texas Political Action Committee, 5703 Sunset Oak, Spring, Texas 77379-2743

Marcus M. Mpwo, African Coalition Political Action Committee, 17807 Scenic Oaks Drive, Richmond, Texas 77469-8587

David Ramos, McAllen Police Officers Union - Political Action Committee, 1017 Wisteria Avenue, McAllen, Texas 78504-3511

Antonio Rosas, Combined Metro Police Officers Association, P.O. Box 131354, Houston, Texas 77219-1354

Gary Rowe, PAC of the Wichita Falls Assn. of Insurance Agents, P.O. Box 1127, Archer City, Texas 76351-1127

Tracy A. Smith, Wise County Active Democrats, 1562 County Road 2625, Decatur, Texas 76234-7516

Sherri T. Statler, Taylor County Republican Women PAC, P.O. Box 2482, Abilene, Texas 79604-2482

Bobby R. Stephens, Help Elect Responsible Officials Political Action Committee, P.O. Box 184, Cedar Park, Texas 78630-0184

Christopher C. Stevens, The Conservative Cause, P.O. Box 642, League City, Texas 77574-0642

Bruce A. Tankleff, Texas Democratic Women of Montgomery County PAC, P.O. Box 130702, The Woodlands, Texas 77393-0702

Senfronia Thompson, Texas Legislative Black Caucus, 603 W. 13th Street, #1A-171, Austin, Texas 78701-1744

Gretchen M. Vaden, Central Austin Democrats, 6501 Shoal Creek Boulevard, Austin, Texas 78757-2727

Lynda P. Vine, Foundation Appraisers Coalition of Texas PAC, 6106 Vance Jackson Road, Apt. 2, San Antonio, Texas 78230-3373

Deadline: Monthly Report Due August 6, 2007

Phyllis Traylor, Montgomery County Law Enforcement Association, P.O. Box 2545, Conroe, Texas 77305

TRD-200704485
David Reisman
Executive Director
Texas Ethics Commission
Filed: September 25, 2007

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Texas Facilities Commission

Request for Proposal #303-8-10287

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), Department of State Health Services (DSHS), and Department of Family and Protective Services (DFPS) announces the issuance of Request for Proposals (RFP) #303-8-10287. TFC seeks a 5 or 10 year lease of approximately 10,367 square feet of office space Henderson, Rusk County, Texas.

The deadline for questions is October 12, 2007 and the deadline for proposals is October 19, 2007 at 3:00 p.m. The award date is November 2, 2007. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=73064*.

TRD-200704481
Kay Molina
General Counsel
Texas Facilities Commission
Filed: September 24, 2007

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Texas Health and Human Services Commission

Correction of Error

In the August 24, 2007, issue of the *Texas Register* (32 TexReg 5496), the Texas Health and Human Services Commission (HHSC) published public notice of its intent to submit Amendment 781, Transmittal Number TX 07-022, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment became effective September 1, 2007. This notice corrects the estimate of the expected annual aggregate expenditures set out in the earlier notice.

The proposed amendment revises the personal care services under the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) program. In Texas, EPSDT is known as Texas Health Steps (THSteps). PCS is a benefit available in a client's home, school, or other community setting when the services are provided through a Medicaid-enrolled organization licensed to provide personal care services or a Medicaid-enrolled organization meeting State contract requirements as a consumer directed services agencies.

Corrected fiscal estimate: HHSC estimates that Amendment 781 will result in additional annual aggregate expenditures of: $11,392,613 for the remainder of federal fiscal year (FFY) 2007 (September 1, 2007 to September 30, 2007), with approximately $6,923,290 additional expenditure in federal funds and approximately $4,469,232 additional expenditure in state general revenue; $135,948,958 for FFY 2008 (Octo-

ber 1, 2007 to September 30, 2008), with approximately $82,317,094 in additional costs in federal funds and approximately $53,631,864 in additional costs in state general revenue; and $139,172,091 for FFY 2009 (October 1, 2008 to September 30, 2009), with approximately $83,558,923 in additional costs in federal funds and approximately $55,623,168 in additional costs in state general revenue.

Interested parties may obtain copies of the proposed amendment by contacting Barbara Davenport, Policy Analyst, by mail at Policy Development Support, Medicaid and CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, H-600, Austin, Texas 78708-5200; by telephone at (512) 491-1104; by facsimile at (512) 491-1953; or by e-mail at Barbara.Davenport@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200704519
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 26, 2007

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on October 30, 2007, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for the 2007 annual procedure codes relating to X-ray services and physicians and certain other practitioners listed below. These changes are part of the annual review of the procedure codes under the Healthcare Common Procedure Coding System (HCPCS). The public hearing will be held in the Big Bend Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code, §32.0282 and Texas Administrative Code (TAC), Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates will be retroactively effective January 1, 2007. Claims filed on or after January 1, 2007, will be reprocessed. The proposed rates are as follows:

Type of Service (TOS)	Procedure Code	Proposed Medicaid Rate
4	37210	$390.87
4	70554	$450.60
I	70554	$76.65
T	70554	$373.95
I	70555	$91.92
4	76813	$93.56
I	76813	$42.55
T	76813	$51.01
4	78614	$62.46
I	78614	$35.73
T	78614	$26.73
I	77022	$155.47
4	91111	$537.34
2	15731	$680.81
2	19307	$786.91
2	22526	$253.94
2	22527	$117.56
2	25109	$357.04
2	33203	$589.16
8	33203	$94.37
2	33675	$1,599.46
8	33675	$255.85
2	33676	$1,649.65
8	33676	$264.03
2	33677	$1,714.84
8	33677	$274.40
2	33724	$1,148.59
8	33724	$183.84
2	33726	$1,514.64
8	33726	$242.21
2	35883	$960.66
2	35884	$1,020.40
2	49324	$267.30
2	49325	$288.03
2	49326	$132.56
2	49435	$85.37
2	49436	$125.47
2	55876	$82.92
2	57296	$678.90
8	57296	$108.56
2	58541	$610.71
8	58541	$97.65
2	58542	$675.90
8	58542	$108.01
2	58543	$687.36
8	58543	$109.92
2	58544	$744.36

8	58544	$119.20
2	58548	$1,301.34
8	58548	$208.12
2	58957	$1,053.94
8	58957	$168.57
2	58958	$1,167.14
8	58958	$186.84
2	64910	$495.33
2	64911	$602.53

Type of Service Code Key:
2 = surgery
8 = assistant surgery
4 = radiology total component
I = radiology professional component
T = radiology technical component

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8081 and 1 TAC §355.8085, which address the reimbursement methodology for X-ray services and physicians and certain other practitioners, and the specific fee guidelines published in Section 2.2.1.2 of the 2007 Texas Medicaid Provider Procedures Manual. Section 355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after October 15, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Required Notice: The five character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2007 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC, and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse, or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors, and/or related components are not assigned by the AMA, are not part of CPT; and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most recent Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.

TRD-200704502
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 26, 2007

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit the state's application for a renewal of the Texas Waiver for People with Deaf Blindness and Multiple Disabilities, a 1915(c) waiver program to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The current waiver is scheduled to expire February 28, 2008.

The Texas Deaf Blind and Multiple Disabilities waiver program serves individuals 18 years and older, who are legally blind; have a chronic, severe hearing impairment; and have a third disability that limits independent functioning. The program serves individuals in the community who would otherwise require care in an Intermediate Care Facility for the Mentally Retarded and Related Conditions (ICF/MR).

The renewal application will include changes to certain services available in the program. The behavior communication specialist service will be changed to behavior support and board certified behavior analysts will be added as a qualified provider type. Dental treatment will be included as a separate service component and will no longer be covered as an adaptive aid. The renewal incorporates the revised consumer directed services agency reimbursement methodology and adds financial management service.

HHSC is requesting that the waiver renewal be approved for an additional five year period beginning March 1, 2008. The waiver maintains cost neutrality of service costs for federal years 2008 - 2013.

To obtain copies of the proposed waiver, interested parties may contact Christine Longoria, Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200, phone (512) 491-1152, fax (512) 491-1953, e-mail christine.longoria@hhsc.state.tx.us.

TRD-200704521
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 26, 2007

The Long Term Care Plan for People with Mental Retardation and Related Conditions

Fiscal Years 2008-2009

Adjusted to Reflect Appropriated Funds

Introduction

The Texas Health and Human Services Commission (HHSC) has prepared the Long-Term Care Plan for People with Mental Retardation and Related Conditions pursuant to §533.062 of the Texas Health and Safety Code (THSC). Section 533.062 requires the plan to be developed biennially and adjusted following legislative action on appropriations for long-term care services. The adjusted plan is required to be published in the *Texas Register*.

In August 2006, HHSC published the plan to reflect the legislative appropriations request for the proposed number of Intermediate Care Facilities for Persons with Mental Retardation or Related Condition (ICF/MR-RC) beds licensed or approved as meeting license requirements, and the proposed capacity of the home and community-based services waivers for the 2008-2009 biennium.

As required by §533.062 of the THSC, this version of the report is the adjusted plan. The numbers appearing in the tables below reflect the appropriated funding amounts of the 80th Legislature, Regular Session, 2007.

Effective September 1, 2004, the Texas Department of Aging and Disability Services operated all programs included in this report.

The report includes information on the following programs:

The Intermediate Care Facilities for Persons with Mental Retardation or a Related Condition Program (ICF/MR-RC);

The Home and Community-based Services for Persons with Mental Retardation Waiver Program (HCS);

The Texas Home Living Waiver Program (TxHmL);

The Community Living Assistance and Support Services Waiver Program (CLASS);

The Deaf-Blind with Multiple Disabilities Waiver Program (DB/MD); and

The Consolidated Waiver Program (CWP).

Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions (ICF/MR-RC)

This is a Medicaid funded program that provides services to people with mental retardation and related conditions in residential settings with 24-hour supervision. These services are provided in two settings: state mental retardation facilities; and public and private community facilities. Approximately 12,000 people currently receive ICF/MR-RC services in Texas.

State Mental Retardation Facilities

Appropriated ICF/MR Bed Capacity

Note: Capacity in this reference means average number of clients served per month.

FY 2008: 4,869

FY 2009: 4,869

The development of community alternatives may result in decreased consumer demand for state mental retardation facilities. The size and rate of this trend will be a function of the availability of community resources, the capability of the community services infrastructure to expand, and consumer choice of services.

Community Facilities

Appropriated ICF/MR Bed Capacity

Note: Adjustments to these figures may be made as a result of provider conversions to waivers, closures and other provider operational adjustments.

FY 2008: 7,019

FY 2009: 7,019

Waiver Programs

Section 1915(c) of the Social Security Act provides that upon federal approval states may "waive" some federal Medicaid requirements to provide an array of support services in the community as an alternative to institutional care. Medicaid expenses for people in waiver programs cannot exceed, in the aggregate, Medicaid expenses for institutional services for people with similar needs.

The 2006-2007 General Appropriations Act (S.B. 1, 79th Legislature, Regular Session, 2005) authorized appropriations for a significant expansion of all waiver programs operated by the department. The 2008-2009 General Appropriations Act (H.B. 1, 80th Legislature, Regular Session, 2007) allocated additional funds in D.1.1. Strategy: Waiting/Interest List Reduction in the amounts of $42,605,333 for fiscal year 2008 and $130,632,915 for fiscal year 2009.

Home and Community-based Services (HCS)

The HCS program is for persons with mental retardation and provides individualized services and supports for individuals living in their family home, their own homes or other community settings.

Appropriated HCS Program Capacity

Capacity in this reference means anticipated average number of persons served in the program each month. Totals for HCS may change as a result of refinance, facility closures, waiver conversions or other operational adjustments.

FY 2008: 13,089

FY 2009: 14,712

The Texas Home Living Waiver Program (TxHmL)

The Texas Home Living Program (TxHmL) is intended to provide community services for persons with mental retardation. Selected essential services and supports are provided for individuals who live in their own or their family's home.

Appropriated TxHmL Program Capacity

Capacity in this reference means anticipated average number of persons served in the program each month. Totals for TxHmL may change as a result of refinance, facility closures, waiver conversions or other operational adjustments.

FY 2008: 1,387

FY 2009: 1,387

The Community Living Assistance and Support Services Program (CLASS)

CLASS provides home and community based services to adults and children with related conditions as a cost-effective alternative to ICF/MR-RC institutional placement. People with related conditions have a qualifying disability other than mental retardation, which originated before age 22 and that affects their ability to function in daily life.

Appropriated CLASS Capacity

FY 2008: 3,607

FY 2009: 3,900

Medicaid Waiver Program for People who are Deaf-Blind with Multiple Disabilities (DB/MD)

This is a home and community-based waiver program for people who are deaf-blind with multiple disabilities. As an alternative to institutional care, the program provides a number of habilitation and support services designed to meet the special needs of the individuals served. Specialists provide assistance in such areas as orientation and mobility, and behavior and communication.

Appropriated DB-MD Capacity

FY 2008: 160

FY 2009: 168

The Consolidated Waiver Program (CWP)

The Consolidated Waiver Program is a pilot 1915(c) Medicaid waiver. The purpose of the pilot is to test the feasibility of consolidating five of the state's other 1915(c) Medicaid waiver programs. The program is limited to Bexar County, and serves individuals who qualify for nursing facility or for ICF/MR-RC Level I or VIII.

Appropriated CWP Capacity

FY 2008: 199

FY 2009: 199

Definitions

Mental Retardation is defined by 25 Texas Administrative Code (TAC) §415.153 as:

Consistent with THSC, §591.033, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

Related Condition is defined by 25 TAC §415.153 as:

As defined in the Code of Federal Regulations (CFR), Title 42, §435.1009, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for persons with mental retardation;

(B) is manifested before the person reaches the age of 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

TRD-200704518
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: September 26, 2007

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Texas Higher Education Coordinating Board

Request for Proposal for the Feasibility Study for Restructuring State Student Financial Aid Programs in Texas

OVERVIEW: THECB is seeking proposals in response to this Request for Proposal (RFP) to conduct all or parts of a feasibility study for restructuring State financial aid programs in Texas. THECB is seeking to hire an individual, educationally-related organization, or other qualified entity to conduct a feasibility study for restructuring financial aid in Texas and write a report on the findings.

The THECB is an agency that administers the State financial aid programs. Within the context of that authority, 80th Texas Legislature directed THECB (Section 49, page III-54, of the 2008-2009 General Appropriations Act) to conduct a feasibility study on the restructuring of student financial aid programs in Texas. The final feasibility study is to be submitted to the Governor and to the Legislative Budget Board by July 1, 2008.

The awarded applicant's responsibility will include performing background research necessary to analyze data related to the relevant report topic; working with the Project Administrator and an advisory panel (appointed by Board Staff) to give input on report topic; and, produce a report that at a minimum explains the findings, recommendations and explains the advantages and disadvantages of implementing each idea below as well as the impact each would have on the participation (and in some instances the success goals) outlined THECB's Higher Education Plan Closing the Gaps by 2015. http://www.thecb.state.tx.us/reports/PDF/0379.PDF .

1. An analysis of the effects of requiring completion of the Free Application for Federal Student Aid as a condition of initial enrollment in a Texas public higher education institution;

2. A proposal for converting the TEXAS Grant program and all State financial aid programs into direct student grant programs based on a uniform assessment of financial need, including an estimate of changes in statewide facility use as a result of changes in student enrollment patterns;

3. An analysis of the effects of using tuition deregulation and TPEG State tuition set-asides as an additional funding source for TEXAS Grants and a projection of the number of additional TEXAS Grants that could be offered with the additional funds;

4. A proposal to convert the index used to establish the value of TEXAS Grants from the statewide average for tuition and fees to the statewide average for room and board (or other index) and to determine the cost of providing tuition waivers for students at institutions with tuition and fees above the State average;

5. A proposal for delivering TEXAS Grants as a stipend-based award that would allow students to access higher education tax credits through the federal income tax system; and

6. An analysis of distributing financial aid directly to students for the payment of tuition and fees and other expenses by debit card or other means.

The final report shall also set forth any other recommendations and the rationale therefore, for restructuring State student financial aid programs in Texas.

Proposer Qualifications: To be eligible for consideration, an applicant must demonstrate the following:

1. Previous experience analyzing higher education enrollment conditions and the impact of financial aid on enrollment patterns;

2. Previous experience revamping, or having significant input on revamping, an established financial aid process or program in an effort to achieve improved results;

3. Previous experience establishing forecasting tools for accurately determining costs and usage of financial aid programs;

4. Previous experience analyzing alternative state financial aid awarding methodologies;

5. Evidence of at least two prior or current contracts or projects of comparable scope with state agencies, Institutions of Higher Education, and/or national organizations;

6. Demonstrated ability to interact with policy leaders to discuss the project and present findings; and

7. Ability to adapt the process to the needs of the sponsoring agencies throughout the project.

PROPOSAL EVALUATION/AWARD: THECB shall evaluate all Proposals to determine if they conform to the requirements of the RFP. Those that do not conform may be eliminated from further consideration.

THECB will make its selection based on the following criteria: experience analyzing higher education enrollment conditions and the impact of financial aid on enrollment patterns; experience revamping an established financial aid process or program to achieve improved results; experience establishing forecasting tools for accurately determining costs and usage of financial aid programs; experience analyzing alternative state financial aid awarding methodologies; evidence of at least two prior or current contracts or projects of comparable scope with state agencies, institutions of higher education and/or national organizations; demonstrated ability to interact with policy leaders to discuss the project and present findings; reasonableness of proposed costs.

THECB shall coordinate the negotiation of a Contract with Awarded Applicant(s) for services relevant to conducting a feasibility study for restructuring state financial aid programs in Texas and the resulting report.

THECB has sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of THECB to do so. Issuance of this RFP in no way constitutes a commitment by THECB to award a Contract or to pay for any expenses incurred either in the preparation of a response to this RFP, attendance at an oral presentation or in the production of a contract for financial services.

SERVICE PERIOD: The project to conduct a feasibility study for restructuring State financial aid programs in Texas will begin upon the date of the Contract/Agreement award(s) and be completed by submission of a final report to the THECB no later than May 16, 2008.

Proposal Deadline: Deadline for responding to this RFP is 5:00 p.m., C.S.T., October 19, 2007.

For a complete copy of the RFP, including instructions for submitting a proposal, please contact THECB Project Administrator: Lois Hollis Phone: (512) 427-6465 E-mail: Lois.Hollis@thecb.state.tx.us

TRD-200704482
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Filed: September 24, 2007

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Texas Department of Housing and Community Affairs

Correction of Error

The Texas Department of Housing and Community Affairs proposed new 10 TAC §60.309, concerning Penalty Table. The notice appeared in the September 7, 2007, issue of the *Texas Register* (32 TexReg 5953).

Due to a submission error on page 6167 the table for Figure: 10 TAC §60.309(a)(4) is incorrect. The correct Figure: 10 TAC §60.309(a)(4) is as follows.

Figure: 10 TAC §60.309(a)(4)

Violation	Administrative Penalty with Corrective Action	Penalty for Non-Compliance Non-Corrected Action
Units leased to households that are not eligible because their income exceeds the allowable limit; occupied by non-eligible full time students; or noncompliance with senior age restrictions	Lease labeled "Do not renew lease--as soon as possible lease the unit to eligible household;" Lease to eligible household **Penalty: $100 per violation**	Violation of do not renew restriction **Penalty: $500 per violation** Multiple Violations after Corrective action requested. **Penalty: $1,000 per violation**
Rents charged exceed allowable limits or improperly calculated utility allowance	Responsible Party/Owner/manager demonstrates reduction in rent and/or recalculation of utility allowance **Penalty: $100 per violation**	Violation based on administrative error **Penalty: $250 per violation** Repeated Violations after Notice **Penalty: $500 per violation**
Property Condition Violations	Appropriate repairs completed and provide evidence related to public health and safety **Penalty: $250 per violation** Violation not an issue of public health and safety maters **Penalty: $50 per violation**	Violation for public health and safety matters **Penalty: $1,000 per day** Violation not an issue of public health and safety maters **Penalty: $250 per violation**
Failure to Submit Reports Timely and or failure to execute and record program documents	After written notice of failure to receive report owner must provide corrective action support within 30 days **Penalty: $100 per violation**	Failure to submit after: 30 days **Penalty: $250 per violation** 60 days **Penalty: $500 per violation** 90 days or more **Penalty: $1000 per violation**
Change in eligible basis	Owner to cease charging for facilities and/or convert commercial space back to residential space as applicable **Penalty: $50 per violation**	**Penalty: $200 per violation**
Failure to meet minimum set aside, violation of Available Unit Rule, or comply with rent and occupancy restrictions	Units rented to the appropriate income and rent restrictions for eligible households **Penalty: $25 per violation**	**Penalty: $300 per violation**
Failure to follow Fair Housing or federal laws providing access by the general public or failure to comply with Section 8 minimum income to rent standard	Owner must to enter into a corrective action agreement and amend leasing requirements if appropriate **Penalty: $100 per violation**	General Public or Section 8 violations **Penalty: $250 per violation**
Failure to maintain adequate documentation or certification for compliance	Owner to recertify accordingly and provide documentation upon completion **Penalty: $25 per violation**	Failure to recertify **Penalty: $250 per violation** Failure to provide documentation **Penalty: $100 per violation**
Low income units used on transient basis	Owner should execute at least six month lease and provide evidence **Penalty: $25 per violation**	Failure to correct within: 30 days **Penalty: $100 per violation** 60 days **Penalty: $200 per violation** 90 days **Penalty: $300 per violation**

Violation of the Unit Vacancy Rule	Property must advertise availability of units within 30 days and provide evidence **Penalty: $100 per violation**	Failure to comply after: 30 days **Penalty: $250 per violation** 60 days **Penalty: $500 per violation** 90 days or more **Penalty: $1000 per violation**
No evidence of material participation by a qualified nonprofit	Owner to correct issue and certify compliance within 60 days **Penalty: $100 per violation**	Failure to submit documentation after: 60 days **Penalty: $500 per violation** 90 days **Penalty: $1000 per violation**
Failure to provide agreed to supportive services	Corrective action within 30 days **Penalty: $100 per violation**	Failure to provide agreed services after: 30 days **Penalty: $500 per violation** 60 plus days **Penalty: $1000 per violation**
Failure to pay compliance fees or compliance penalties timely	After notice of fees due and payable within 30 days of notice **Penalty: $25 per violation**	Admin penalty of 5% of fees owed per month as late fees
Failure to meet prescribed special needs set aside	Property must develop and follow adequate marketing plan utilizing organizations that work with special needs for corrective action within 60 days **Penalty: $100 per violation**	For each 30 day period set aside is not met or marketed after 60 days **Penalty: $250 per violation**
Failure to meet Department minimum standards for rehabilitation act compliance	If discovered during development, potential correction of building. If discovered after building, establish an account to fund necessary modifications **Penalty: $100 per violation**	Penalty of up to $1,000 per day up to a maximum of the cost of making necessary changes and referral for Debarment under 10 TAC §1.20
Continued non-compliance resulting in declaration of no longer participating in program	After written notice owner should provide a corrective action memo **Penalty: $100 per violation**	**Penalty: $1000 per violation**
Determination of material Non-compliance for more than six months	After notice of violation corrective action plan developed with Department **Penalty: $100 per violation**	**Penalty: $500 per violation**
Owner refuses to allow monitoring review	Allow monitoring upon request **Penalty: $50 per day not previously allowed**	**Penalty: $500 per day not allowing monitoring.**

TRD-200704498

FY 2008 Texas Bootstrap Loan Program Notice of Funding Availability

The Texas Department of Housing and Community Affairs (TDHCA), through its Office of Colonia Initiatives (OCI), is pleased to announce the availability of approximately Six Million Five Hundred Thousand Dollars ($6,500,000) of State of Texas Housing Trust Funds for the Texas Bootstrap Loan Program. The purpose of the funding is to purchase land and build new residential or improve existing residential housing through self-help construction methodologies for very low and extremely low income individuals and/or families (Owner-Builders) including persons with special needs. In an effort to attract a diverse group of nonprofit organizations that will serve various populations throughout the state and improve upon the efficiency of the traditional funding method, a reservation system will be initiated with this Notice of Funding Availability (NOFA). The reservation system will be utilized to secure these funds for Owner-Builder Applicants through nonprofit organizations certified by TDHCA as a Nonprofit Owner-Builder Housing Provider (NOHP) that has executed a Loan Origination Agreement in order to ensure compliance with the Texas Bootstrap Loan Program Rules and Guidelines.

In order for a nonprofit organization to be certified by TDHCA as a NOHP, the nonprofit organization must also qualify as a tax-exempt organization listed under §501(c)(3) of the Internal Revenue Code of 1986.

Nonprofit Owner-Builder Housing Provider Requirements:

Designation as a NOHP and subsequent execution of a Loan Origination Agreement will entitle nonprofits to:

(1) Qualify potential Owner-Builders for loans under this program.

(2) Assist Owner-Builders in constructing or rehabilitating their home.

(3) Possibly originate and/or service loans in compliance with Texas Bootstrap Loan Program Rules and Guidelines.

(4) Provide Owner-Builder education classes such as:

(a) financial responsibilities of an Owner-Builder, including the consequences of an Owner-Builder's failure to meet those responsibilities;

(b) building of housing by Owner-Builders;

(c) resources for low-cost building materials available to Owner-Builders; and

(d) resources for building assistance available to Owner-Builders.

Section 2306.753(a) of the Texas Government Code directs TDHCA to establish a priority in directing funds to Owner-Builders with an annual income of less than $17,500. The maximum loan amount using TDHCA funds may not exceed $30,000 per Owner-Builder. The total amount of loans made with TDHCA and any other source may not exceed a combined $60,000 per household. An NOHP will only be allowed to have up to ten reservations at any given time. Projects utilizing additional non-TDHCA resources will be required to provide additional documentation identifying the sources of these additional funds and information about their rates and terms.

Owner-Builder Eligibility Requirements:

To be eligible for up to a $30,000 loan from TDHCA, an Owner-Builder:

(1) Must not have an annual income that exceeds 60 percent, as determined by TDHCA, of the greater of the state or local Area Median Family Income (AMFI), when combined with the income of any person who resides with the Owner-Builder.

(2) Must have resided in this state for the preceding six months.

(3) Must have successfully completed an Owner-Builder education class.

(4) Must agree to provide at least 60 percent of the labor necessary to build or rehabilitate the proposed housing by working through a state certified NOHP; or must agree to provide an amount of labor equivalent to the amount required in connection with building or rehabilitating housing for others through a state certified NOHP.

(5) Must not be currently delinquent or in default on any government loan.

(6) Must not be currently delinquent or in default on child support payments.

(7) Total debt to income ratio cannot exceed 45 percent.

TDHCA is required under §2306.753(d) of the Texas Government Code, to set aside at least two-thirds ($4,333,333) of the available funds for Owner-Builders whose property is located in a county that is eligible to receive financial assistance under Chapter 17, Subchapter K of the Texas Water Code. The Texas Water Development Board has determined that an economically distressed area which has a median household income that is not greater than 75 percent of the median state household income which are identified by census tracts. The eligible census tracts are listed at the TDHCA website. The remainder of the funding, one-third ($2,166,667), will be available statewide.

The amounts available for distribution are as follows:

For Fiscal Year 2008 (September 1, 2007)

$4,333,333 - Economically Distressed Areas (EDA)

$2,166,667 - Balance of State

In order to submit an Owner-Builder loan application for reservation, an NOHP that has received a Program award in the past must be meeting all performance benchmarks as outlined in their current contract, must execute a Loan Origination Agreement with the Department and must attend a Loan Reservation System training provided by the Department.

Reservation System Guidelines:

After being certified as an NOHP and executing a Loan Origination Agreement, the nonprofit organization may begin to submit loan applications on behalf of the Owner-Builder Applicant. If more than one Owner-Builder Application is submitted they will be processed in the order entered into the Reservation System.

All Application/Compliance Packages will be reviewed on a first-come, first-served basis. There will be no expedited applications except for an Owner-Builder Applicant with an annual income of less than $17,500.

The following guidelines are a supplement to the Texas Bootstrap Loan Program Rules and Texas Bootstrap Loan Program Manual. This overview of the Reservation System will assist the NOHP on how to originate loans on behalf of TDHCA under the Texas Bootstrap Loan Program Reservation System.

After the Loan Origination Agreement is executed, the NOHP must register each individual Owner-Builder applicant into the TDHCA Texas Bootstrap Loan Program Registration System using the TDHCA website. After registering the Owner-Builder applicant, TDHCA must receive the completed Application/Compliance Package (Exhibit 9 of the Texas Bootstrap Loan Program Manual) within five business days of the date the registration was entered into the system.

TDHCA Office of Colonia Initiatives (OCI) staff will review the Application/Compliance Package to ensure that the Owner-Builder applicant meets all program rules and guidelines. The NOHP will be notified in writing in the form of a Deemed Eligible Letter, that the Owner-Builder applicant has been deemed eligible and that funds have been reserved for one year from the date of issuance of a Deemed Eligible Letter (Form 10 of the Texas Bootstrap Loan Program Manual).

If TDHCA staff is unable to deem the Owner-Builder applicant eligible the NOHP will be notified in writing of the reason(s) by either a Notice of Deficiency Letter (Form 13 of the Texas Bootstrap Loan Program Manual) or Applicant Deemed Ineligible Letter (Form 12).

Incomplete Application/Compliance Packages will not be accepted. All incomplete packages will be returned to the NOHP and the reservation will be cancelled. The NOHP must resubmit a new reservation and the Application/Compliance Package to TDHCA in order to be reconsidered for funding.

Maximum reservations allowed at any given time: 10

Performance Benchmarks:

Once an Owner-Builder has been deemed eligible and funds have been reserved, depending on the type of loan being requested the NOHP must meet the following performance benchmarks.

If the Owner-Builder Applicant qualifies for the Texas Bootstrap Loan Program, the OCI will issue a deemed eligible letter (pre-approval) which reserves the funds (up to $30,000 per reservation) for 12 months. The NOHP, in accordance with the Texas Bootstrap Loan Program Rules, will be given a six percent administration fee upon completion of the house and closing of each mortgage loan.

In an effort to expedite expenditures, the NOHP will be required to meet specific performance benchmarks on that home within 12 months of the reservation. If the NOHP fails to meet the required benchmarks, the reservation will be subject to cancellation in accordance with the Loan Origination Agreement. TDHCA may choose to provide one 45-day extension due to extenuating circumstances that were beyond the Owner-Builder's and/or the NOHP's control. If the NOHP cannot meet the required benchmarks after the 45-day extension, the reservation will be cancelled. In order to receive another reservation on the same Owner-Builder Applicant the NOHP will be instructed to submit an updated application to ensure that the Owner-Builder Applicant still meets all Texas Bootstrap Loan Program Rules and Guidelines.

Nonprofit organizations that have been certified as an NOHP and have executed the Loan Origination Agreement with TDHCA may begin submitting Owner-Builder loan applications to TDHCA.

Purchase Money Loan:

(1) Within 90 days of the respective reservation date the NOHP must have initiated the preconstruction process which includes the home-ownership education and counseling programs of the organization.

(2) Within 180 days of the respective reservation date construction must have started on the unit; and

(3) Within one year of the respective reservation date the unit must be 100 percent complete and the purchase money loan must have closed with the Owner-Builder Applicant.

Interim and Residential Construction Loans:

(1) Within 90 days of the respective reservation date, the loan must close and construction must have started on the unit;

(2) Within 180 days of the respective reservation date, the unit must be at 40 percent completion;

(3) Within 270 days of the respective reservation date, the unit must be at 80 percent completion; and

(4) Within one year of the respective reservation date, the unit must be 100 percent complete and the purchase money loan must have closed with the Owner-Builder Applicant.

TDHCA will begin accepting reservations on November 1, 2007, and continue to accept reservations on an ongoing basis until such time as all funding has been committed.

The NOHP state certification application may be downloaded from TDHCA's website located at **http://www.tdhca.state.tx.us/oci-docs/NOHPApp.doc**.

Implementation Workshops on how to access and utilize the reservation system and originate Texas Bootstrap Loan Program Loans will be held at the following locations:

Joe C. Thompson Conference Center

Room: 3.108

2405 Robert Dedman Drive

Austin, Texas 78712

Date: October 10, 2007

Time: 9:00 a.m. to 4:00 p.m.

McAllen City Hall

Room: Commissioner's Court

1300 Houston Avenue

McAllen, Texas 78501

Date: October 12, 2007

Time: 9:00 a.m. to 4:00 p.m.

Dallas Area Habitat for Humanity

2800 N. Hampton Road

Dallas, Texas 75212

Date: October 15, 2007

Time: 9:00 a.m. to 4:00 p.m.

TDHCA-State Office Building

Room: 5th Floor Conference

401 East Franklin

El Paso, Texas 79901

Date: October 18, 2007

Time: 9:00 a.m. to 4:00 p.m.

Port Arthur Housing Authority

Conference Room

902 Dequeen Boulevard

Port Arthur, Texas 77640

Date: October 23, 2007

Time: 9:00 a.m. to 4:00 p.m.

Webb County Self-Help Center

8116 Highway 359

Laredo, Texas 78043

Date: October 25, 2007

Time: 9:00 a.m. to 4:00 p.m.

All interested parties are encouraged to participate in this program. For more information regarding this NOFA and the training please call Raul Gonzales with the Office of Colonia Initiatives at (800) 462-4251, visit the TDHCA's website at **http://www.tdhca.state.tx.us/oci/index.jsp** or e-mail your request to raul.gonzales@tdhca.state.tx.us.

TRD-200704415
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 21, 2007

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Texas Department of Insurance

Company Licensing

Application to change the name of ELDER HEALTH INSURANCE COMPANY, INC. to BRAVO HEALTH INSURANCE COMPANY,

INC., a foreign life, accident and/or health company. The home office is in Wilmington, Delaware.

Application for admission to the State of Texas by OCEAN HARBOR CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Tallahassee, Florida.

Application to change the name of AMERICAN SKANDIA LIFE ASSURANCE CORPORATION to PRUDENTIAL ANNUITIES LIFE ASSURANCE CORPORATION, a foreign life, accident and/or health company. The home office is in Shelton, Connecticut.

Any objections must be filed with the Texas Department of Insurance, within 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-200704529
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 26, 2007

Notice of Public Hearing

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2674 on October 31, 2007 at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the Texas Windstorm Insurance Association's (Association) petition for proposed increases to the current maximum limits of liability for residential dwellings and individually owned townhouses and associated contents; contents of an apartment, condominium, or townhouse; commercial structures and associated contents; and governmental structures and associated contents for policies of windstorm and hail insurance. The petition is submitted pursuant to Texas Insurance Code §§2210.502 - 2210.504.

This notice is made pursuant to Texas Insurance Code §2210.504(a) which requires notification and a hearing prior to the Commissioner's approval, disapproval, or modification of the Association's proposed adjustments to the limits of liability for its policies of windstorm and hail insurance. This proceeding is exempt from the contested case procedures in Texas Insurance Code §40.002 and §40.003.

A copy of the Association's petition is available for review in the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. To request a copy of the petition, contact Sylvia Gutierrez at (512) 463-6327 (refer to Reference No. P-0907-12). For additional information interested parties may contact Marilyn Hamilton, Property and Casualty Associate Commissioner, MC 104-PC, Texas Department of Insurance, 333 Guadalupe, Austin, Texas 78701 or call at (512) 322-2265.

TRD-200704527
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 26, 2007

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 STREAMLINE ADMINISTRATORS, LLC (using the assumed name of STREAMLINE FINANCIAL), a domestic third party administrator. The home office is ALLEN, TEXAS.

Application of MANAGED CARE OF NORTH AMERICA, INC. (using the assumed name of MCNA DENTAL PLANS), a foreign third party administrator. The home office is MIAMI, FLORIDA.

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-200704528
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 26, 2007

Texas Lottery Commission

Instant Game Number 728 "Rocky"

The Texas Lottery Commission filed for publication Instant Game Number 728 "Rocky". The document was published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8142). The procedure for claiming a prize pack in paragraphs "2.3.A and B Procedure for Claiming Prizes" was changed after the procedures were filed in the *Texas Register*. Sections 2.3.A and B now read as follows:

2.3 Procedure for Claiming Prizes.

A. To claim a "ROCKY" Instant Game prize of $2.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00 or $100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "ROCKY" Instant Game prize of PACKS, $1,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

TRD-200704466
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 24, 2007

Instant Game Number 788 "Texas Major League Baseball Series"

The Texas Lottery Commission filed for publication Instant Game Number 788 "Texas Major League Baseball Series." The document was published in the March 23, 2007, issue of the *Texas Register* (32 TexReg 1780). The procedure for claiming a prize pack in paragraphs "2.3.A and B Procedure for Claiming Prizes" was changed after the procedures were filed in the *Texas Register*. Sections 2.3.A and B now read as follows:

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00 or $100 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game prize of PRIZE PACK, $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

TRD-200704467
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 24, 2007

Instant Game Number 798 "World Poker Tour $100,000 Texas Hold 'Em"

The Texas Lottery Commission filed for publication Instant Game Number 798 "World Poker Tour $100,000 Texas Hold 'Em". The document was published in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3738). The procedure for claiming a prize pack in paragraphs "2.3.A and B Procedure for Claiming Prizes" was changed after the procedures were filed in the *Texas Register*. Sections 2.3.A and B now read as follows:

2.3 Procedure for Claiming Prizes.

A. To claim a "WORLD POKER TOUR $100,000 TEXAS HOLD 'EM" Instant Game prize of $10.00, $15.00, $20.00, $25.00, $50.00, $75.00, $100, $250 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $25.00, $50.00, $75.00, $100, $250 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WORLD POKER TOUR $100,000 TEXAS HOLD 'EM" Instant Game prize of PACK, TRIP, $5,000 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

TRD-200704468
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 24, 2007

Instant Game Number 831 "John Wayne™" "The Duke™"

The Texas Lottery Commission filed for publication Instant Game Number 831 "John Wayne™" "The Duke™". The document was published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4288). The procedure for claiming a prize pack in paragraphs "2.3.A and B, Procedure for Claiming Prizes" was changed after the procedures were filed in the *Texas Register*. Sections 2.3.A and B now read as follows:

2.3 Procedure for Claiming Prizes.

A. To claim a "JOHN WAYNE™" "THE DUKE™" Instant Game prize of $5.00, $10.00, $15.00 $20.00, $50.00 or $100 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "JOHN WAYNE™" "THE DUKE™" Instant Game prize of PACK, $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to

the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

TRD-200704469
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 24, 2007

Instant Game Number 1018 "Holiday Lucky Times 10"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1018 is "HOLIDAY LUCKY TIMES 10". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1018 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 1018.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 1X, 2X, 5X, 10X, $10.00, $20.00, $50.00, $100, $200, $500, $1,000, $2,500, $25,000 and $100,000.

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. 1018 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX

47	FRSV
48	FRET
49	FRNI
50	FFTY
51	FTON
52	FTTO
53	FTTH
54	FTFR
55	FTFV
56	FTSX
57	FTSV
58	FTET
59	FTNI
60	SXTY
61	SXON
62	SXTO
63	SXTH
64	SXFR
65	SXFV
66	SXSX
67	SXSV
68	SXET
69	SXNI
70	SVTY
71	SVON
72	SVTO
73	SVTH
74	SVFR
75	SVFV
76	SVSX
77	SVSV
78	SVET
79	SVNI
80	EGTY
1X SYMBOL	WINX1
2X SYMBOL	WINX2
5X SYMBOL	WINX5
10X SYMBOL	WINX10
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$25,000	25 THOU
$100,000	HUN 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. 1018 - 1.2E

CODE	PRIZE
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

I. High-Tier Prize - A prize of $1,000, $2,500, $25,000 or $100,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (1018), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 50 within each pack. The format will be: 1018-0000001-001.

L. Pack - A pack of "HOLIDAY LUCKY TIMES 10" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both 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 "HOLIDAY LUCKY TIMES 10" Instant Game No. 1018 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 "HOLIDAY LUCKY TIMES 10" Instant Game is determined once the latex on the ticket is scratched off to expose 67 (sixty-seven) Play Symbols. If a player reveals the YOUR LUCKY NUMBER play symbol within a GAME, the player wins the PRIZE shown for that GAME. The player then scratches the BONUS BOX for a chance to win up to 10 (ten) TIMES the total amount won on the ticket. 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 67 (sixty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 67 (sixty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 67 (sixty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 67 (sixty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed

in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The top prize will appear on every ticket unless otherwise restricted.

C. No duplicate non-winning GAME 1 through GAME 10 play symbols on a ticket.

D. No more than two matching non-winning prize symbols.

E. The 1X BONUS BOX play symbol will appear on every winning ticket that is not designated by the prize structure to contain the 2X, 5X or 10X BONUS BOX play symbols.

F. Each GAME, other than GAME 1, may win more than once, but there will be no more than 10 wins per ticket.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY LUCKY TIMES 10" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, $200 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "HOLIDAY LUCKY TIMES 10" Instant Game prize of $1,000, $2,500, $25,000 or $100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "HOLIDAY LUCKY TIMES 10" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "HOLIDAY LUCKY TIMES 10" 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 "HOLIDAY LUCKY TIMES 10" 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 4,080,000 tickets in the Instant Game No. 1018. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1018 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	734,400	5.56
$20	326,400	12.50
$50	81,600	50.00
$100	58,446	69.81
$200	10,030	406.78
$500	1,938	2,105.26
$1,000	170	24,000.00
$2,500	68	60,000.00
$25,000	34	120,000.00
$100,000	6	680,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.36. 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. 1018 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. 1018, 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-200704339
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 20, 2007

♦ ♦ ♦

Notice of Public Comment Hearing

A public hearing to receive comments regarding proposed amendments to 16 TAC §401.301, relating to General Definition, §401.304, relating to On-Line Game Rules (General), §401.305, relating to "Lotto Texas" On-Line Game Rule, §401.307, relating to "Pick 3" On-Line Game Rule, §401.308, relating to "Cash Five" On-line Game, §401.312, relating to "Texas Two Step" On-line Game, §401.315, relating to "Mega Millions" On-Line Game Rule, and §401.316, relating to "Daily 4" On-Line Game Rule, will be held on Thursday, October 18, 2007, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 East Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200704416

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 21, 2007

Notice of Public Comment Hearing

A public hearing to receive comments regarding proposed new 16 TAC §402.211, relating to Fair Conduct, proposed new 16 TAC §402.210, relating to House Rules, and proposed new 16 TAC §402.709, relating to Corrective Action-Audit, will be held on Tuesday, October 16, 2007, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 East Sixth Street, Austin, Texas 78701. Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200704417
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: September 21, 2007

Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction and Opportunity for Comment

Acceptance of Land Acquisition - El Paso County

On November 8, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider accepting the donation of approximately 63 acres adjacent to Franklin Mountains State Park in El Paso County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or made in person at time of meeting.

TRD-200704505
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 26, 2007

Notice of Proposed Real Estate Transaction and Opportunity for Comment

Grant of Easement - Brown County

On November 8, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider granting a 20 foot wide utility easement to the Zephyr Water Supply Corporation at the McGillivray and Leona McKie Muse Wildlife Management Area, Brown County, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or made in person at time of meeting.

TRD-200704508
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 26, 2007

Notice of Proposed Real Estate Transaction and Opportunity for Comment

Grant of Easement - Cameron County

On November 8, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider granting an easement to the Santa Maria/La Feria Irrigation District for the installation of a 15-inch underground irrigation line across approximately 2,000 feet of the Anacua Unit of the Las Palomas Wildlife Management Area in Cameron County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or made in person at time of meeting.

TRD-200704507
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 26, 2007

Notice of Proposed Real Estate Transaction and Opportunity for Comment

Land Acquisition - Grimes County

On November 8, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider the purchase of approximately 4.6 acres adjacent to Fanthorp Inn State Historic Site in Grimes County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or made in person at time of meeting.

TRD-200704506
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 26, 2007

Notice of Proposed Real Estate Transaction and Opportunity for Comment

Land Transfer - Calhoun County

On November 8, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider the transfer of approximately 4.7 acres adjacent to the Swan Point Boat Ramp to Calhoun County. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Public comment may be submitted

to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or made in person at time of meeting.

The department will also hold a local public meeting concerning the proposed transaction at 7:00p.m., October 25, 2007, in the office of Kenneth Finster, Calhoun County Commissioner Precinct 4, 104 E. Dallas, Seadrift, Texas 77983.

TRD-200704504
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: September 26, 2007

Office of Public Utility Counsel

Notice of Public Hearing

Annual Public Hearing for the Office of Public Utility Counsel

Pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §13.064 (Vernon 2007) (PURA), the Office of Public Utility Counsel (Office) is conducting its annual public hearing.

The public hearing will be held on the date and time, and at the location indicated below.

Monday, October 29, 2007, at 1:30 p.m.

Brown-Heatly Building

First Floor, Room 1420

4900 North Lamar Blvd.

Austin, Texas 78751

All interested persons are invited to attend and provide input.

Contact Janalee Paiz, P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 for further information.

TRD-200704526
Suzi McClellan
Public Counsel
Office of Public Utility Counsel
Filed: September 26, 2007

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 19, 2007, 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 Rapid Acquisition Co., LLC to Amend a State-Issued Certificate of Franchise Authority, Project Number 34768 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 34768.

TRD-200704499
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 25, 2007

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 20, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable to Amend a State-Issued Certificate of Franchise Authority, Project Number 34783 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 34783.

TRD-200704500
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 25, 2007

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 September 17, 2007, 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 AP Electric, LLC for Retail Electric Provider (REP) Certification, Docket Number 34755 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 12, 2007. 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 34755.

TRD-200704366
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2007

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 September 18, 2007, 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 Energy Services Providers of Texas, Inc. for Retail Electric Provider (REP) Certification, Docket Number 34763 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 12, 2007. 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 34763.

TRD-200704407
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 2007

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 September 18, 2007, 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 Catalyst Energy USA, Inc. for Retail Electric Provider (REP) Certification, Docket Number 34764 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 12, 2007. 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 34764.

TRD-200704408
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 2007

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 September 19, 2007, 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 NRG Texas Retail LLC for Retail Electric Provider (REP) Certification, Docket Number 34771 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the service area defined by customers.

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 October 12, 2007. 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 34771.

TRD-200704501
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 25, 2007

Notice of Application to Amend Certificated Service Area Boundaries in Menard County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 19, 2007, for an amendment to certificated service area boundaries within Menard County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Service Area Exception within Menard County, Docket Number 34767.

The Application: Pedernales Electric Cooperative, Inc. seeks to provide service to a specific customer located within the certificated service area of Cap Rock Energy Corporation. Both utilities are agreeable to the requested service area exception.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 12, 2007 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 34767.

TRD-200704409
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 21, 2007

Notice of Award of Major Consulting Contract

The Public Utility Commission of Texas (PUCT) announces the award of Contract No. 473-07-00019.

Description of Activities

The consultant will assist the PUCT with the day-to-day operation of the Electric Reliability Council of Texas (ERCOT) Wholesale Electricity Market and implementation of the Nodal market design.

Consultant's Name and Business Address

Shmuel S. Oren, Ph.D.

57 Hill Road

Berkeley, CA 94708

Contract Value and Term

The total value of the contract will not exceed $147,000. The contract was executed September 18, 2007, and will expire on August 31, 2009.

TRD-200704365
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2007

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 18, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 20, 2007.

Docket Title and Number: Application of Windstream Communications Kerrville, LP for Approval of a LRIC Study for Private Switch/Automatic Location Identification Service Pursuant to P.U.C. Substantive Rule §26.214; Docket Number 34757.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34757. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34757.

TRD-200704367
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2007

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 18, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 20, 2007.

Docket Title and Number: Application of Windstream Communications Sugar Land, Inc. for Approval of a LRIC Study for Private Switch/Automatic Location Identification Service Pursuant to P.U.C. Substantive Rule §26.214; Docket Number 34758.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34758. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34758.

TRD-200704368
Adriana A. Gonzales
Rule Coordinator
Public Utility Commission of Texas
Filed: September 20, 2007

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 18, 2007, with the Public Utility Commission of Texas (Commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 20, 2007.

Docket Title and Number: Application of Texas Windstream, Inc. for Approval of a LRIC Study for Private Switch/Automatic Location Identification Service Pursuant to P.U.C. Substantive Rule §26.214; Docket Number 34759.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34759. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34759.

TRD-200704369
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2007

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 18, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 20, 2007.

Docket Title and Number: Application of Windstream Communications Southwest, Inc. for Approval of a LRIC Study for Private Switch/Automatic Location Identification Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 34760.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34760. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones

(TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34760.

TRD-200704370
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2007

Public Notice of Workshop on Policy Relating to Excess Development in Competitive Renewable Energy Zones in the ERCOT Market

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding dispatch priority options for excess wind resources in the ERCOT Market on Thursday, November 8, 2007 at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 34577, *Proceeding to Develop Policy Relating to Excess Development in Competitive Renewable Energy Zones* has been established for this proceeding. The commission hopes to further discuss and/or clarify the previously filed written responses to the questions below. Prior to the workshop, the commission requests interested persons file comments to the following questions:

1. During the September 17th workshop in Project Number 34577 - *Proceeding to Develop Policy Relating to Excess Development in Competitive Renewable Energy Zones,* different options for dealing with potential excess development were discussed:

(a) Day Ahead Operating Limit with pro-rata Curtailment Distribution

(b) Day Ahead Operating Limit with Last in First Out Curtailment Priority

(c) Adjusted Offer Floor

(d) Offer Curve Adder

(e) Texas Nodal with Financial Transmission Rights

Do these five options represent the universe of potential ways the commission could deal with potential excess wind development in the CREZ regions or are there other ways the commission could address the potential over development issue?

2. Which one of the options listed in question one is the most appropriate? Please explain.

3. Please identify every entity type that should be considered in the course of drafting this rule. For example, entity types might include entities owning wind farms that have already been constructed within a Competitive Renewable Energy Zone (CREZ); CREZ proceeding participants that intend to construct wind farms within a CREZ and commit resources pursuant to CREZ requirements; or, entities with existing or planned wind farms outside of a CREZ that desire to connect to a CREZ transmission line or facility at a point outside of the CREZ, etc. For each type, please identify and describe the entity and then explain how said entity type should be addressed by dispatch priority and/or financial transmission rights within the Texas nodal market design.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 within 30 days of the date of publication of this notice. All responses should reference Project Number 34577. This notice is not a formal notice of proposed rulemaking, however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Questions concerning the workshop or this notice should be referred to Adrianne Brandt, Senior Analyst, Competitive Markets Division, (512) 936-7384. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200704510
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 26, 2007

Stephen F. Austin State University

Notice of Consultant Contract Amendment

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this supplemental notice of consultant contract amendment. The original notice of award for the contract awarded to Maren Systems, LLC, 14101 Highway 290 West, Suite 500A, Austin, Texas 78737, was filed in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7763). The Notice of Availability was filed in the July 28, 2006, issue of the *Texas Register* (31 TexReg 6145). The notice of transfer to Radiant RFID, LLC, 12316 Pleasant Hill Court, Austin, Texas 78738 for an amount not to exceed $48,000 was filed in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10986).

The contract amount is amended not to exceed $55,000.

Documents, films, recording, or reports of intangible results will not be presented by the outside consultant.

For further information, please call (936) 468-4157.

TRD-200704425
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: September 21, 2007

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

PURPOSE: Stephen F. Austin State University has a variety of projects to accomplish. The identified needs include large interior renovations, new buildings, utility infrastructure, and deferred maintenance projects. The Program Manager will have responsibility for assisting in the scope and scheduling development and implementation for an estimated $25-28 million dollars of capital funds. The services included in the Program Management contract may include prioritizing projects; developing scope of work statements; establishing construction standards; scheduling, estimating, negotiating changes; production of bridging documents, design review, and value engineering exercises; managing a quality assurance program; construction management; on-site inspection; review of pay applications; documenting project close-out, move and relocation coordination; identify and make-ready of temporary housing; overall contract management; and community relations.

CRITERIA: Contact Diana Boubel, Director of Purchasing & Inventory, (936) 468-4037 or dboubel@sfasu.edu for a complete copy of the

Request For Qualifications (PROGRAM-MGMT-07), HUB Subcontracting requirements, evaluation criteria, and response information.

DEADLINES & CONTACT INFORMATION: The response to the RFQ must be received before 5:00 p.m. on October 4, 2007. For further information, contact Diana Boubel, Director of Purchasing & Inventory, (936) 468-4037 or dboubel@sfasu.edu.

TRD-200704372
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: September 21, 2007

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

PURPOSE: The Stephen F. Austin State University (SFA or University) seeks the involvement of an expert resource to assist in the development of an updated SFA Student Housing Plan. Among other things, these experts will be asked to evaluate our current housing facilities, review our policies and pricing structures, and study our demographic needs and market affordability. The resulting evaluation should provide the University with a series of substantiated recommendations that will assist us in determining the "next steps" in housing capacity, renewal, and development to be presented to our Board of Regents (Board). The firm selected to conduct the study will present their findings and recommendations to the Board as part of the development of a Housing Plan.

The recommendations sought should include, but are not limited to, the following considerations:

Current Facility Assessment: to include structure analysis, deferred maintenance schedule, and revitalization assessment per building. Any associated cost of renovation, remodel, or facelift should project the cost/benefit over the renewed life of each facility. Future construction recommendations must include at least one alternative based on cost, desires of students, and affordability. Recommendations and cost analysis should be provided for facilities that are no longer viable in the long term for student housing but that may fill some other purpose for the benefit of the University.

Market Analysis: Create a market analysis that includes two formats of expressing current availability: (1) competitive analysis of rental property within a one-mile radius and (2) a competitive analysis of rental property in a radius of more than one mile but less than three miles.

A matrix should be developed based on age of each public property reviewed that includes the number of units, the square footage of each type of unit offered, and the length of the lease required for the rate quoted.

Competitive Analysis: Develop an overview of similar educational institutions. This analysis should include peer market competitors in-state and similar peer, out-of-state non-private institutions that house 30-35% of their enrolled student body. This review should include pertinent campus cultures and attraction values. Any analysis must include cost of meal plans as a factor.

Demographic Analysis: A current analysis of customer satisfaction and the ability to pay for desired amenities by the customer that are in strategic alignment with the stated goals of the University.

The demographic study will include an overview of the sustainability of the University's ability to attract students at the current rates and the proposed increased rates from the current markets.

Capacity Analysis: This analysis will examine the capacity requirements of the housing system at the University as it relates to current needs, as well as projected needs for student housing in the future.

Management Services: This review will include an onsite analysis of current variable and fixed costs and evaluating those costs relative to in-state peer institutions as related to the cost of managing our current operation. This review will result in the development of alternative strategies that will enhance the on-campus experience of our students that could potentially lead to more student contract renewals. This review should include institutional culture, policies, and operational strategies.

Residential Program Analysis: A review of the on-campus living experience in light of the current hall/apartment lifestyle and living configuration as it is currently developed. The study should evaluate the current campus housing structure for contribution to the self evaluation of a student's aspirations that are the alignment with the University's mission.

Financial Analysis: The outcome of this review will provide a model for appropriate cost allocation and an analysis of cost per bed based on style of hall. The financial review should include costs to renovation, demolition, or new build based on allowable revenue projections. The current debt burden of the housing system, the students' ability to pay, and the cost of programming should be included for any type of newly built facilities recommended. If any new build recommendation is made, a full pro forma should also be included. Any new build facility recommendation should have an alternative proposal that is "value engineered..." Any new facilities should be proposed and compared to all previous analyses of this proposal.

Final Recommendations: A final overall evaluation of the total housing program is required. The vendor should use the information gained to make recommendations for the strategic development of the University's on campus housing system that can be implemented in stages for the next 15 years.

Any items that require code or legal requirements that are known or may become known during this process are to be reported as a "finding for immediate action." Any item(s) of this nature are beyond any priority recommendation of the final report.

CRITERIA: Interested parties are to submit proposals that include the following: a description of the method to be used to assure an accurate assessment; a description of the qualifications and experience of the study participants; a work schedule of the activities with milestones; costs, along with justifications that are consistent with the objectives and the amount of funds requested; the name, address, and phone number of the proposed project director; and a list of no more than 5 references from other universities including contact name and number. Evaluation and funding will be determined based on evidence of the applicant's knowledge and experience in conducting such studies; evidence of availability and capacity to provide valid analysis; the submission of realistic work plan and time line; reference verification from other universities; and costs that are appropriate for the scope and quality needed for the successful completion of the study.

Identify any proposed subcontractors to be used on this project, stating the specific service they will provide and their qualifications. Note the requirement to complete an HSP stated above.

If none of the applicants satisfactorily meets the criteria, the University reserves the right to refrain from making a selection. The University reserves the right not to make an award because of changing funding

priorities. After application review and evaluation, an applicant will be selected to negotiate a contract. The final amount of the contract will be determined through negotiations between the University and the applicant. The University reserves the right to adjust the funding allocation during the term of the contract pursuant to the terms of the contract.

DEADLINES & CONTACT INFORMATION: Proposals will be submitted to Diana Boubel, Director of Purchasing & Inventory, P.O. Box 13030 SFA, Nacogdoches, TX 75962, (936) 468-4037, FAX (936) 468-4282., dboubel@sfasu.edu by October 26, 2007. Study to be completed and report submitted by March 31, 2008.

TRD-200704493
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: September 25, 2007

Notice of Consultant Contract Award

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Stephen F. Austin State University furnishes this notice of consultant contract award. The consultant will provide plan, design and preparation of digital files for use in fabrication of wayside exhibit panels for the Pinewoods Nature Center and the Trail Between the Lakes. The Notice of Availability was filed in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5222).

The contract was awarded to Jay S. Miller, 1617 Tarrytwon Rd., Little Rock, AR 72227, for an amount not to exceed $50,000.

The beginning date of the contract is September 15, 2007 and the ending date is December 31, 2008.

It is not anticipated that documents, films, recording, or reports of intangible results will be presented by the outside consultant.

For further information, please call (936) 468-1832.

TRD-200704497
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: September 25, 2007

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The County of Brazoria, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

The following is a listing of proposed projects at the Brazoria County Airport during the course of the next five years through multiple grants.

Current Project: TxDOT CSJ No. 0712ANGLE. Scope: Provide engineering/design services for runway reconstruction at the Brazoria County Airport.

The **DBE** goal is set at 13%. TxDOT Project Manager is John Wepryk, P.E.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate Taxiways A, B, C, E, F, J and T-Hangar Taxiway
2. Construct North and South Taxiways
3. Rehabilitate Apron
4. Replace VASI-2 with PAPI-4 Runway 35
5. Install REILS Runway 17
6. Construct Hangar Access Taxiway/Apron
7. Install Perimeter Security Access
8. Construct GA Parking
9. Expand Auto Parking

The County of Brazoria reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent airport layout plan are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting Brazoria County Airport. The proposal should address a technical approach for the current scope. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled Aviation Engineering Services Proposal. The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm.** The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than October 30, 3007, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm.** All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the

right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager at 1-800-68-PILOT at extension 4517. For technical questions, please contact John Wepryk, at 1-800-68-PILOT at extension 4533.

TRD-200704495
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 25, 2007

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Sweetwater, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below.

The following is a listing of proposed projects at the Avenger Field during the course of the next five years through multiple grants.

Current Project: City of Sweetwater; TxDOT CSJ No.: 0808SWEET. Provide engineering/design services for site development and associated appurtenances for a three unit box hangar pre-engineered metal building system with hangar access paving.

The DBE goal for the current project is **6%**. TxDOT Project Manager is Megan Caffall.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate Taxiways A, B, C, D, and stub taxiway
2. Rehabilitate and mark Runways 4-22 and 17-35
3. Rehabilitate aprons
4. Install REIL RW 4-22

The City of Sweetwater reserves the right to determine which of the above scopes of services may or may not be awarded to the successful firms and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the criteria, 5010 drawing, project narrative, and most recent Airport Layout Plan are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Avenger Field". The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scopes.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **October 26, 2007, 4:00 p.m**. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Edie Stimach, Grant Manager. For technical questions, please contact Megan Caffall, Project Manager.

TRD-200704513
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: September 26, 2007

Aviation Division - Request for Proposal for Aviation Engineering Services

Harrison County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

The following is a listing of proposed projects at Harrison County Airport, Marshall, Texas, during the course of the next five years through multiple grants.

Current: TxDOT CSJ No. 0719MARSH. Provide engineering/design services for site development, and associated appurtenances for a four to six unit pre-engineered metal Hangar Building system with hangar access paving.

The DBE goal is set at **6%**. TxDOT Project Manager is Megan Caffall.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Rehabilitate and mark Runways 1-19 and 15-33

2. Rehabilitate aprons

3. Rehabilitate hangar access taxiways

4. Construct/rehabilitate/overlay Taxiway A (parallel and cross taxiways)

5. Rehabilitate Taxiway C

6. Construct hangar access taxiway

7. Rehabilitate Taxiway B (Taxiway to Runway 19)

8. Install Taxiway CL reflectors

9. Replace PAPI-2 Runway 1/19

10. Replace REILs Runway 33

11. Replace PAPI-2 with PAPI-4 RW 15/33

The County of Harrison reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at **www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm** by selecting "Harrison County Airport". The proposal should address a technical approach for the current scope. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scopes.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm**. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **October 26, 2007**, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluation engineering proposals can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm**. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach Grant Manager at 1-800-68-PILOT at extension 4518. For technical questions, please contact Megan Caffall at 1-800-68-PILOT at extension 4522.

TRD-200704514
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: September 26, 2007

Aviation Division - Request for Proposal for Professional Services

Angelina County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Angelina County, Angelina County Airport. TxDOT CSJ No. 0811LUFKN. Scope: Prepare an Airport Master Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to development, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan.

The HUB goal is set at race neutral. TxDOT Project Manager is Josephine Jarrell.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at **www.dot.state.tx.us/services/aviation/consultant.htm.** The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Please note:

Seven completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than October 30, 2007, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The com-

mittee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects can be found at **http://www.dot.state.tx.us/services/aviation/consultant.htm.** All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Josephine Jarrell, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200704496
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 25, 2007

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

www.txdot.gov/about_us/public_hearings_and_meetings/aviation.htm

Or visit **www.txdot.gov,** click on Citizen, click on Public Hearings, and then click on Aviation.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 1-800-68-PILOT.

TRD-200704494
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: September 25, 2007

The University of Texas System

Notice of Entering into Major Consulting Services Contract

In accordance with the provisions of *Texas Government Code*, Chapter 2254, The University of Texas at San Antonio has entered into a contract for consulting services more particularly described in the Request for Proposal for Consulting Services, published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1679). The consultant will perform a feasibility study for a full scale fund raising campaign that addresses the overall needs of the University of Texas at San Antonio.

The Name and Address of Consultant is as follows:

Bentz Whaley Flessner

7251 Ohms Lane

Minneapolis, MN 55439

The University will pay an amount not to exceed $117,900.00. The contract will begin on August 30, 2007 and end approximately 16 weeks thereafter on December 21, 2007.

A written report will be submitted no later than December 21, 2007.

Any questions regarding this posting should be directed to:

Lane Brinson

Purchasing Manager

Purchasing & Distribution Services Department

One UTSA Circle

San Antonio, TX 78249

Voice: (210) 458-4066

E-mail: Lane.brinson@utsa.edu

TRD-200704463
Francie A. Frederick
General Counsel to the Board of Regents
The University of Texas System
Filed: September 24, 2007

Texas Water Development Board

Request for Applications for Flood Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) §355.3, the submission of applications leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program.

Flood protection planning applications may be submitted by eligible political subdivisions from any area of the state. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of the flood protection planning grant program is for the state to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. The flood protection planning study should also include an assessment of the environmental and cultural resources of the planning area as necessary to evaluate the flood control alternatives being considered. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration. Up to $1,000,000 has been initially authorized for fiscal year 2008 assistance for flood protection planning from the Board's Research and Planning Fund. Up to fifty percent funding may be provided to individual applicants, with up to seventy-five percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Seven double-sided copies on recycled paper and one digital copy (CD) of a complete flood protection planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., January 4, 2008. Applications can be directed either in

person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Mr. Gilbert Ward at the preceding mailing address, or by email at gilbert.ward@twdb.state.tx.us or by calling (512) 463-6418. This information can also be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-200704517
Robert Flores
Attorney
Texas Water Development Board
Filed: September 26, 2007

Request for Applications for Regional Water and Wastewater Facility Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) Chapter 355, Subchapter A, the submission of planning grant applications leading to the possible award of contracts for regional facility planning. This planning will evaluate and determine the most feasible alternatives to meet water supply and/or wastewater facility needs, estimate the costs associated with implementing feasible water supply and/or wastewater facility alternatives, and identify institutional arrangements to provide water supply and/or wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate regional water supply and/or wastewater facilities.

Planning grant applications may be submitted by eligible political subdivisions from any area of the state. To be eligible for funding, at least two political subdivisions must participate in the proposed study and more than one service area must be evaluated for feasibility of regional facilities. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. Note: Studies related to the development of regional water supply plans, the evaluation of water supply alternatives, and drought response plans as defined in Senate Bill 1, 75th Session, Texas Legislature are not eligible for funding under this Request for Applications. The purpose of this program is for the state to assist local governments to prepare plans that document water supply and/or wastewater service facility needs, identify feasible regional alternatives to meet water supply and/or wastewater facility needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and/or regional wastewater treatment plants and collection systems. The study should, at a minimum, include the following steps:

1. Develop Problem Statement;

2. Inventory Existing Conditions and Forecast Future Conditions and Needs;

3. Formulate Planning Alternatives;

4. Evaluate and Compare Each Planning Alternative; and

5. Select Best Planning Alternative.

A water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections. Discrete phases to implement regional water supply and/or wastewater facilities to meet projected needs will be identified. Environmental, social, and cultural factors for possible solutions identified in the plan should be evaluated. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and/or wastewater system component, including the water conservation program.

Description of Funding Consideration. Up to $1,000,000 has been initially authorized for Fiscal Year 2008 assistance for regional facility planning from the Board's Research and Planning Fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a), as amended, as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies on recycled paper and one digital copy (CD) of a complete regional facility planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., December 20, 2007. Applications can be directed either in person to Mr. David Carter, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Mr. David Carter, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5, as amended. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the Research and Planning Fund may be directed to Mr. David Meesey at the preceding mailing address, by e-mail at david.meesey@twdb.state.tx.us or by calling (512) 936-0852. This information can be found on the Internet at the following address: http://www.twdb.state.tx.us.

TRD-200704516
Robert Flores
Attorney
Texas Water Development Board
Filed: September 26, 2007

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).