
TEXAS REGISTER

Volume 30 Number 42

October 21, 2005

Pages 6835-6972

Steven Rickman
8th Grade



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

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, (ISSN 0362-4781, USPS 120-090), is published weekly (52 times per year) for \$211.00 (\$311 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* Director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, 136 Carlin Rd., Conklin, N.Y. 13748-1531.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
<http://www.sos.state.tx.us>
subadmin@sos.state.tx.us

Secretary of State –
Roger Williams

Director - Dan Procter

Staff
Ada Aulet
Leti Benavides
Dana Blanton
Kris Hogan
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Diana Muniz

IN THIS ISSUE

GOVERNOR

Appointments	6841
Executive Order	6841
Proclamation 41-3025	6842
Proclamation 41-3026	6842

EMERGENCY RULES

PUBLIC UTILITY COMMISSION OF TEXAS

SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

16 TAC §25.7	6843
--------------------	------

SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

16 TAC §26.8	6845
--------------------	------

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

REIMBURSEMENT RATES

1 TAC §355.102	6847
1 TAC §355.112	6848
1 TAC §355.457	6857
1 TAC §355.503	6861
1 TAC §355.509	6863
1 TAC §355.722	6865

TEXAS DEPARTMENT OF AGRICULTURE

MARKETING AND PROMOTION

4 TAC §17.52	6870
--------------------	------

STATE SECURITIES BOARD

TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.15	6870
---------------------	------

REGISTRATION OF SECURITIES

7 TAC §113.5	6871
7 TAC §113.13	6872
7 TAC §113.13	6872

SECURITIES DEALERS AND AGENTS

7 TAC §§115.1, 115.2, 115.4, 115.10	6873
---	------

INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §§116.1, 116.2, 116.4	6875
-----------------------------------	------

FORMS

7 TAC §133.33	6877
---------------------	------

EXEMPTIONS BY RULE OR ORDER

7 TAC §139.14	6877
7 TAC §139.16	6878

OFFICE OF RURAL COMMUNITY AFFAIRS

TEXAS COMMUNITY DEVELOPMENT PROGRAM

10 TAC §255.7	6878
---------------------	------

EXECUTIVE COMMITTEE FOR OFFICE OF RURAL COMMUNITY AFFAIRS

10 TAC §§257.1, 257.3 - 257.9	6880
10 TAC §§257.21 - 257.30	6881
10 TAC §§257.61 - 257.73	6886
10 TAC §§257.101, 257.103, 257.105, 257.107, 257.109	6887
10 TAC §§257.201, 257.203, 257.205, 257.207, 257.209, 257.211, 257.213, 257.215, 257.217	6888
10 TAC §§257.301, 257.303, 257.305, 257.307, 257.309, 257.311, 257.313, 257.315, 257.317, 257.319, 257.321, 257.325, 257.327	6891
10 TAC §§257.401 - 257.411	6894
10 TAC §§257.501, 257.503, 257.505, 257.507, 257.509, 257.511, 257.513, 257.515, 257.517, 257.519, 257.521, 257.523, 257.525, 257.527	6896
10 TAC §257.701, §257.703	6896
10 TAC §257.801, §257.807	6897

TEXAS EDUCATION AGENCY

SCHOOL DISTRICTS

19 TAC §61.1035	6898
-----------------------	------

SCHOOL DISTRICT PERSONNEL

19 TAC §153.1022	6901
------------------------	------

DEPARTMENT OF STATE HEALTH SERVICES

END STAGE RENAL DISEASE FACILITIES

25 TAC §117.14	6903
----------------------	------

RESPIRATORY CARE PRACTITIONER CERTIFICATION

25 TAC §123.4	6904
---------------------	------

HOSPITAL LICENSING

25 TAC §133.26	6905
----------------------	------

MASSAGE THERAPISTS

25 TAC §141.2	6907
---------------------	------

MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §143.4	6908
---------------------	------

PRODUCT SAFETY

25 TAC §205.11	6911
25 TAC §205.44	6912
25 TAC §205.57	6912

FOOD AND DRUG	
25 TAC §229.145	6914
25 TAC §229.182	6915
25 TAC §229.372	6917
25 TAC §229.439	6918
PESTICIDE APPLICATORS	
25 TAC §267.3	6919
RADIATION CONTROL	
25 TAC §289.204	6921
OCCUPATIONAL HEALTH	
25 TAC §§295.42 - 295.56, 295.61	6923
STANDARD OF CARE	
25 TAC §448.408	6926
TEXAS BOND REVIEW BOARD	
ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS	
34 TAC §190.3	6927
ADOPTED RULES	
TEXAS DEPARTMENT OF INSURANCE	
TITLE INSURANCE	
28 TAC §9.1	6933
28 TAC §9.401	6933
GENERAL LAND OFFICE	
COASTAL AREA PLANNING	
31 TAC §15.30	6934
TEXAS PARKS AND WILDLIFE DEPARTMENT	
OYSTERS AND SHRIMP	
31 TAC §58.11, §58.22	6935
RULE REVIEW	
Adopted Rule Reviews	
Texas Department of Licensing and Regulation	6937
TABLES AND GRAPHICS	
.....	6939
IN ADDITION	
Texas Department of Agriculture	
Egg Administrative Penalty Matrix	6945
Office of the Attorney General	
Notice of Agreed Final Judgment	6949
Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action.....	6949

Texas Building and Procurement Commission	
Request for Proposals	6949
Request for Proposals	6950
Coastal Coordination Council	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program.....	6950
Comptroller of Public Accounts	
Notice of Contract Awards.....	6950
Notice of Request for Proposals	6951
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings.....	6951
Texas Commission on Environmental Quality	
Proposal for Decision	6951
Proposal for Decision	6952
Department of State Health Services	
Licensing Actions for Radioactive Materials.....	6952
Notice of Intent to Revoke Certificates of Registration.....	6959
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Joseph Novosel, D.P.M., P.C.....	6959
Texas Higher Education Coordinating Board	
Notice of Contract Award	6960
Texas Department of Insurance	
Company Licensing	6960
Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer	6960
Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer	6960
Third Party Administrator Applications	6961
Texas Lottery Commission	
Instant Game Number 611 "Big Money Doubler".....	6961
North East Texas Regional Mobility Authority	
Notice of Availability of a Request for Qualifications for General Engineering Consulting Services	6965
Public Utility Commission of Texas	
Announcement of Application for State-Issued Certificate of Franchise Authority	6966
Notice of Application for Amendment to Certificated Service Area Boundary	6966
Notice of Application for Approval of the ERCOT System Administration Fee Pursuant to P.U.C. Substantive Rule §25.363(b)	6966
Notice of Application for Designation as an Eligible Telecommunications Carrier	6967

Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.2146967

Notice of Petition for Waiver of Denial of Request for NXX Code 6967

Notice of Petition Seeking to Determine Whether Markets of Incumbent Local Exchange Carriers in Texas Should Remain Regulated 6967

Public Notice of Workshop Regarding Review and Evaluation of the Texas Universal Service Fund Pursuant to PURA Section 56.029 6968

Request for Proposals to Assist the Public Utility Commission of Texas by Providing Marketing and Customer Education Services6968

Texas Council on Purchasing from People with Disabilities

Request for Comment Regarding the Management Fee Rate Charged by TIBH Industries Inc. (Central Nonprofit Agency)6969

Request for Comment Regarding the Services Performed by TIBH Industries Inc. (Central Nonprofit Agency)6969

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services6969

Aviation Division - Request for Proposal for Aviation Engineering Services6970

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: Subadmin@sos.state.tx.us

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

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

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

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

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

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

...

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

THE GOVERNOR

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

Appointments

Appointments for October 6, 2005

Appointed as Judge of the 183rd Judicial District Court, Harris County, for a term until the next General Election and until her successor shall be duly elected and qualified, Angela Vanessa Velasquez of Houston. Ms. Velasquez is replacing Judge Joan Huffman who resigned.

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2011, Patty A. Bryant of Amarillo (replacing Bobbe Crawford of Lubbock whose term expired).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2011, David C. Garza of Rancho Viejo (replacing Laurie Lozano of Edinburg whose term expired).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2011, Billye Proctor Shaw of Abilene (replacing William Wright of Abilene whose term expired).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2011, Polly Sowell of Austin (replacing Claudia Ladensohn of San Antonio whose term expired).

Appointed to the Texas Commission on the Arts for a term to expire August 31, 2011, Norma Helm Webb of Midland (replacing Idelle Rabin of Dallas whose term expired).

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2011, Scott D. Burford of Austin (replacing Cathy Williams of Austin whose term expired).

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2011, Chuck Brewton of San Antonio (Reappointment).

Appointed to the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2011, Margaret "Meg" Pfluger of Lubbock (Reappointment).

Rick Perry, Governor

TRD-200504537



Executive Order

RP 48

Relating to expeditious restoration of electrical services in areas damaged by Hurricane Rita.

WHEREAS, on September 20, 2005, the Governor of the State of Texas did issue an Emergency Disaster Proclamation as Hurricane Rita posed a threat of imminent disaster along the Texas Coast; and

WHEREAS, Hurricane Rita struck the State of Texas on September 24, 2005, causing massive destruction in Southeast Texas; and

WHEREAS, extensive damage in Texas as a result of Hurricane Rita has caused widespread power outages; and

WHEREAS, the expeditious restoration of electrical services is crucial for the health, safety, and welfare of the citizens of Texas, and for the preservation of life and property in the recovery efforts from the devastating effects of Hurricane Rita; and

WHEREAS, Texas Government Code, Section 418.017, provides that the Governor may use all available resources of state government and of political subdivisions that are reasonably necessary to cope with a disaster; temporarily reassign resources, personnel, or functions of state executive departments and agencies or their units for the purpose of performing or facilitating emergency services; and use any property necessary to cope with the disaster;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the constitution and laws of the State of Texas, do hereby order the following:

Temporary Utility Connections. Utilities located in the State of Texas and regulated by the Public Utility Commission of Texas are hereby authorized to make temporary connections at the distribution and transmission level, voltages such as 12.5 kV, 13.2 kV, 25 kV, 69 kV, 138 kV, 230 kV, to restore power to Entergy, electric cooperatives, and municipal customers within the State of Texas. This temporary action will allow faster restoration of critical infrastructure facilities such as hospitals, law enforcement facilities, water pumping stations, fire stations, water treatment plants, sewer facilities, nursing homes, schools, and other customers that have been without power as a result of Hurricane Rita.

Entrance and Use of Private Property. Utilities located in the State of Texas and regulated by the Public Utility Commission of Texas are hereby authorized to enter and use private property as necessary for the limited purpose of connecting power lines and reconstructing the electric utility grid, including but not limited to establishing temporary above-ground and underground power lines, switching and transforming facilities, and transporting materials and equipment necessary to the restoration of electrical power.

Protection of Private Property Rights. Those utilities are further directed to undertake the restoration effort in a manner that maximizes the use of existing state and local government resources, easements, and property to preserve the property and privacy rights of affected Texas property owners to the greatest extent possible.

Public Easements. State and local political subdivisions and special districts are hereby directed to surrender existing highway, utility, and other public easements and state-owned or controlled land for the same purposes.

This proclamation shall continue in effect as long as a state of emergency and the Emergency Disaster Proclamation issued on September 20, 2005, remain in effect, unless rescinded earlier by my order.

Given under my hand this the 28th day of September, 2005.

Rick Perry, Governor

TRD-200504532



Proclamation 41-3025

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation in the wake of Hurricane Katrina, a disaster in sister states, on September 1, 2005; and

WHEREAS, I do hereby certify that Hurricane Katrina continues to create an emergency disaster and emergency conditions for the people in the State of Texas.

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

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. This Proclamation shall be effective for a period of 30 days beginning on October 1, 2005.

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 3rd day of October, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200504533



Proclamation 41-3026

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on September 20, 2005, as Hurricane Rita posed a threat of imminent disaster along the Texas Coast; and

WHEREAS, Hurricane Rita struck the State of Texas on September 24, 2005, causing massive destruction in Southeast Texas; and

WHEREAS, in accordance with the Emergency Disaster Proclamation and with the authority vested in me by Section 418.020 of the Texas Government Code, I did issue a Proclamation suspending the collection of all state and local hotel and motel taxes from the victims of Hurricane Rita for a period of 14 days.

NOW THEREFORE, I do hereby extend the Proclamation of September 20, 2005, suspending the collection of the state and local hotel and motel taxes from the victims of Hurricane Rita for an additional 46 days as allowed by law.

This Proclamation shall apply to victims of Hurricane Rita for any length of stay, regardless of their time of arrival in this State.

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 3rd day of October, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200504534



EMERGENCY RULES

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §25.7

The Public Utility Commission of Texas (commission) adopts, on an emergency basis, new §25.7, relating to Relief for Victims of Hurricanes Katrina and Rita. The new rule prevents retail electric providers and electric utilities from requiring a deposit as a condition of service when providing electric service to an applicant for residential service who is or was an evacuee due to Hurricanes Katrina and Rita. The rule also establishes the methods by which an applicant may demonstrate entitlement to the protection of the rule and prevents disconnection of service on the basis of a failure to pay a deposit. This emergency rule is effective immediately upon filing with the Secretary of State and will be in effect for 61 days, unless subsequently extended by the commission. In support of the emergency adoption of new §25.7, the commission makes the following findings:

1. On August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States causing significant damage in Louisiana, Mississippi and Alabama. Many of the residents of those states who were displaced by Hurricane Katrina have been evacuated or have relocated to Texas.
2. The recent destruction of large areas of the U.S. Gulf Coast by Hurricane Katrina has caused tens of thousands of displaced residents to be evacuated to Texas. The Federal Emergency Management Agency (FEMA) has registered over 147,000 heads of households who are now situated in Texas. Many of these evacuees may not be able to return to their homes for an indefinite length of time.
3. On September 1, 2005, Governor Perry issued a disaster proclamation certifying that Hurricane Katrina had created emergency conditions for the people of Texas and directing that all rules and regulations that might inhibit or prevent prompt response to the emergency conditions were suspended for the duration of the incident.
4. On September 20, 2005, Governor Perry issued a disaster proclamation certifying that Hurricane Rita posed a threat of imminent danger along the Texas Coast and suspending all rules and regulations that might inhibit or prevent prompt response to the emergency conditions. As part of the preparation for the emergency conditions, large numbers of Texas residents were

evacuated from their homes and moved to other areas of the state.

5. On September 24, 2005, Hurricane Rita struck the Texas Gulf Coast area causing extensive damage to property and loss of electric power in large areas of Texas. The destruction created by Hurricane Rita will prevent or delay many evacuees from returning to their homes in the stricken area for some period of time.

6. Many of the evacuees from these two emergencies will need to find new temporary or permanent housing. A potential hurdle for evacuees trying to transition from shelters to more permanent housing will be deposits for utility services. Under the commission's current rules, an applicant for electric service can avoid paying a deposit by demonstrating satisfactory credit using various methods of proof. For many of the evacuees, the hurricanes have destroyed their personal records and they will not be able to provide the information necessary to demonstrate their satisfactory credit. If satisfactory credit cannot be established, the commission's rules allow an electric service provider to require a deposit for residential electric service not to exceed an amount equal to one-fifth of the customer's annual billings or the sum of the estimated billings for the next two months. Many evacuees who might otherwise have had the means to pay a deposit likely have become unemployed because of damage to the businesses at which they worked or have been cut off from bank accounts and other financial resources. Many of those on fixed incomes likely have been temporarily cut off from retirement and other benefits such as Social Security and Veteran's benefits. Finally, many of the evacuees are low-income and simply do not have the financial means to pay a service deposit now that they are homeless and unemployed.

7. Hurricanes Katrina and Rita have created one of the largest natural disaster areas in U.S. history. Texas has been made eligible for federal disaster aid from FEMA to assist the state and local governments in their efforts to assist evacuees. Shelters have been opened to provide temporary shelter for persons displaced by the hurricanes, but it is clear that even under the best of conditions the shelters cannot be used to house people on a long-term basis.

8. Waiving the deposit requirements for electric service at this time and allowing evacuees to establish satisfactory credit simply by demonstrating their status as a victim of this disaster would remove a significant hurdle for individuals moving out of the emergency shelters and into temporary or permanent housing. Therefore, it is a reasonable and necessary step to help these stranded people get out of the shelters and regain control of their lives.

9. Section 36.004 of the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 64.158 (Vernon 1998 and Supp. 2005) (PURA), provides that an electric utility may not charge or

receive from a person a lesser compensation for a service than the compensation prescribed by its applicable tariff, and a person may not knowingly receive or accept a service from an electric utility for a lesser compensation than that prescribed by the tariff. PURA §36.001 authorizes the commission to establish just and reasonable rates of an electric utility and may adopt rules for determining the applicability of rates. In order to address the imminent peril to the public welfare that could result from the imposition of a deposit requirement on the evacuees, it is necessary and appropriate for the commission to adopt a rule limiting the applicability of the deposit requirements and amounts set forth in electric utilities' tariffs, to the extent stated in the emergency rule.

10. Section 39.101(e) of PURA, provides that the commission has the authority to adopt and enforce rules to provide certain customer protections, including rules for minimum service standards for retail electric service providers relating to deposits. The commission finds that, in order to address the imminent peril to the public welfare that could result from the imposition of a deposit requirement on the evacuees, it is necessary and appropriate for the commission to adopt a rule establishing minimum standards of electric service applicable to a retail electric provider's ability to impose deposit requirements and amounts, to the extent stated in the emergency rule.

11. Many of the persons who have evacuated from the hurricane-stricken areas may have limited means of identifying themselves as having been displaced from their homes due to the hurricane emergencies. Accordingly, it is the commission's intent that, in determining whether a person has evacuated as a result of the hurricanes, electric utilities and retail electric service providers recognize a valid driver's license from the stricken areas, or documentation of a person's status as a claimant of benefits offered by FEMA, the American Red Cross or other recognized, legitimate private relief agency, or a state or local jurisdiction or other public aid agency as sufficient to obtain the benefits of the emergency rule.

12. It is the intent of the commission that this emergency rule be effective for an initial period of 61 days, from October 3, 2005, the date of adoption and of filing with the Office of the Secretary of State, through December 2, 2005.

The commission adopts new §25.7 on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes a state agency to 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, and states in writing the reasons for its findings. The new section is adopted under PURA §14.002, 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 §36.001, which authorizes the commission to establish just and reasonable rates of an electric utility and adopt rules for determining the applicability of rates, and PURA §39.101(e), which authorizes the commission to adopt and enforce rules for minimum service standards for a retail electric provider relating to customer deposits, the extension of credit, and termination of service.

Cross Reference to Statutes: Texas Government Code, §2001.034 and §2001.036, and Public Utility Regulatory Act §§14.002, 36.001 and 39.101.

§25.7. Relief for Victims of Hurricanes Katrina and Rita.

(a) Application. This rule establishes special deposit limitations applicable to an applicant for residential electric utility service who resided within federally declared disaster areas in Texas, Louisiana, Mississippi, or Alabama, and who has been determined to be an evacuee from an area damaged by Hurricane Katrina or Hurricane Rita as evidenced by proof of:

(1) prior residency within one of these affected areas during or immediately prior to the hurricanes;

(2) application for or receipt of disaster assistance from the Federal Emergency Management Agency (FEMA); the American Red Cross or other recognized, legitimate private relief agency; or a state or local jurisdiction or other public aid agency related to damages suffered in one of these affected areas; or

(3) residing or having resided in a designated emergency shelter within Texas.

(b) Evidence of qualification. In determining whether an applicant qualifies for purposes of establishing satisfactory credit, a retail electric provider or an electric utility shall accept:

(1) the applicant's valid Texas driver's license listing a residence within an affected Texas county; or

(2) the applicant's valid driver's license listing a residence within an affected county in Alabama, Louisiana, or Mississippi; or

(3) any documentation submitted by the applicant from a federal, state, or local government assistance agency or the American Red Cross or another recognized, legitimate private relief agency that substantiates one of the conditions listed in subsection (a) of this section.

(c) Deposits for qualified applicants. Provisions to the contrary in this chapter and in tariffs subject to commission jurisdiction notwithstanding, each retail electric provider and each electric utility shall:

(1) notify all applicants for residential service about this provision; and

(2) waive any requirement that an applicant or customer make or pay any deposit for residential electric utility service if the applicant or customer meets the standards and requirements set forth in subsections (a) and (b) of this section.

(d) Disconnection. No retail electric provider or electric utility may disconnect a residential customer for failure to pay a deposit if the customer meets the standards and requirements set forth in subsections (a) and (b) of this section.

(e) Expiration. This rule expires on December 2, 2005, unless extended by subsequent order of the commission.

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 October 3, 2005.

TRD-200504468

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective Date: October 3, 2005

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



CHAPTER 26. SUBSTANTIVE RULES
APPLICABLE TO TELECOMMUNICATIONS
SERVICE PROVIDERS
SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §26.8

The Public Utility Commission of Texas (commission) adopts, on an emergency basis, new §26.8, relating to Relief for Victims of Hurricanes Katrina and Rita. The new rule prevents certificated telecommunications utilities (CTUs) from requiring a deposit as a condition of service when providing basic local telecommunications services to an applicant for residential service who is or was an evacuee due to Hurricanes Katrina or Rita. The rule also establishes the methods by which an applicant may demonstrate entitlement to the protection of the rule and prevents disconnection of service on the basis of a failure to pay a deposit. This emergency rule is effective immediately upon filing with the Secretary of State and will be in effect for 61 days, unless subsequently extended by the commission. In support of the emergency adoption of new §26.8, the commission makes the following findings:

1. On August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States causing significant damage in Louisiana, Mississippi and Alabama. Many of the residents of those states who were displaced by Hurricane Katrina have been evacuated or have relocated to Texas.
2. The recent destruction of large areas of the U.S. Gulf Coast by Hurricane Katrina has caused tens of thousands of displaced residents to be evacuated to Texas. The Federal Emergency Management Agency (FEMA) has registered over 147,000 heads of households who are now situated in Texas. Many of these evacuees may not be able to return to their homes for an indefinite length of time.
3. On September 1, 2005, Governor Perry issued a disaster proclamation certifying that Hurricane Katrina had created emergency conditions for the people of Texas and directing that all rules and regulations that might inhibit or prevent prompt response to the emergency conditions were suspended for the duration of the incident.
4. On September 20, 2005, Governor Perry issued a disaster proclamation certifying that Hurricane Rita posed a threat of imminent danger along the Texas Coast and suspending all rules and regulations that might inhibit or prevent prompt response to the emergency conditions. As part of the preparation for the emergency conditions, large numbers of Texas residents were evacuated from their homes and moved to other areas of the state.
5. On September 24, 2005, Hurricane Rita struck the Texas Gulf Coast area causing extensive damage to property and loss of electric power in large areas of Texas. The destruction created by Hurricane Rita will prevent or delay many evacuees from returning to their homes in the stricken area for some period of time.
6. Many of the evacuees from these two emergencies will need to find new temporary or permanent housing. A potential hurdle for evacuees trying to transition from shelters to more permanent housing will be deposits for utility services. Under the commission's current rules, an applicant for basic local telecommunications service can avoid paying a deposit by demonstrating satisfactory credit using various methods of proof. For many

of the evacuees, the hurricanes have destroyed their personal records and they will not be able to provide the information necessary to demonstrate their satisfactory credit. The commission's rules allow a CTU to require a deposit for residential basic local telecommunications service not to exceed an amount equivalent to one-sixth of the estimated annual billing, except as provided in P.U.C. Substantive Rule §26.29 (relating to Prepaid Local Telephone Service). Many evacuees who might otherwise have had the means to pay a deposit likely have become unemployed because of damage to the businesses at which they worked or have been cut off from bank accounts and other financial resources. Many of those on fixed incomes likely have been temporarily cut off from retirement and other benefits such as Social Security and Veteran's benefits. Finally, many of the evacuees are low-income and simply do not have the financial means to pay a service deposit now that they are homeless and unemployed.

7. Hurricanes Katrina and Rita have created one of the largest natural disaster areas in U.S. history. Texas has been made eligible for federal disaster aid from FEMA to assist the state and local governments in their efforts to assist evacuees. Shelters have been opened to provide temporary shelter for persons displaced by the hurricanes, but it is clear that even under the best of conditions the shelters cannot be used to house people on a long-term basis.

8. Waiving the deposit requirements for basic local telecommunications service at this time and allowing evacuees to establish satisfactory credit simply by demonstrating their status as a victim of this disaster would remove a significant hurdle for individuals moving out of the emergency shelters and into temporary or permanent housing. Therefore, it is a reasonable and necessary step to help these stranded people get out of the shelters and regain control of their lives.

9. Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001 - 64.158 (Vernon 1998 and Supp. 2005) (PURA) §51.001 authorizes the commission to make and enforce rules necessary to protect customers of basic local telecommunications service consistent with the public interest. In order to address the imminent peril to the public welfare that could result from the imposition of a deposit requirement on the evacuees, it is necessary and appropriate for the commission to adopt a rule limiting the applicability of the deposit requirements and amounts set forth in CTU's tariffs, to the extent stated in the emergency rule.

10. Section 64.004(b) of PURA provides that the commission has the authority to adopt and enforce rules to provide certain customer protections, including rules for minimum service standards for CTUs relating to customer deposits and extension of credit. The commission finds that, in order to address the imminent peril to the public welfare that could result from the imposition of a deposit requirement on the evacuees, it is necessary and appropriate for the commission to adopt a rule establishing minimum standards of telecommunications service applicable to a CTU's ability to impose deposit requirements and amounts, to the extent stated in the emergency rule.

11. Many of the persons who have evacuated from the hurricane-stricken areas may have limited means of identifying themselves as having been displaced from their homes due to the hurricane emergencies. Accordingly, it is the commission's intent that, in determining whether a person has evacuated as a result of the hurricanes, CTUs recognize a valid driver's license from the stricken areas, or documentation of a person's status

as a claimant of benefits offered by FEMA, the American Red Cross or other recognized, legitimate private relief agency, or a state or local jurisdiction or other public aid agency as sufficient to obtain the benefits of the emergency rule.

12. It is the intent of the commission that this emergency rule be effective for an initial period of 61 days, from October 3, 2005, the date of adoption and of filing with the Office of the Secretary of State, through December 2, 2005.

The commission adopts new §26.8 on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes a state agency to 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, and states in writing the reasons for its findings. The new section is adopted under PURA §14.002, 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 §51.001, which authorizes the commission to make and enforce rules necessary to protect customers of telecommunications services consistent with the public interest, and PURA §64.004(b), which authorizes the commission to adopt and enforce rules to provide certain customer protections, including rules for minimum service standards for CTUs relating to customer deposits, extension of credit, and termination of service.

Cross Reference to Statutes: Texas Government Code, §2001.034 and §2001.036, and Public Utility Regulatory Act §§14.002, 51.001 and 64.004.

§26.8. Relief for Victims of Hurricanes Katrina and Rita.

(a) Application. This rule establishes special deposit limitations applicable to an applicant for residential basic local telecommunications service who resided within federally declared disaster areas in Texas, Louisiana, Mississippi, or Alabama, and who has been determined to be an evacuee from an area damaged by Hurricane Katrina or Hurricane Rita as evidenced by proof of:

(1) prior residency within one of these affected areas during or immediately prior to the hurricanes;

(2) application for or receipt of disaster assistance from the Federal Emergency Management Agency (FEMA); the American Red Cross or other recognized, legitimate private relief agency; or a state or local jurisdiction or other public aid agency related to damages suffered in one of these affected areas; or

(3) residing or having resided in a designated emergency shelter within Texas.

(b) Evidence of qualification. In determining whether an applicant qualifies for purposes of establishing satisfactory credit, a certificated telecommunications utility shall accept:

(1) the applicant's valid Texas driver's license listing a residence within an affected Texas county; or

(2) the applicant's valid driver's license listing a residence within an affected county in Alabama, Louisiana, or Mississippi; or

(3) any documentation submitted by the applicant from a federal, state, or local government assistance agency or the American Red Cross or another recognized, legitimate private relief agency that substantiates one of the conditions listed in subsection (a) of this section.

(c) Deposits for qualified applicants. Provisions to the contrary in this chapter and in tariffs subject to commission jurisdiction notwithstanding, each certificated telecommunications utility shall:

(1) notify all applicants for residential service about this provision; and

(2) waive any requirement that an applicant or customer make or pay any deposit for residential basic local telecommunications service if the applicant or customer meets the standards and requirements set forth in subsections (a) and (b) of this section.

(d) Disconnection. No certificated telecommunications utility may disconnect a residential customer for failure to pay a deposit if the customer meets the standards and requirements set forth in subsections (a) and (b) of this section.

(e) Expiration. This rule expires on December 2, 2005, unless extended by subsequent order of the commission.

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 October 3, 2005.

TRD-200504469

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective Date: October 3, 2005

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



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.102

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.102, concerning mandatory cost report training in its Medicaid Reimbursement Rates chapter. The amendment will include language to give HHSC Rate Analysis the authority to offer online training and/or testing, the authority to determine which providers will be allowed to participate in online training and/or testing, and the authority to determine the criteria for passing the online examination. The amendment will also state that those preparers who are not allowed to participate in online training and/or testing or who fail the online examination will be required to attend scheduled classroom sessions, and that those preparers who are allowed to participate in online training and/or testing will be required to pay a convenience fee, regardless if they pass or fail the online examination. The amendment will also remove references to previous time periods and unnecessary references to MHMR programs for failure to file a cost report signed by a preparer that has attended training.

Background and Justification

This amendment is being proposed in order to offer more flexibility and convenience for contracted providers who are required to attend mandatory cost report training since they would not have to travel to attend classroom sessions. Offering online training and/or testing will also reduce staff travel and per diem costs.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated negative impact on local employment.

Public Benefit

Ed White, Director of Forecasting and Rate Analysis, has determined that, during the first five years the proposed section is in effect, the public benefits anticipated as a result of offering online training and/or testing include more convenience and flexibility for contracted providers in meeting their obligation of participation in mandatory cost report training; and a reduction of travel and per diem costs for HHSC Rate Analysis staff.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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 environment 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 environment 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

Questions about the content of this proposal may be directed to Victor Perez (telephone: 512-491-1375; FAX: 512-491-1998) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Mr. Perez via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the 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; and the Texas Government Code, §531.021(b) which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed amendment affects the Texas Government Code, §531.033 and §31.021(b). No other statutes, articles, or codes are affected by this proposal.

§355.102. *General Principles of Allowable and Unallowable Costs.*
(a) - (c) (No change.)

(d) Cost report training. HHSC is responsible for conducting, at no charge to the provider, comprehensive cost report training for each contracted program. It is the responsibility of the provider to ensure that each preparer signing the Cost Report Methodology Certification has completed [attended] the required cost report training conducted by HHSC. 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 [attend] cost report training for each program for which a cost report is submitted. Preparers [Beginning with the 2001 cost report for Texas Department of Human Services (DHS) contracted providers and the 2004 cost report for Texas Department of Mental Health and Mental Retardation (TDMHMR) contracted providers, preparers] must complete [attend] cost report training every other year for the odd-year cost report in order to receive a certificate [be certified] 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 [attended] the previous odd-year cost report training, to receive a certificate [be certified] to complete the even-year cost report, he/she must complete [attend] 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. Travel costs to complete [attend] the state-sponsored cost report training are allowable within the travel limits specified in §355.103(b)(12) of this title. Contracted preparer's fees to complete [attend] state-sponsored cost report training are allowable.

(1) At the discretion of HHSC, cost report preparers may be approved to train and/or test online, or by other methods determined by HHSC, in lieu of the classroom training sessions required in subsection (d) of this section. The criteria that determine whether a cost report preparer may be approved to train and/or test online are determined by HHSC. Preparers who participate in online training and/or testing must pass an online examination in order to receive a certificate of completion for each program for which a cost report is submitted. Preparers that complete classroom session(s) will not be required to pass an examination in order to receive a certificate. HHSC determines the criteria for passing the online examination. Preparers who participate in online training and/or testing and who fail the examination are required to complete the appropriate classroom training session. Preparers approved to participate in online training and/or testing will be assessed a convenience fee, which will be determined by HHSC, whether the preparer passes or fails the online examination. The convenience fees assessed for state-sponsored online cost report training and/or testing are allowable costs. HHSC will provide the criteria for cost report preparers to be approved to participate in online training and/or testing when it mails the training and cost reporting information to providers.

(2) [(4)] For nursing facilities, failure to file a completed cost report signed by preparers who have completed [attended] the required cost report training and/or testing may result in vendor hold as specified in §355.403 of this title (relating to Vendor Hold).

[(2) For Intermediate Care Facilities for Persons with Mental Retardation, Home and Community-based Services, Service Coordination/Targeted Case Management, Rehabilitative Services, and Texas Home Living programs, failure to file a completed cost report signed by preparers who have attended the required cost report training constitutes an administrative contract violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).]

(3) For all other programs, failure to file a completed cost report signed by preparers who have completed [attended] the required cost report training and/or testing constitutes an administrative contract

violation. In the case of an administrative contract violation, procedural guidelines and informal reconsideration and/or appeal processes are specified in §355.111 of this title (relating to Administrative Contract Violations).

(e) - (k) (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 October 10, 2005.

TRD-200504552

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 424-6900

◆ ◆ ◆
1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.112, concerning attendant compensation rate enhancement, in its Medicaid Reimbursement Rates chapter.

Background and Justification

The proposed amendment makes several changes to the Attendant Compensation Rate Enhancement program. The amendment mandates that providers that fail to meet their enhancement requirements in a prior period have their enrollment in the attendant compensation rate enhancement program limited to the level they achieved in the prior period. However, a provider would be permitted to present documentation supporting a higher level of enrollment if the provider believes that his or her prior period achievement does not represent their current attendant compensation levels. The amendment also prohibits granting newly-requested enhancements to providers owing funds identified for recoupment. The amendment deletes existing enrollment limitation rules.

The amendment will change the spending requirement from accrued attendant compensation revenue per unit of service divided by 1.10 to accrued attendant compensation revenue per unit of service times 0.90. The amendment will eliminate the base rate for participants in all Attendant Compensation Rate Enhancement programs, except Community Based Alternatives Assisted Living / Residential Care (CBA AL/RC), and modify the provider enrollment process to accommodate this change.

The amendment will mandate that if a report is not received within a year of its due date, any recoupments due to non-submittal of the report are made permanent and the vendor hold relating to the report is released. Under the amendment, for a contract to qualify for reinvestment, HHSC Rate Analysis must have received an acceptable Attendant Compensation Report at least 30 days prior to, and the contract must be ongoing at, the time reinvestment is determined. If the provider fails to repay the amount due or fails to submit an acceptable payment plan within 60 days of notification of the recoupment, the amendment allows HHSC or its designee to collect recoupments owed by a provider from other Texas Department of Aging and Disability Services (DADS) contracts controlled by the provider.

As amended, amended Attendant Compensation Reports must be received by HHSC Rate Analysis prior to the date the provider is notified of compliance with spending requirements for the report in question. In addition, the amendment will clarify attendant compensation reporting requirements; training requirements for Attendant Compensation Report preparers; the process for calculating enhancement level add-ons; and the process for calculating reinvestment. The amendment explains that if the granting of newly requested enhancements to ongoing providers is limited during enrollment, the granting of enhancements to new providers is limited to that same level. Under the amendment, informal reviews and formal appeals relating to Attendant Compensation Reports are governed by §355.110 (relating to Informal Reviews and Formal Appeals). The amendment also clarifies resulting enrollment levels and grouping statuses for contracts after contract assignments and explains that Attendant Compensation Rate Enhancement rules do not prohibit providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

Finally, the amendment will replace references to the Texas Department of Human Services with references to DADS or HHSC or its designee, as appropriate; replace references to Primary Home Care / Family Care with references to Primary Home Care; and replace references to Priority 1 with references to Priority.

The amendments are proposed to increase consistency between the community care Attendant Compensation Rate Enhancement and the nursing facility Enhanced Direct Care Staff Rate. As well, the amendment pertaining to limiting providers' enrollment in the enhancement program to the level they achieved in a prior period is proposed in response to concerns expressed by providers and staff that, when funding for the enhancement program is limited, providers at the highest enhancement levels are allowed to keep their levels even when they have not met their spending requirements in prior periods while providers enrolled at low levels are frozen at their low levels.

The spending requirement calculation amendment is to make the calculation of the spending requirement more straightforward and to give providers more flexibility in allocating limited funding between attendant compensation and other operating expenses. The amendment eliminating the participant base rate with no enhancement levels for all Attendant Compensation Rate Enhancement programs except CBA AL/RC is proposed because participants (other than CBA AL/RC participants) are not currently paid a different base rate than nonparticipants, rather, participants receive the same base rate as nonparticipants plus enhancements. The amendments pertaining to reinvestment are proposed to ensure that reinvested funds are distributed to ongoing contracts rather than to entities no longer contracted to provide care to clients. As well, these changes will ensure that reinvestment can be calculated in a timely fashion. The amendment pertaining to recouping funds owed by a provider from other DADS contracts controlled by the provider if the provider fails to repay the amount due is proposed to simplify the collection process for delinquent recoupments. The remaining amendments are proposed to clarify and simplify the administration of the attendant compensation rate enhancement.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no fiscal implications for

state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small and Micro-Business Impact Analysis

There is no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section because the proposed section has no impact on the funding of the enhancement program overall. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Public Benefit

Ed White, Director of Rate Setting and Forecasting, has determined that, during the first five years the proposed section is in effect, the public benefits anticipated as a result of enforcing the section include the following. The public benefit of mandating that providers failing to meet their enhancement requirements in a prior period have their enrollment in the attendant compensation rate enhancement limited to the level they achieved in the prior period is that the distribution of enhancement levels will be more equitable. The distribution will be more equitable because providers that failed to meet their self-selected attendant compensation requirements in a prior period will be prevented from enrolling at levels not supported by their previous performance which, in turn, will make monies available to increase the enrollment levels of other providers and to allow nonparticipants to become participants.

The public benefit of changing how the spending requirement is calculated is that providers will have increased flexibility in allocating limited funds between attendant compensation and other operating expenses. The public benefit of limiting reinvestment to providers currently contracting with DADS to provide services to clients is that reinvestments will remain available to support client care. The public benefit of allowing collection of owed recoupments from contracts related to the provider's controlling entity is that accountability for meeting attendant compensation rate enhancement requirements will be ensured.

The public benefit of the various other changes, simplifications and clarifications is that providers will have increased understanding of the attendant compensation rate enhancement and the program will be easier to administer.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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

Under §2007.003(b) of the Government Code, HHSC has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, HHSC is not required to complete a takings impact assessment regarding this rule.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald (telephone: 512-491-1373; FAX: 512-491-1998) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Ms. McDonald via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact local DADS offices or Pam McDonald at (512) 491-1373 in HHSC Rate Analysis.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the executive commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment implements the Government Code, §531.033 and §531.021(b).

§355.112. Attendant Compensation Rate Enhancement.

(a) Eligible programs. Providers contracted in the Primary Home Care[, including Family Care] (PHC[~~FC~~]); Day Activity and Health Services (DAHS); Residential Care (RC); Community Living Assistance and Support Services (CLASS)--Direct Service Agency; Community Based Alternatives (CBA)--Home and Community Support Services (HCSS); Deaf-Blind Multiple Disabilities Waiver (DBMD); and CBA--Assisted Living/Residential Care (AL/RC) programs, are eligible to participate in the attendant compensation rate enhancement.

(b) Definition of attendant. An attendant is the unlicensed caregiver providing direct assistance to the clients with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL).

(1) In the case of DAHS, RC, and CBA AL/RC programs, the attendant may perform some nonattendant functions. In such cases, the attendant must perform attendant functions at least 80% of his or her total time worked. Staff in these settings not providing attendant services at least 80% of their total time worked are not considered attendants. Time studies must be performed in accordance with §355.105(b)(2)(B)(i) for staff in the DAHS, RC, and CBA AL/RC programs that are not full-time attendants but perform attendant functions to determine if a staff member meets this 80% requirement. Failure to perform the time studies for these staff will result in the staff not being considered to be attendants.

(2) Attendants do not include the director, administrator, assistant director, assistant administrator, clerical and secretarial staff, professional staff, other administrative staff, licensed staff, attendant supervisors, cooks and kitchen staff, maintenance and groundskeeping staff, activity director, and laundry and housekeeping staff. In the case of PHC[~~FC~~], CLASS, CBA HCSS, and DBMD staff other than attendants may deliver attendant services and be considered an attendant if they must perform attendant services that cannot be delivered by another attendant to prevent a break in service.

(3) An attendant also includes a driver in the DAHS, RC, and CBA AL/RC programs.

(4) An attendant also includes medication aides in the RC and CBA AL/RC programs.

(c) Attendant compensation cost center. This cost center will include employee compensation, contract labor costs, and personal vehicle mileage reimbursement for attendants as defined in subsection (b) of this section.

(1) Attendant compensation is the allowable compensation for attendants defined in §355.103(b)(1) of this title (relating to Specifications for Allowable and Unallowable Costs) and required to be reported as either salaries and/or wages, including payroll taxes and workers' compensation, or employee benefits. Benefits required by §355.103(b)(1)(A)(iii) of this title (relating to Specifications for Allowable and Unallowable Costs) to be reported as costs applicable to specific cost report line items, except as noted in paragraph (3) of this subsection, are not to be included in this cost center.

(2) Contract labor refers to personnel for whom the contracted provider is not responsible for the payment of payroll taxes, such as FICA, Medicare, and federal and state unemployment insurance, and who perform tasks routinely performed by employees where allowed by program rules. Allowable contract labor costs are defined in §355.103(b)(2)(C) of this title (relating to Specifications for Allowable and Unallowable Costs).

(3) Mileage reimbursement paid to the attendant for the use of his or her personal vehicle and which is not subject to payroll taxes is considered compensation for this cost center.

(d) Rate year. The rate year begins on the first day of September and ends on the last day of August of the following year.

(e) Open enrollment. Open enrollment begins on the first day of July and ends on the last day of that same July preceding the rate year for which payments are being determined, unless the Texas Health and Human Services Commission (HHSC) notified providers before the first day of July that open enrollment has been postponed or cancelled. Should conditions warrant, HHSC may conduct additional enrollment periods during a rate year.

(f) Enrollment contract amendment. An initial enrollment contract amendment is required from each provider choosing to participate in the attendant compensation rate enhancement. On the initial enrollment contract amendment, the provider must specify for each contract a desire to participate or not to participate. The participating provider must specify for each program the desire to have all participating contracts be considered as a group or as individuals for purposes related to the attendant compensation rate enhancement. For the PHC[~~FC~~] program, the participating provider must also specify if he wishes to have [either] priority [+], nonpriority, or both priority [+] and nonpriority services participating in the attendant compensation rate enhancement. If the PHC[~~FC~~] provider selects to have their contracts participating as a group, then the provider must select to have [either] priority [+], nonpriority, or both priority [+] and nonpriority services participate for the entire group of contracts. For providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. After initial enrollment, participating and nonparticipating providers may request to modify their enrollment status during any open enrollment period. A nonparticipant can request to become a participant; a participant can request to become a nonparticipant; a participant can request to change its participation level; a provider whose participating contracts are being considered as a group can request to have them considered as individuals; and a provider whose participating contracts are being considered as individuals can request to have them considered as a group. Providers whose prior year enrollment was limited by subsection (u) of this section who request to increase their enrollment levels will be limited to increases of three or fewer enhancement levels during any single open enrollment

period. Requests to modify a provider's enrollment status during an open enrollment period must be received by HHSC Rate Analysis by the last day of the open enrollment period as per subsection (e) of this section. If the last day of open enrollment is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. Providers from which HHSC Rate Analysis has not received an acceptable request to modify their enrollment by the last day of the open enrollment period will continue at the level of participation and group or individual status in effect during the open enrollment period within available funds until the provider notifies HHSC in accordance with subsection (x) of this section that it no longer wishes to participate or until the provider's enrollment is limited in accordance with subsection (u) of this section. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized signatory as per the Texas Department of Aging and Disability [Human] Services (DADS [DHS]) Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and legible.

(g) New contracts. For the purposes of this section, for each rate year a new contract is defined as a contract delivering its first day of service to a DADS [DHS] client on or after the first day of the open enrollment period, as defined in subsection (e) of this section, for that rate year. Contracts that underwent a contract assignment are not considered new contracts. For purposes of this subsection, an acceptable contract amendment is defined as a legible enrollment contract amendment that has been completed according to instructions, signed by an authorized signator as per the DADS [DHS] Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and received by HHSC Rate Analysis within 30 days of the mailing [date] of notification to the provider that such an enrollment contract amendment must be submitted. If the 30th day is on a weekend day, state holiday, or national holiday, the next business day will be considered the last day requests will be accepted. [The granting of newly requested rate enhancement increments as outlined in subsection (p) of this section is limited to available funds.] New contracts will receive the nonparticipant attendant compensation rate as specified in subsection (l) of this section with no enhancements. For new contractors specifying their desire to participate in the attendant compensation rate enhancement on an acceptable enrollment contract amendment, the attendant compensation rate is adjusted as specified in subsection (r) of this section, effective on the first day of the month following receipt by HHSC of an acceptable enrollment contract amendment. If the granting of newly requested enhancements was limited by subsection (p)(2)(B) of this section during the most recent enrollment, enrollment for new contracts will be subject to that same limitation. If the most recent enrollment was cancelled by subsection (e) of this section, new contracts will not be permitted to be enrolled. [(m) until:]

[(1) for new contractors specifying the desire not to participate on an acceptable enrollment contract amendment, the attendant compensation rate component is as specified in subsection (m) of this section.]

[(2) for new contractors specifying the desire to participate on an acceptable enrollment contract amendment, the attendant compensation rate component is adjusted as specified in subsections (l) and (n) of this section retroactive to the first day of their contract.]

[(3) for new contracts from which an acceptable enrollment contract amendment is not received, the attendant compensation rate component is as specified in subsection (m) of this section.]

(h) Attendant Compensation Report submittal requirements. Attendant Compensation Reports must be submitted [by participating contracted providers] as follows.

(1) Annual Attendant Compensation Report. [Contracted providers participating for the full rate year. Contracted providers participating for the full rate year must provide annual Attendant Compensation Reports as follows:]

[(A) Participating] All participating contracted providers will provide HHSC Rate Analysis, in a method specified by HHSC Rate Analysis, an annual Attendant Compensation Report reflecting the activities of the provider while delivering contracted services from the first day of the rate year through the last day of the rate year. This report must be submitted for each participating contract if the provider requested participation individually for each contract; or, if the provider requested participation as a group, the report must be submitted as a single aggregate report covering all contracts participating at the end of the rate year within one program of the provider. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with reporting requirements for the owner prior to the termination or contract assignment. This report will be used as the basis for determining compliance with the spending requirements and recoupment amounts as described in subsection (s) of this section. Contracted providers failing to submit an acceptable annual Attendant Compensation Report within 60 days of the end of the rate year will be placed on vendor hold until such time as an acceptable report is received and processed by HHSC Rate Analysis.

(A) When a participating provider changes ownership through a contract assignment, the prior owner must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by HHSC or its designee. This report will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section. The new owner will be required to submit an Attendant Compensation Report covering the period from the day after the date recognized by HHSC or its designee as the contract-assignment effective date to the end of the rate year.

(B) Participating providers whose contracts are terminated voluntarily or involuntarily must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by HHSC or its designee as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.

(C) Participating providers who voluntarily withdraw from participation, as described in subsection (x) of this section, must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC. This report must cover the period from the beginning of the rate year through the date of withdrawal as determined by HHSC and will be used as the basis for determining any recoupment amounts as described in subsection (s) of this section.

(D) [(B)] Participating providers [Contracts] whose cost report year, as defined in §355.105(b)(5) of this title (relating to General Reporting and Documentation Requirements, Methods and Procedures), coincides with the state of Texas fiscal year, are exempt from the requirement to submit a separate annual Attendant Compensation Report. For these contracts, their cost report will be considered their annual Attendant Compensation Report.

[(2) Contracted providers participating for less than a full year. Contracted providers participating for less than a full year must provide Attendant Compensation Reports as follows:]

[(A) A participating provider whose contract is terminated either voluntarily or involuntarily before the end of the rate year must submit an Attendant Compensation Report covering the period from the beginning of the rate year to the date recognized by DHS as the contract termination date. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.]

[(B) In cases where a participating provider changes ownership through a contract assignment, the owner prior to the change of ownership must submit an Attendant Compensation Report, covering the period from the beginning of the rate year to the effective date of the contract assignment as determined by DHS. The owner, after the change of ownership, must submit an Attendant Compensation Report within 60 days of the end of the rate year, covering the period from the effective date of the contract assignment as determined by DHS to the end of the rate year. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.]

[(C) A participating provider who is excluded from participation as per subsection (u) of this section must submit an Attendant Compensation Report within 60 days from the date of notification of the exclusion, covering the period from the beginning of the rate year to the date of exclusion as determined by HHSC Rate Analysis. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.]

[(D) A participating provider who voluntarily withdraws from participation as per subsection (x) of this section must submit an Attendant Compensation Report within 60 days from the date of withdrawal as determined by HHSC, covering the period from the beginning of the rate year through the date of withdrawal as determined by HHSC. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.]

[(E) A participating provider who is a new contractor as per subsection (g) of this section must submit an Attendant Compensation Report within 60 days of the end of the rate year, covering the period from the first day of the contract as determined by DHS through the end of the rate year. This report will be used as the basis for determining recoupment as described in subsection (s) of this section.]

(2) [(3)] Other reports. HHSC may require other reports from all contracts as needed.

(3) [(4)] Vendor hold. HHSC or its designee will place on hold the vendor payments for any participating contractor who does not submit an Attendant Compensation Report completed in accordance with all applicable rules and instructions by the due dates described in this subsection. This vendor hold will remain in effect until HHSC Rate Analysis receives an acceptable Attendant Compensation Report. Participating contracts that do not submit an Attendant Compensation Report completed in accordance with all applicable rules and instructions within 60 days of the due dates described in this subsection will become nonparticipants retroactive to the first day of the reporting period in question and will be subject to an immediate recoupment of funds related to participation paid to the facility for services provided during the reporting period in question. These contracts will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment from subsection (s) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released. In addition, participating contracts that have terminated or undergone a contract assignment from one legal entity to a different legal entity that do not submit an Attendant Compensation Report within 60

days of the contract assignment or contract termination effective date will become nonparticipants retroactive to the first day of the reporting period in question. These contracts will remain nonparticipants and recouped funds will not be restored until they submit an acceptable report and repay to HHSC or its designee funds identified for recoupment under subsection (s) of this section. If an acceptable report is not received within 365 days of the contract assignment or contract termination effective date, the recoupment will become permanent and, if all funds associated with participation during the reporting period in question have been recouped by HHSC or its designee, the vendor hold associated with the report will be released.

[(A) Contractors participating at the end of the rate year who do not submit an Attendant Compensation Report in accordance with paragraphs (1), (2)(B), and (2)(E) of this subsection, completed in accordance with all applicable rules and instructions, within 60 days of the vendor hold being placed will become a nonparticipant retroactive to the first day of the reporting period until the first day of the month after all of the following conditions are met:]

[(i) the provider submits an acceptable annual Attendant Compensation Report;]

[(ii) the provider submits a separate Attendant Compensation Report from the beginning of the current rate year to the date they were disenrolled as a participant;]

[(iii) the provider repays to DHS funds that are identified for recoupment from subsection (s) of this section; and]

[(iv) HHSC Rate Analysis receives, in writing by certified mail, a request from the provider to be restored to the participant status.]

[(B) Contractors not participating at the end of the rate year who do not submit an Attendant Compensation Report in accordance with paragraph (2)(A) - (D) of this subsection, completed in accordance with all applicable rules and instructions, within 60 days of the vendor hold being placed will become nonparticipants from the beginning of the rate year to the date of ownership change, exclusion, or withdrawal.]

(4) Provider-initiated amended Attendant Compensation Reports. Provider-initiated amended Attendant Compensation Reports must be received prior to the date the provider is notified of compliance with spending requirements for the report in question in accordance with subsection (s) of this section.

(i) Attendant Compensation Report contents. Each Attendant Compensation Report will include any information required by HHSC to implement this attendant compensation rate enhancement.

(j) Completion of compensation reports. All Attendant Compensation Reports must be completed in accordance with the provisions of §§355.102 - 355.105 of this title (relating to General Principles of Allowable and Unallowable Costs, Specifications for Allowable and Unallowable Costs, Revenues, and General Reporting and Documentation Requirements, Methods, and Procedures) and may be reviewed or audited in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports). Beginning with the rate year that starts September 1, 2002, all Attendant Compensation Reports must be completed by preparers who have attended the required cost report training for the applicable program under §355.102(d) of this title (relating to General Principles of Allowable and Unallowable Costs). For Attendant Compensation Reports for even numbered state fiscal years, preparers must have attended the cost report training for that same even numbered year. For Attendant Compensation Reports for odd numbered state fiscal years, preparers must

have attended the most recent cost report training sessions provided prior to the due date of the Attendant Compensation Report.

(k) Enrollment. Providers choosing to participate in the attendant compensation rate enhancement must submit to HHSC a signed enrollment contract amendment as described in subsection (f) of this section. Participation is determined separately for each program specified in subsection (a) of this section, except that for providers delivering services to both RC and CBA AL/RC clients in the same facility, participation includes both the RC and CBA AL/RC programs. For PHC[~~FC~~], participation is also determined separately for priority [4] and nonpriority services. Participation will remain in effect, subject to availability of funds, until the provider notifies HHSC, in accordance with subsection (x) of this section, that it no longer wishes to participate or until HHSC excludes the contract from participation for reasons outlined in subsection (u) of this section. Contracts voluntarily withdrawing from participation will have their participation end effective with the date of withdrawal as determined by HHSC. Contracts excluded from participation will have their participation end effective on the date determined by HHSC.

~~[(4) Determination of attendant compensation rate component for participating contracts. For each of the programs identified in subsection (a) of this section, an attendant compensation rate component will be determined for participating contracts from subsection (k) of this section. The attendant compensation rate enhancement component will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement component will be determined on a per-unit-of-service basis applicable to each program or service.]~~

~~(1) [(m)] Determination of attendant compensation rate component for nonparticipating contracts. For each of the programs identified in subsection (a) of this section, HHSC will calculate an attendant compensation rate component for nonparticipating contracts as follows.~~

~~(1) Determine for each contract included in the cost report data base used in determination of rates in effect on September 1, 1999, the attendant compensation cost center from subsection (c) of this section.~~

~~(2) Adjust the cost center data from paragraph (1) of this subsection in order to account for inflation utilizing the inflation factors used in the determination of the September 1, 1999 rates.~~

~~(3) For each contract included in the cost report database used to determine rates in effect on September 1, 1999, divide the result from paragraph (2) of this subsection by the corresponding units of service. Provider projected costs per unit of service are rank-ordered from low to high, along with the provider's corresponding units of service. For DAHS, the median cost per unit of service is selected. For all other programs, the units of service are summed until the median unit of service is reached. The corresponding projected cost per unit of service is the weighted median cost component. The result is multiplied by 1.044 for all programs in subsection (a) of this section except for RC and CBA AL/RC, which is multiplied by 1.07. The result is the attendant compensation rate component for nonparticipating contracts.~~

~~(4) The attendant compensation rate component for nonparticipating contracts will remain constant over time, except for adjustments necessitated by increases in the minimum wage. In such cases, adjustments to the nonparticipating rates are limited to ensuring that these rates are adequate to cover mandated minimum wage levels.~~

~~(m) Determination of attendant compensation base rate for participating contracts.~~

(1) For each of the programs identified in subsection (a) of this section except for CBA AL/RC, the attendant compensation base rate is equal to the attendant compensation rate component for nonparticipating contracts from subsection (l) of this section.

(2) For CBA AL/RC, the attendant compensation base rate will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints.

(n) Determination of attendant compensation rate enhancements. HHSC will determine a per diem add-on payment for each enhanced attendant compensation level using data from sources such as cost reports, surveys, and/or other relevant sources and taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement add-ons will be determined on a per-unit-of-service basis applicable to each program or service. Add-on payments may vary by enhancement level. [Determination of attendant compensation rate enhancements. HHSC will determine attendant compensation rate enhancement increments associated with each enhanced attendant compensation level. The attendant compensation rate enhancement increments will be determined by using data from sources such as cost reports, surveys, and/or other relevant sources. The attendant compensation rate enhancement increments will be determined by taking into consideration quality of care, labor market conditions, economic factors, and budget constraints. The attendant compensation rate enhancement increments will be determined on a per-unit-of-service basis applicable to each program or service.]

(o) Enhanced attendant compensation. Contracts [Participating contracts] desiring to participate in the enhanced [provide] attendant compensation rate [above the level included in subsection (4) of this section] may request attendant compensation levels [increments] from an array of enhanced attendant compensation options and associated add-on payments determined in subsection (n) of this section during open enrollment. Participating providers who select to have all of their contracts participate in a program as a group must request a single attendant compensation level [increment] for the entire group of contracts. PHC[~~FC~~] providers participating as a group must select a single attendant compensation level [increment] for their entire group of contracts for the priority [4] and/or nonpriority services they have selected for participation.

(p) Granting [additional] attendant compensation rate enhancements [enhancement increments]. HHSC divides all requested enhancements, after applying any enrollment limitations from subsection (u) of this section, [requests for attendant compensation rate enhancement increments] into two groups: pre-existing enhancements, [rate enhancement increments] which providers request [requested] to carry over from the prior year, and newly-requested enhancements [rate enhancement increments]. Newly-requested enhancements [rate enhancement increments] may be enhancements requested by providers who were nonparticipants in the prior year or [;] by providers who were participants in [during] the prior year who seek [desiring to be granted] additional enhancements [rate enhancement increments or by new contracts as described in subsection (g) of this section]. Using the process described herein, HHSC first determines the distribution of carry-over enhancements [rate enhancement increments]. If funds are available after the distribution of carry-over enhancements [rate enhancement increments], HHSC determines the distribution of newly-requested enhancements. [rate enhancement increments as follows:] HHSC may not distribute newly-requested enhancements to providers owing funds identified for recoupment under subsection (s) of this section.

(1) For all programs and levels except for CBA AL/RC Level 1, HHSC determines projected units of service for contracts requesting each enhancement level [increment] and multiplies this number by the enhancement rate add-on amount associated with that enhancement level [increment] as determined in subsection (n) of this section. For CBA AL/RC Level 1, HHSC determines projected units of service for CBA AL/RC contracts requesting Level 1 and multiplies this number by the sum of the difference between the base rate and the nonparticipant rate and the enhancement add-on amount associated with enhancement Level 1 as follows: (Base Rate - Nonparticipant Rate) + Level 1 add-on amount.

(2) HHSC compares the sum of the products from paragraph (1) of this subsection to available funds.

(A) If the sum of the products [product] is less than or equal to available funds, all requested enhancements are granted.

(B) If the sum of the products [product] is greater than available funds, enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until requested enhancements are granted within available funds. Based upon an examination of existing compensation levels and compensation needs, HHSC may grant certain enhancement options priority for distribution.

(q) Notification of granting of enhancements. Participating contracts are notified, in a manner determined by HHSC, as to the disposition of their request for [additional] attendant compensation rate enhancements [enhancement increments].

(r) Total attendant compensation rate for participating providers [contracts]. Each participating provider's total attendant compensation rate will be equal to the attendant compensation base rate from subsection (m) of this section plus any add-on payments associated with enhanced attendant compensation levels selected by and awarded to the provider during open enrollment. [Each participating contract will receive an attendant compensation rate equal to the attendant compensation rate component for participating contracts from subsection (t) of this section, plus any additional attendant compensation rate enhancement payments granted to the contract.]

(s) Spending requirements for participating contracts. HHSC will determine from the Attendant Compensation Report, as specified in subsection (h) of this section and other appropriate data sources, the amount of attendant compensation spending per unit of service delivered. The provider's compliance with the spending requirement is determined based on the total attendant compensation spending as reported on the Attendant Compensation Report for each participating contract if the provider requested participation individually for each contract. A participating contract that has been terminated in accordance with subsection (v) of this section or that has undergone a contract assignment in accordance with subsection (w) of this section will be considered to have participated on an individual basis for compliance with the spending requirement for the owner prior to the termination or contract assignment. In all other cases, if [if] the provider specified that he wished to have all participating contracts be considered as a group for purposes related to the attendant compensation rate enhancement[;] (as specified in subsection (f) of this section[;]) compliance with the spending requirement is based on the total attendant compensation as reported on the single aggregate Attendant Compensation Report described in subsection (h) of this section. Compliance with the spending requirement is determined separately for each program specified in subsection (a) of this section, except for providers delivering services to both RC and CBA AL/RC clients in the same facility whose compliance is determined by combining both programs. HHSC will calculate recoupment, if any, as follows.

(1) [For the rate year beginning September 1, 2000, the attendant compensation spending per unit of service is multiplied by 1.09 to determine the adjusted attendant compensation per unit of service. For the rate years beginning September 1, 2001, and September 1, 2002, the attendant compensation spending per unit of service is multiplied by 1.07 to determine the adjusted attendant compensation per unit of service.] For the rate years [year] beginning September 1, 2003 and September 1, 2004, [, and thereafter,] the attendant compensation spending per unit of service is multiplied by 1.10 to determine the adjusted attendant compensation per unit of service.

[(2)] The adjusted attendant compensation per unit of service [from paragraph (1) of this subsection] will be subtracted from the accrued attendant compensation revenue to determine the amount to be recouped. If the adjusted attendant compensation per unit of service is greater than or equal to the accrued attendant compensation revenue per unit of service, there is no recoupment.

(2) For the rate year beginning September 1, 2005, and thereafter, the accrued attendant compensation revenue per unit of service is multiplied by 0.90 to determine the spending requirement per unit of service. The unadjusted accrued attendant compensation spending per unit of service will be subtracted from the spending requirement per unit of service to determine the amount to be recouped. If the unadjusted accrued attendant compensation spending per unit of service is greater than or equal to the spending requirement per unit of service, there is no recoupment.

(3) The amount paid for attendant compensation per unit of service after adjustments for recoupment must not be less than the amount determined for nonparticipating contracts in subsection (l) [(m)] of this section.

(t) Notification of recoupment. Providers will be notified in a manner specified by HHSC of the amount to be repaid to HHSC or its designee [DHS]. If a subsequent review by HHSC or audit results in [audit] adjustments to the annual Attendant Compensation Report, as described in subsection (h)(1) of this section, that change [changes] the amount to be repaid, the provider will be notified in writing of the adjustments and the adjusted amount to be repaid [to DHS]. HHSC or its designee [DHS] will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter.

(u) Enrollment limitations. A provider will not be enrolled in the attendant compensation rate enhancement at a level higher than the level it achieved on its most recently available, audited Attendant Compensation Report. HHSC will issue a notification letter that informs a provider in writing of its enrollment limitations (if any) prior to the first day of the open enrollment period. [Exclusion from participation: Effective with the rate year that begins September 1, 2002, if the Attendant Compensation Report described in subsection (h) of this section indicates that the participating provider did not meet their spending requirement as determined from subsection (s) of this section, HHSC will notify the provider of the noncompliance. If the subsequent compensation report from subsection (h) of this section indicates that the provider has not met their spending requirement, the contract will be excluded from participation in the attendant rate enhancement effective immediately upon notice of failure to meet the spending requirement. The contract will be excluded from participation in the attendant compensation rate enhancement and will remain a nonparticipant for the remainder of the rate year in which the determination was made plus an additional rate year. Providers whose contracts are participating as a group must meet the requirements of this subsection as a group or all the contracts of the group will be excluded.]

(1) Requests for revision. A provider may request a revision of its enrollment limitation if the provider's most recently available audited Attendant Compensation Report does not represent its current attendant compensation levels.

(A) A request for revision of enrollment limitation must include the documentation specified in subparagraph (B) of this paragraph and must be received by HHSC Rate Analysis by hand delivery, United States mail, or special delivery mail no later than 30 calendar days from the date on the notification letter. If the 30th calendar day is a weekend day, national holiday, or state holiday, the first business day following the 30th calendar day is the final day the receipt of the written request will be accepted. A request for revision that is not received by the stated deadline and that is not submitted on the form specified by HHSC will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(B) A provider that requests a revision of its enrollment limitation must submit documentation, in the form specified by HHSC in the notification letter, which shows that, for the period beginning September 1 of the current rate year and ending April 30 of the current rate year, the provider met a higher attendant compensation level than the notification letter indicates. In such cases, the provider's enrollment limitation will be established at the level supported by its request for revision documentation. It is the responsibility of the provider to render all required documentation at the time of its request for revision. Requests not in the form specified by HHSC in the notification letter and requests that fail to support an attendant compensation level different from what is indicated in the notification letter will result in a rejection of the request, and the enrollment limitation specified in the notification letter will apply.

(C) A request for revision must be signed by an individual legally responsible for the conduct of the provider or legally authorized to bind the provider, such as the sole proprietor, a partner, a corporate officer, an association officer, a governmental official, a limited liability company member, a person authorized by the applicable DADS Form 2031 for the interested party on file at the time of the request, or a legal representative for the interested party. A request for revision that is not signed by an individual legally responsible for the conduct of the interested party will not be accepted, and the enrollment limitation specified in the notification letter will apply.

(D) If the provider's Attendant Compensation Report for the rate year that included the open enrollment period described in subsection (e) of this section shows the provider compensated attendants below the level it presented in its request for revision, HHSC will immediately recoup all enhancement payments associated with the request for revision documents, and the provider will be limited to the level supported by the report for the remainder of the rate year.

(2) Informal reviews and formal appeals. The filing of a request for an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report under §355.110 of this title (relating to Informal Reviews and Formal Appeals) does not stay or delay implementation of an enrollment limitation applied in accordance with the requirements of this subsection. If an informal review or formal appeal relating to a provider's most recently available, audited Attendant Compensation Report is pending at the time the enrollment limitation is applied, the result of the informal review or formal appeal shall be applied to the provider's enrollment retroactively to the beginning of the rate year to which the enrollment limitation was originally applied.

(3) New owners after a contract assignment that is an ownership change from one legal entity to a different legal entity. Enhancement levels for a new owner after a contract assignment that is

an ownership change from one legal entity to a different legal entity will be determined in accordance with subsection (w) of this section. A new owner after a contract assignment that is an ownership change from one legal entity to a different legal entity will not be subject to enrollment limitations based upon the prior owner's performance.

(4) New providers. A new provider's enrollment will be determined in accordance with subsection (g) of this section.

(v) Contract terminations. For contracted providers required to submit an Attendant Compensation Report due to a contract termination as described in subsection (h)(1)(B) of this section, ~~[For terminating participants,]~~ HHSC or its designee will place a vendor hold on the payments of the contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h)(2)(A) of this section, and funds identified for recoupment from subsection (s) of this section are repaid to HHSC or its designee ~~[DHS]~~. Informal reviews and formal appeals relating to these reports are governed by §355.110 of this title (relating to Informal Reviews and Formal Appeals). HHSC or its designee ~~[DHS]~~ will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from ~~[by]~~ the held ~~[terminating provider's last]~~ vendor payments ~~[payment]~~, the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee ~~[DHS]~~. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS ~~[DHS]~~ contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS ~~[DHS]~~ until repayment is made in full. The responsible entity for these contracts will be notified as described in subsection (t) of this section prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contracts.

(w) Contract assignments. The following applies to contract assignments.

(1) Definitions. The following words and terms have the following meanings when used in this subsection.

(A) Assignee--A legal entity that assumes a Community Care contract through a legal assignment of the contract from the contracting entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(B) Assignor--A legal entity that assigns its Community Care contract to another legal entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(C) Contract assignment--The transfer of a contract by one legal entity to another legal entity as provided in 40 TAC §49.15 (relating to Contract Assignment).

(i) Type One Contract Assignment--A contract assignment by which the assignee is an existing Community Care contract.

(ii) Type Two Contract Assignment--A contract assignment by which the assignee is a new Community Care contract.

(2) Participation and group status after a contract assignment. Participation and group status after a contract assignment are determined as follows:

(A) Type One Contract Assignments. For Type One contract assignments, the assignee's level of participation and group

status remains the same while the assignor's level of participation and grouping status changes to the assignee's.

(B) Type Two Contract Assignments. For Type Two contract assignments the following applies:

(i) In cases where the assignee is controlled by a legal entity that controls other contracts participating in the attendant compensation rate enhancement, the following applies:

(I) If the assignee's participating contracts are participating as a group as subsection (f) of this section.

(-a-) If the assignor was a participating contract, the new contract becomes part of the assignee's group at the level of participation of the assignee's group.

(-b-) If the assignor was not a participating contract, the new contract remains a nonparticipating contract.

(II) If the assignee's participating contracts are participating as individuals as provided subsection (f) of this section, the following applies:

(-a-) If the assignor was a participating contract, the new contract continues participation at the assignor's level as an individual contract whether or not the assignor contract was part of a group.

(-b-) If the assignor was not a participating contract, the new contract remains a nonparticipating contract.

(ii) In cases where the assignee is controlled by a legal entity that does not control any contracts participating in the attendant compensation rate enhancement, the level of participation and individual or group status of the assignor contract(s) will continue unchanged under the assignee contract(s).

[(1) Contracts participating under the prior legal entity will continue participation under the legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as individuals, participation in the attendant compensation rate enhancement confers to the provider or legal entity accepting the contract assignment. When the provider or legal entity accepting the contract assignment has their contracts participating as a group, the contract will participate with the group of the legal entity accepting the contract assignment for purposes related to the attendant compensation rate enhancement. When the provider or legal entity accepting the contract assignment has no contracts participating, the individual or group status of participating contracts under the old owner will transfer to the new owner. When the provider or legal entity accepting the contract assignment has its contracts participating as individuals or has no contracts participating, the provider or legal entity may submit an enrollment contract amendment to modify the enrollment of the assigned contract. To be acceptable, an enrollment contract amendment must be completed according to instructions, signed by an authorized signatory as per the DHS Corporate Board of Directors Resolution applicable to the provider's contract or ownership type, and be legible.]

(3) The assignee is responsible for the reporting requirements in subsection (h) of this section for any reporting period days occurring after the contract assignment effective date. If the contract assignment occurs during an open enrollment period as defined in subsection (e) of this section, the owner recognized by HHSC or its designee on the last day of the enrollment period may request to modify the enrollment status of the contract in accordance with subsection (f) of this section.

(4) [(2)] For contracted providers required to submit an Attendant Compensation Report due to contract assignment, as described in subsection (h)(1)(A) of this section, [When the contract assignment is an ownership change from one legal entity to a different legal entity,] HHSC or its designee will place a vendor hold on the payments of the existing contracted provider until HHSC receives an acceptable Attendant Compensation Report, as specified in subsection (h)(2)(B) of this section, and until funds identified for recoupment from subsection (s) of this section are repaid to HHSC or its designee [DHS]. HHSC or its designee [DHS] will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from [by] the held [existing contracted provider's] vendor payments [that are being held], the responsible entity from subsection (cc) of this section will be jointly and severally liable for any additional payment due to HHSC or its designee [DHS]. Failure to repay the amount due within 60 days of notification will result in the recoupment of the owed funds from other HHSC and/or DADS contracts controlled by the responsible entity, placement of a vendor hold on all HHSC and/or DADS [DHS] contracts controlled by the responsible entity, and will bar the responsible entity from enacting new contracts with HHSC and/or DADS [DHS] until repayment is made in full. The responsible entity for these contracts will be notified, as described in subsection (t) of this section, prior to the recoupment of owed funds, placement of vendor hold on additional contracts, and barring of new contract.

(x) Voluntary withdrawal. Participating contracts wishing to withdraw from the attendant compensation rate enhancement must notify HHSC Rate Analysis in writing by certified mail. The requests will be effective the first of the month following the receipt of the request. Contracts voluntarily withdrawing must remain nonparticipants for the remainder of the rate year. Providers whose contracts are participating as a group must request withdrawal of all the contracts in the group.

(y) Adjusting attendant compensation requirements. Providers that determine that they will not be able to meet their attendant compensation requirements may request to reduce their attendant compensation requirements and associated enhancement payment to a lower participation level by submitting a written request to HHSC Rate Analysis by certified mail. These requests will be effective the first of the month following the receipt of the request. Providers whose contracts are participating as a group must request the same reduction for all of the contracts in the group.

(z) All other rate components. All other rate components will continue to be calculated as specified in the program-specific reimbursement methodology and will be uniform for all providers.

(aa) Failure to document spending. Undocumented attendant compensation expenses will be disallowed and will not be used in the determination of the attendant compensation spending per unit of service in subsection (s) of this section.

(bb) Appeals. Subject matter of informal reviews and formal appeals is limited as per §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(cc) Responsible entities. The contracted provider, owner, or legal entity which received the attendant compensation rate enhancement is responsible for the repayment of the recoupment amount.

(dd) Reinvestment. HHSC will reinvest recouped funds in the attendant compensation rate enhancement to the extent there are qualifying contracts.

(1) Identify qualifying contracts. Contracts that meet the following criteria during the most recently completed reporting period are qualifying contracts for reinvestment purposes.

(A) The contract was a participant in the attendant compensation rate enhancement.

(B) The contract's attendant compensation spending per unit of service was greater than the total attendant compensation rate per unit of service granted to the contract.

(C) An [HHSC Rate Analysis has received an] acceptable Attendant Compensation Report for the reporting period completed in accordance with all applicable rules and instructions was received by HHSC Rate Analysis at least 30 days prior to the date on which HHSC determined how available reinvestment funds would be distributed.

(D) The DADS contract that was in effect during the reinvestment reporting period is still in effect as an active contract when reinvestment is determined and there has been no ownership change from one legal entity to a different legal entity.

(2) Distribution of available reinvestment funds. Available funds are distributed as follows:

(A) For each qualifying report, HHSC subtracts the attendant compensation revenue per unit of service from the attendant compensation spending per unit of service and determines the number of full levels by which attendant compensation costs exceeded attendant compensation revenues. This number is multiplied by the add-on value of a level during the reporting period [HHSC determines] and the product is multiplied by the units of service provided during the [most recently completed] reporting period as determined by HHSC. [by each qualifying contract and multiplies this number by the attendant compensation spending per unit of service minus the attendant compensation rate per unit of service for the reporting period.]

(B) HHSC compares the sum of the products from subparagraph (A) of this paragraph to funds available for reinvestment.

(i) If the product is less than or equal to available funds, all enhancements for qualifying contracts are retroactively awarded for the reporting period.

(ii) If the product is greater than available funds, retroactive enhancements are granted beginning with the lowest level of enhancement and granting each successive level of enhancement until enhancements are granted within available funds.

(3) Non-qualification as pre-existing enhancements. Retroactively awarded enhancements do not qualify as pre-existing enhancements for enrollment purposes.

(4) Notification of reinvested enhancements. Qualifying facilities are notified of the award of reinvested enhancements in a manner determined by HHSC.

(ee) Disclaimer. Nothing in these rules should be construed as preventing providers from compensating attendants at a level above that funded by the enhanced attendant compensation rate.

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 October 10, 2005.

TRD-200504553

Steve Aragón
Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 424-6900

◆ ◆ ◆

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

1 TAC §355.457

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.457, "Reimbursement Methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF-MR) Program," in its reimbursement rates chapter.

Background and Justification

The purpose of the amendment is (1) to clarify in rules the current practice regarding cost report grouping for determination of spending requirements for ICF-MR providers, (2) to define daily timesheet elements, (3) to provide an alternative reporting of direct care costs for contracted services, and (4) to require proof that the spending requirement has been met, or imposing a spending floor. The rule proposal clarifies the elements that constitute an appropriate daily time sheet for staff that perform both direct care and administrative/indirect functions. The rule proposal also specifies that if a provider is unable to obtain the actual direct service costs from an unrelated party, the provider must determine the allowable direct costs by applying the percentage of direct costs to total costs from the modeled rate. The rule proposal also clarifies the handling of cost when a management company operates a facility.

The rule proposal specifies that when a cost report is not submitted within 60 days of being placed on vendor hold for failure to timely submit a cost report, or within 60 days of an ownership change or contract termination, the provider is assumed to have direct service costs equal to 65% of direct service revenues. In such instances HHSC will recoup funds related to fiscal accountability, and then adjust the recoupment when an acceptable cost report is received. However, if an acceptable cost report is not received within 365 days of the due date, the recoupment will become permanent.

The rule proposal specifies that in cases where an entity (parent company, sole member, individual, limited partnership or group of limited partnerships controlled by the same general partner) possesses greater than 50% ownership in multiple component codes, the entity may request HHSC to evaluate its multiple component codes' compliance with spending requirements in the aggregate. In addition, the rule proposal removes obsolete sections and references, and clarifies rule language by reordering sections and modifying parameters to eliminate overlap in recoupment categories.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no implications for state government as a result of enforcing or administering the section.

There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small and Micro-business Impact Analysis

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

Public Benefit

Ed White, Director of Rate Setting and Forecasting, has determined that amending these rules as stated in this preamble will provide a public benefit by: (1) clarifying the essential elements of a timesheet; (2) providing an alternative reporting procedure for contracted services; (3) clarifying reporting requirements for contracted management costs; (4) creating enforcement methods for failure to submit cost reports; (5) placing in rule the current practice of allowing certain providers with multiple contracted entities to combine cost reports to comply with spending requirements across all their entities; and (6) removing obsolete sections and references and making other minor technical changes to improve clarity of the rules.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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 environment 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 sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment 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

Questions about the content of this proposal may be directed to Carolyn Pratt (telephone: 512-491-1359; FAX: 512-491-1998) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Ms. Pratt via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment implements the Government Code, §531.033 and §531.021(b). No other statutes, articles, or codes are affected by this proposal.

§355.457. *Fiscal Accountability.*

(a) General principles. The [Texas] Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to introduction). Fiscal accountability is a process used to gauge the ongoing financial performance under the non-state operated facility reimbursement rates.

(b) Annual reporting. Fiscal accountability will consist of the annual reporting of direct service costs from all non-state operated providers. The data will be collected on a cost report designed by HHSC in accordance with §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(1) Direct service costs include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care staff, Qualified Mental Retardation Professionals (QMRPs), registered nurses, and licensed vocational nurses. Direct service costs include: costs related to wage rates, benefits, payroll taxes, contracts for direct services, and direct service supervision information. Accrued leave (sick or annual) can only be considered a direct service cost if the employee has a right to the cash value of that leave upon termination.

(2) The provider is responsible for submission of the fiscal accountability cost report to HHSC, and payment of amounts owed in accordance with subsection (c) of this section, regardless of whether the provider contracts with another entity for the management or operation of the ICF/MR.

(A) If the provider contracts with another entity for the management or operation of the ICF/MR (a "managing entity"), the provider must report the specific direct services costs of that entity as required in the cost report instructions and not the amount for which the provider is contracting for the entity's services] and the facility staff are employees of the managing entity, the provider must report the specific costs related to the facility staff at the actual cost to the managing entity and the detailed costs on the cost report.

(B) If the provider contracts with another entity for the provision of any ICF/MR direct services, the provider must report only those costs of the contract that are associated with the delivery of direct services as direct service costs on the cost report.

(i) If the entity the provider contracts with is a related party as defined in §355.102(i) of this title (relating to General Principles of Allowable and Unallowable Costs), the provider must report the specific direct service costs at the actual cost to the related party, and the detailed costs on the cost report. Reporting the total contracted amount paid to the related party is unacceptable.

(ii) If the entity the provider contracts with is an unrelated party, the provider may report the direct services costs of the contract as a lump sum. The direct services costs of the contract must be determined as follows:

(I) In cases where the provider is able to obtain actual cost data for the direct services costs and total costs of the contracted services from the unrelated entity, the provider must use the ratio of direct service costs to total costs to determine the allowable direct services costs of the contract. In such cases, the provider must attach to the cost report an allocation schedule identifying the calculation of the ratio of direct care costs to total costs that includes the actual contracted costs.

(II) If the provider is unable to obtain actual cost data for the direct services costs and total costs of the contracted service from the unrelated entity, then the provider must use the ratio of direct service costs to total costs from the modeled rate as described in §355.456 of this title (relating to Rate Setting Methodology) for each

type of specific direct service to determine the allowable direct services costs of the contract.

(C) [(B)] For staff whose duties include work other than the provision of direct services for the provider, [the proportion of work that is spent on] time spent providing direct services and associated expenses may be reported as [included in the] direct service costs if properly documented. The proportion of their salary and benefits that is compensation for direct services work can be included in the direct service cost report. Staff whose duties include multiple direct service types, both direct and indirect service component types and/or both direct hands-on support and first-level supervision of direct care workers must complete continuous, daily time sheets to properly document their time. The daily timesheet must document, for each day, the staff member's start time, stop time, total hours worked, and the actual time worked (in increments of 30 minutes or less) providing direct services for the provider, the actual time worked performing other functions, and paid time off. The employee and the employee's supervisor must sign each daily timesheet. Work schedules are unacceptable documentation for staff whose duties include multiple direct service types, both direct and indirect service component types, and both direct hands-on support and first level supervision of direct care workers. [The facility must have a procedure that specifies how direct service work time is allocated.]

(D) [(E)] If the staff providing direct services is an owner[, operator,] or a related party as defined in §§355.102(i) and [-] 355.103(b)(2) of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs), the salary and benefits must be the lesser of the actual wages and benefits paid or the wages and benefits for a comparable staff person assumed in the model. Owner and related party employees who provide multiple direct service types, both direct care and indirect services and/or both direct hands-on support and first-level supervision of direct care workers must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). The maximum hours per fiscal year that an owner and related party employee may report on the cost report is 2080 hours per fiscal year.

(3) The direct service portions of the current rate model are inflated on an annual basis as specified in §355.456(d)(2) of this title (relating to Rate Setting Methodology).

(4) The Department of Aging and Disability Services (DADS) will place a vendor hold on a prior owner at a change of ownership which results in the execution of a new provider agreement. The prior owner must submit a fiscal accountability report to HHSC for the current reporting period. Upon receipt of an acceptable fiscal accountability report and resolution of any outstanding balances, the vendor hold will be released.

(5) ICF/MR providers that do not submit an ICF/MR cost report completed in accordance with all applicable rules and instructions within 60 days of the placement of a vendor hold due to the failure to submit the cost report are subject to an immediate recoupment of funds related to fiscal accountability as described in subsection (c)(1)(D) of this section. The recouped funds will not be restored until the provider submits an acceptable report and has paid the actual amount due as specified in subsections (c)(1)(A) through (c)(1)(C) of this section. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent.

(6) ICF/MR providers with an ownership change from one legal entity to a different legal entity or a contract termination that do not submit an ICF/MR cost report for the fiscal year of the ownership change or contract termination within 60 days of the change of ownership or contract termination are subject to recoupment of funds related to fiscal accountability as described in subsection (c)(1)(D) of this section. The recouped funds will not be restored until the provider submits an acceptable report and has paid the actual amount due as specified in subsections (c)(1)(A) through (c)(1)(C) of this section. If an acceptable report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent.

(7) [(5)] For cost reports pertaining to providers' fiscal years ending in calendar year 2004 and subsequent years the following applies:

(A) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(B) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs).

(C) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(8) [(6)] Field Audit and Desk Review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(c) HHSC will require providers to report all direct costs incurred in their annual fiscal year. HHSC will compare the reported direct service costs to the direct service cost component of the modeled rates.

[(4) Paragraph (2) of this subsection, concerning the fiscal accountability repayment, applies to that portion of the provider's fiscal year that occurs after April 5, 1998. Paragraph (3) of this subsection, concerning the fiscal accountability repayment, applies to that portion of the provider's fiscal year that begins on or after January 1, 1999.]

[(2) The total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.]

[(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.]

[(B) Providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to DADS the difference between the direct service costs and 95% of the direct service revenues.]

[(C) Providers whose direct service costs are between 80% and 85% of the direct service revenues will be required to pay to DADS 100% of the difference between the direct service costs and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.]

~~[(D)]~~ Providers whose direct service costs are between 85% and 90% of the direct service revenues will be required to pay to DADS 50% of the difference between the direct service costs and 90% of the direct service revenues.]

(1) ~~[(3)]~~ The total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.

(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) Providers whose direct service costs are less than 85% of the direct service revenues will be required to pay to DADS the difference between the direct service costs and 95% of the direct service revenues.

(C) Providers whose direct service costs are less than 90% but greater than or equal to 85% ~~[between 85% and 90%]~~ of the direct service revenues will be required to pay to DADS 75% of the difference between the direct service costs and 90% of the direct service revenues.

(D) Providers who do not submit an ICF/MR cost report as described in subsection (b)(5) or (b)(6) of this section will be assumed to have direct service costs equal to 65% of the direct services revenues and will be required to pay to DADS the difference between 65% of the direct services revenues and 95% of the direct service revenues, subject to the provisions of subsection (b)(5) or (b)(6).

(2) ~~[(4)]~~ The fiscal accountability calculation shows an estimated amount due for repayment. A provider's repayment status may change as a result of the desk review or onsite audit of the cost report or adjustments to claims paid to the provider for services provided in the cost reporting period. The provider will be notified of the results of the desk reviews or onsite audits in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). If the adjustments and or exclusions result in an amount due, or if the original estimated amount due calculation is upheld, HHSC will notify the provider of the amount due and the provider will remit the repayment amount no later than 60 calendar days after the date of the notification was received by the provider.

(3) ~~[(5)]~~ Repayment will be collected from the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(4) ~~[(6)]~~ Providers will be jointly and severally liable for any repayment due. Failure to repay the amount due by the 61st calendar day after the provider has received notification may result in a vendor hold on all of the ICF/MR payments to a provider.

(5) ~~[(7)]~~ Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(d) If a provider is paid a transitional add-on for a consumer in accordance with §355.456(e) of this title, the provider may exclude the amount of the transitional add-on from its fiscal accountability cost report only if the consumer resides in the small non-state operated facility for at least 12 months.

(e) Compliance with the spending requirements detailed in subsection (c) of this section may be evaluated in the aggregate for ICF/MR providers meeting requirements as described below. This process is called aggregation.

(1) Definitions. The following words and terms have the following meanings when used in this paragraph.

(A) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(B) Control--greater than 50% ownership by the entity.

(2) Where the entity controls more than one ICF/MR component code, the entity has the option of having those component codes' compliance with the spending requirements detailed in subsection (c) of this section evaluated in the aggregate.

(3) In such cases described in subsection (e)(2) of this section, compliance with the spending requirements will be evaluated in the aggregate for all ICF/MR component codes that the entity controlled at the end of its fiscal year, or at the effective date of the change of ownership or termination of its last ICF/MR contract.

(4) To exercise the aggregation option, the entity must submit an aggregation request, in a manner prescribed by HHSC, at the time each cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, that single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(5) The entity must submit a separate request to have compliance with spending requirements evaluated in the aggregate for each reporting period.

(6) ICF/MR contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per subsection (c) of this section, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(7) Failure to disclose all ICF/MR component codes controlled by the entity making the request as permitted in subsection (e) of this section will result in the denial of, or revocation of a prior approval of, the request to aggregate for all component codes so controlled.

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 October 10, 2005.

TRD-200504554

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 424-6900



SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.503, concerning annual adjustments to provider payment rates for the Community Based Alternatives Assisted Living/Residential Care Program. These rates are adjusted for the increase in the Social Security Income (SSI) Federal Benefit Rate which clients begin receiving effective January 1 of each year. Since the client receives an increase in his/her SSI payment and all but \$85 per month is paid to the contracted provider for room and board, the payment rate from the Texas Department of Aging and Disability Services (DADS) to the provider is adjusted by the amount of the increase in the SSI that is paid to the provider by the client. As a result of this proposed rate change, the contracted provider receives the same total revenue as it received prior to the adjustment, but the client's room and board payment covers a greater share of the total revenue and DADS's share of the total revenue is reduced.

Background and Justification

The amendment to the above-referenced rule will incorporate the process of annually adjusting rates for the Community Based Alternatives Assisted Living/Residential Care Program into the reimbursement methodology for this program.

In addition, §355.503 is to be amended to update references relating to cost reporting for the Community Based Alternatives Assisted Living/Residential Care Program from former DHS rules to HHSC and/or DADS rules as applicable.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section. The effect on state government for the first five-year period the sections are in effect is an estimated savings of \$208,991 in fiscal year (FY) 2006; \$222,320 in FY 2007; \$228,172 in FY 2008; \$234,025 in FY 2009; and \$239,877 in FY 2010.

Small and Micro-business Impact Analysis

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

Public Benefit

Ed White, Director of Rate Setting and Forecasting, has determined that amending these rules as stated in this preamble will provide a public benefit by helping to clarify terminology as currently stated in §355.503.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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 environment 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 sector of the state. This

proposal is not specifically intended to protect the environment or reduce risks to human health from environment 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

Questions about the content of this proposal may be directed to Jerry Plaisance (telephone: 512-491-1369; FAX: 512-491-1998) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Mr. Plaisance via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact Jerry Plaisance at (512) 491-1369 in HHSC Rate Analysis.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment implements the Government Code, §531.033 and §531.021(b). No other statutes, articles, or codes are affected by this proposal.

§355.503. *Reimbursement Methodology for the Community-Based Alternatives Waiver Program.*

(a) General requirements. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) General. Texas Medicaid contracted providers will be reimbursed for waiver services provided to individuals who meet the criteria for alternatives to nursing facility care. Additionally, Texas Medicaid contracted providers will be reimbursed for a pre-enrollment assessment of potential waiver participants. The pre-enrollment assessment covers care planning for the participant and is reimbursed by a one-time administrative expense fee which is not included in the waiver services but will be paid from Medicaid administrative funds.

(c) Other sources of cost information. If HHSC has determined that there is not sufficient reliable cost report data from which to determine reimbursements and reimbursement ceilings for waiver services, reimbursements and reimbursement ceilings will be developed by using data from surveys; cost report data from other similar programs, consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(d) Waiver reimbursement determination. Recommended reimbursements are determined in the following manner.

(1) Unit of service reimbursement. Reimbursement for personal assistance services, nursing services provided by a registered nurse (RN), nursing services provided by a licensed vocational nurse (LVN), physical therapy, occupational therapy, speech pathology, and in-home respite care services will be determined on a fee-for-service basis in the following manner.

(A) Total allowable costs for each provider will be determined by analyzing the allowable historical costs reported on the cost report.

(B) Total allowable costs are reduced by the amount of the pre-enrollment expense fee and requisition fee revenues accrued for the reporting period.

(C) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(D) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes are Federal Insurance Contributions Act (FICA) or Social Security, Medicare Contributions, Workers' Compensation Insurance (WCI), the Federal Unemployment Tax Act (FUTA), and the Texas Unemployment Compensation Act (TUCA).

(E) Allowable administrative and facility costs are allocated or spread to each waiver service cost component on a pro rata basis based on the portion of each waiver service's units of service to the amount of total waiver units of service.

(F) For nursing services provided by an RN, nursing services provided by an LVN, physical therapy, occupational therapy, speech pathology, and in-home respite care services, an allowable cost per unit of service is calculated for each contracted provider for each service. The allowable costs per unit of service for each contracted provider are arrayed. The units of service for each contracted provider in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044. The allowable costs per unit of service may be combined into an array with the allowable cost per unit of service of similar services provided by other programs in determining the weighted median cost per unit of service.

(G) For personal assistance services two cost areas are created:

(i) The attendant cost area includes salaries, wages, benefits, and mileage reimbursement calculated as specified in §355.112 of this title (relating to Attendant Compensation Rate Enhancement).

(ii) Another attendant cost area is created which includes the other personal attendant services costs not included in subparagraph (G)(i) of this paragraph as determined in subparagraphs (A)-(E) of this paragraph. An allowable cost per unit of service is determined for each contracted provider for the other attendant cost area. The allowable costs per unit of service for each contracted provider are arrayed. The units of service for each contracted provider in the array are summed until the median unit of service is reached. The corresponding expense to the median unit of service is determined and is multiplied by 1.044.

(iii) The attendant cost area and the other attendant cost area are summed to determine the personal assistance services cost per unit of service.

(2) Per day reimbursement.

(A) The reimbursement for Adult Foster Care (AFC) [~~Assisted Living/Residential Care (AL/RC)~~] and out-of-home respite

care [~~provided in AFC and AL/RC settings,~~] will be determined as a per day reimbursement using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from other similar programs, consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources. The room and board payments for AFC [~~and AL/RC~~] Services are not covered in these reimbursements and will be paid to providers from the client's Supplemental Security Income, less a personal needs allowance.

(B) The reimbursement for Assisted Living/Residential Care (AL/RC) will be determined as a per day reimbursement in accordance with §355.509(a) - (c)(2)(F)(iii) of this title (relating to Reimbursement Methodology for Residential Care). The per day reimbursement for attendant care will be determined, based upon client need for attendant care into six levels of care. A total reimbursement amount will be calculated and the proposed reimbursement is equal to the total reimbursement less the client's room and board payments. The room and board payment is paid to the provider by the client from the client's Supplemental Security Income (SSI), less a personal needs allowance. When the SSI is increased or decreased by the Federal Social Security Administration, the reimbursement for AL/RC will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(C) [~~(B)~~] The reimbursement for out-of-home respite care provided in a Nursing Facility will be based on the amount determined for the Texas Index of Level of Effort (TILE) for the CBA participant.

(3) Monthly reimbursement ceilings. The reimbursement for Emergency Response Services will be determined as monthly reimbursement ceiling, based on the ceiling amount determined in accordance with 40 TAC §52.504 (relating to Reimbursement Methodology for Emergency Response Services (ERS)). The reimbursement for Home-Delivered Meals will be determined on a per meal basis, based on the ceiling amount determined in accordance with 40 TAC §55.45 (relating to Reimbursement Methodology for Home-Delivered Meals).

(4) Requisition fees. Requisition fees are reimbursements paid to the CBA home and community support services contracted providers for their efforts in acquiring adaptive aids and minor home modifications for CBA participants. Reimbursement for adaptive aids and minor home modifications will vary based on the actual cost of the adaptive aid and minor home modification. Reimbursements are determined using a method based on modeled projected expenses which are developed by using data from surveys; cost report data from similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and/or other sources.

(5) Pre-enrollment expense fee. Reimbursement for pre-enrollment assessment is determined using a method based on modeled projected expenses that are developed by using data from surveys; cost report data from other similar programs; consultation with other service providers and/or professionals experienced in delivering contracted services; and other sources.

(6) Specialized nursing reimbursement add-on. A specialized nursing reimbursement add-on will be paid in addition to the unit-of-service reimbursements for skilled nursing services provided by an RN or by an LVN. The specialized nursing reimbursement add-on is paid when a client requires, as determined by a physician, daily skilled nursing to cleanse, dress, and suction a tracheostomy or daily skilled nursing assistance with ventilator or respirator care. The client must be unable to do self-care and require the assistance of a nurse for the ventilator, respirator, or tracheostomy care. This specialized nursing

reimbursement add-on will be determined in accordance with subsection (c) of this section.

(7) Exceptions to the reimbursement determination methodology. HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(e) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 of this title (relating to Introduction).

(f) Reporting of cost.

(1) Cost reporting guidelines. If HHSC requires a cost report for any waiver service in this program, providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Excused from submission of cost reports. If required by HHSC, all contracted providers must submit a cost report unless the number of days between the date the first Texas Department of Aging and Disability Services (DADS) [Department of Human Services (DHS)] client received services and the provider's fiscal year end is 30 days or fewer. The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost-report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. An AL/RC provider may also be excused from submitting a cost report if the total number of days serving [DHS] AL/RC or Residential Care residents is 366 or fewer during its fiscal year. Requests to be excused from submitting a cost report must be received by HHSC before the due date of the cost report.

(3) Reporting and verification of allowable cost.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers; the purpose is to ensure that the database reflects costs and other information which are necessary for the provision of services, and are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(4) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(A) Client room and board expenses are not allowable, except for those related to respite care.

(B) The actual cost of adaptive aids and home modifications are not allowable for cost reporting purposes. Allowable labor costs associated with acquiring adaptive aids and home modifications should be reported in the cost report. Any item purchased for participants in this program and reimbursed through a voucher payment system is unallowable for cost reporting purposes. Refer to §355.103(17)(K) of this title (relating to Specifications for Allowable and Unallowable Costs).

(g) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 of this title (relating to Informal Reviews and Formal Appeals).

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 October 10, 2005.

TRD-200504555

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 424-6900



1 TAC §355.509

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.509, concerning annual adjustments to provider payment rates for the Residential Care Program. These rates are adjusted for the increase in the Social Security Income (SSI) Federal Benefit Rate which clients begin receiving effective January 1 of each year. When a client receives an increase in his/her SSI payment, the payment rate from the Texas Department of Aging and Disability Services (DADS) to the provider is adjusted by the amount of the increase in the SSI that is paid to the provider by the client. As a result of this proposed rate change, the contracted provider receives the same total revenue as it received prior to the adjustment, but the client's room and board payment covers a greater share of the total revenue and DADS's share of the total revenue is reduced.

Background and Justification

The amendment to the above-referenced rule will incorporate the process of annually adjusting rates for the Residential Care Program into the reimbursement methodology for this program.

In addition, §355.509 is to be amended to update references relating to cost reporting for the Residential Care Program from former DHS rules to HHSC and/or DADS rules as applicable.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are fiscal implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section. The effect on state government for the first five-year period the sections are in effect is an estimated savings of \$134,234 in fiscal year (FY) 2006; \$134,234 in FY 2007; \$134,234 in FY 2008; \$134,234 in FY 2009; and \$134,234 in FY 2010.

Small and Micro-business Impact Analysis

There is no adverse economic effect on small or micro-businesses as a result of enforcing or administering the proposed section. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Public Benefit

Ed White, Director of Rate Setting and Forecasting, has determined that amending these rules as stated in this preamble will provide a public benefit by helping to clarify terminology as currently stated in §355.509.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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 environment 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 sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment 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

Questions about the content of this proposal may be directed to Jerry Plaisance (telephone: 512-491-1369; FAX: 512-491-1998) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Mr. Plaisance via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*. For further information regarding the proposal or to make the proposal available for public review, contact Jerry Plaisance at (512) 491-1369 in HHSC Rate Analysis.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which established HHSC as the agency

responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment implements the Government Code, §531.033 and §531.021(b). No other statutes, articles, or codes are affected by this proposal.

§355.509. *Reimbursement Methodology for Residential Care.*

(a) General requirements. The Texas Health and Human Services Commission (HHSC) [~~Texas Department of Human Services (DHS)~~], or its designee, applies the general principles of cost determination as specified in §355.101 [~~§20.101~~] of this title (relating to Introduction).

(b) Cost reporting.

(1) Providers must follow the cost-reporting guidelines as specified in §355.105 [~~§20.105~~] of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) All contracted providers must submit a cost report unless the number of days between the date the first [~~DHS~~] client received services and the provider's fiscal year end is 30 days or fewer.

(3) The provider may be excused from submitting a cost report if circumstances beyond the control of the provider make cost report completion impossible, such as the loss of records due to natural disasters or removal of records from the provider's custody by any regulatory agency. Requests to be excused from submitting a cost report must be received by the Texas Health and Human Services Commission's (HHSC) Rate Analysis department before the due date of the cost report.

(c) Reimbursement determination.

(1) Reporting and verification of allowable costs.

(A) Providers are responsible for reporting only allowable costs on the cost report, except where cost report instructions indicate that other costs are to be reported in specific lines or sections. Only allowable cost information is used to determine recommended reimbursements. HHSC [~~DHS~~] or its designee excludes from reimbursement determination any unallowable expenses included in the cost report and makes the appropriate adjustments to expenses and other information reported by providers. The purpose is to ensure that the database reflects costs and other information that are necessary for the provision of services and that are consistent with federal and state regulations.

(B) Individual cost reports may not be included in the database used for reimbursement determination if:

(i) there is reasonable doubt as to the accuracy or allowability of a significant part of the information reported; or

(ii) an auditor determines that reported costs are not verifiable.

(C) When material pertinent to proposed reimbursements is made available to the public, the material will include the number of cost reports eliminated from reimbursement determination for the reason stated in subparagraph (B)(i) of this paragraph.

(2) Residential care reimbursement. Recommended per diem reimbursement for residential care is determined as follows.

(A) Reported allowable expenses are combined into four cost areas:

(i) attendant;

(ii) other direct care;

- (iii) facility; and
- (iv) administration and transportation.

(B) Facility, transportation (vehicle), and administration expenses are lowered to reflect expenses for a provider at the lower of:

- (i) 85% occupancy rate; or
- (ii) the overall average occupancy rate for licensed beds in facilities included in the database during the cost-reporting periods included in the base. The occupancy adjustment is applied if the provider's occupancy rate is below 85% or the overall average, whichever is lower. The occupancy adjustment is determined by the individual provider occupancy rate being divided by .85 or the average occupancy rate of all providers in the database.

(C) Payroll taxes and employee benefits are allocated to each salary line item on the cost report on a pro rata basis based on the portion of that salary line item to the amount of total salary expense for the appropriate group of staff. Employee benefits will be charged to a specific salary line item if the benefits are reported separately. The allocated payroll taxes and employee benefits are Federal Insurance Contributions Act or Social Security, Medicare contributions, Workers' Compensation Insurance, the Federal Unemployment Tax Act, and the Texas Unemployment Compensation Act.

(D) Allowable salaries paid to the director, administrator, assistant administrator, owner, or partner who works for the Residential Care contracted provider may be limited to the 90th percentile of an array of salary costs for the director, administrator, assistant administrator, owner, or partner.

(E) The attendant cost area from subparagraph (A)(i) of this paragraph will be calculated as specified in §355.112 [~~§20.112~~] of this title (relating to Attendant Compensation Rate Enhancement).

(F) The following applies to the cost areas from subparagraph (A)(ii) - (iv) of this paragraph:

(i) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 [~~§20.108~~] of this title (relating to Determination of Inflation Indices). The prospective reimbursement period is the period of time that the reimbursement is expected to be in effect.

(ii) Cost area per diem expenses are calculated by dividing total reported allowable costs for each cost area by the total days of service. Cost area per diem expenses are rank ordered from low to high to produce projected per diem expense arrays.

(iii) Reimbursement is determined by selecting from each cost area the median day of service and the corresponding per diem expense times 1.07. The resulting cost area amounts are totaled to determine the per diem reimbursement.

(iv) The client is required to pay for their [the] room and board portion of the per diem reimbursement. DADS [DHS] will pay the services portion of the per diem reimbursement. The room and board payments will be paid to providers by the client from the client's Supplemental Security Income (SSI). When SSI is increased or decreased by the Federal Social Security Administration, the per diem reimbursement will be adjusted in amounts equal to the increase or decrease in SSI received by clients.

(3) Exceptions to the reimbursement determination methodology. Reimbursement may be adjusted in accordance with §355.109 [~~§20.109~~] of this title (relating to Adjusting Reimbursement

When New Legislation, Regulations, or Economic Factors Affect Costs) when new legislation, regulations, or economic factors affect costs.

(d) Authority to determine reimbursement. The authority to determine reimbursement is specified in §355.101 [~~§20.101~~] of this title.

(e) Allowable and unallowable costs. In determining whether a cost is allowable or unallowable, providers must follow the guidelines as specified in §355.102 [~~§20.102~~] of this title (relating to General Principles of Allowable and Unallowable Costs) and §355.103 [~~§20.103~~] of this title (relating to Specifications for Allowable and Unallowable Costs). In addition to these sections, the following allowable and unallowable costs are applicable in the Community Care for Aged and Disabled Residential Care program.

(1) Allowable costs. Medical supplies required to provide residential care services are allowable. Allowable medical costs include supply costs associated with the administration of medications, such as medication cups, syringes for insulin injections, stethoscopes, blood pressure cuffs, and thermometers.

(2) Unallowable costs. Unallowable costs include prescription drugs; non-legend drugs; medical records costs; and compensation for physicians, pharmacists, and medical directors.

(f) Reporting revenue. Revenues must be reported on the cost report in accordance with §355.104 [~~§20.104~~] of this title (relating to Revenues).

(g) Reviews and field audits of cost reports. Desk reviews or field audits are performed on cost reports of all contracted providers. The frequency and nature of the field audit are determined by HHSC [DHS] or its designee to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 [~~§20.106~~] of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 [~~§20.107~~] of this title (relating to Notification of Exclusions and Adjustments). Providers may request an informal review and, if necessary, an administrative hearing to dispute an action taken under §355.110 [~~§20.110~~] of this title (relating to Informal reviews and Formal Appeals).

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 October 10, 2005.

TRD-200504556

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 424-6900



SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

1 TAC §355.722

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.722, concerning the Reporting Costs by Home and Community-based Services (HCS) Providers in its Reimbursement Rates Chapter.

Background and Justification

The purpose of the amendment is to (1) clarify in rules the current practice regarding cost report grouping for determination of spending requirements for HCS providers, (2) to define daily timesheet elements, (3) to provide an alternative reporting direct care costs for contracted services, and (4) to require proof that the spending requirement has been met, or imposing a spending floor. The rule proposal clarifies the elements that constitute an appropriate daily time sheet for staff that perform both direct care and administrative/indirect functions. The rule proposal also specifies that if a provider is unable to obtain the actual direct service costs from an unrelated party, the provider must determine the allowable direct costs by applying the percentage of direct costs to total costs from the modeled rate.

The rule proposal specifies that when a cost report is not submitted within 60 days of being placed on vendor hold for failure to timely submit a cost report or within 60 days of an ownership change or contract termination, the provider is assumed to have direct service costs equal to 65% of direct service revenues. In such instances HHSC will recoup funds related to fiscal accountability, and then adjust the recoupment when an acceptable cost report is received. However, if an acceptable cost report is not received within 365 days of the due date, the recoupment will become permanent.

The rule proposal specifies that in cases where an entity (parent company, sole member, individual, limited partnership or group of limited partnerships controlled by the same general partner) possesses greater than 50% ownership in multiple component codes, the entity may request HHSC to evaluate its multiple component codes' compliance with spending requirements in the aggregate. In addition, the rule proposal removes obsolete sections and references, and clarifies rule language by reordering sections and modifying parameters to eliminate overlap in recoupment categories.

Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that, for the first five-year period the proposed amendment is in effect, there are no implications for state government as a result of enforcing or administering the section. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small and Micro-business Impact Analysis

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

Public Benefit

Ed White, Director of Rate Setting and Forecasting, has determined that amending these rules as stated in this preamble

will provide a public benefit by: (1) clarifying the essential elements of a timesheet; (2) providing an alternative reporting procedure for contracted services; (3) clarifying reporting requirements for contracted management costs; (4) creating enforcement methods for failure to submit cost reports; (5) placing in rule the current practice of allowing certain providers with multiple contracted entities to combine cost reports to comply with spending requirements across all their entities; and (6) removing obsolete sections and references and making other minor technical changes to improve clarity of the rules.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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 environment 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 sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment 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

Questions about the content of this proposal may be directed to Carolyn Pratt (telephone: 512-491-1359; FAX: 512-491-1998) in HHSC Rate Analysis. Written comments on the proposal may be submitted to Ms. Pratt via facsimile or mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the commissioner of HHSC to adopt rules necessary to carry out the commission's duties, and §531.021(b), which established HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment implements the Government Code, §531.033 and §531.021(b). No other statutes, articles, or codes are affected by this proposal.

§355.722. Reporting Costs by Home and Community-based Services (HCS) Providers.

(a) On an annual basis, all [state-operated] HCS providers must submit cost reports as directed by the Health and Human Services Commission (HHSC) [HHSC or its designee] and in accordance with this subchapter. HHSC [The Texas Health and Human Services Commission (HHSC)] applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Direct service costs are defined to include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care workers, registered nurses, licensed vocational nurses, and other personnel who provide activities of daily living training and clinical program services. Direct service costs include: costs

related to wage rates, benefits, payroll taxes, contracts for direct services, and direct service supervision information. Accrued leave (sick or vacation) can only be considered a direct service cost if the employee has a right to a cash value of that leave upon termination.

(2) For staff whose duties include work other than the provision of direct services for the provider, ~~[the proportion of work that is spent on]~~ time spent providing direct services and associated expenses may be reported as [included in the] direct service costs if properly documented. [The proportion of their salary and benefits that are compensation for direct services work can be included in the direct service cost report only to the extent that the salary and benefits for this direct service work must be the lesser of the actual wages and benefits or the wages and benefits for a comparable direct care workers assumed in the model. The provider must have a procedure that specifies how direct service work time is allocated.] Staff whose duties include multiple direct service types, both direct and indirect service component types and/or both direct hands-on support and first-level supervision of direct care workers must complete continuous, daily time sheets to properly document their time. The daily timesheet must document, for each day, the staff member's start time, stop time, total hours worked, and the actual time worked (in increments of 30 minutes or less) providing direct services for the provider, the actual time worked performing other functions, and paid time off. The employee and the employee's supervisor must sign each daily timesheet. Work schedules are unacceptable documentation for staff whose duties include multiple direct service types, both direct and indirect service component types, and both direct hands-on support and first level supervision of direct care workers.

(3) The direct service portions of the current rate model are inflated on an annual basis as specified in §355.723(g)(1) of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS)). This will increase the indirect part of the rate proportionately.

(4) Providers must report ~~[the following costs:]~~

~~[(A) Staff Wages]~~ direct service costs as defined in paragraph (1) of this subsection related to the delivery of direct services including residential assistance, day habilitation services, and the direct supervision of the delivery of these services.

~~(A) [(B)]~~ These costs may be either the HCS provider's actual expenses or contracted expenditures.

~~(B)~~ If the provider contracts with another entity for the provision of any HCS direct services, the provider must report only those costs of the contract associated with the delivery of direct services as direct service costs on the cost report.

(i) If the entity the provider contracts with is a related party as defined in §355.102(i) of this title (relating to General Principles of Allowable and Unallowable Costs), the provider must report the specific direct service costs at the actual cost to the related party and the detailed costs on the cost report. Reporting the total contracted amount paid to the related party is unacceptable.

(ii) If the entity the provider contracts with is an unrelated party, the provider may report the direct services costs of the contract as a lump sum. The direct services costs of the contract must be determined as follows:

(I) In cases where the provider is able to obtain actual cost data for the direct services costs and total costs of the contracted services from the unrelated entity, the provider must use the ratio of direct service costs to total costs to determine the allowable direct services costs of the contract. In such cases, the provider must

attach to the cost report an allocation schedule identifying the calculation of the ratio of direct care costs to total costs that includes the actual contracted costs.

(II) If the provider is unable to obtain actual cost data for the direct services costs and total costs of the contracted services from the unrelated entity, then the provider must use the ratio of direct service costs to total costs from the modeled rate as described in §355.723 of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS)) for each type of specific direct service to determine the allowable direct services costs of the contract.

(b) HHSC will select a sample of ~~[non-state operated]~~ HCS providers which will be required to submit a full and accurate account of all costs related to the provision of services for an HCS provider's fiscal year in order to collect data for the analysis referenced in §355.723(g)(2) of this title (relating to Reimbursement Methodology for Home and Community-Based Services (HCS)).

(c) HHSC will conduct desk audits of all full cost reports and/or direct service cost reports, and will conduct on-site reviews of a sample of providers submitting cost reports.

(d) Record keeping requirements. Each HCS provider must retain records according to HHSC's requirements. HCS providers must ensure that records are accurate and sufficiently detailed to support the legal, financial, and statistical information provided to HHSC.

(e) Noncompliance with record keeping requirements. Failure to maintain records that support the information submitted to HHSC constitutes a violation of the HCS provider contract.

(f) Allowable and unallowable costs. HCS providers must complete cost reports in accordance with this subchapter.

(g) Certification. HCS providers must certify the accuracy of cost reports submitted to HHSC. HCS providers may be liable for civil and/or criminal penalties if the cost report is not completed according to HHSC requirements.

(h) Due date. HCS providers must submit direct service cost reports no later than 90 calendar days after the end of the reporting period or 90 days after the date that HHSC mails the form to the HCS provider, whichever is later. HCS providers must submit full cost reports no later than 90 days after the reporting period or 90 days after the date that HHSC mails the form to the HCS provider, whichever is later.

(i) Extension of due date. HHSC may grant extensions of due dates for good cause. Good cause is defined as one that the HCS provider could not reasonably be expected to control. An HCS provider must submit a request for extension in writing to HHSC before the cost report due date. HHSC will respond to a request for extension within 10 working days of its receipt.

(j) Cost data. HHSC may at times require additional financial and statistical information to ensure the fiscal integrity of the HCS Program. Each provider must submit additional information to HHSC upon request, unless the information is not at the HCS provider's disposal.

(k) Failure to submit requested data. Failure to submit acceptable cost data by the due date constitutes a violation of the HCS provider contract.

(l) Review of cost data. HHSC or its designee reviews each HCS provider's cost data to ensure that the financial and statistical information submitted conforms to all applicable rules and instructions.

Forms that are not completed according to HHSC's instructions or rules may be returned to the HCS provider for proper completion.

(m) On-site audits. A [TDMHMR or its designee performs] a sufficient number of on-site financial audits are performed to ensure the fiscal integrity of the HCS [Programs] program. The number of on-site audits performed may vary.

(n) On-site audit standards. HHSC performs on-site financial audits in a manner consistent with the generally accepted auditing standards (GAAS) approved by the American Institute of Certified Public Accountants and included in Standards for Audit of Governmental Organizations, Programs, Activities and Functions, issued by the United States Comptroller General.

(o) Access to records. Each HCS provider must allow access to HHSC to any and all records necessary to verify cost data submitted to HHSC. This requirement includes records pertaining to related-party transactions and other business activities engaged in by the HCS provider that are directly or indirectly related to the provision of contracted services. Failure to allow inspection of pertinent records within 10 working days following written notice from HHSC constitutes a violation of the HCS provider contract. If the administrative office or other entity pertaining to a multi-contract operation refuses access to records, then the penalties are extended to all of the provider's entities having Medicaid contracts [with TDMHMR]. Additional rules regarding access to records that are out-of-state may be found in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(p) Reviews of exclusions or adjustments. An HCS provider who disagrees with HHSC's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(q) Notification of exclusions and adjustments. HHSC will notify an HCS provider of exclusions and any adjustments, including caps applied, to reported costs in accordance with §355.705 of this title (relating to Notification).

(r) The information in subsections (d)-(p) of this section applies to cost reports pertaining to provider's fiscal years ending in calendar year 2001, 2002 and 2003.

(s) For cost reports pertaining to providers' fiscal years ending in calendar year 2004 and subsequent years the following applies:

(1) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(2) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), in addition to the following.

(3) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(t) Allowable compensation for owners and related parties and definitions of owners and related parties are specified in §355.102(i) and §355.103(b)(2) of this title (relating to General Principles of Allowable and Unallowable Costs and Specifications for Allowable and Unallowable Costs and subsection (a)(2) of this section. Owner and related party employees who provide multiple direct service types, both direct care and indirect services and/or both direct hands-on support and first-level supervision of direct care workers must maintain

daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures). The allowable direct cost of an owner or related party may be included in the cost report only to the extent that the salary and benefits for this direct service work must be the lesser of the actual wages and benefits or the wages and benefits for a comparable direct care workers assumed in the model. The maximum hours per fiscal year that an owner and related party employee may report on the cost report is 2080 hours per fiscal year.

(u) Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

(v) Fiscal Accountability.

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the [~~non-state operated~~] reimbursement rates.

(2) Annual reporting. Fiscal accountability will consist of the annual reporting of the direct service costs including wages, and benefits, from all [~~non-state operated~~] HCS providers. The data will be collected on a cost report designed by HHSC in accordance with §355.105(b) of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(A) ~~A vendor hold will be placed [TDMHMR will place a vendor hold] on payments to an HCS provider whose provider agreement is being assigned or terminated. The HCS provider will submit a cost report for the current reporting period to HHSC. Upon receipt of an appropriate cost report and repayment of any amounts due [to HHSC] in accordance with this section, the vendor hold will be released.~~

~~(B) HCS providers are exempt from submitting cost reports in accordance with this section for the portion of their programs which convert to the Mental Retardation Local Authority (MRLA Program) for the fiscal year in which the conversion occurred.~~

(B) HCS providers that do not submit an HCS cost report completed in accordance with all applicable rules and instructions within 60 days of the placement of a vendor hold due to the failure to submit the cost report are subject to an immediate recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable report and has paid the actual amount due as specified in paragraphs (5) through (7) of this subsection. If an acceptable report is not received within 365 days of the due date, the recoupment will become permanent.

(C) HCS providers with an ownership change from one legal entity to a different legal entity or a contract termination that do not submit an HCS cost report for the fiscal year of the ownership change or contract termination within 60 days of the change of ownership or contract termination are subject to recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable report and has paid the actual amount due as specified in paragraphs (5) through (7) of this subsection. If an acceptable report

is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent.

(3) HHSC will require HCS providers to report all direct costs incurred on an annual fiscal year basis. HHSC will compare the reported direct service costs to the total direct service revenue.

~~[(4) Paragraph (5) of this subsection applies to that portion of the HCS provider's fiscal year that occurs after April 5, 1998. Paragraph (6) of this subsection, concerning the following fiscal accountability repayment, applies to that portion of the provider's fiscal year that begins on or after January 1, 1999.]~~

~~[(5) Direct service revenues are calculated by multiplying the number of units eligible for payment that have been paid, for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.]~~

~~[(A) HCS providers whose direct service costs are 85% or more of the direct service revenues will not be subject to repayment under this section.]~~

~~[(B) HCS providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to TDMHMR the difference between the direct service costs and 95% of the direct service revenues.]~~

~~[(C) HCS providers whose direct service costs are between 80% and 85% of the direct service revenues will be required to pay to TDMHMR 100% of the difference between the direct service costs and 85% of the direct service revenues.]~~

(4) ~~[(6)]~~ Direct Service Revenues are calculated by multiplying the number of units eligible for payment that have been paid for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.

(A) HCS providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) HCS providers whose direct service costs are less than 90% but greater than or equal to 85% ~~[between 85% and 90%]~~ of the direct service revenues will be required to pay to the Department of Aging and Disability Services (DADS) ~~[TDMHMR]~~ 50% of the difference between the direct service costs and 90% of the direct service revenues.

(C) HCS providers whose direct service costs are less than 85% but greater than or equal to 80% ~~[between 80% and 85%]~~ of the direct service revenues will be required to pay to DADS ~~[TDMHMR]~~ 100% of the difference between the direct service costs and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.

(D) HCS providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to DADS ~~[TDMHMR]~~ the difference between the direct service costs and 95% of the direct service revenues.

(E) HCS providers who do not submit an HCS cost report as described in paragraph (2)(B) or (2)(C) of this subsection will be assumed to have direct service costs equal to 65% of the direct services revenues and will be required to pay to DADS the difference between 65% of the direct services revenues and 95% of the direct service revenues, subject to the provisions of paragraph (2)(B) or (2)(C) of this subsection.

(5) ~~[(7)]~~ Where applicable, HCS providers will be notified of the requirement to repay revenues at the time provider is notified of any adjustments and exclusions to the cost report as described in

§355.107 of this title (relating to Notification of Exclusions and Adjustments) [within 90 days of submitting their cost reports]. An HCS provider's repayment status may change as a result of the desk reviews or outside audits of cost reports, or adjustments to claims paid to the HCS provider for services provided in the cost reporting period. HCS providers will submit the repayment amount within 60 days of notification.

(6) [(8)] Repayment will be made by the following:

(A) the HCS provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(7) [(9)] HCS providers required to repay revenues to DADS ~~[TDMHMR]~~ will be jointly and severally liable for any repayment. A vendor hold will be applied to the ~~[TDMHMR]~~ will apply a vendor hold on Medicaid payments of ~~[to]~~ a HCS provider for not making the payment to DADS ~~[TDMHMR]~~ within 60 days of receiving notice.

(8) Compliance with the spending requirements detailed in paragraph (4) of this subsection may be evaluated in the aggregate for HCS providers meeting requirements as described in subparagraphs (A) - (G) of this paragraph. This process is called aggregation.

(A) Definitions. The following words and terms have the following meanings when used in this paragraph.

(i) Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

(ii) Control--greater than 50% ownership by the entity.

(B) Where the entity controls more than one HCS component code, the entity has the option of having those component codes' compliance with the spending requirements detailed in paragraph (4) of this subsection evaluated in the aggregate.

(C) In such cases, described in subparagraph (B) of this paragraph compliance with the spending requirements will be evaluated in the aggregate for all HCS component codes that the entity controlled at the end of its fiscal year or at the effective date of the change of ownership or termination of its last HCS contract.

(D) To exercise the aggregation option, the entity must submit an aggregation request, in a manner prescribed by HHSC, at the time each cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, that single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(E) The entity must submit a separate request to have compliance with spending requirements evaluated in the aggregate for each reporting period.

(F) HCS contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per paragraph (4) of this subsection, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

(G) Failure to disclose all HCS component codes controlled by the entity making the request as permitted in paragraph (8) of this subsection will result in the denial of, or revocation of a prior approval of, the request to aggregate for all component codes so controlled.

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 October 10, 2005.

TRD-200504557

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 424-6900



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

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

4 TAC §17.52

The Texas Department of Agriculture (the department) proposes amendments to §17.52, concerning expiration dates for a certificate of registration for membership in the department's GO TEXAN promotional marketing membership program, and prorated registration fees for the GO TEXAN program. The amendments to §17.52 are proposed to change all GO TEXAN certificate of registration expiration dates from August 31 to the last day of the month corresponding to the license anniversary date and to eliminate prorated registration fees.

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

Ms. Caesar also has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of administering and enforcing the section, as amended, will be that the amendments will create less confusion for the GO TEXAN program applicant about the correct membership fee amount. The amendments will also allow the department to more evenly distribute licensing workflow throughout the year, which will provide for a better turnaround time to customers. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the proposed amendments.

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

The amendments to §17.52 are proposed under Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code; and the Code, §12.0175, which provides that the department, by rule, may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state, and adopt rules necessary to administer a program established under this section.

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

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

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

(g) Upon receipt of the registration fee, the department shall mail to the registrant or licensee a certificate of registration, which is valid for one year and shall expire on the last day of the month corresponding to the license anniversary date [shall expire on August 31 following the year of issuance]. The department shall also enclose copies of the mark, suitable for reproduction. [~~If the certificate is for less than one full year, registration fees will be assessed on a pro rata basis.~~]

(h) - (q) (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 October 6, 2005.

TRD-200504511

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: November 20, 2005

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



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 109. TRANSACTIONS EXEMPT FROM REGISTRATION

7 TAC §109.15

The Texas State Securities Board proposes an amendment to §109.15, concerning designated matching services. The amendment would update a cross-reference to another rule.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt 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 accurate rule references. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-12.C and 581-28-1. Section 12.C provides the Board with the authority to prescribe new dealer/agent and investment adviser/representative registration exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-5 and 581-12.

Statutes and codes affected: Texas Civil Statutes, Articles 581-5, 581-12, and 581-18.

§109.15. *Designated Matching Services.*

(a) (No change.)

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

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

(3) Investor member--An investor who has been properly qualified by and uses a designated matching service. Any of the following investors, among others, may be properly qualified: any institutional investor as described in the Texas ~~[The]~~ Securities Act, §5.H, or §109.4 ~~§109.3(e)]~~ of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors [under The Securities Act, §5.H]); any individual accredited investor as defined in §139.16 of this title (relating to Sales to Individual Accredited Investors); any sophisticated investor as defined in §109.13(a)(2) of this title (relating to Limited Offering Exemptions); or any person who is engaged in the same business, or in the practice of a profession or discipline directly related to that business, as is the issuer member whose identity and summary business plan is provided to that person.

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

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

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504546

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 305-8310

◆ ◆ ◆
CHAPTER 113. REGISTRATION OF
SECURITIES

7 TAC §113.5

The Texas State Securities Board proposes an amendment to §113.5, concerning financial statements. The amendment would update a cross-reference to another rule.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt 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 accurate rule references. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-7.

Statutes and codes affected: Texas Civil Statutes, Articles 581-7 and 581-10.

§113.5. *Financial Statements.*

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

(c) Small business issuer. For purposes of subsection (b) of this section, the term "small business issuer" shall mean any corporation:

(1) that has not previously sold securities by means of an offering involving public solicitation or advertising unless such offering was made in compliance with §139.16 of this title (relating to Sales to Individual Accredited Investors), §139.19 of this title (relating to Accredited Investor Exemption), §109.4 ~~§109.3(e)]~~ of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors [under the Texas Securities Act, §5.H]), or the Texas Securities Act, §5.H;

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

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

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504545
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: November 20, 2005
For further information, please call: (512) 305-8303



7 TAC §113.13

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

The Texas State Securities Board proposes the repeal of §113.13, concerning multijurisdictional disclosure system--MDS offerings. The repeal would allow for simultaneous adoption of a concurrently-proposed, "plain-English" rule that includes a shortened review period for MDS applications.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the repeal is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Northcutt also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be adopting a new, more understandable, uniform rule that speeds the registration process. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-7.

Statutes and codes affected: Texas Civil Statutes, Articles 581-7 and 581-10.

§113.13. Multijurisdictional Disclosure System--MDS Offerings.

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 October 10, 2005.

TRD-200504544
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Earliest possible date of adoption: November 20, 2005
For further information, please call: (512) 305-8303



7 TAC §113.13

The Texas State Securities Board proposes new §113.13, concerning multijurisdictional disclosure system--MJDS offerings. New §113.13 is based on the recently amended model rule promulgated by the North American Securities Administrators Association (NASAA). The Board is proposing the concurrent repeal of existing §113.13, concerning multijurisdictional disclosure system--MDS offerings. The only substantive change to the existing rule, concerning multijurisdictional disclosure systems, would be a reduction in the review period for an MJDS application from seven days to three days, the timeframe in which Canadian jurisdictions review MJDS applications. Other nonsubstantive changes include rewriting the provisions in "plain English" and updating a reference to the Securities and Exchange Commission adopting release.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt 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 greater uniformity in registration provisions for cross-border offerings of securities. Also, rule provisions will be more easily understood, and references will be current. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-7.

Statutes and codes affected: Texas Civil Statutes, Articles 581-7 and 581-10.

§113.13. Multijurisdictional Disclosure System--MJDS Offerings.

(a) This section shall apply to the registration by coordination in Texas of securities registered with the Securities and Exchange Commission (SEC) in accordance with the multijurisdictional disclosure system (MJDS) adopted in SEC Release Number 33-6902.

(b) For purposes of the Texas Securities Act, §7.C, MJDS offerings filed on SEC Form F-7, Form F-8, Form F-9 or Form F-10,

shall become effective the later of three days after filing, or the effective date with the SEC, as long as the application for registration is filed contemporaneously with the SEC registration application in accordance with §113.2 of this title (relating to Registration by Coordination).

(c) Financial statements and financial information for offerings filed under subsection (b) of this section shall comply with instructions provided with SEC Form F-7, Form F-8, Form F-9, or Form F-10.

(d) In a rights offering, SEC Form F-7 will be accepted in lieu of any state form required to claim an exemption for any transaction pursuant to an offer to existing securities holders.

(e) After the SEC has declared effective an issuer's Form F-8, Form F-9 or Form F-10 registration statement, a non-issuer transaction in any class of the issuer's securities is exempt from registration, whether or not the transaction is effected through a broker dealer.

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 October 10, 2005.

TRD-200504543

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 305-8303



CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §§115.1, 115.2, 115.4, 115.10

The Texas State Securities Board proposes amendments to §§115.1, 115.2, 115.4, and 115.10, concerning securities dealers and agents. These proposed amendments would accommodate the use of Form BR, Uniform Branch Office Form, which has been approved by the Securities and Exchange Commission; replace the definitions of "branch office" and "branch office manager" with definitions that more closely coordinate with terminology used in National Association of Securities Dealers (NASD) rules and in Form BR; conform terminology; provide for filing Form BR through the Central Registration Depository (CRD) system; and shorten the time period for a registration application to be considered automatically withdrawn.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rules are in effect the public benefits anticipated as a result of enforcing the rules will be greater coordination with other securities regulators and facilitating internal processing of registration applications. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the

rules as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-18.

Statutes and codes affected: Texas Civil Statutes, Articles 581-12, 581-13, 581-13-1, 581-15, 581-17, 581-18, and 581-21.

§115.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Branch office--Any location where one or more agents of a dealer regularly conduct the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such. [Each office in Texas in which either records are maintained or control over and review of the activities of registered persons exists.]

(A) This definition excludes:

(i) any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) any location that is the agent's primary residence, provided that:

(I) only one agent, or multiple agents who reside at that location and are members of the same immediate family, conduct business at the location;

(II) the location is not held out to the public as an office and the agent does not meet with customers at the location;

(III) neither customer funds nor securities are handled at that location;

(IV) the agent is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such agent;

(V) the agent's correspondence and communications with the public are subject to the dealer's supervision in accordance with NASD Rule 3010;

(VI) electronic communications (e.g., e-mail) are made through the dealer's electronic system;

(VII) all orders are entered through the designated branch office or an electronic system established by the dealer that is reviewable at the branch office;

(VIII) written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the dealer; and

(IX) a list of the residence locations are maintained by the dealer;

(iii) any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the dealer complies with the provisions of clause (ii)(II) - (VIII) of this subparagraph;

(iv) any office of convenience, where agents occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(v) any location that is used primarily to engage in non-securities activities and from which the agent(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the agent(s) conducting business at the non-branch locations are directly supervised;

(vi) the floor of a registered national securities exchange where a dealer conducts a direct access business with public customers; and

(vii) a temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in subparagraph (A) of this paragraph, any location that is responsible for supervising the activities of persons associated with the dealer at one or more non-branch locations of the dealer is considered to be a branch office.

(C) The term "business day" as used in NASD Rule 3010(g)(2) shall not include any partial business day provided that the agent spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

(3) Supervisor [Branch office manager]--The person named by a dealer to supervise the activities of a branch office and registered as an agent with the Securities Commissioner.

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

(b) Registration requirements of dealers, issuers, agents, and branch offices.

(1) Requirements of registration.

(A) (No change.)

(B) Each branch office in Texas must be registered. A registered officer, partner, or agent must be named as supervisor [branch office manager].

(2) (No change.)

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

§115.2. *Application Requirements.*

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

(c) Branch office registration and inspection. A request for registration of a branch office of a dealer may be made upon initial application of the dealer or by amendment to a current registration. No sales-related activity may occur in any branch office location until such time as the dealer receives notification from the Securities Commissioner that such location has been approved as a branch office. The

request for registration of a branch office may be made ~~in letter form or~~ by the submission of Form BR on CRD for NASD member firms. For non-NASD member firms, the request is made by submitting Form BR in paper form to the Securities Commissioner [~~Schedule E of Form BD~~]. The fee for registration of each branch office is \$25. Simultaneous with the request for registration of a branch office, a supervisor [branch office manager] must be designated. A supervisor [branch office manager] is not required to be registered as an [a] NASD principal, but must be registered in Texas as an agent and is responsible for supervision of the activities of the branch office. A supervisor [branch office manager] may not supervise sales activities encompassing a broader range of products than those covered by the supervisor's [manager's] qualification examination(s). Within 10 business days from when a supervisor [branch office manager] ceases to be employed or registered in such capacity by the dealer, a new supervisor [branch office manager], qualified by passage of the appropriate examinations, must be designated. Absent the designation of a new supervisor [branch manager] to the Securities Commissioner within the 10 business day period, the registration of a branch office whose supervisor [manager] ceases to be employed as such by a dealer may be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified supervisor [branch office manager] and payment of the branch office registration fee. Each branch office registered with the Securities Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) Automatic withdrawal [Withdrawal] of a dealer or agent application for registration that has been pending for at least 90 days. If an application for dealer or agent registration has been pending for at least 90 days and the applicant has failed to substantively respond to a written request for information sent by certified mail to the applicant's address as set forth in the application, an automatic withdrawal will occur. The written request must have advised the applicant that if a substantive response is not received within 30 days from the date of the certified request, the application will be withdrawn automatically. Regardless of how long an application has been pending, it may not be withdrawn automatically without sending certified notice of this subsection to the address set forth in the application and allowing the applicant 30 calendar days from the date of the notice to provide a substantive written response. [If an applicant for registration with the Securities Commissioner as a dealer or agent fails to make any type of response to the most recent written request for information relating to an application that has been pending for six months, the application will be considered withdrawn. This withdrawal will occur automatically if the applicant fails to respond to the most recent written request for information sent by certified mail to the applicant's address as set forth in the application. This certified written request shall inform the applicant that the application will be considered withdrawn if a response to the request for information is not received within 30 days from the date of the certified letter.] A copy of this subsection and the most recent written request for information will be included with the certified letter.

(e) (No change.)

§115.4. *Evidences of Registration.*

(a) Issuance. An evidence of registration or certificate of registration shall be issued for each registered securities dealer reflecting the registered officer or partner. An evidence of registration shall be issued for each registered branch office reflecting the registered supervisor [branch office manager].

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

§115.10. *Supervisory Requirements.*

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

(d) Review of transactions and correspondence. Each dealer shall establish and implement procedures for the review and endorsement by a designated supervisor [~~or branch office manager~~], in writing on an internal record, of all transactions and for the review by that [~~a designated~~] supervisor [~~or branch office manager~~] of incoming and outgoing written and electronic correspondence of its registered agents with the public relating to the securities activities of such dealer. Such procedures should be in writing and be designed to reasonably supervise each agent. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Securities Commissioner upon 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.

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504542

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 305-8303



CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTA- TIVES

7 TAC §§116.1, 116.2, 116.4

The Texas State Securities Board proposes amendments to §§116.1, 116.2, and 116.4, concerning investment advisers and their representatives. These proposed amendments would accommodate the use of Form BR, Uniform Branch Office Form, which has been approved by the Securities and Exchange Commission (SEC); replace the definitions of "branch office" and "branch office manager" with definitions that more closely coordinate with terminology used in Form BR; conform terminology; provide for the filing of Form BR through the Central Registration Depository (CRD) System; shorten the time period for a registration application to be considered automatically withdrawn; and eliminate the transitional language regarding filings through the Investment Adviser Registration Depository (IARD).

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rules are in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rules are in effect the public benefits anticipated as a result of enforcing the rules will be greater coordination with other securities regulators and facilitating internal processing of registration applications. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed sections in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-18.

Statutes and codes affected: Texas Civil Statutes, Articles 581-12, 581-13, 581-13-1, 581-15, 581-17, 581-18, and 581-21.

§116.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Branch office--Any location where one or more representatives of an investment adviser regularly conduct investment advisory services or that is held out as such. [Each office in Texas in which either records are maintained or control over and review of the activities of registered persons exists.]

(A) This definition excludes:

(i) any location that is established solely for customer service and/or back office type functions where no advisory services are conducted and that is not held out to the public as a branch office;

(ii) any location that is the investment adviser representative's primary residence, provided that:

(I) only one investment adviser representative, or multiple representatives who reside at that location and are members of the same immediate family, conduct business at the location;

(II) the location is not held out to the public as an office and the investment adviser representative does not meet with customers at the location;

(III) neither customer funds nor securities are handled at that location;

(IV) the investment adviser representative is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements, and other communications to the public by such representative;

(V) the investment adviser representative's correspondence and communications with the public are subject to the investment adviser's supervision;

(VI) electronic communications (e.g., e-mail) are made through the investment adviser's electronic system;

(VII) all orders are entered through the designated branch office or an electronic system established by the investment adviser that is reviewable at the branch office;

(VIII) written supervisory procedures pertaining to supervision of investment advisory services conducted at the residence are maintained by the investment adviser; and

(IX) a list of the residence locations are maintained by the investment adviser;

(iii) any location, other than a primary residence, that is used for investment advisory services for less than 30 business days in any one calendar year, provided the investment adviser complies with the provisions of clause (ii)(II)-(VIII) of this subparagraph;

(iv) any office of convenience, where investment adviser representatives occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;

(v) any location that is used primarily to engage in non-securities activities and from which the investment adviser representative(s) effects no more than 25 investment advisory services in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the representative(s) conducting business at the non-branch locations are directly supervised; and

(vi) a temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in subparagraph (A) of this paragraph, any location that is responsible for supervising the activities of persons associated with the investment adviser at one or more non-branch locations of the investment adviser is considered to be a branch office.

(C) The term "business day" shall not include any partial business day provided that the investment adviser representative spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

(3) Supervisor [Branch office manager]--The person named by the investment adviser to supervise the activities of a branch office and registered as an investment adviser representative.

(4) - (12) (No change.)

(b) Registration of investment advisers, investment adviser representatives, and branch offices.

(1) Requirements of registration.

(A) (No change.)

(B) Each branch office of a registered investment adviser in Texas must be registered. A registered officer, partner, or investment adviser representative must be named as supervisor [branch office manager].

(2) (No change.)

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

§116.2. *Application Requirements.*

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

(c) Branch office registration and inspection. A request for registration of a branch office of an investment adviser may be made upon initial application of the investment adviser or by amendment to a current registration. No investment advisory activity may occur in any branch office location until such time as the investment adviser receives notification from the Securities Commissioner that such location has been approved as a branch office. The request for registration of a branch office is [may be] made [in letter form or] by the submission of Form BR on CRD [such information on the Form ADV]. The

fee for registration of each branch office is \$25. Simultaneous with the request for registration of a branch office, a supervisor [branch office manager] must be named. The supervisor [manager] must satisfy the examination qualifications required of the investment adviser before the branch office may be registered. A supervisor [branch office manager] is responsible for supervision of the activities of the branch office. Within 10 business days from when a supervisor [branch office manager] ceases to be employed or registered in such capacity by the investment adviser, a new supervisor [branch office manager], qualified by passage of the appropriate examinations, must be named. Absent the designation of a new supervisor [branch office manager] to the Commissioner within the 10 business day period, the registration of a branch office whose supervisor [manager] ceases to be employed as such by an investment adviser shall be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified supervisor [branch office manager] and payment of the branch office registration fee. Each branch office registered with the Commissioner is subject to unannounced inspections at any time during normal business hours.

(d) Automatic withdrawal [Withdrawal] of an investment adviser or investment adviser representative application for registration that has been pending for at least 90 days. If an application for investment adviser or investment adviser representative registration has been pending for at least 90 days and the applicant has failed to substantively respond to a written request for information sent by certified mail to the applicant's address as set forth in the application, an automatic withdrawal will occur. The written request must have advised the applicant that if a substantive response is not received within 30 days from the date of the certified request, the application will be withdrawn automatically. Regardless of how long an application has been pending, it may not be withdrawn automatically without sending certified notice of this subsection to the address set forth in the application and allowing the applicant 30 calendar days from the date of the notice to provide a substantive written response. [If an applicant for registration with the Securities Commissioner as an investment adviser or investment adviser representative fails to make any type of response to the most recent written request for information relating to an application that has been pending for six months, the application will be considered withdrawn. This withdrawal will occur automatically if the applicant fails to respond to the most recent written request for information sent by certified mail to the applicant's address as set forth in the application. This certified written request shall inform the applicant that the application will be considered withdrawn if a response to the request for information is not received within 30 days from the date of the certified letter.] A copy of this subsection and the most recent written request for information will be included with the certified letter.

(e) (No change.)

(f) Use [Implementation] of IARD.

[(1) All investment advisers registered with the Securities Commissioner as of July 31, 2001, must make a transitional filing with the IARD no later than August 1, 2001.]

(1) [(2)] All investment advisers seeking registration with the Securities Commissioner [after August 1, 2001,] must file Part I of Form ADV and the filing fee via the IARD.

(2) [(3)] All persons seeking registration as an investment adviser representative must file the Form U-4 and the appropriate fee via the CRD [IARD upon the ability of the system to accept such filings].

§116.4. *Evidences of Registration.*

(a) Issuance. An evidence of registration or certificate of registration shall be issued for each registered investment adviser reflecting

the registered officer or partner. An evidence of registration shall be issued for each registered branch office reflecting the registered supervisor [branch office manager].

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

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504541

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 305-8303



CHAPTER 133. FORMS

7 TAC §133.33

The Texas State Securities Board proposes an amendment to §133.33, concerning uniform forms accepted, required, or recommended. The amendment would authorize acceptance of the Uniform Branch Office Registration Form (Form BR). This form would be used by dealers and investment advisers for branch office registration, notification, closing, or withdrawal. Form BR would replace Schedule E of Form BD, Uniform Application for Broker-Dealer Registration.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have 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 enhanced efficiency for industry participants in the branch office registration and notice-filing processes. Form BR also will assist regulators in conducting inspections. Specifically, the proposed form will enable regulators to track complaints to various branches by linking registered persons to various branches. Additionally, regulators will be able to generate reports about branch offices using the information contained on Form BR. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-13.

Statutes and codes affected: Texas Civil Statutes, Articles 581-13, 581-13-1, and 581-21.

§133.33. *Uniform Forms Accepted, Required, or Recommended.*

(a) Assuming the appropriate exhibits and supplements are filed, the State Securities Board will accept for filing the following "Uniform Forms" in lieu of the requisite Texas form, if any.

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

(11) BR. Uniform Branch Office Registration Form.

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

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504540

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 305-8303



CHAPTER 139. EXEMPTIONS BY RULE OR ORDER

7 TAC §139.14

The Texas State Securities Board proposes an amendment to §139.14, concerning non-issuer sales. The amendment would update a cross-reference to another rule.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt 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 accurate rule references. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-5.
Statutes and codes affected: Article 581-7.

§139.14. Non-Issuer Sales.

The State Securities Board, pursuant to the Securities Act, §5.T, exempts from the securities registration requirements of the Securities Act, §7, the offer and sale of any securities, provided the following conditions are met.

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

(4) Number of sales.

(A) Except as the allowable number of sales may be increased as provided in subparagraph (B) of this paragraph, the owner, together with any persons acting in concert with the owner, may make no more than 15 sales in any 12-month period under and in reliance on this section, exclusive of sales made:

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

(iii) in compliance with the following:

(I) §109.4 [~~§109.3~~] of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors [~~under the Securities Act, §5.H~~]);

(II) §139.7 of this title (relating to Sales of Securities to Nonresidents); or

(III) §139.13 of this title (relating to Resales under SEC Rule 144 and Rule 145(d)).

(B) - (C) (No change.)

(5) - (6) (No change.)

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504539

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 305-8303



7 TAC §139.16

The Texas State Securities Board proposes an amendment to §139.16, concerning sales to individual accredited investors. The proposed amendment would update a cross-reference to another rule.

Micheal Northcutt, Director, Registration Division, has determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt 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 accurate rule references. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-5.T and 581-28-1. Section 5.T provides that the Board may prescribe new exemptions by rule. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-5.

Statutes and codes affected: Article 581-7.

§139.16. Sales to Individual Accredited Investors.

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

(g) Transactions exempt under this section may be combined with offers and sales exempt under the Securities Act, §5.H, and §109.4 [~~§109.3(e)~~] of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors [~~under the Securities Act, §5.H~~]). In this event, the statement required by subsection (e)(1)(D) of this section may be modified to indicate that the securities are also being offered to eligible purchasers under §5.H and §109.4 [~~§109.3(e)~~] of this title (relating to Securities Registration Exemption for Sales to Financial Institutions and Certain Institutional Investors [~~under the Securities Act, §5.H~~]).

(h) - (k) (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 October 10, 2005.

TRD-200504538

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 305-8303



TITLE 10. COMMUNITY DEVELOPMENT

**PART 6. OFFICE OF RURAL
COMMUNITY AFFAIRS**

**CHAPTER 255. TEXAS COMMUNITY
DEVELOPMENT PROGRAM**

**SUBCHAPTER A. ALLOCATION OF
PROGRAM FUNDS**

10 TAC §255.7

The Office of Rural Community Affairs (Office) proposes amendments to 10 Texas Administrative Code §255.7, concerning eligibility criteria to receive Community Development Block Grant

(CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP).

The amendments are being proposed to make changes to the application and selection criteria for the programs under the Texas Capital Fund. The amendments also delete language to be consistent with previous changes to 10 TAC §255.7(a)(13) that were made when program rules were established under the CDBG-TCDP 2003 and later Action Plans. The CDBG-TCDP Action Plan is submitted to the U.S. Department of Housing and Urban Development (HUD) to receive HUD funding under the State of Texas Consolidated Plan One Year Action Plan. Other amendments have been made to §255.7 to reflect the Texas Capital Funds use of quarterly county poverty and unemployment rates in the selection criteria as a result of the Texas Workforce Commission decision to stop generating the unemployment rates for many small cities eligible under the Texas Capital Fund.

Charles S. Stone, Executive Director of the Office, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Stone also has determined that for the period that the amendments are in effect, the public benefit as a result of enforcing the amended section will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas and that there will be no cost to small business or individuals.

Comments on the proposal may be submitted to Jerry Hill, General Counsel, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone: (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

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

§255.7. *Texas Capital Fund.*

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements and downtown revitalization programs, projects must qualify to meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

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

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed \$25,000 for awards of \$750,000 or less; \$10,000 for awards of \$750,001 to \$1,000,000; and \$5,000 for awards of \$1,000,001 to \$1,500,000. These requirements do not apply to the main street program or the downtown revitalization program.

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

(14) TDA will allocate the available funds for the year, less \$600,000 for the main street program, and \$1,200,000 [~~\$600,000~~] for the downtown revitalization program, as follows:

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

~~(E) The downtown revitalization program projects may not exceed \$600,000 in total awards, unless there are unused funds remaining in the Texas Capital Fund real estate and infrastructure programs as of January 1st. If such funds are available, up to an additional \$600,000 may be used for downtown revitalization program projects.~~

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

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on county poverty rate [~~stated on the score sheet~~]. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on county unemployment rate [~~stated on the score sheet~~]. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Community Need (maximum 60 points). Measures the economic distress of the applicant community.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's quarterly county unemployment rate (~~for cities;] the most recently available 3 months [quarterly city rate] will be used; for counties; the most recently available quarterly county or census tract rate, for where the business site is located, whichever is higher, will be used~~) is higher than the state rate, indicating that the community is economically below the state average. Ten points awarded if the applicant's most recently available quarterly county unemployment rate is 1.5% over the state rate.

(B) - (F) (No change.)

(3) (No change.)

(4) Business Emphasis (maximum 20 points).

(A) Manufacturers (max 10 points). Awarded if 51% or more of the jobs created and/or retained are or will be employed by a benefiting [the] Business' whose primary Standard Industrial Classification (SIC) code number starts with 20-39 or if their primary North American Industrial Classification System (NAICS) code number starts with 31-33. This is based on the SIC number reported on the Business' Texas Workforce Commission (TWC) Quarterly Contribution Report, Form C-3 [or] their IRS business tax return, or other documentation from the Texas Workforce Commission. Foreign businesses that have not had an SIC/NAICS code number assigned to them by either the TWC or IRS may submit alternative documentation to support manufacturing as their primary business activity to be eligible for these points.

(B) Small businesses (maximum 5 Points). Awarded if each/the benefiting Business employs no more than 50 employees for all locations both in and out of state. This number is determined by the business and any related entities, such as parent companies, subsidiaries and common ownership. Common ownership is considered 51% or more of the same owners.

(C) HUB--Historically Underutilized Business (maximum of 5 Points). Awarded if each/the benefiting [a] business is certified by the state Texas Building and Procurement Commission (TBPC) as a Historically Underutilized Business (HUB). Provide a copy of TBPC's certification in the application.

(g) - (h) (No change.)

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) In the event of a tie score, the following tie breaker criteria will be used.

(A) (No change.)

(B) If a tie still exists after applying the first criteria, then applications are ranked from lowest to highest based on the most recently available, quarterly, county [~~city~~] unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

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

(j) - (k) (No change.)

(l) Scoring criteria for downtown revitalization program. There are a total of 100 points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) (No change.)

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the most recently available, quarterly, county [~~city~~] unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Maximum 100 points.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's quarterly county unemployment rate (~~for cities,~~ the most recently available 3 months [~~quarterly city rate~~] will be used) is higher than the state rate, indicating that the city [~~community~~] is economically below the state average. Ten points awarded if the applicant's most recently available quarterly county unemployment rate is 1.5% over the state rate.

(B) - (J) (No change.)

(m) (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 October 5, 2005.

TRD-200504504

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6722



CHAPTER 257. EXECUTIVE COMMITTEE FOR OFFICE OF RURAL COMMUNITY AFFAIRS

The Office of Rural Community Affairs (Office) proposes to repeal §§257.1, 257.3 - 257.9, 257.61 - 257.73, 257.501, 257.503, 257.505, 257.507, 257.509, 257.511, 257.513,

257.515, 257.517, 257.519, 257.521, 257.523, 257.525, and 257.527 and proposes amendments to §§257.21 - 257.230, 257.101, 257.103, 257.105, 257.107, 257.109, 257.201, 257.203, 257.205, 257.207, 257.209, 257.211, 257.213, 257.215, 257.217, 257.301, 257.303, 257.305, 257.307, 257.309, 257.311, 257.313, 257.315, 257.317, 257.319, 257.321, 257.325, 257.327, 257.401 - 257.411, 257.701, 257.703, 257.801, and 257.807.

The proposed amendments delete all references to the Center for Rural Health Initiatives and substitute Office of Rural Community Affairs. The amendments will also eliminate the rules addressing the Community Scholarship and Rural Emergency Medical Scholarship Incentive Programs (REMSIP). The Community Scholarship Program was eliminated when Congress failed to continue to fund the program.

The REMSIP program, which was a pilot program, became inactive because of a high rate of default. The program has been replaced with other pilot programs including the EMS Education Program, the Critical Access Hospital/EMS and the Rural EMS Enhancement Program.

The proposed repeals will eliminate duplicate procedures and processes provided for in agency rules Title 10, Part 6, Chapters 255, 256 and 257 of the Texas Administrative Code.

The revision proposes using the definition of Rural Health Professional Shortage Area (HPSA) as defined by the U.S. Department of Health and Human Services and Medically Underserved Area (MUA) as defined in this agency's enabling legislation.

Charles S. (Charlie) Stone, Executive Director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of administering the sections.

Mr. Stone has also determined that for each year of the first five years the sections are in effect the public benefit will be to help the public and the agency to clearly distinguish the separate responsibilities of the Executive Committee and Executive Director and the public's opportunity to offer comments to the agency, to understand the responsibilities of the agency in its administration of its programs and to recognize the entities eligible for the programs administered by the Office. There will not be an effect on small businesses and/or individuals. There is no anticipated economic cost to persons who are required to comply with the proposed rules.

Comments on the proposal may be submitted in writing to J. Randel (Jerry) Hill, General Counsel, at P.O. Box 12877, Austin, Texas 78711. Comments may also be submitted electronically to jhill@orca.state.tx.us or faxed to (512) 936-6385. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*. All requests for a public hearing on the proposed rule revision submitted under the Administrative Procedure Act must be received by the General Counsel not more than 15 calendar days after notice of a proposed change in the rule has been published in the *Texas Register*.

SUBCHAPTER A. POLICIES AND PROCEDURES

10 TAC §§257.1, 257.3 - 257.9

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

The repeals are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed repeals.

§257.1. *Introduction.*

§257.3. *Organization.*

§257.4. *Committees.*

§257.5. *Executive Director.*

§257.6. *Executive Committee Policies.*

§257.7. *Executive Committee Meetings.*

§257.8. *Press and Public Relations.*

§257.9. *Actions Requiring Executive Committee Approval.*

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 October 10, 2005.

TRD-200504558

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6710



SUBCHAPTER B. TEXAS OUTSTANDING RURAL SCHOLAR RECOGNITION PROGRAM

10 TAC §§257.21 - 257.30

The amendments are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed amendments.

§257.21. *Purpose, Administration and Delegation of Powers and Duties.*

(a) The purpose of the Outstanding Rural Scholar Recognition Program is to recognize, encourage, and financially support students in health care professions studies at institutions of higher education and to lead them to provide health care in rural communities in Texas.

(b) The Office [~~Center~~] shall administer the Outstanding Rural Scholar Recognition Program in accordance with the Health and Safety Code, Chapter 106, Subchapter C.

(c) The executive committee delegates to the executive director of the Office [~~Center~~] the powers and duties to administer the program.

§257.22. *Definitions.*

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

(1) Academic term--Is equal to one of the following:

- (A) a semester;
- (B) a trimester; and
- (C) a quarter.

(2) Selection [~~Advisory~~] committee--The Outstanding Rural Scholar Selection [~~Advisory~~] Committee.

(3) Allied health professional--A provider of health care or health related services, including services relating to: the identification, evaluation, and prevention of diseases and disorders; diet and nutrition; health promotion; rehabilitation; or health systems management.

(4) Allied health professions--Fields relating to the delivery of health care or health related services responsible for the identification, evaluation and prevention of diseases and disorders; dietary and nutritional services; health promotion, rehabilitation; or health systems management.

[~~(5) Center--The Center for Rural Health Initiatives.~~]

(5) [~~(6)~~] Cost of attendance--Allowable costs as determined to be necessary by the financial aid office of the academic institution a student attends which includes costs for tuition, fees, books, supplies, room and board, transportation and personal expenses.

(6) [~~(7)~~] Executive committee--The Executive Committee of the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~].

(7) [~~(8)~~] Executive director--The Executive Director of the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~].

(8) [~~(9)~~] Family member--An individual related to the student by kinship, adoption, or marriage, as well as foster children certified by the Department of Family and Protective Services [~~Texas Department of Protective and Regulatory Services~~].

(9) [~~(10)~~] Forgiveness loan--A loan made through the Outstanding Rural Scholar Recognition Program.

(10) [~~(11)~~] Fund--The Outstanding Rural Scholar Loan Fund administered by the Executive Committee.

(11) [~~(12)~~] Health care professional--Any provider of health care or health related services in the fields of medicine, dentistry, optometry, pharmacy, chiropractic, podiatry, psychology, nursing or allied health.

(12) [~~(13)~~] Health care professions--The fields of medicine, dentistry, optometry, pharmacy, chiropractic, podiatry, psychology, nursing and/or allied health.

(13) Office--The Office of Rural Community Affairs as created in Chapter 487 of the Texas Government Code.

(14) Resident of Texas--As described in Education Code, Chapter 54, Subchapter B.

(15) Rural community--~~A~~ [~~An incorporated or unincorporated~~] municipality in a nonmetropolitan county in Texas as defined by the United States Census Bureau in its most recent census.

(16) Satisfactory academic progress--Maintenance of satisfactory cumulative grade point average and course load to qualify the student for placement in planned subsequent years of the degree plan.

§257.23. *Selection [~~Advisory~~] Committee.*

(a) Appointments to the selection [~~advisory~~] committee by the executive committee shall be made with consideration to geographical areas of the state.

(b) The composition of the advisory committee shall be:

- (1) one rural practicing family practice physician;
- (2) one rural hospital administrator;
- (3) one rural practicing registered professional nurse;
- (4) one rural practicing allied health professional;
- (5) one dean of a medical school;
- (6) one dean of a nursing school;
- (7) one dean of a school of allied health science;
- (8) one head of a vocational/technical institution;
- (9) one community college administrator;
- (10) one individual knowledgeable in student financial assistance programs;
- (11) one rural public school superintendent; and
- (12) one rural resident.

(c) The selection committee members serve for staggered 3-year terms [of six years] with the terms of one-third of the members expiring on August 31 of each [odd-numbered] year. All committee members are eligible for reappointment to consecutive terms.

~~[(d) A member of the advisory committee shall be reimbursed for expenses incurred in performing duties pertaining to the Outstanding Rural Scholar Recognition Program. Reimbursement may not exceed the amount specified in the General Appropriations Act for travel and per diem allowances for state employees.]~~

~~(d) [(e)]~~ The selection [advisory] committee may elect a chairman, vice-chairman and secretary from among its members and may adopt rules for the conduct of its activities.

~~(e) [(f)]~~ Vacancies on the selection [advisory] committee shall be filled by the Executive Committee in the same manner as indicated in subsections (a), (b) and (c) of this section.

~~(f) [(g)]~~ The selection [advisory] committee advises the Executive Committee on the progress of the Outstanding Rural Scholar Recognition Program and shall:

- (1) select students to be recognized as outstanding rural scholars;
- (2) recommend guidelines for sponsors to nominate students;
- (3) recommend guidelines for awarding forgiveness loans;
- (4) recommend the amount of the loan to be awarded to the student;
- (5) review cases and make recommendations concerning exceptions regarding the community in which a student may fulfill the obligated service period; and
- (6) review cases and make recommendations concerning student academic progress.

§257.24. *Requirements for Recognition.*

(a) Eligibility Requirements for Recognition.

(1) Eligible Sponsor. To nominate a student for recognition, a sponsor shall:

- (A) be located in a rural community in Texas;
- (B) be an entity with a council, board of trustees or commissioners which is responsible to the rural community in which it is

located, and is legally authorized to raise funds, or accept grants, financial gifts, scholarship funds, or private foundation funds;

(C) agree to provide 50% of the cost of attendance, if the nominee is selected to receive a forgiveness loan; and

(D) be in good standing with the Outstanding Rural Scholar Recognition Program.

(2) Eligible Student. To be nominated for recognition, a student shall:

(A) be a Texas resident, who is sponsored by and has financial support committed from a rural community sponsor;

(B) be enrolled or intend to enroll in an eligible academic institution of higher education to become a health care professional;

(i) be a high school student who is in the upper 25% of the high school's class, if such class numbers 48 or greater, or have an overall B average; or

(ii) be a college student who has a cumulative grade point average of 3.00 on a 4.00 scale; or

(iii) be an individual who has a high school diploma or equivalent and demonstrates to the satisfaction of the rural community sponsor the motivation, qualities, and abilities that lead to success in the chosen health care profession.

(3) Eligible Academic Institution.

(A) An eligible academic institution shall be a Texas institution of higher education which may be any public institution as defined in Texas Education Code, §61.003(8), or any nonprofit, independent institution as defined in Texas Education Code, §61.222, or any other nonprofit health-related school or program.

(B) Any health related schools or programs within eligible academic institutions must be accredited by the Commission on Colleges of the Southern Association of Colleges and Schools, the Liaison Committee on Medical Education, the American Osteopathic Association, the Texas State Board of Nurse Examiners for Registered Nurses (which now includes Registered Nurses and Licensed Vocational Nurses) [the Texas Board of Vocational Nurse Examiners], or, in the case of allied health, an accrediting body recognized by the U.S. Department of Education.

(C) An eligible academic institution must follow the Civil Rights Act of 1964 (Public Law 88-353) Title VI to prevent discrimination in admissions.

(b) Application Requirements for Recognition.

(1) The application shall be coordinated and submitted by the sponsor. The application shall be in a form prescribed by the Office [Center] and may include but is not limited to:

(A) the student's name, social security number, home address, and phone number;

(B) academic credentials;

(C) the results of one or more sponsor interviews with the student;

(D) a typed essay of no more than 500 words stating the following:

(i) the reasons for entering the competition;

(ii) a description of the chosen health care profession;

(iii) the reasons for entering the chosen health care profession;

(iv) the reasons for wanting to provide health care to rural Texans;

(E) no more than three letters of recommendation from the professional staff of the high school or college, or from employers or community leaders who have known the student for at least one year; and

(F) evidence of sponsor eligibility.

(2) The selection [advisory] committee may request additional information or interviews from the sponsor or the student as needed.

(c) Criteria for Recognition.

(1) A student shall be selected for recognition as an outstanding rural scholar by the selection [advisory] committee based on the student's:

(A) academic credentials;

(B) one or more interviews with the sponsor;

(C) a statement written by the student of the student's reasons for entering the competition and a health care profession and the student's reasons for wanting to provide health care to rural Texans;

(D) financial support committed by the sponsoring rural community; and

(E) standardized tests, but in no event shall the student's performance on a standardized test be used as the sole criterion to determine selection.

(2) The selection [advisory] committee shall select and rank the students and inform the executive committee of its selections. The Executive Committee shall notify each sponsor of the results and provide the sponsor with a certificate of award signed by the Executive Director and the Executive Committee chairman for each student recognized as an outstanding rural scholar.

§257.25. Requirements for Forgiveness Loan.

(a) Eligibility Criteria for Forgiveness Loan.

(1) Initial Loan. To be eligible to apply for a forgiveness loan under this program, the student shall:

(A) meet the eligibility requirements and be recognized as an outstanding rural scholar;

(B) receive public recognition of the student's selection as an outstanding rural scholar. Each sponsor shall send the Office proof of public recognition of the student. Such recognition may include an announcement in local newspapers of the student's selection and public recognition of the student at civic gatherings or school assemblies;

(C) have the sponsor's commitment to provide 50% of the student's costs of education;

(D) not have defaulted on nor owe a refund on any state or federal aid.

(2) Subsequent Loan. A student who has received an initial loan shall have priority for subsequent loans provided the following requirements are satisfied:

(A) the student maintains satisfactory academic progress in the educational program in accordance with the prescribed degree plan;

(B) the student files a degree plan complete with graduation date;

(C) the student files a course plan, financial aid disclosure statement and grade report each academic term;

(D) the student completes the same number of credit hours for which the student enrolled at the beginning of the academic term each academic term, unless circumstances outside the student's control such as severe illness suffered by the student or a family member, or death of a family member have necessitated the student to reduce the credit load. The student shall present to the Office verification of the reason for dropping below the initial number of credit hours for which initially enrolled at the beginning of the academic term. Such verification may include a sworn affidavit from a qualified physician as to the student's or family member's health status, or a death certificate in the case of a death in the student's family. If the student repeatedly drops below the initial number of credit hours during the course of the academic program, the Office in concurrence with the sponsor shall determine whether the student is in breach of contract and whether the student should be discontinued from the program. However, the selection [advisory] committee may unilaterally recommend removal of a student from the program should the selection [advisory] committee determine that the student is not maintaining satisfactory academic progress to attain the prescribed degree; and

(E) state funds are available for subsequent loans.

(b) Application for Forgiveness Loan. The student shall submit the completed forgiveness loan application. The forgiveness loan application shall be in a form prescribed by the Office and may include but is not limited to:

(1) student personal information;

(2) health care professional education program the student is pursuing;

(3) name and relation of a cosigner for forgiveness loan;

(4) name of the academic institution the student shall attend;

(5) cost of attendance at the academic institution;

(6) other financial aid the student will receive;

(7) length of academic year;

(8) estimated graduation date;

(9) signature of financial aid officer;

(10) name and address of sponsoring rural community organization; and

(11) signature of sponsor representative.

(c) Conditions for Forgiveness Loan.

(1) The student shall use the proceeds of the forgiveness loan only for educational expenses at the agreed upon academic institution.

(2) The annual forgiveness loan shall not exceed the annual cost of attendance at the eligible academic institution the student attends.

(3) The cost of attendance shall be determined by the academic institution's financial aid office. A student may receive other financial aid in the form of grants, scholarships and loans for which the student may be eligible. However, it is recommended that the student decline any loans other than the forgiveness loan. The Office shall

reduce the amount of the forgiveness loan by the amount of other financial aid a student receives in order that the total financial aid a student receives does not exceed the allowable cost of attendance as determined by the financial aid office.

(4) The Executive Director may authorize forgiveness loans to be awarded to eligible students provided the:

(A) student has submitted a forgiveness loan application;

(B) sponsor has executed a Memorandum of Understanding with the Office in which the sponsor agrees to provide 50% of the student's costs of attendance for the academic year;

(C) sponsor and the student have executed a contract with the Office in which the:

(i) sponsor agrees to provide 50% of the student's cost of attendance for the duration of the student's academic program as determined by the eligible academic institution;

(ii) sponsor agrees to provide a practice or employment opportunity for the student upon certification or licensure in the prescribed health care profession;

(iii) student agrees to provide a course plan, grade report or transcript and financial aid disclosure statement each academic term;

(iv) student agrees to complete the prescribed health care professional education program within the time period determined by the eligible academic institution for the specified degree;

(v) student agrees to attain certification or licensure in the prescribed health care profession;

(vi) in the case of medical students, the student agrees to complete a residency program in family practice, emergency medicine, general internal medicine, general pediatrics, general surgery, or general obstetrics and gynecology;

(vii) student agrees to return to the sponsoring rural community within 60 days of attaining certification or licensure or completing the prescribed residency program in the case of medical students;

(viii) student agrees to provide health care on a full-time basis in the sponsoring rural community for a period of obligated service equal to the same number of years loan support was provided;

(ix) office agrees to provide 50% of the student's cost of attendance for the duration of the student's academic program;

(x) office agrees to report the student's status to the sponsor at least once a year;

(xi) student agrees to coordinate with the sponsoring community regarding rural rotations, preceptorships or other programs in the sponsoring community; and

(xii) student agrees to meet with his or her sponsoring community annually in order for the participant to receive his or her check from the Office to keep the sponsoring community and office informed of career goals, interns etc.

(d) Disbursement of Forgiveness Loan Funds. Disbursements shall be made according to a schedule determined by the Office. Before a disbursement is made:

(1) the student shall execute a promissory note with the Office to pay the forgiveness loan in the event of breach of contract. The promissory note must be cosigned:

(A) a cosigner of a promissory note executed under these rules shall be a person signing a note, other than the student, who is a citizen or permanent resident of the United States over 21 years of age and who is gainfully employed or otherwise demonstrates financial responsibility;

(B) a cosigner may be a relative other than the student's spouse and may not be a student;

(C) a cosigner is jointly and severally responsible for the promissory note in the event of breach of contract;

(2) the sponsor shall remit to the Office an amount equal to 50% of the disbursement; and

(3) a state warrant for the prescribed disbursement will be made payable to the student at the academic institution the student attends, and shall be sent to the financial aid office of the academic institution. Disbursements shall not be sent directly to the student.

(e) Refunds.

(1) A student shall be responsible for refunding the Office an amount equal to:

(A) the cost of attendance paid for courses not completed; and

(B) any amount of financial aid received from other sources.

(2) The Office may:

(A) deduct the refund from the student's next scheduled loan disbursement;

(B) request the financial aid office of the academic institution the student attends to remit an institutional check for the amount of the refund; or

(C) require the student to remit a personal check for the amount of the refund in the event the student will not receive any more loan disbursements.

(f) Loan Forgiveness.

(1) A student who receives a forgiveness loan under this program shall be forgiven the total forgiveness loan by providing full-time health care practice for an obligated period of service equal to 12 months for each year loan support is provided. If employment is on less than a full-time basis, forgiveness shall be prorated.

(2) The obligated period of service shall begin on the date full-time employment or practice begins in the sponsoring rural community after the student has become certified or licensed in the health care profession for which sponsored.

(3) Only outstanding principal and interest remaining unpaid shall be eligible for forgiveness.

§257.26. Breach of Contract.

A contract executed under this subchapter between the Office [Center], the sponsor and the student is a binding contract.

(1) Sponsor.

(A) A sponsor shall be in breach of contract on the date the sponsor failed to meet the conditions of this subchapter.

(B) A sponsor shall notify the Office, [Center] in writing within two weeks of any change in status.

(C) A sponsor shall be in breach of contract if the sponsor:

(i) fails to provide 50% of the student's costs of attendance as determined by the academic institution for the duration of the student's agreed upon health care academic program; or

(ii) fails to provide a full-time employment or practice opportunity for the student as a health care professional for which sponsored upon the student's certification or licensure.

(D) If the sponsor is found to be in breach of contract, the Office [Center] may require any or all of the following:

(i) forfeiture of all claim to funds forwarded to the student;

(ii) cancellation of the student's obligated period of service; and

(iii) forfeiture of opportunity to sponsor a student in the future.

(E) In the event of a sponsor breach of contract, the Office [Center] may assist the student in obtaining alternative sponsorship, employment or practice opportunity in another rural community where loan forgiveness may be granted. In such an event, the original sponsor may not seek reimbursement from either the student, another rural community sponsor nor the Office [Center].

(2) Student.

(A) The student shall be in breach of contract on the date the student failed to meet the conditions of this subchapter.

(B) The Office [Center] shall hold the student who breaches a contract liable for liquidated damages equal to one time the total forgiveness loan amount plus all applicable costs, fees and interest at the highest rate allowed by law.

(C) The student shall be considered in breach of contract and shall not be eligible to receive forgiveness loan funds if the student fails to meet any of the conditions of this subchapter. The student shall notify the Office [Center] in writing within two weeks of any change in status. The student shall be in breach of contract if the student:

(i) fails to maintain satisfactory academic progress according to the academic institution the student attends except that one academic term of grace will be extended to the student if the student is placed on scholastic probation during which time the student may receive a loan disbursement;

(ii) fails to attain satisfactory academic progress following an academic term of scholastic probation;

(iii) voluntarily withdraws from the Outstanding Rural Scholar Recognition Program forgiveness loan;

(iv) fails to accept payment or instructs the academic institution not to accept payment, in whole or in part, of a forgiveness loan under contract as described in this subsection;

(v) voluntarily withdraws from or terminates enrollment in the agreed upon academic program or institution before completion of the agreed upon academic program;

(vi) fails to complete the academic program according to the degree plan;

(vii) ceases to be enrolled full-time in an academic program which requires full-time enrollment;

(viii) is dismissed for disciplinary reasons from the agreed upon academic program or institution;

(ix) fails to begin or complete the required practicum, internship or residency;

(x) fails to begin or complete a residency program in family practice, emergency medicine, general internal medicine, general pediatrics, general surgery, or general obstetrics and gynecology, in the case of medical students;

(xi) fails to begin the obligated period of service within 60 days of attaining certification or licensure, or within 60 days of completing a residency program in the case of medical students; or

(xii) fails to complete the obligated period of service.

(D) A student shall sit for the first certification or licensure examination for which eligible upon completion of the prescribed academic program. If certification or licensure is delayed because of failure to pass the examination, the student shall retake it the next time the student is eligible to do so. If the student fails to become certified or licensed after the second attempt, the student shall be in breach of contract.

§257.27. *Repayment.*

(a) In the event a student is found to be in breach of contract, the student shall remedy the breach by paying to the Office [Center] liquidated damages equal to one time the total forgiveness loan amount plus collection costs, fees and interest as specified in this subsection.

(b) In the event the student breaches the contract by beginning but failing to complete the obligated period of service, the student shall pay to the Office [Center] a prorated share of the damages based on the percent of the obligated period of service which has not been completed plus collection costs, fees and interest as specified in this subsection.

(c) Interest assessed to the loan shall be simple interest at the highest rate allowed by law and shall commence with the date of the first disbursement.

(d) To remedy the breach of contract, the student shall remit all payments directly to the Office [Center] according to a schedule determined by the Office [Center].

(e) Repayment shall begin immediately upon a breach of contract.

(f) The repayment period shall not exceed five years.

(g) A charge of 5.0% of the monthly payment or \$5.00, whichever is greater, shall be assessed on any payment received later than ten days from the due date.

(h) The Office [Center] shall repay the sponsor its portion of the forgiveness loan plus interest, which pertains to that portion according to a schedule, determined by the Office [Center].

(i) The Office [Center] shall not be responsible for repaying to the sponsor any forgiveness loan portions or interest accrued on those portions provided by the sponsor in the event the Office [Center] is unsuccessful in collecting repayment from the student.

(j) The Office [Center] shall report all outstanding loans in repayment to a national credit bureau to be placed on the students' credit reports.

§257.28. *Enforcement of Collection.*

(a) The Office [Center] shall initiate collection procedures immediately against a student who fails or refuses to make as many as six payments due in accordance with the repayment schedule.

{(b) The Center shall report the student's name and last known address and other information requested to the attorney general.}

~~[(e) Suit for the remaining sum shall be instituted by the attorney general or any county or district attorney acting on behalf of the attorney general in the county of the student's residence or in Travis County; at the option of the Center, unless the attorney general finds reasonable justification for delaying suit and so advises the Center in writing.]~~

~~[(d) Should the default continue beyond 60 days from the date suit service was obtained, the Center shall cause a judgment to be entered, which may be filed in the county where the service was obtained. The Center will release the judgment once the student has completed the repayment of the debt as stipulated in the judgment.]~~

~~(b) [(e)]~~ The Office [Center] shall request the academic institution to cause the student's transcripts to be unavailable to the student or any other person outside the institution until the academic institution has been notified that the default has been corrected.

~~(c) [(f)]~~ The student shall be responsible for the payment of the liquidated damages and all accrued charges including interest at the highest rate allowed by law, late charges, skip-tracking fees and other collection fees, administrative costs, court costs and attorney fees.

§257.29. Cancellations and Postponements.

(a) The Office [Center] shall have the authority to cancel a student's service or repayment obligation if the Office [Center] determines that:

(1) the student is unable to complete the academic program, internship or residency, or attain certification or licensure, or practice health care because of a total and permanent disability verified by a sworn affidavit of a qualified physician; or

(2) the student has died, verified by a court-certified copy of a death certificate or other evidence of death that is conclusive under state law.

(b) The cosigner of a promissory note shall not be responsible for loan repayment, accrued interest or other charges if the student dies or becomes totally and permanently disabled.

(c) The Office [Center] may postpone the repayment requirement for a student who is enrolled at least half time at an eligible academic institution. A postponement period is not included when determining the maximum repayment period. The Office [Center] may also cancel or postpone repayment for a student who provides evidence of extreme financial hardship. In the case of postponement, the period of postponement will not be included in determining the maximum repayment period. The Office [Center] may require periodic payments on the accrued interest during the postponement period.

§257.30. Dissemination of Program Information, Tracking and Reports.

(a) The Office [Center] shall disseminate information about the program to all interested parties.

(b) The Office [Center] shall send post-secondary academic institutions the list of outstanding rural scholars and program rules.

(c) The Office [Center] shall track the academic progress of each student and report to the selection [advisory] committee annually on the status of each student.

(d) The Office [Center] shall report a student's academic status to the sponsor at least annually.

(e) After a student begins the obligated period of service, the Office [Center] shall track the student and report to the Executive Committee on the student's employment or practice status at least annually.

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 October 10, 2005.

TRD-200504559

Charles S. (Charlie) Stone
Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6710



SUBCHAPTER C. COMMUNITY SCHOLARSHIP PROGRAM

10 TAC §§257.61 - 257.73

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

The repeals are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed repeals.

§257.61. *Purpose and Administration.*

§257.62. *Definitions.*

§257.63. *Advisory Committee.*

§257.64. *Eligibility Requirements.*

§257.65. *Application Requirements.*

§257.66. *Criteria for Selection.*

§257.67. *Conditions of Scholarships.*

§257.68. *Disbursement of Scholarship Funds.*

§257.69. *Breach of Contract.*

§257.70. *Repayment.*

§257.71. *Enforcement of Collection.*

§257.72. *Waivers and Suspensions.*

§257.73. *Reporting and Monitoring.*

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504560

Charles S. (Charlie) Stone
Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6710

◆ ◆ ◆

SUBCHAPTER D. TEXAS RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

10 TAC §§257.101, 257.103, 257.105, 257.107, 257.109

The amendments are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed amendments.

§257.101. *Purpose, Administration and Delegation of Powers and Duties.*

(a) The purpose of the Rural Physician Assistant Loan Reimbursement Program is to encourage qualified physician assistants to practice in areas in rural Texas where there is a high need for primary health care providers.

(b) The Office [~~Center for Rural Health Initiatives; or its successor or successors~~], shall administer the Rural Physician Assistant Loan Reimbursement Program.

(c) The Executive Committee delegates to the Executive Director the necessary powers, duties and functions to administer the program. The Executive Director shall enter into an interagency contract with the Texas Medical Board [~~Texas State Board of Medical Examiners~~] to specify the mechanisms for the annual transfer of program funds from the Texas Medical Board [~~Texas State Board of Medical Examiners~~].

§257.103. *Definitions.*

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

(1) Approved Program--A physician assistant or surgeon assistant training program accredited by the American Medical Association's Committee on Allied Health Education and Accreditation or the American Osteopathic Association.

~~(2) Center--The Center for Rural Health Initiatives established by the Omnibus Health Care Rescue Act passed by the 71st Session of the Texas Legislature.~~

(2) ~~(3)~~ Executive Committee--The nine member governing body of the Office [~~Center for Rural Health Initiatives~~] appointed by the governor, lieutenant governor and speaker.

(3) ~~(4)~~ Executive Director--The chief executive officer of the Office [~~Center for Rural Health Initiatives~~].

(4) Office--The Office of Rural Community Affairs as created in Chapter 487 of the Texas Government Code.

(5) Rural Health Professional Shortage Area (HPSA)--~~[Any area in Texas that is not designated as a Metropolitan Statistical Area by the United States Bureau of the Census that is recommended by the Texas Department of Health to the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services; or its successors; as having a shortage of primary health care physicians. The degree of shortage designations, also determined by the United States Department of Health and Human Services, range from groups one to four, with one representing the highest degree of shortage.]~~

(A) a rural area, which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services, which the Secretary of the U.S. Department of Health and Human Services (hereinafter Secretary) determines has a health manpower shortage and which is not reasonably accessible to an adequately served area,

(B) a population group which the Secretary determines has such a shortage, or

(C) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage. All Federally qualified health centers and rural health clinics, as defined in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x (aa)), that meet the requirements of section 254g of title 42 of the United States Code, shall be automatically designated as having such a shortage.

~~(6) Rural Medically Underserved Area (MUA)--An area designated by the United States secretary of health and human services as having: [Any area in Texas that is not designated as a Metropolitan Statistical Area by the United States Bureau of the Census that is recommended by the Texas Department of Health to the Office of Shortage Analysis, Bureau of Health Care Delivery and Assistance, of the United States Department of Health and Human Services or its successors; as an area with a demonstrated shortage of personal health services. Areas with the lowest Index of Medical Underservice (IMU) score, also determined by the United States Department of Health and Human Services, are the most severely medically underserved.]~~

(A) a shortage of personal health services or a population group that has such a shortage as provided by 42 U.S.C. Section 300e-1(7); or

(B) a health professional shortage as provided by 42 U.S.C. Section 254e(a)(1).

~~(7) RPALR Program--The Rural Physician Assistant Loan Reimbursement Program established by the Physician Assistant Licensing Act found in §204.104 of the Texas Occupations Code [passed by the 73rd Session of the Texas Legislature].~~

~~(8) Service obligation period--A consecutive 12 calendar-month period immediately preceding the date of application and during which a physician assistant provided health care services as a physician assistant in a rural health professional shortage area or rural medically underserved area.~~

§257.105. *Dissemination of Information.*

(a) The Office [~~Center~~] shall disseminate information about the Rural Physician Assistant Loan Reimbursement Program to all interested parties.

(b) The Office [~~Center~~] shall publish and send information about the program to health care institutions of higher education, physician assistant training programs, appropriate state agencies, interested professional associations, and, upon request, to individuals.

§257.107. *Requirements for an Eligible Educational Loan, an Eligible Lender or Holder, and an Eligible Physician Assistant.*

(a) An educational loan is eligible for repayment if it was obtained through an eligible lender for purposes of attending a post-secondary institution.

(b) An educational loan is not eligible for repayment if it:

(1) was a self-made educational loan from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative;

(2) involves a service obligation; or

(3) is in default at the time of the physician assistant's application.

(c) An eligible lender or holder makes or holds an educational loan to an individual for purposes of attending an approved post-secondary institution. An eligible lender or holder may include, and is not limited to, a bank, savings and loan association, credit union, institution of higher education, secondary market, governmental agency, pension fund, private foundation, or insurance company. An eligible lender or holder may not be any private individual.

(d) A physician assistant eligible for loan reimbursement is one who:

(1) passed the certifying examination administered by the National Commission on Certification of Physician Assistants, is licensed to practice as a physician assistant in Texas by the Texas Medical Board [~~Texas State Board of Physician Assistant Examiners of the Texas State Board of Medical Examiners~~], and who has not been subject to professional disciplinary action by any state or federal licensing agency or any professional physician assistant association or society whether the society is local, regional, state, or national in scope and who has not been disciplined by a licensed hospital or medical staff of a hospital, including removal, suspension, or limitation of hospital privileges, or other disciplinary action;

(2) satisfactorily completed an approved physician assistant training program within ten years prior to the date of application; and

(3) completed a minimum of one period of service as a physician assistant in a rural Texas Health Professional Shortage Area or rural Medically Underserved Area.

§257.109. Application Process, Recipient Selection and Reimbursement of Educational Loans.

(a) First-time and renewal applications for the RPALR Program are accepted annually during a time period specified by the Office [~~Center~~]. An eligible physician assistant applies for the RPALR Program by completing a loan reimbursement application packet and returning the completed loan reimbursement application packet to the Office [~~Center~~].

(b) Selection of recipients is contingent upon the availability of funds. Applicants practicing in areas with the highest degree of shortage and/or lowest Index of Medical Services (IMU) score are selected over other applicants. Selected recipients are recommended by the Office's [~~Center's~~] Executive Director and approved by the Office's [~~Center's~~] Executive Committee. Applicants are notified whether or not they are accepted for loan reimbursement after the annual application period is closed and recipients are selected.

(c) Eligible education loans of selected recipients are reimbursed by annual payments made at a time specified by the Office [~~Center~~] and under the following conditions:

(1) total annual reimbursement to one or more eligible lenders or holders must not exceed the recipient's unpaid principal loan balance, including capitalized interest, from all sources, or a maximum of \$5,000, whichever is less. Depending upon the availability of funds and the number of qualifying applicants, the Office [~~Center~~] may establish an annual reimbursement amount below \$5,000 per eligible recipient; however, the minimum total annual payment cannot be less than \$2,500 per eligible recipient unless the recipient's total unpaid principal loan balance is below \$2,500;

(2) each period of service must be completed before reimbursement is made;

(3) loan reimbursement may be renewed annually but for no more than a total of four periods of service and total maximum reimbursement amount of \$20,000;

(4) annual payment is made co-payable to the recipient and to the eligible lender(s) or holder(s) and applied only to the outstanding principal balance of the education loan, including capitalized interest;

(5) recipients are responsible for payment of any and all state and federal taxes to which this loan reimbursement is subject.

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 October 10, 2005.

TRD-200504561

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6710

◆ ◆ ◆

SUBCHAPTER E. TEXAS HEALTH SERVICE CORPS PROGRAM

**10 TAC §§257.201, 257.203, 257.205, 257.207, 257.209,
257.211, 257.213, 257.215, 257.217**

The amendments are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed amendments.

§257.201. Purpose, Administration, and Delegation of Powers and Duties.

(a) The Texas Health Service Corps is a physician recruitment program for medically underserved areas in Texas. The purpose of the Texas Health Service Corps Program is to encourage physicians trained in the primary care specialties to establish and maintain practices in medically underserved areas in Texas. To accomplish this goal, the program provides stipends to resident physicians who enter into a contract with the Office [~~Center for Rural Health Initiatives~~]. The contract requires the physician, upon completion of residency training, to provide services in a medically underserved area of Texas for at least one year for each year that the physician receives the stipend.

(b) The Office [~~Center for Rural Health Initiatives, or its successor or successors,~~] shall administer the Texas Health Service Corps Program.

(c) The Executive Committee of the Office [~~Center for Rural Health Initiatives~~] delegates to the Executive Director the necessary powers, duties, and functions to administer the Program.

§257.203. Definitions.

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

~~{(1) Center--The Texas Center for Rural Health Initiatives established by the Omnibus Health Care Rescue Act passed by the 71st Session of the Texas Legislature.}~~

(1) ~~{(2)}~~ Executive Committee--The nine member governing body of the Office ~~[Center for Rural Health Initiatives]~~ appointed by the governor, lieutenant governor and speaker.

(2) ~~{(3)}~~ Medically Underserved Area ~~[Community]~~--As defined in §487.201(1) of the Texas Government Code ~~[A community located within a whole county HPSA or whole county MUA].~~

(3) Office--The Office of Rural Community Affairs as created in Chapter 487 of the Texas Government Code.

(4) Primary Care ~~[Specialty]~~--Physician services ~~[A medical specialty]~~ in family practice, general practice, general internal medicine, general pediatrics ~~[pediatric medicine, or general]~~ obstetrics or ~~[and]~~ gynecology.

(5) Program--The Texas Health Service Corps Program established within Texas Government Code, Chapter 487, Subchapter G, and §§487.251 - 487.256 ~~[Health and Safety Code, Subchapter E, Chapter 406, by the 75th Session of the Texas Legislature].~~

(6) Resident Physician--A medical graduate of an accredited allopathic or osteopathic medical school within the United States of America who is enrolled in an accredited residency training program in Texas in the specialty of family practice, general internal medicine, or general obstetrics or gynecology.

(7) Rural County--Any county within Texas that is not designated as a Metropolitan Statistical Area by the United States Bureau of the Census.

(8) Service Obligation--A defined period of time during which a physician must provide physician services to repay a previous loan, grant, scholarship, or stipend.

(9) Stipend--A maximum payment of \$15,000 per year paid to a resident physician selected to participate in the Program.

(10) ~~[Whole County]~~ Health Professional Shortage Area (HPSA)--~~[Any whole county in Texas recommended by the Texas Department of Health to the Office of Shortage Designation, Bureau of Primary Health Care, of the United States Department of Health and Human Services, or its successors, as having a shortage of primary health care physicians. The degree of shortage designations, also determined by the United States Department of Health and Human Services, range from groups one to four, with one representing the highest degree of shortage and the areas with the greatest need for primary care physicians.]~~

~~(A) a rural area, which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services, which the Secretary of the U.S. Department of Health and Human Services (hereinafter Secretary) determines has a health manpower shortage and which is not reasonably accessible to an adequately served area,~~

~~(B) a population group which the Secretary determines has such a shortage, or~~

~~(C) a public or nonprofit private medical facility or other public facility which the Secretary determines has such a shortage. All Federally qualified health centers and rural health clinics, as defined in section 1861(aa) of the Social Security Act (42 U.S.C. 1395x (aa)), that meet the requirements of section 254g of title 42 of the United States Code, shall be automatically designated as having such a shortage.~~

(11) ~~[Whole County]~~ Rural Medically Underserved Area (MUA)--A rural area designated by the United States secretary of health and human services as having: ~~[Any whole county in Texas identified as being designated as a Medically Underserved Area by the Office of Shortage Designation, Bureau of Primary Care, of the United States Department of Health and Human Services, or its successors, as an area with a demonstrated shortage of personal health services. Areas with the lowest Index of Medical Underservice (IMU) score, also determined by the United States Department of Health and Human Services, are the most severely medically underserved areas and the areas with the greatest need for personal health services.]~~

~~(A) a shortage of personal health services or a population group that has such a shortage as provided by 42 U.S.C. Section 300e-1(7); or~~

~~(B) a health professional shortage as provided by 42 U.S.C. Section 254e(a)(1).~~

§257.205. Dissemination of Information, Research, Data Collection, and Reports.

(a) The Office ~~[Center]~~ shall disseminate information about the Texas Health Service Corps Program to all interested parties. The Office ~~[center]~~ shall publish and send information about the program to Texas medical schools, Texas primary care residency programs, appropriate state agencies, interested physician professional associations and, upon request, to individuals.

(b) The Office ~~[center]~~ shall conduct field research, collect information, and prepare statistical and other reports relating to the need for the program.

§257.207. Requirements for Registering Medically Underserved Communities.

(a) A health care entity located in a county designated as a whole county medically underserved area (MUA) and/or a ~~[whole county]~~ health professional shortage area (HPSA) is eligible to register to participate in the Program.

(b) The Office ~~[Center]~~ ranks eligible communities for program participation. The Office ~~[Center]~~ ranks communities as having a greater need for primary care physicians if the county in which the community is located is rural. The Office ~~[Center]~~ may consider other factors in ranking the community, including, but not limited to, factors such as the county's MUA score or HPSA degree of shortage designation. The Office ~~[Center]~~ assigns the most favorable rating to the communities the Office ~~[Center]~~ determines to have the greatest need for primary care physicians.

(c) Communities register for the program by completing a Texas Health Service Corps Program Community Registration Form, or other form designated by the Office ~~[Center]~~, during the annual registration period specified by the Office ~~[Center]~~.

(d) If a community is accepted into the Program and the physician matched with the community is either receiving a stipend or serving the resulting stipend obligation, the community is ineligible to re-register for participation until the physician has fulfilled the obligation.

§257.209. Requirements for Registering Eligible Resident Physicians.

(a) A resident physician is eligible to register for participation in the Texas Health Service Corps Program if the physician:

(1) is enrolled in an accredited Texas residency training program in a primary care specialty;

(2) is participating in an accredited Texas primary care residency program that holds an institutional permit to practice medicine

in Texas from the Texas Medical Board [~~Texas State Board of Medical Examiners~~];

- (3) has not defaulted on any educational loans; and
- (4) does not have a service obligation to any entity; or

(5) is a fourth year medical student who will meet the requirements provided in paragraphs (1) - (4) of this subsection, by June 30 in the year of application.

(b) Eligible physicians register for the program by completing a Texas Health Service Corps Program Physician Registration Form, or other form designated by the Office [~~Center~~], during the annual registration period specified by the Office [~~Center~~].

(c) The Office [~~Center~~] may rank physician applicants by the type of primary care specialty the physician has selected or by the number of years remaining to complete the residency program.

(d) A physician receiving assistance under any local, state, or federal educational loan repayment or incentive program is ineligible to receive a stipend under this program. A physician with any service obligation to any entity also is ineligible to receive a stipend.

§257.211. Matching Eligible Communities with Eligible Resident Physicians.

(a) The Office [~~Center~~] sends the ranked profiles of all registered resident physicians to all the registered communities, and the ranked profiles of all registered communities to the registered resident physicians at a time designated annually by the Office [~~Center~~].

(b) Upon receipt of the profiles, eligible communities and eligible physicians may contact each other to determine if the community is suitable for the physician and the physician is suitable for the community. Once a match between a community and a physician is made, the community and the physician jointly complete a Texas Health Service Corps Program Joint Application and submit it to the Office [~~Center~~] no later than June 30 of each year.

(c) Resident physicians and communities making a match prior to initiating the registration process may both jointly register and apply simultaneously. The Office [~~Center~~] will not distribute the ranked profiles of these matched resident physicians and communities to the pool of unmatched ranked registered resident physicians and communities.

(d) In July of each year, the Office [~~Center~~] reviews the joint applications and awards the stipends to the resident physicians matched with the communities ranked as having the greatest need for a primary care physician.

§257.213. Contractual Requirements for Matched Communities and Resident Physicians.

(a) A resident physician selected to receive a stipend from the Texas Health Service Corps Program must enter into a written contract with the Office [~~Center for Rural Health Initiatives~~] before the award is received. The contract between the resident physician and the Office [~~Center for Rural Health Initiatives~~] must specify that:

(1) within 90 days of completion of the residency program for first board eligibility, the physician must initiate a medical practice to provide physician services, as defined by the contract, in a medically underserved area for one year for each year that the physician received the stipend;

(2) the physician must not discriminate against patients seeking care based on their ability to pay or whether payment is made through Medicaid or Medicare;

(3) the physician must accept Medicare assignment and make every attempt to enroll as a provider in the Medicare and Texas Medicaid Programs unless enrollment is denied by either the Medicare or Texas Medicaid Programs;

(4) the physician must cooperate with the Office [~~Center~~] in its efforts to collect information and data relevant to the program;

(5) the physician must keep the Office [~~Center~~] informed of all changes in address and phone number during the practice obligation period;

(6) if the physician does not provide physician services in the medically underserved area, provides the services for less than the required term, or is determined ineligible to participate in the program after receiving program funds, within 90 days from the date of completion of the residency program, the physician is liable to the state for payment of an amount that is a total of:

(A) the total amount of the stipend the physician has received;

(B) interest on the total amount for the period beginning on the date the physician signed the contract and ending on the date the physician repays the amount of the stipend computed at a rate equal to the sum of:

(i) the auction average rate quoted on a bank discount basis for 26-week treasury bills issued by the United States government, as published by the Federal Reserve Board, for the week preceding the week in which the contract is signed; and

(ii) 5.0%; and

(iii) the state's reasonable expenses incurred in obtaining payment, including reasonable attorney's fees; and

(7) the Office [~~Center~~] must report a physician whose repayment account is delinquent, or who fails to repay his or her cash obligation, to the Texas Medical Board [~~Texas State Board of Medical Examiners~~] for appropriate action; and

(b) The contract must include any and all other provisions determined necessary by the Office [~~Center~~] for the effective and efficient administration of the Program.

§257.215. Awarded Stipends.

(a) Stipends are awarded beginning with July of the year in which the joint application was received, reviewed, and selected for Program participation. The Office [~~Center~~] may renew awards annually, based on the resident physician's submission of a noncompetitive renewal application. The Office [~~Center~~] may withdraw a stipend if the Office [~~Center~~] determines the resident physician is no longer eligible to qualify for participation in the program.

(b) The number of stipends awarded annually is determined by the amount of funds available for the program each year.

(c) A physician is not eligible for a stipend for a period longer than is ordinarily and customarily required for completion of residency training for first board eligibility in the chosen primary care specialty.

(d) The maximum amount of the stipend is \$15,000 per year. The Office [~~Center~~] makes stipend payments to the resident physicians on a quarterly basis for the previous quarter, beginning in October and followed by payments in January, April and July, until the ordinary and customary period required to complete the chosen residency has ended.

§257.217. Provision for Effective and Efficient Administration of the Program.

The Executive Director of the Office [~~Center for Rural Health Initiatives~~] has the administrative authority to establish policies if unusual

or exceptional circumstances arise concerning either eligible communities or eligible physicians and those circumstances are not adequately addressed by the rules contained within this subchapter.

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 October 10, 2005.

TRD-200504563

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6710



SUBCHAPTER F. MEDICALLY UNDERSERVED COMMUNITY-STATE MATCHING INCENTIVE PROGRAM

10 TAC §§257.301, 257.303, 257.305, 257.307, 257.309, 257.311, 257.313, 257.315, 257.317, 257.319, 257.321, 257.325, 257.327

The amendments are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed amendments.

§257.301. Introduction.

(a) Purpose. These sections, listed in this Subchapter F of this chapter (relating to Executive Committee for the Office of Rural Community Affairs [~~Center for Rural Health Initiatives~~]) implement the provisions in the Texas Government Code, Subchapter F, §§487.201 - 487.204 [~~Health and Safety Code, Subchapter F, Chapter 406~~], by establishing program rules for the allocation of grant funds to qualified communities through the Medically Underserved Community-State Matching Incentive Program. State grants match funds committed by medically underserved communities to cover start-up costs for primary care physicians' practices.

(b) Funding. These sections, listed in Subchapter F of this chapter [~~relating to Executive Committee for the Center for Rural Health Initiatives~~] describe the criteria and procedures to be used by the Office [~~Texas Center for Rural Health Initiatives (Center)~~] in determining the communities eligible for funding and the funding allocation method.

(c) Administration. The Office [~~Center~~] shall allocate funds to eligible communities based on the procedures specified in these sections, listed in Subchapter F of this chapter [~~relating to Executive Committee for the Center for Rural Health Initiatives~~].

§257.303. Definitions.

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

(1) Office--The Office of Rural Community Affairs created by Chapter 487 of the Texas Government Code [~~Center--The Texas Center for Rural Health Initiatives~~].

(2) Executive Committee--The Executive Committee Governing Board of the Office [~~Center for Rural Health Initiatives~~].

(3) Full-time practice--At least 40 hours of patient-related medical practice per week.

(4) Medically underserved community--A community meeting any of the following criteria listed in subparagraphs (A) - (D) of this paragraph:

(A) a community located in an area in this state with a medically underserved population;

(B) a community located in an area in this state designated by the United States Secretary of Health and Human Services as an area with a shortage of personal health services;

(C) a population group designated by the United States Secretary of Health and Human Services as having a shortage of personal health services; or

(D) a community that meets criteria adopted by the Executive Committee [~~board~~] by rule, considering relevant demographic, geographic, and environmental factors.

(5) Part-time practice--At least 25 hours of patient-related practice per week at the site for which match funds are requested.

(6) Primary care--Physician services in any of the following medical specialties listed in subparagraphs (A) - (D) of this paragraph:

(A) family/general practice;

(B) general pediatrics;

(C) general internal medicine; or

(D) general obstetrics/gynecology.

(7) Start-up money--Payments made by a medically underserved community for reasonable costs incurred by a physician to establish a medical office and ancillary facilities for diagnosing and treating patients.

(8) Physician--A person licensed to practice medicine in this state.

§257.305. Eligibility Criteria for a Contributing Community.

To be eligible to participate in this program, a contributing community must:

(1) qualify as a "medically underserved community";

(2) exist in perpetuity as a non-profit entity governed by council members, commissioners, or a board of trustees that:

(A) is responsible to and serves the community in which it is located;

(B) is legally authorized to raise funds and/or accept grants and financial gifts from citizens, scholarship funds, or private foundations;

(C) assures a commitment from the community of at least \$15,000 in contributions toward the project and no more than \$25,000 per year;

(D) assures that sponsor contributions will include no federal or state funds; and

(E) assures the availability of a practice opportunity for a participating physician;

(3) apply for state matching funds available through this program; and

(4) contract with a physician who is eligible to participate in the program by providing primary care in the community for at least two years.

§257.307. *Physician Eligibility Criteria.*

To qualify for participation in this program, a physician must:

(1) hold a current, unrestricted license as a physician from the Texas Medical Board. [~~Texas State Board of Medical Examiners~~];

(2) have successfully completed a primary care residency program approved by the Accreditation Council on Graduate Medical Education or the American Osteopathic Association; a physician with less than ten post-residency years will be given priority;

(3) have contracted with an eligible community (that has made a financial commitment of at least the minimum contribution level) to provide primary care in the supporting community for at least two years;

(4) have never defaulted on nor currently owe a refund on any state, federal, or local student financial aid;

(5) have authorized a credit check and background check, the results of which are satisfactory to the sponsoring community; and

(6) have never been convicted of a felony.

§257.309. *Procedures to Apply for Funds.*

(a) Application cycle. The Office [~~Center for Rural Health Initiatives~~] shall publish an annual notice of availability of funds in the Texas Register.

(b) Issuing office. The Request for Application (RFA) shall be issued by the Office [~~Center~~], and applicants shall request applications from the Office [~~Center~~].

(c) Purpose. The RFA shall provide the applicant with information and forms necessary to apply for financial assistance.

(d) Application submission.

(1) The Office [~~Center~~] must receive the application by the due date specified in the RFA.

(2) Applicants must submit an original and two copies of the application to the Office [~~Center~~].

(3) The application must be on the forms and in the format prescribed by the Office [~~Center~~].

(4) The Office [~~Center~~] shall return late or incomplete applications with an explanation. Otherwise, all applications shall be considered for funding.

§257.311. *Application Requirements.*

Applications must be in the format prescribed and contain the following information listed in paragraphs (1) - (4) of this section:

(1) a description of the organization applying for state funds which at a minimum shall include:

(A) the organization's full name and address;

(B) the name, title, mailing address, physical address, and telephone number of a contact person;

(C) the organization's status as a governmental entity or nonprofit corporation (including a certified copy of the organization's nonprofit charter, if applicable);

(D) the name of the person responsible for the project;

(E) the name of the person authorized to execute contracts on behalf of the organization; and

(F) a proposed schedule of the days and hours the medical practice will operate.

(2) a community needs/resource assessment which shall include:

(A) a community profile;

(B) a demographic profile of the service area;

(C) health resources available in the community;

(D) cultural and socioeconomic status;

(E) a description of health problems;

(F) a description of the service area and service population; and

(G) a medical community profile;

(3) a comprehensive financial plan for the project which shall include:

(A) a listing of funding sources for the project other than the Office [~~Center~~];

(B) a financial statement signed by an auditor or accounting entity; and

(C) an estimated budget for the first year of the project; and

(4) a budget for funds requested from the Office [~~Center~~] which shall include:

(A) allowable costs, which may include but are not limited to, the following:

(i) land acquisition and facility construction and/or renovation;

(ii) computer hardware and software;

(iii) lab equipment required to provide basic primary health care services;

(iv) an exam table;

(v) routine medical equipment;

(vi) a refrigerator required for drug/vaccine storage;

(vii) supplies required in a primary care physician's office;

(viii) staff salaries and fringe benefits for six months (excluding compensation for the physician); and

(ix) staff and job-related training; and

(B) non-allowable costs, which include but are not limited to, the following:

(i) lease or purchase of motor vehicles;

(ii) consulting fees or the cost of a feasibility study;

and

(iii) physician compensation.

§257.313. *Evaluation of Application.*

(a) The Executive Committee of the Office [Center] delegates to the executive director the necessary powers, duties and functions to administer this program.

(b) The Office [Center] shall review each complete application to determine program eligibility, to prioritize community need among applicants, and to make recommendations for funding.

(c) An application in which the physician has less than ten post-residency years will be given priority.

(d) An application, which contains false information included to increase the likelihood of receiving funding, shall be denied consideration for the duration of the application period.

(e) An applicant who has filed bankruptcy is not eligible.

(f) The Office [Center] may renegotiate the amount of matching funds to be awarded to any applicant.

(g) The Office [Center] may limit award amounts based on the availability of funds.

(h) The executive director of the Office [Center] may waive provisions of these rules if necessary to address unusual or exceptional community or physician eligibility issues.

§257.315. *Contract Award.*

(a) After review of staff recommendations, the Executive Director of the Office [Center] shall announce the projects selected for funding.

(b) Applicants will be notified in writing of the approval or denial of the application.

(c) Any applicant who is denied funds under this program may file a written request for an administrative review of the denial. The request shall be mailed to the Office [Center] within ten working days of the postmarked date of the Office [Center] letter of denial. Upon receipt of the request, staff shall conduct an administrative review, resulting in a final decision. The Office [Center] will mail a written notice of the decision either upholding or overruling the denial to the applicant.

(d) Contract awards shall not exceed \$25,000 unless the Office [Center] has determined that the application demonstrates exceptional financial need.

§257.317. *Methodology for Prioritizing Neediest Communities.*

The Office [Center] will prioritize the communities found eligible for participation in the program to assure that the neediest communities are provided grants. The prioritization process will quantify indicators of need (not listed in any assigned priority order) which may include, but are not limited to, the following listed in paragraphs (1) - (10) of this section:

- (1) no practicing primary care physicians;
- (2) with only one primary care physician and a population of at least 2,000;
- (3) no federally or state-funded primary care clinic;
- (4) no practicing physician assistants or nurse practitioners;
- (5) the participating physician will be the only physician practicing in one of the primary care specialties;
- (6) large minority population, if the participating physician is a member of the same minority group;

(7) designation by the United States Department of Health and Human Services as a primary care Health Professional Shortage Area (HPSA) for at least the last five years;

(8) a population-to-primary care provider ratio in the top 25% of all counties in the state;

(9) poverty rates above the state average; and

(10) median family incomes at least 25% below the state average.

§257.319. *Contribution Procedures.*

The Office [Center] may provide up to \$25,000 in matching funds to the neediest communities [as determined under §500.317 of this title (relating to Methodology for Prioritizing Neediest Communities)].

§257.321. *Contract.*

The Office [Center] will execute a written contract with each community selected concerning use of the state matching funds allocated under this program. The contract shall provide that:

(1) the community has obtained a credit check and information concerning the participating physician's professional background from reputable sources, including the National Practitioner Data Bank or its successor;

(2) the community will retain title to or ownership of any buildings or equipment purchased with state or local matching funds disbursed under this program for seven years;

(3) the community has executed a contract with an eligible physician containing at least the following provisions:

(A) the physician shall engage in clinical practice in the supporting community for at least two years following disbursement of the state funds;

(B) during the two-year service obligation, the physician shall not discriminate among patients seeking care based on their ability to pay or whether payment will be made through Medicaid or Medicare;

(C) the physician shall complete and submit provider enrollment applications for Medicare and the Texas Medicaid program, and shall accept Medicare assignment if enrolled; and

(D) the physician shall set his or her charges at the prevailing rate for the area and shall utilize a sliding fee scale based on the client's ability to pay;

(4) the community shall make reasonable efforts to locate the physician's practice at a site readily accessible to a majority of area residents;

(5) the community shall make a good faith effort to contract with a physician whose practice specialty is appropriate to serve the primary health care needs of area residents;

(6) the community shall attempt in good faith to replace a participating physician as quickly as possible after the physician fails to fulfill his or her two-year practice obligation, but the community may seek a replacement physician for no more than six months.

§257.325. *Breach of Contract.*

(a) Binding contract. A contract executed under these sections, listed in Subchapter F of this chapter (relating to Executive Committee for the Office [Center for Rural Health Initiatives]) between the Office [Center] and the supporting community is a binding contract.

(b) A supporting community shall notify the Office [Center] in writing within two weeks of any change in its status or that of the participating physician.

(c) The Office [Center] may find that the supporting community has breached the contract if the supporting community fails to:

(1) provide the full amount of funding specified in the contract; or

(2) fulfill any other conditions specified in the contract.

(d) If the Office [Center] finds that the supporting community has breached the contract, the Office [Center] may require the following listed in paragraphs (1) - (4) of this subsection:

(1) forfeiture of all claim to funds and/or property acquired through use of the state matching funds disbursed through this program;

(2) cancellation of the physician's obligation of service in the supporting community;

(3) reimbursement by the supporting community to the Office [Center] of state matching funds; and

(4) forfeiture of the opportunity to participate in the program in the future.

§257.327. *Reporting and Monitoring.*

(a) The supporting community shall provide quarterly progress reports to the Office [Center] regarding the expenditure of funds related to this program to cover physician practice start-up costs.

(b) The supporting community shall provide periodic progress reports to the Office [Center] regarding patient outcomes as a result of accessing this program, as outlined in the program guidelines.

(c) The supporting community shall monitor the participating physician's practice during the period of obligated service and shall provide quarterly reports including status reports on the physician's compliance with the requirements specified in §257.321 [§500.321] of this title (relating to Contract) to the Office of Rural Community Affairs [Center].

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 October 10, 2005.

TRD-200504564

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6710



SUBCHAPTER G. PERMANENT FUND FOR RURAL HEALTH FACILITY CAPITAL IMPROVEMENT

10 TAC §§257.401 - 257.411

The amendments are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed amendments.

§257.401. *Purpose.*

(a) As authorized in [by] the Texas Government Code, §403.1065, and §§487.301 - 487.304, [the Health and Safety Code, §§106.201-106.204] relating to the Permanent Fund for Rural Health Facility Capital Improvement, the Office [Center] shall institute and administer grants, loans, and loan guarantees under this subchapter.

(b) The Office may impose and collect reasonable fees and charges in connection with the grants, loans and loan guarantees and reasonable penalties for delinquent payment of fees, charges or loan repayments.

(c) The Office may take and enforce a mortgage or appropriate security interest in real or personal property that a loan recipient acquires with the proceeds of a loan made under this subchapter.

(d) [(b)] This subchapter governs the administration of the grants, loans, and loan guarantees; the submission and review of grant, loan and loan guarantee applications; and the award of the grants, loans and loan guarantees.

§257.402. *Definitions.*

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

(1) Closing date--Dates specified in the request for proposals as the dates on which applications must be received.

(2) Director--Executive Director of the Office [Center for Rural Health Initiatives] or his or her designee.

(3) Capital improvement--The acquisition, construction, or improvement of a facility, equipment, or real property for use in providing health services. The term includes designing, engineering, supervising, inspecting, surveying, and other expenses incidental to the acquisition, construction, or improvements, or the purchase of capital equipment, including information systems hardware and software, for a health facility.

(4) Public hospital--A general or special hospital licensed under the Health and Safety Code, Chapter 241 that is owned or operated by a municipality, county, municipality and county, hospital district, or hospital authority and that performs inpatient or outpatient services.

(5) Office--The Office of Rural Community Affairs created in Chapter 487 of the Texas Government Code [Center--Center for Rural Health Initiatives].

(6) Capital equipment--Equipment of a value defined as capital by the rules of the Centers for Medicare and Medicaid Services [Health Care Financing Administration] for implementation of the Medicare program [; or \$500.00 single item cost, whichever is less].

(7) Rural county--A county that has a population in the most recent decennial United States census of 150,000 or less, or with respect to a county that has a population of more than 150,000 and contains a geographic area that is not delineated as urbanized by the federal census bureau, that part of the county that is not delineated as urbanized.

§257.403. *Sources and Allocation of Funds.*

(a) Funds for the grants, loans, and loan guarantees shall be provided in accordance with Texas [the] Government Code, §403.1065, relating to the Permanent Fund for Rural Health Facility Capital Improvement and Texas Government Code, §§487.301 - 487.304 [the Health and Safety Code, §§106.201 - 106.204].

(b) All grants, loans and loan guarantees shall be awarded competitively according to the provisions of this subchapter. For

each competitive process the Executive Director shall decide whether that particular process will result in the awards of grants, loans, loan guarantees, or a combination of these programs.

(c) Grants, loans and loan guarantees shall be made only to the extent that funds are appropriated and available.

(d) The Office [eenter] shall have the authority and discretion to:

(1) determine the purpose(s) of the grants, loans and loan guarantees pursuant to law and this subchapter;

(2) approve or deny grant, loan and loan guarantee applications;

(3) determine the number, size and duration of grants, loans and loan guarantees; and

(4) modify or terminate grants, loans, and loan guarantees.

(e) The Office [eenter] shall not be liable, nor shall grant, loan and loan guarantee funds be used, for any costs incurred by applicants in the development, preparation, submission, or review of applications.

§257.404. Eligibility for Grants, Loans and Loan Guarantees.

(a) A public or nonprofit hospital located in a rural county is eligible to apply for a grant, loan or loan guarantee.

(b) A hospital eligible to receive a grant, loan, or loan guarantee under this subchapter is not eligible to receive a grant from the Department of State Health Services [Texas Department of Health] from its Community Hospital Capital Improvement Fund.

§257.405. Requirements for Grants, Loans and Loan Guarantees.

(a) The Office [eenter] shall specify reasonable requirements for grant, loan and loan guarantee applications.

(b) Use of grant, loan and loan guarantee funds shall be restricted to capital improvements and shall not be used for operating expenses, debt retirement of the hospital or the owner of the hospital, or recruitment or retention of providers.

(c) Loans awarded will be made with an interest rate below the current market rate and may be made at no interest at the discretion of the Office based upon the financial need and condition of the applicant[eenter].

(d) Grant, loan and loan guarantee recipients shall submit periodic reports to the Office [eenter], with content, form and time determined by the Office [eenter].

§257.406. Procedures for Grant, Loan and Loan Guarantee Announcements.

(a) Before applications are requested, the Office [department] shall publish one or more notices of grant, loan and loan guarantee availability in the *Texas Register*. These notices shall also be distributed throughout the state through mail and electronic means. The notices will include details about the grants, loans, and loan guarantees, instructions for obtaining a request for proposals, and the names of persons to contact in the Office [eenter] for further information.

(b) The Office [eenter] shall maintain a list of persons to be notified of requests for proposals. Any person wanting to be placed on the list should contact: Executive Director, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711 [eenter for Rural Health Initiatives, Attention: Capital Improvement Fund Program Administrator, 211 E. 7th Street, Suite 915, Austin, TX 78701].

(c) The Office [eenter] shall develop and publish a request for proposals, which shall contain details concerning, but not limited to, the following:

(1) the nature and purpose(s) of the grant, loan or loan guarantee;

(2) the total amount of funds available for the grant, loan, and loan guarantee;

(3) the maximum and minimum dollar amounts that will be awarded for individual grantees, loan recipients or loan guarantee recipients;

(4) the information and format required for grant, loan, and loan guarantee applications;

(5) information about the criteria used to judge grant, loan and loan guarantee applications; and

(6) the closing date or dates.

§257.407. Procedures for Grant, Loan and Loan Guarantee Applications.

(a) The Office [eenter] may specify any reasonable requirements for grant, loan and loan guarantee applications, including, but not limited to, length, format, authentication, and supporting documentation.

(b) Applications that are incomplete or substantially inconsistent with the requirements of this subchapter may be rejected without further consideration at the discretion of the Office [eenter].

(c) Applications received after the closing date will not be considered, unless the closing date is extended by the Office [eenter].

(d) Applicants will be given a minimum of 60 calendar days to file applications after a request for proposals is published. Applications must be received by the Office [eenter] on or before the closing date specified in the request for proposals.

§257.408. Competitive Review Process.

(a) Each application shall be reviewed by the Office [eenter] for completeness, relevance to the published request for proposals, adherence to Office [eenter] policies, general quality, technical merit, and budget appropriateness.

(b) The Office [eenter] may invite an advisor or advisors to provide review and make recommendations concerning the grant process. Such advisor(s) may include any number of members from inside or outside the Office [eenter], at the discretion of the Executive Director. Advisor(s) from outside the Office [eenter] shall receive no compensation or reimbursement for expenses. No advisor(s) shall be a current or potential applicant for a grant, loan, or loan guarantees on which the advisor(s) would be making recommendations, unless provision for independent review is made by the Executive Director.

(c) The Office [eenter's] review process shall be completed within 45 days after the closing date.

§257.409. Selection Criteria.

(a) No grant, loan or loan guarantee shall be approved unless, in the opinion of the Office [eenter], it addresses only capital improvements and does not propose to expend funds for operating expenses, debt retirement, or recruitment or retention of practitioners.

(b) A grant, loan or loan guarantee application from a public hospital will be given preference over an application from a nonprofit hospital.

(c) Evaluation of a grant, loan or loan guarantee application will consider applicant information relating to criteria delineating the health care needs of the rural area and community served by the applicant, the financial need of the applicant related to the specific project, and the probability that the applicant will effectively and efficiently use the money obtained through the grant, loan or loan guarantee.

§257.410. *Project Approval.*

(a) Grant, loan and loan guarantee recipients shall execute a contract with the Office [eenter]. The contract shall detail items such as budget, reporting requirements, general provisions for Office [eenter] contracts, and any other specifics that might apply to the award.

(b) Grant, loan and loan guarantee recipients shall cooperate with the Office [eenter] in preparing reports [~~to the Legislature as required by the Government Code, §403.1069~~].

§257.411. *Continuation Funding.*

(a) Grant, loan and loan guarantee recipients may be eligible for future funding and/or funding of a second or third type, under the program funding options. The Office [eenter] will consider the grant, loan and loan guarantee recipient's accomplishments, progress toward stated goals and objectives, award of past grants, and development of alternative funding. Applications shall be submitted in accordance with this subchapter.

(b) The Office [eenter] will award future or alternative grants, loans and loan guarantees after a review of applications in accordance with the provisions of this subchapter.

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 October 10, 2005.

TRD-200504566

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6710



SUBCHAPTER H. RURAL EMERGENCY MEDICAL SERVICES SCHOLARSHIP INCENTIVE PROGRAM

10 TAC §§257.501, 257.503, 257.505, 257.507, 257.509, 257.511, 257.513, 257.515, 257.517, 257.519, 257.521, 257.523, 257.525, 257.527

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

The repeals are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed repeals.

§257.501. *Purpose.*

§257.503. *Definitions.*

§257.505. *Eligibility Criteria for a Rural EMS Scholarship Incentive Program Applicant.*

§257.507. *Candidate Eligibility Criteria.*

§257.509. *Procedures to Apply for Funds.*

§257.511. *Application Requirements.*

§257.513. *Evaluation of Application.*

§257.515. *Contract Award.*

§257.517. *Methodology for Prioritizing Neediest Communities*

§257.519. *Contribution Procedures.*

§257.521. *Contract.*

§257.523. *Funding Allocation Procedure.*

§257.525. *Breach of Contract.*

§257.527. *Reporting and Monitoring.*

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504566

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6710



SUBCHAPTER J. DESIGNATION OF A HOSPITAL AS A RURAL HOSPITAL

10 TAC §257.701, §257.703

The amendments are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed amendments.

§257.701. *Purpose.*

(a) Federal Public Law 106-113 (also known as H.R. 3426), Title IV-Rural Provider Provisions, Section 401. Permitting Reclassification of Certain Urban Hospitals as Rural Hospitals provides procedures under which certain urban hospitals may apply for reclassification as rural hospitals for all purposes under the Medicare inpatient hospital prospective payment system (42 United States Code §1395ww), the Medicare prospective payment for hospital outpatient department services (42 United States Code §1395l), and the Medicare rural hospital flexibility program including designation of critical access hospitals (42 United States Code §1395i-4).

(b) The federal law allows a hospital for these Medicare purposes to be treated as being located in the rural area of the state in which the hospital is located if the hospital satisfies certain criteria stated in the law.

(c) The statutory criteria in pertinent part is that the hospital applying for reclassification is located in an area designated by any law or regulation of the state as a rural area or is designated by the state as a rural hospital.

(d) Texas [The] Government Code, Subchapter J, §487.401 [(enacted by Acts 2001, 77th Legislature, Chapter 1424 (House Bill 7)] requires the Office to adopt rules that establish a procedure for designating a hospital as a rural hospital in order for the hospital to qualify for federal funds under federal regulations relating to Medicare prospective payment systems for inpatient hospital services. Federal law then

allows use of the state's designation for the other purposes discussed in this section.

(e) This subchapter establishes the procedure under which the Office will designate a hospital as a rural hospital. Once a hospital has received its designation from the Office under this subchapter, the hospital must submit an application directly to the Centers for Medicare and Medicaid Services (CMS) seeking reclassification under Medicare provisions.

§257.703. Definitions.

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

(1) **Urban Hospital**--A hospital located in a Metropolitan Statistical Area (MSA) as determined by the Federal Office of Management and Budget.

(2) **Rural Hospital**--A hospital that is not located in Metropolitan Statistical Area (MSA) as determined by the Federal Office of Management and Budget [~~or has been determined to meet the criteria established in §257.705 of this title~~].

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504568

Charles S. (Charlie) Stone
Executive Director

Office of Rural Community Affairs

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 936-6710



SUBCHAPTER K. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

10 TAC §257.801, §257.807

The amendments are proposed under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by these proposed amendments.

§257.801. Definition of Terms.

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

(1) **Advisory Panel**--a committee appointed by the Office of Rural Community Affairs which assists the Office in recruiting and retaining health professionals in medically underserved areas in the State of Texas.

(2) **Office**--The Office of Rural Community Affairs created by Chapter 487 of the Texas Government Code [~~the Office of Rural Community Affairs established by the 77th Legislature~~].

(3) **Executive Committee**--the nine member governing body of the Office, appointed by the governor, lieutenant governor, and speaker.

(4) **Health professional**--any provider of health care or health related services, other than a physician, who holds a license, certificate, registration, permit or other authorization required by law or a state agency rule that the individual must obtain in order to practice in a health care profession.

(5) **Investment Program**--the Rural Communities Health Care Investment Program that was created to attract and retain rural health professionals.

(6) **Medically Underserved Community**--a community that is located in a county with a population of 50,000 residents or less; which has been designated under state or federal law as either a health professional shortage or medically underserved area; or which the Office has designated as a medically underserved area.

(7) **Permanent endowment fund**--a special state treasury fund, outside general revenue, that supports the Investment Program.

(8) **Recipient**--an eligible health professional or student in a degree program preparing to become a health professional who receives a loan reimbursement or stipend through the Investment Program.

§257.807. Contracts.

(a) A health professional may receive assistance under this subchapter only if the health professional signs a contract agreeing to provide health care services in a medically underserved community.

(b) A student enrolled in a health professional degree program may contract with the Office for the loan reimbursement program prior to obtaining the license required to practice as a health professional.

(c) The Office may contract with a health professional for part-time services under the stipend program.

(d) A health professional that participates in any loan reimbursement program is not eligible for a stipend.

(e) A contract under this section must provide that a health professional that does not provide the required services to the community or provides those services for less than the required time is personally liable to the state for:

(1) two times the total amount of assistance the health professional received from the Office and the medically underserved community. This is the amount of the assistance plus a penalty in the same amount;

(2) interest on the amount, equal to the [prime] rate provided in the Texas Government Code [~~accrued quarterly~~]; and

(3) the state's reasonable expenses incurred in obtaining payment, including a reasonable attorney's fees.

(f) The participating health professional must establish an Office and residence in the medically underserved area before receiving any portion of the stipend.

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 October 10, 2005.

TRD-200504569

Charles S. (Charlie) Stone
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: November 20, 2005
For further information, please call: (512) 936-6710

◆ ◆ ◆
TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

**SUBCHAPTER CC. COMMISSIONER'S
RULES CONCERNING SCHOOL FACILITIES**

19 TAC §61.1035

The Texas Education Agency (TEA) proposes amendment to §61.1035, concerning assistance with payment of existing debt. The section includes provisions relating to the establishment of eligibility; definition of qualifying debt service; and explanations of limits on assistance, data and payment cycles, deposits and uses of funds, and refinancing of eligible debt. The proposed amendment would modify eligibility for the Existing Debt Allotment (EDA) based on changes to statutory language, in accordance with Senate Bill 1863, 79th Texas Legislature, 2005. The proposed changes would also add requirements for districts to disclose transactions that affect EDA eligible bonds, including related debt derivative agreements and refunding transactions. Another proposed change would establish requirements for maintaining eligibility for bonds that are refunded.

Through 19 TAC §61.1035, adopted to be effective December 12, 1999, the commissioner exercised rulemaking authority relating to assistance with payment of existing debt. The current provisions include the establishment of eligibility; definition of qualifying debt service; and explanations of limits on assistance, data and payment cycles, deposits and uses of funds, and refinancing of eligible debt.

Senate Bill 1863, 79th Texas Legislature, 2005, amended Texas Education Code, §46.033 and §46.034, relating to assistance with payment of existing debt by updating reference to the 2004-2005 school year rather than the 2002-2003 school year. The proposed amendment to 19 TAC §61.1035 would revise subsection (a)(1) to specify that payment on bonds must have been made on or before August 31, 2005, in order to meet eligibility criteria. Subsection (a)(1) would also be revised to add language requiring that final official statements or bond orders be reported to the state information depository in order for bond issues and their related debt service payments to be eligible to receive EDA state assistance.

In addition, the proposed amendment would add new subsection (b)(3) to require that debt derivative transactions and their associated credit risk ratings be disclosed in the final official statement related to the bond transaction.

The proposed amendment would also add new subsection (f)(2) to establish eligibility criteria for refunding bonds, including restrictions that would accelerate or lengthen the maturity schedule of the bonds being refunded and a requirement for present value savings.

Districts will be required to disclose debt derivative transactions in their final official statements, though this appears to be a common practice and will not likely result in a change in the way of doing business for most districts. Districts will also be required to report their computations of present value savings, which will represent a new reporting requirement for the EDA program. However, similar reports are commonly produced during such refunding transactions and currently submitted by school districts that participate in the Instructional Facilities Allotment Program and the Bond Guarantee Program.

Ernest Zamora, associate commissioner for support services and school finance, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment. The proposed change for the implementation of the statutory changes will increase the state aid to local school districts for the EDA by expanding the eligibility criteria as set forth in statute. The fiscal note incorporated the additional costs associated with the inclusion of bonds issued over the past two years. There is no difference between the costs anticipated by the fiscal note and the currently anticipated costs. The proposed new requirement related to disclosure of debt derivatives is not expected to have any fiscal impact. The proposed addition related to maintaining the eligibility of bonds that are refunded will also ensure that districts' decisions to refund debt produce actual savings. Although the proposed changes for refunding bonds may reduce districts' flexibility in restructuring debt, there is no clear indication that such restrictions would result in any fiscal impact.

Dr. Zamora has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be the re-definition of the eligibility of bonds for state assistance through the EDA. The requirements to disclose debt derivative agreements would provide greater transparency in school district transactions. The requirement to produce present value savings in refunding transactions will also increase the transparency of school districts' decisions on managing long-term debt obligations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §46.031 and §46.061, which authorize the commissioner of education to adopt rules for the administration of TEC, Chapter 46, Subchapter B, Assistance with Payment of Existing Debt, and to provide by rule for the payment of state assistance under TEC, Chapter 46, to refinance school district debt.

The amendment implements the Texas Education Code, §§46.031-46.037 and 46.061.

§61.1035. Assistance with Payment of Existing Debt.

(a) Eligibility. Certain restrictions apply to debt and to school districts eligible for the existing debt allotment (EDA).

(1) Debt eligible for the EDA is an existing obligation of a school district made through the issuance of a bond for instructional or non-instructional purposes pursuant to Texas Education Code (TEC), Chapter 45, Subchapter A, or through the refunding of bonds as defined in TEC, §46.007. The district must have made a payment on the bonds on or before August 31, 2005 [2003]. Lease-purchase arrangements authorized by Local Government Code, §271.004, are not eligible. Payments demonstrating eligibility for the EDA must appear on the debt service schedule contained in the final official statement or bond order. The debt service schedule reported in the final official statement or in the bond order, if the bonds are privately placed, to the state information depository will be used to determine eligible bond payments. Bond issues and their related debt service payments that are not reported to the state information depository are not eligible to receive EDA state assistance.

(2) Eligible debt does not include any portion of an existing obligation that has been approved for financial assistance with the Instructional Facilities Allotment (IFA) as defined in §61.1032 of this title (relating to Instructional Facilities Allotment), in accordance with TEC, Chapter 46.

(3) Eligible bond payments include regularly scheduled principal and interest payments that are made between September 1 and August 31 each year.

(4) Certain other refinanced debt may be eligible for funding under this subsection.

(A) A lease purchase refunded with a general obligation bond shall be eligible for consideration for the EDA in future years based on the date of payment on the new bond and the limits on tax rates that apply.

(B) Any portion of a bond issue that refinances a portion of an original lease-purchase arrangement that was eligible for IFA consideration but exceeded the IFA limit shall be eligible for consideration in future years pursuant to this subsection based on the date of first payment on the new bond and the limits on tax rates that apply.

(C) If a lease purchase that is not funded in the IFA program is refinanced with a general obligation bonded debt, the bonded debt shall gain eligibility for the EDA by the terms of the EDA program. Any Interest and Sinking (I&S) fund tax effort associated with the bonded debt payments may be counted for purposes of computing the EDA. Qualification pursuant to this subsection shall be according to the terms of the program, including the date of first payment on the bond and the relevant tax rate limitation.

(D) Debt that is refinanced in a manner that disqualifies it for eligibility for funding within the IFA program shall be treated as new bonded debt at the time of issuance for the purpose of funding consideration pursuant to the EDA.

(b) Qualifying debt service. Certain district revenues may qualify to meet the local share requirement of the EDA when computing state assistance amounts.

(1) I&S fund taxes collected in the current school year may qualify toward meeting the local share requirement of the EDA. In addition, other district funds budgeted for the payment of bonds may qualify to meet the EDA local share requirements.

(A) Funds budgeted by a district for payment of eligible bonds may include I&S fund taxes collected in the 1999-2000 school year or later school year in excess of the amount necessary to pay the district's local share of debt service on bonds in that year, provided that the taxes were not used to generate other state aid.

(B) Funds budgeted by a district for payment of eligible bonds may include Maintenance and Operations (M&O) taxes collected in the current or previous school year that are in excess of amounts used to generate other state aid.

(C) The commissioner of education will provide each district with information about what tax collections were not equalized by state assistance in the preceding school year and worksheets to enable districts to calculate tax collections that will not receive state assistance in a current school year.

(D) The commissioner of education will determine the amount of excess collections, if any, to be applied to the EDA local share requirement.

(2) If a district issues debt that requires the deposit of payments into a mandatory I&S fund or debt service reserve fund, the deposits will be considered debt payments for the purpose of the EDA if the district's bond covenant calls for the deposit of payments into a mandatory and irrevocable fund for the sole purpose of defeasing the bonds or if the final statement stipulates the requirements of the I&S fund and the bond covenant.

(3) If a district enters into a debt derivative agreement related to the debt that is supported by the EDA funds, the district must fully disclose this arrangement in the final official statement related to this transaction. The final official statement must provide evidence of the credit risk rating that has been assigned to the derivative transaction. The amount of debt service eligible for the EDA state assistance is the amount of debt service that is reflected in the debt service schedule of the final official statement. Failure to disclose the debt derivative transaction in the final official statement will disqualify the debt service from the EDA state assistance on otherwise eligible bonds. This debt service will remain ineligible unless the final official statement is corrected and updated with the state information depository. Debt service payments made while the debt service was ineligible due to failure to disclose and report the debt derivative agreement will not be paid retroactively if documents are subsequently filed to restore eligibility.

(4) [(3)] I&S fund taxes collected during a school year will be attributed first to satisfy the local share requirement of debts eligible for EDA state aid for that school year, second to satisfy the local share requirements of any IFA debts for that school year, and lastly to excess taxes that may raise the limit for the EDA program in a subsequent biennium if collected in the second year of a state fiscal biennium.

(5) [(4)] Computation of state aid in the EDA program for a variable rate bond shall be based on the minimum payment requirement. A district may receive such state aid for payment on a variable rate bond in excess of the minimum payment requirement as long as the additional amount meets certain conditions.

(A) The payment is necessary to meet the computed interest costs for the year.

(B) The amount shall not exceed the applicable limit for debt established pursuant to TEC, §46.034(b).

(C) The district shall notify the commissioner of education of its intent prior to the adoption of the district's tax rate for debt service for the applicable year.

(6) [(5)] A district may exercise its ability to make payments in excess of the minimum payment required but the excess amount shall not be used in determining the limit on the existing debt tax rate (EDTR) or in the calculation of state assistance in that year.

(7) [(6)] Computation for fixed-rate bonds shall be based on published debt service schedules as contained in the official statement. Prepayment of a bond, either through an early call provision or some other mechanism, shall not increase the state's obligation or the computed state aid pursuant to the EDA. To the extent that prepayments reduce future debt service requirements, the computation of state aid shall also be appropriately adjusted.

(c) Limits on assistance. The amount of state assistance is limited by the lesser of a calculated EDTR for eligible debt or an appropriated debt tax limit.

(1) The calculated EDTR is a rate determined with the debt limit resulting from the lesser of calculations specified in subparagraphs (A) or (B) of this paragraph.

(A) EDTR may be calculated as the I&S fund taxes collected for eligible bonds for the last fiscal year of the preceding state fiscal biennium divided by the property value used for state funding purposes in that year, then multiplied by 100.

(B) EDTR may be calculated as the current year debt service payment on eligible bonds divided by the product of the current year average daily attendance (ADA) multiplied by \$35, then divided by \$100.

(2) The EDTR used in the funding formula cannot exceed the appropriated limit (\$.29).

(3) For purposes of computing EDTR, tax collections or payment amounts associated with bonded debt in the IFA program shall be excluded from the calculation.

(d) Data and payment cycles. The necessary data elements to calculate state assistance for existing debt and the associated payment cycle are determined by the commissioner of education.

(1) An initial, preliminary payment of state assistance will be made as soon as practicable after September 1 of each year. This payment will be based on an estimate of ADA; the taxable value of property certified by the Comptroller of Public Accounts for the preceding school year as determined in accordance with Government Code, Chapter 403, Subchapter M; and the amount of taxes budgeted to be collected for payment of eligible bonds. Districts will supply information about budgeted taxes in July on a data collection survey.

(2) A final determination of assistance for a school year will be made at the close of business for the current school year when final counts of ADA and collection amounts for eligible debt are available. This determination will also take into account, if applicable, a reduced property value that reflects either a rapid decline pursuant to TEC, §42.2521, or a grade level adjustment pursuant to TEC, §42.106.

(A) Any additional amounts owed will be paid as soon as practicable after the final determination is made.

(B) Any overpayment will be subtracted from the EDA in the subsequent year. If no such assistance is due in the subsequent school year, the Foundation School Fund will be reduced accordingly. If no payments are due from the Foundation School Fund, the district will be notified about the overpayment and must remit that amount to the Texas Education Agency (TEA) no later than three weeks after notification.

(C) Adjustments to state assistance based on changes in the final counts of ADA or changes to a district's property value must be requested no later than three years following the close of the school year for which the adjustment is sought.

(e) Deposit and uses of funds.

(1) Funds received from the state for assistance with existing debt must be deposited in the district's I&S fund and must be taken into account before setting the I&S fund tax rate.

(2) State and local shares of the EDA must be used for the exclusive purpose of making principal and interest payments on eligible debt.

(f) Refinancing of eligible debt.

(1) A district that refinances eligible debt in part or in full must inform the TEA's division responsible for state funding in writing and must provide appropriate documentation related to the refinancing, including payment schedules for the refunded debt that clearly identify the bonds being refunded and the debt service attributable to the refunded bonds, if available. State aid payments for EDA will not be processed until these documents have been received by the TEA division responsible for state funding.

(2) In order to retain eligibility for EDA funding, refunding bonds must also meet the following criteria.

(A) Refunding bonds may not be called for redemption earlier than the earliest call date of the bonds being refunded.

(B) Refunding bonds must not have a maturity date later than the final maturity date of the bonds being refunded.

(C) The refunding of bonds must result in a net present value savings, which is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. A schedule showing the calculation of a net present value savings prescribed in this subparagraph shall be submitted to the division of the TEA responsible for state funding, in a form specified by the commissioner, no later than 180 days after the date the refunding bonds were approved for sale by the Office of the Attorney General.

(i) Present value savings for fixed rate bonds shall be computed at the true interest cost of the refunding bonds.

(ii) Present value savings for the conversion of variable rate bonds to fixed rate bonds will be calculated using the average interest rate actually paid during the most recent fiscal year and the interest rate applicable to the refunding bonds.

(iii) Present value savings for the conversion of fixed rate bonds to variable rate bonds will be calculated using a 20-year average of the Municipal Market Data 1-year AAA maturity tax-exempt municipal bond interest rate that includes the value for the year in which the refunding bonds are issued and the 19 years immediately preceding the year of issue.

(I) The financial advisor to the district shall certify the projected net present value savings based on the Initial Rate during the Initial Rate period and thereafter based on the 20-year average of the Municipal Market Data 1-year maturity tax-exempt municipal bond interest rate.

(II) The certification of net present savings submitted to the division of the TEA responsible for state funding shall be signed and dated by the district's financial advisor to the bond transaction.

(3) [(2)] The portion of the debt eligible for state assistance on refunded bonds is subject to the same limits as eligible debt that has not been refinanced.

(4) [(3)] If a refunding pricing of a district decreases the current year bond payment requirement, the reduced payment amount shall be the basis of determining the limit on funding.

(5) [(4)] If a refunding pricing of a district increases the bond payment requirement, the amount of increase shall not be used to determine state aid unless the pricing took place prior to January 1 of the last fiscal year of the preceding state fiscal biennium. The total debt service eligible for state assistance will be limited to the district's total debt service prior to January 1 of the last fiscal year of the preceding state fiscal biennium.

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 October 4, 2005.

TRD-200504478

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 475-1497



**CHAPTER 153. SCHOOL DISTRICT
PERSONNEL
SUBCHAPTER CC. COMMISSIONER'S
RULES ON CREDITABLE YEARS OF SERVICE
19 TAC §153.1022**

The Texas Education Agency (TEA) proposes amendment to §153.1022, concerning the minimum salary schedule for certain professional staff. The section establishes definitions of qualifying staff, details eligibility criteria for placement on the salary schedule, and explains the base pay for the 1999-2000 biennium. The proposed amendment would update the rule to modify the components and calculation of the minimum monthly salary rates prescribed by Texas Education Code (TEC), §21.402.

The commissioner is authorized to adopt a minimum monthly salary schedule for certain professionals, including classroom teachers and full-time librarians, counselors, and nurses. The salary schedule is based on the employee's level of experience. In accordance with TEC, §21.402, enacted by Senate Bill 4, 76th Texas Legislature, 1999, 19 TAC §153.1022 was adopted to be effective January 2, 2000. The rule establishes definitions of qualifying staff, details eligibility criteria for placement on the salary schedule, and explains the base pay for the 1999-2000 biennium. Salaries are adjusted using a factor, defined as "FS" in TEC, §21.402(a), based on state assistance under TEC, §42.302.

The proposed amendment to 19 TAC §153.1022 specifies the components and calculation of "FS" and sets forth minimum monthly salary rates. The proposed amendment would modify subsection (c) to incorporate a new element in the determination of "FS" and modify subsection (d) by specifying that the salary rates are applicable for the entire 2005-2006 and 2006-2007 school years. The table set forth as Figure 19 TAC §153.1022(d) in subsection (d) would be updated to establish the new minimum monthly salary rates.

Ernest Zamora, associate commissioner for support services and school finance, has determined that for the first five-year period the amendment is in effect there will be fiscal implications

for state and local government as a result of enforcing or administering the section.

The additional cost to the state is related to a constitutional requirement for the state to make contributions to the Teacher Retirement System on behalf of school district employees. Assuming the minimum contribution rate of 6%, the cost to the state associated with additional compensation for school district employees who appear to be paid no higher than the required state minimum would be estimated to range from \$240,000 to \$300,000 each year for the next five-year period.

School districts that compensate their employees at the rate established by the minimum salary schedule will incur additional costs to comply with the proposed amendment to the minimum salary schedule. Although districts do not report their salary schedules to the TEA, data on staff responsibilities and payroll were used to infer potential costs. Based on the data for staff who appear to be compensated at the minimum salary rate, school district costs for implementing the proposed salary schedule on a statewide basis are estimated to range between \$4 - \$5 million each year for the next five-year period. In addition, there are school districts that adopt salary schedules or contractual language that ties the district salary schedule to the minimum salary schedule. These districts could also incur additional costs, depending upon the specific provisions of the schedules or contracts. However, costs that may be incurred for employees due to such provisions cannot be reliably estimated.

The proposed amendment recognizes the revenue provided through a continued appropriation of \$110 per weighted average daily attendance by the 79th Texas Legislature, 2005 (Appropriations Act, Article III-TEA Rider 69, as amended by House Bill 1, 79th Texas Legislature, 2005, First Called Session). The use of revenue distributed under this appropriation is a matter of local discretion, and school districts could opt to use this revenue to offset any costs associated with the proposed increase in the salary structure.

Dr. Zamora has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be the clarification of the calculation of the salary adjustment factor that is based on state assistance and the establishment of minimum monthly salary rates for certain professional staff. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §21.402, which authorizes the commissioner of education to adopt rules to govern the application of the minimum salary schedule for certain professional staff.

The amendment implements the Texas Education Code, §21.402.

§153.1022. *Minimum Salary Schedule for Certain Professional Staff.*

(a) Definitions and eligibility. The following definitions and eligibility criteria apply to the increases in the minimum salary schedule in accordance with Texas Education Code (TEC), Chapter 21.

(1) The staff positions that qualify for the salary increase include classroom teachers and full-time librarians, counselors, and nurses employed by public school districts and who are entitled to a minimum salary under TEC, §21.402.

(A) A classroom teacher is an educator who teaches an average of at least four hours per day in an academic or career and technology instructional setting pursuant to TEC, §5.001, focusing on the delivery of the Texas essential knowledge and skills and holds the relevant certificate issued by the State Board for Educator Certification (SBEC) under the provisions of TEC, Chapter 21, Subchapter B. Although non-instructional duties do not qualify as teaching, necessary functions related to the educator's instructional assignment such as instructional planning and transition between instructional periods should be applied to creditable classroom time.

(B) A school librarian is an educator who provides full-time library services and holds the relevant certificate issued by the SBEC under the provisions of TEC, Chapter 21, Subchapter B.

(C) A school counselor is an educator who provides full-time counseling and guidance services under the provisions of TEC, Chapter 33, Subchapter A, and holds the relevant certificate issued by the SBEC pursuant to the provisions of TEC, Chapter 21, Subchapter B.

(D) A school nurse is an educator employed to provide full-time nursing and health care services and who meets all the requirements to practice as a registered nurse (RN) pursuant to the Nursing Practice Act and the rules and regulations relating to professional nurse education, licensure, and practice and has been issued a license to practice professional nursing in Texas.

(2) An eligible educator who is employed by more than one district in a shared service arrangement or by a single district in more than one capacity among any of the eligible positions qualifies for the salary increase as long as the combined functions constitute full-time employment.

(3) Full-time means contracted employment for at least ten months (187 days) for 100% of the school day in accordance with definitions of school day in TEC, §25.082, employment contract in TEC, §21.002, and school year in TEC, §25.081.

(4) A local supplement is any amount of pay above the state minimum salary schedule for duties that are part of a teacher's classroom instructional assignment.

(5) Current placement on the salary schedule means a placement based on years of service recognized for salary increment purposes up to the current year.

(6) Salary schedule means a system of providing routine salary increases based upon an employee's total teaching experience and/or an employee's longevity in a school district.

(b) Base pay for the 1999-2001 biennium. As long as employment is in the same position, eligible educators may not receive a minimum salary for each year of the biennium that is less than the salary that they would have received in 1998-1999 at their current placement on the employing district's 1998-1999 salary schedule.

(1) An educator eligible for the salary increase is entitled to a minimum salary in 1999-2000 and 2000-2001 equal to the greater of the salary corresponding to their current placement on the state salary schedule pursuant to TEC, §21.402(a), or the salary corresponding to

their current placement on the employing district's 1998-1999 salary schedule, plus \$300 per month. If employed by the same district, the minimum must include any local and career ladder supplements the employee would have received in 1998-1999. In addition to classroom teachers, this provision applies to eligible counselors, nurses, and librarians whose salary was based on placement on a salary schedule in 1998-1999.

(2) Eligible counselors, nurses, and librarians who were not on a salary schedule in 1998-1999 are entitled in 1999-2000 to the greater of the salary earned in 1998-1999 plus \$300 per month or to the salary corresponding to their current placement on the salary schedule. These educators are placed on the state schedule according to the same criteria that applies to teachers and librarians pursuant to §153.1021 of this title (relating to Recognition of Creditable Years of Service). In 2000-2001, they are entitled to maintain the salary earned in 1999-2000 or to meet the minimum corresponding to their current placement on the salary schedule, whichever is greater.

(3) A beginning teacher who has not previously been on the state salary schedule is entitled to any local supplement that would have been offered to a beginning teacher on the employing district's 1998-1999 salary schedule.

(4) Educators who are eligible for the salary increase and who are employed for more than ten months are entitled to an additional \$300 in increased pay for each full month of additional service.

(5) Teachers who are eligible for the salary increase but who are not employed full-time (work either less than 100% of the day or for a portion of the year) are entitled to a proportionate pay increase. For teachers working less than 100% of the day, the increase is proportionate to the percent of the day employed. For teachers employed less than a full year, the increase is valid only for the months employed.

(6) Nurses, librarians, and counselors who are employed for less than a full school year or who are placed in an eligible assignment for less than a full school year are entitled to a pay increase in proportion to the months employed in which they are eligible.

(c) Determination of "FS." The value of "FS" in the formula contained in TEC, §21.402, shall be determined by dividing the sum of state and local shares of allotments under TEC, Chapter 42, Subchapters B, C, and F, plus the funds allocated under Rider 69 of the General Appropriations Act, as amended by House Bill 1, First Called Session, 79th Texas Legislature, 2005, by the weighted students in average daily attendance for the year. For this determination, the commissioner of education shall use projections of the total amount of allotments and the number of weighted students for the year. In accordance with TEC, §21.402(a), the commissioner shall project the revenues available under TEC, Chapter 42, Subchapter F, based on a guarantee level of \$24.70 and a district enrichment tax rate (DTR) of \$0.64. ~~[The commissioner shall exclude funding amounts contained outside TEC, Chapter 42, Subchapter F, unless specifically directed in statute to include them.]~~

(d) Monthly minimum salary rates. The minimum monthly salary rates applicable for the entire 2005-2006 ~~[2003-2004]~~ and 2006-2007 ~~[2004-2005]~~ school years, in accordance with this section and TEC, §21.402, shall be as set forth in the table in this subsection.

~~Figure: 19 TAC §153.1022(d)
[Figure: 49 TAC §153.1022(d)]~~

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 October 4, 2005.

TRD-200504479
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: November 20, 2005
For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 117. END STAGE RENAL DISEASE FACILITIES

SUBCHAPTER B. FACILITY LICENSING

25 TAC §117.14

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §117.14, concerning end stage renal disease facilities licensing fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The End Stage Renal Disease Facilities Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

SECTION-BY-SECTION SUMMARY

Amendments to §117.14 contain changes in the manner in which fees are assessed against end stage renal disease facilities for initial and renewal licenses. Specifically, §117.14(b)(1) establishes a fee system based on the number of licensed stations. This new fee structure will result in an increase in the licensing fee for some facilities, and a decrease in the licensing fee for other facilities.

FISCAL NOTE

Cindy Bednar, Manager, Facility Licensing Group, Regulatory Licensing Unit, has determined that for each fiscal year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of \$206,903 in 2006 and \$133,148 in 2007 through 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the

proposed section would have fiscal implications for local government only if the local government owned or operated a licensed end stage renal disease facility.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bednar has also determined that there will be an adverse economic effect on both small businesses and micro-businesses that operate licensed end stage renal disease facilities related to the increase in licensing fees. It is assumed that a large percentage of end stage renal disease facilities will meet the definition of a small business or a micro-business. Approximately 283 facilities will see an increase in the total fee, with an average increase of approximately \$1,089. Approximately 78 facilities will see a decrease in fees. There will be an increase in the licensing fees for businesses or persons required to maintain an end stage renal disease facility license. There is no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bednar has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding sufficient for continued operation of the program to ensure that end stage renal disease facilities are licensed and maintain compliance with minimum licensing standards.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Nance Stearman, Health Care Quality Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Mail Code CEN, Austin, Texas 78756, (512) 834-6752 or by email to Nance.Stearman@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed amendment to §117.14 is authorized by Health and Safety Code, §12.0111 and §251.002, which require the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapters 12, 251, and 1001; and Government Code, Chapter 531.

§117.14. Fees.

(a) (No change.)

(b) License fees.

(1) The fees for both initial and renewal licenses are as follows:

(A) \$3,500 for facilities licensed for 0 to 10 dialysis stations;

(B) \$4,300 for facilities licensed for 11 to 20 dialysis stations;

(C) \$5,100 for facilities licensed for 21 to 30 dialysis stations;

(D) \$5,900 for facilities licensed for 31 to 40 dialysis stations; and

(E) \$6,700 for facilities licensed for 41 dialysis stations or more.

~~[(1) The fee for an initial license is \$2,000 per 12-month period.]~~

~~[(2) All licenses are valid for 24 months.]~~

~~[(2) Renewal license fees:]~~

~~[(A) For renewal licenses issued prior to January 1, 2005, the license fee is determined by multiplying the number of treatments in the previous 12-month period by \$.25, except that the minimum fee is \$1,000 and the maximum fee is \$2,500.]~~

~~[(B) For renewal licenses issued January 1, 2005 or later, the license fee will be determined as follows:]~~

~~[(i) For licenses that the department determines will be valid for 12 months, the license fee is the total number of treatments in the past 12-month period multiplied by \$.25, except that the minimum fee is \$1,000 and the maximum fee is \$2,500.]~~

~~[(ii) For licenses that the department determines will be valid for 24 months, the license fee is the total number of treatments in the past 12-month period multiplied by \$.50, except that the minimum fee is \$2,000 and the maximum fee is \$5,000.]~~

(c) (No change.)

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

Filed with the Office of the Secretary of State on October 7, 2005.
TRD-200504517

Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Earliest possible date of adoption: November 20, 2005
For further information, please call: (512) 458-7236

◆ ◆ ◆
**CHAPTER 123. RESPIRATORY CARE
PRACTITIONER CERTIFICATION**

25 TAC §123.4

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §123.4, concerning Respiratory Care Practitioners fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Respiratory Care Practitioner Certification Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; and the cost of licenses compared to other similar licenses. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

Amendments to §123.4 contain increases in fees assessed against licensed respiratory care practitioners for license renewal. Specifically, §123.4(1)(C) increases the fee for a one-year renewal by \$5; and §123.4(1)(D) increases the fee for a two-year renewal by \$10. The term "renewal fee" is being inserted, and language referencing the Board of Health is being removed because the Board of Health was abolished on August 31, 2004.

FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each fiscal year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of \$36,640 in 2006 and \$55,000 in 2007 through 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed section will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed. There will be an increase in the licensing fees for businesses which pay licensing fees for their employees or persons required to maintain a respiratory care practitioner license. The probable economic cost

to persons required to comply with the fee for the license will increase from \$45 per year to \$100 every two years. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding to operate the program to ensure public health and safety through the licensing and regulation of respiratory care practitioners.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Pam K. Kaderka, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628 or by email to pam.kaderka@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed amendment to §123.4 is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Occupations Code, Chapter 604, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§123.4. Fees.

The following fees [~~are prescribed by the board and~~] are required to be paid to the department before any certificate or permit is issued. All fees shall be submitted in the form of a check or money order and are nonrefundable. The department may direct examination applicants to submit examination fees to the National Board for Respiratory Care, Inc. (NBRC).

(1) Schedule of fees for certification as a respiratory care practitioner:

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

(C) renewal fee for a license issued for a one year term is \$50 [~~\$45~~];

(D) renewal fee for a license issued for a two year term is \$100 [~~\$90~~];

(E) - (O) (No change.)

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

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

Filed with the Office of the Secretary of State on October 7, 2005.

TRD-200504522

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236



CHAPTER 133. HOSPITAL LICENSING SUBCHAPTER B. HOSPITAL LICENSE

25 TAC §133.26

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §133.26, concerning hospital licensing fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Hospital Licensing Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

SECTION-BY-SECTION SUMMARY

Amendments to §133.26 contain increases in fees assessed against licensed hospitals for initial and renewal applications based on the number of licensed beds, as well as for certain

types of architectural plan reviews, and include clarification of the language related to application requirements. Specifically, §133.26(b)(1) increases the fee for initial and renewal license applications by \$19 per bed; §133.26(b)(1)(A) clarifies beds which must be included in the fee calculation; §133.26(b)(2) requires that the applicant submit the \$39 per bed fee when adding a multiple location hospital to the license; §133.26(c)(5) increases the fee per square foot by \$100 for architectural plan reviews when the applicant is unable to establish an estimated construction cost; and §133.26(f) adds language authorizing the collection of subscription and convenience fees to recover costs for application processing through the Texas Online authority.

FISCAL NOTE

Cindy Bednar, Manager, Facility Licensing Group, Regulatory Licensing Unit, has determined that for each fiscal year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of \$427,842 in 2006, \$670,738 in 2007, \$670,468 in 2008, \$670,738 in 2009 and \$670,468 in 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement.

In addition, these additional revenues will offset the increased costs associated with implementation of several bills: (1) Senate Bill 872 requiring the department to conduct a study of the impact of niche hospitals on general hospitals; (2) House Bill 677 requiring hospitals to establish a program relating to emergency services for sexual assault survivors; and (3) Senate Bill 316 requiring the department to develop a pamphlet for distribution by Hospitals and Birthing Centers on Shaken Baby Syndrome

Implementation of the proposed section would have fiscal implications for local government if the local government owned or operated a licensed hospital.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bednar has also determined that there will be an adverse economic effect on both micro-businesses and small business that operate licensed hospitals related to the increase in license renewal fees. The number of hospitals meeting the definition of a micro-business would likely be very low, but there are a substantial number of hospitals that could meet the definition of a small business. Those hospitals meeting the definition of a small business will likely fall in the category of 100 beds or less, so the financial impact would be approximately \$1900 or less for a 2 year licensing period. There will be an increase in the licensing fees for those businesses or persons required to maintain a hospital license. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bednar has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding sufficient for continued operation of the program to ensure that hospitals are licensed and maintain compliance with minimum licensing standards.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code,

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Nance Stearman, Health Care Quality Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Mail Code CEN, Austin, Texas 78756, (512) 834-6752 or by email to Nance.Stearman@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed amendment to §133.26 is authorized by Health and Safety Code, §12.0111 and §241.025, which require the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapters 12, 241, and 1001; and Government Code, Chapter 531.

§133.26. Fees.

(a) General.

(1) All fees paid to the [Texas] Department of State Health Services (department) are nonrefundable with the exception of inspection fees for inspections that were not conducted.

(2) All fees shall be paid by check or money order made payable to the [Texas] Department of State Health Services.

(b) License fees.

(1) The fee for an initial license or a renewal license is \$39 [10] per bed [per 12 months] based upon the design bed capacity of the hospital. The design bed capacity of a hospital is determined as follows.

(A) The design bed capacity is the maximum number of patient beds that a hospital can accommodate in rooms that comply with the requirements for patient room suites in §133.163 of this

title (relating to ~~[Hospital]~~ Spatial Requirements for New Construction) including beds, bassinets or cribs in critical care units (including neonatal nurseries), continuing care nursery beds, hospital-based skilled nursing units, medical nursing units, mental health and chemical dependency nursing units, pediatric and adolescent nursing units, obstetrical suites (including labor/delivery/recovery/postpartum (LDRP) beds), and surgical suites. The design bed capacity does not include labor/delivery/recovery (LDR) beds, newborn nursery bassinets, or recovery beds.

(B) The maximum design bed capacity includes beds that comply with the requirements in §133.163 of this title even if the beds are unoccupied or the space is used for other purposes such as offices or storage rooms, provided such rooms can readily be returned to patient use. All required support and service areas must be maintained in place. For example, the removal of a nurse station in an unused patient bedroom wing of 20 beds would effectively eliminate those 20 beds from the design capacity. Eliminating access to the medical gas outlets and nurse call would also remove bed(s) from the design capacity.

(C) (No change.)

(2) A hospital shall submit a license fee for each design bed added as a result of adding a multiple location hospital to its license. The fee is \$39 per bed, regardless of the number of months remaining in the license period.

(3) ~~[(2)]~~ A hospital shall submit an additional license fee with the Final Construction Approval form ~~[notarized affidavit for final construction approval]~~ for each new design bed ~~[an increase in the number of beds]~~ resulting from an approved construction project. The fee is \$39 per bed, regardless of the number of months remaining in the license period. The hospital shall also submit ~~[and]~~ an additional plan review fee if the construction cost increases to the next higher fee schedule according to subsection (c)(4) of this section.

(4) ~~[(3)]~~ A hospital will not receive a refund of previously submitted fees should the hospital's design capacity decrease as a result of an approved construction project.

(c) Plan review fees. This subsection outlines the fees which must accompany the application for plan review and all proposed plans and specifications covering the construction of new buildings or alterations to existing buildings which must be submitted for review and approval by the department in accordance with §133.167 of this title (relating to Preparation, Submittal, Review and Approval of Plans).

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

(5) If an estimated construction cost cannot be established, the estimated cost shall be based on \$225 ~~[\$125]~~ per square foot. No construction project shall be increased in size, scope, or cost unless the appropriate fees are submitted with the proposed changes.

(d) (No change.)

(e) Cooperative agreement application fee. The application fee for a cooperative agreement is \$10,000. The application fee shall be submitted with an application for a cooperative agreement and other documents in accordance with §133.62 ~~[\$133.62(b)(2)]~~ of this title (relating to Cooperative Agreements).

(f) Subscription and convenience fee. The department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online, in accordance with Texas Government Code, §2054.111.

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 October 7, 2005.

TRD-200504516

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236



CHAPTER 141. MASSAGE THERAPISTS SUBCHAPTER A. THE DEPARTMENT

25 TAC §141.2

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §141.2, concerning Massage Therapists fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85 makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Massage Therapy Registration Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; and the cost of licenses compared to other similar licenses. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

Amendments to §141.2 contain increases in fees assessed against licensed massage therapists for renewal registrations. Specifically, §141.2(c)(7) increases the fee for a one-year renewal by \$10; and §141.2(c)(8) increases the fee for a two-year renewal by \$20.

FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each fiscal year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of \$126,640 in 2006 and \$190,000 in 2007 through 2010. These additional revenues will offset costs associated with the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed section will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed. There will be an increase

in the licensing fees for businesses, which pay licensing fees for their employees or persons required to maintain a massage therapist license. The probable economic cost to persons required to comply with the fee for the license will increase from \$40 per year to \$100 every two years. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding to operate the program to ensure public health and safety through the licensing and regulation of massage therapists.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Heather Muehr, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, 512/834-6628 or by email to heather.muehr@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed amendment to §141.2 is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§141.2. Fees.

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

(c) The fees related to the registration of massage therapists are as follows:

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

(7) fee for a renewal registration issued for a one-year period--\$50 [~~\$40~~];

(8) fee for a renewal registration issued for a two-year period--\$100 [~~\$80~~];

(9) (No change.)

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

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

Filed with the Office of the Secretary of State on October 7, 2005.

TRD-200504518

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236



CHAPTER 143. MEDICAL RADIOLOGIC TECHNOLOGISTS

25 TAC §143.4

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §143.4, concerning Medical Radiologic Technologists fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Medical Radiologic Technologists Certification Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; and the cost of licenses compared to other similar licenses. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

The amendment to §143.4 contains an increase in the fee assessed against licensed medical radiologic technologists for the biennial certificate renewal. Specifically, §143.4(b)(2) increases the fee for a two-year renewal by \$20.

FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each fiscal year of the first five years the section

is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section as proposed. The effect on state government will be an increase in revenue to the state of \$93,280 in 2006 and \$140,000 in 2007 through 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed section will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the section as proposed. There will be an increase in the licensing fees for businesses which pay licensing fees for their employees or persons required to maintain a medical radiologic technologist license. The probable economic cost to persons required to comply with the fee for the license will increase from \$40 to \$60 every two years. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding to operate the program to ensure public health and safety through the licensing and regulation of medical radiologic technologists.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Pam K. Kaderka, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628 or by email to pam.kaderka@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed amendment to §143.4 is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Occupations Code, Chapter 601, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§143.4. Fees.

- (a) (No change.)
- (b) The schedule of fees is as follows:
 - (1) (No change.)
 - (2) biennial certificate renewal fee--~~\$60~~ [\$40];
 - (3) - (26) (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 October 7, 2005.

TRD-200504523

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236



CHAPTER 205. PRODUCT SAFETY

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §205.11, concerning Bedding fees, §205.44, concerning Labeling of Hazardous Substances fees, and §205.57, concerning Inhalant Abuse fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85 makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

Programs with regulatory authority over the bedding, labeling of hazardous substances, and inhalant abuse were evaluated to determine the level of increase in fees based on the following criteria: The date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

Amendments to §205.11(b) contain increases in bedding permit fees assessed for a two-year term. Specifically, §205.11(b)(1)(A) increases the mattress manufacturer permit fee for less than 2,000 articles per term by \$20; §205.11(b)(1)(B) increases the mattress manufacturer permit fee for 2,000 to 9,999 articles per term by \$30; §205.11(b)(1)(C) increases the mattress manufacturer permit fee for 10,000 to 19,999 articles per term by \$40; §205.11(b)(1)(D) increases the mattress manufacturer permit fee for 20,000 to 29,999 articles per term by \$60; §205.11(b)(1)(E) increases the mattress manufacturer permit fee for 30,000 to 49,999 articles per term by \$80; §205.11(b)(1)(F) increases the mattress manufacturer permit fee for 50,000 to 100,000 articles per term by \$120; §205.11(b)(1)(G) increases the mattress manufacturer permit fee for over 100,000 articles per term by \$120; §205.11(b)(3)(A) increases the bedding product manufacturer permit fee for less than 1,000 articles per term by \$20; §205.11(b)(3)(B) changes the 2,000 to 9,999 articles per term to 1,000 to 9,999 articles per term to correct a typographical error in the current rule and also increases the bedding product manufacturer permit fee for 1,000 to 9,999 articles per term by \$25; §205.11(b)(3)(C) increases the bedding product manufacturer permit fee for 10,000 to 19,999 articles per term by \$30; §205.11(b)(3)(D) increases the bedding product manufacturer permit fee for 20,000 to 29,999 articles per term by \$40; §205.11(b)(3)(E) increases the bedding product manufacturer permit fee for 30,000 to 49,999 articles per term by \$50; §205.11(b)(3)(F) increases the bedding product manufacturer permit fee for 50,000 to 99,999 articles per term by \$70; §205.11(b)(3)(G) increases the bedding product manufacturer permit fee for 100,000 to 200,000 articles per term by \$120; §205.11(b)(3)(H) increases the bedding product manufacturer permit fee for over 200,000 articles per term by \$120; §205.11(b)(6) increases the processor permit fee by \$10; §205.11(b)(7) increases the germicidal treatment permit fee by \$10; and §205.11(b)(8) increases the arts and crafts permit fee by \$5. In addition, amendments to §205.11(c)(1) change the department name from "Texas Department of Health" to "Department of State Health Services" to state the new department name.

Amendments to §205.44 contain an increase in the registration fee for manufacturers of hazardous substances for a two-year term. Specifically, §205.44(f)(1) increases the two-year term fee by \$60.

Amendments to §205.57 contain an increase in the inhalant abuse permit fee assessed for a two-year term. Specifically, §205.57(a) increases the two-year term fee by \$5. Amendments to §205.57(b) change the department name from "Texas Department of Health or its successor" to "Department of State Health Services" to state the new department name.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each fiscal year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of \$88,582 in 2006 and \$132,874 in 2007 through 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. All businesses that manufacture mattresses; renovate mattresses; manufacture bedding products; wholesale or distribute bedding articles or filling materials; import bedding articles or filling materials; manufacture and/or process bulk filling materials; germicidally treat articles of bedding or filling materials; manufacture bedding articles other than mattresses; manufacture hazardous substances; or sell abusable volatile chemicals, including small businesses and micro-businesses, will have an approximate 10% increase in their fees. For bedding permit fees, the cost to small businesses and micro-businesses is less than to large businesses due to a fee schedule based upon articles per term manufactured. The increases for mattress manufacturers and bedding products range from \$20 to \$120 for a two-year term, depending on the number of items manufactured. The labeling of hazardous substances registration fee contained in §205.44 increases from \$570 to \$630 for a two-year term. The inhalant abuse permit fee in §205.57 increases from \$50 to \$55 for a two-year term. The §205.44 and §205.57 increased fees are the same for all businesses, regardless of size. There is also an economic impact on persons, including businesses, required to have permits or file registrations as those fees will increase. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to generate funding to operate the program to ensure the safety of the public with regard to bedding products, hazardous substances, and abusable volatile chemicals (inhalants).

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Michael J. Minoia, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6773, extension 2305 or by email to Michael.Minoia@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

SUBCHAPTER A. BEDDING RULES

25 TAC §205.11

STATUTORY AUTHORITY

The proposed amendments to §§205.11, 205.44 and 205.57 are authorized by Health and Safety Code, §345.043, which authorizes fees for an annual and renewal permit in amounts reasonable and necessary to defray the cost of administering the program; Health and Safety Code, §501.026, which authorizes reasonable registration fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license designed to recover all direct and indirect costs; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Health and Safety Code, Chapters 345, 485, 501, and 1001; and Government Code, Chapter 531.

§205.11. Permit Requirements; Types; Application; Conditions; Suspension.

(a) (No change.)

(b) Types of permit and permit fees.

(1) Mattress Manufacturer Permit. Required of all manufacturers of mattresses or box springs prior to shipping mattresses and/or box springs into or within this state for the purpose of resale. Permit fees are graduated based on the number of articles the manufacturer is requesting authorization to ship during the term of the permit. The fees are set out as follows:

(A) for less than 2,000 articles per term, [a one-year term is \$100 and] a two-year term is \$220 [\$200];

(B) 2,000 to 9,999 articles per term, [a one-year term is \$150 and] a two-year term is \$330 [\$300];

(C) 10,000 to 19,999 articles per term, [a one-year term is \$200 and] a two-year term is \$440 [\$400];

(D) 20,000 to 29,999 articles per term, [a one-year term is \$300 and] a two-year term is \$660 [\$600];

(E) 30,000 to 49,999 articles per term, [a one-year term is \$400 and] a two-year term is \$880 [\$800];

(F) 50,000 to 100,000 articles per term, [a one-year term is \$600 and] a two-year term is \$1,320 [\$1,200]; and

(G) over 100,000 articles per term, [a one-year term is \$600 plus \$.03 for each article and] a two-year term is \$1,320 [\$1,200] plus \$.03 for each article.

(2) (No change.)

(3) Bedding Product Manufacturer Permit. Required of all manufacturers of bedding products, other than mattresses and box springs, prior to shipping such articles in or within this state for the purpose of resale. Permit fees are graduated based on the number of

articles the manufacturer is requesting authorization to ship during the term of the permit. The fees are set out as follows:

(A) for less than 1,000 articles per term, [a one-year term is \$100 and] a two-year term is \$220 [\$200];

(B) 1,000 [2,000] to 9,999 articles per term, [a one-year term is \$125 and] a two-year term is \$275 [\$250];

(C) 10,000 to 19,999 articles per term, [a one-year term is \$150 and] a two-year term is \$330 [\$300];

(D) 20,000 to 29,999 articles per term, [a one-year term is \$200 and] a two-year term is \$440 [\$400];

(E) 30,000 to 49,999 articles per term, [a one-year term is \$250 and] a two-year term is \$550 [\$500];

(F) 50,000 to 99,999 articles per term, [a one-year term is \$350 and] a two-year term is \$770 [\$700];

(G) 100,000 to 200,000 articles per term, [a one-year term is \$600 and] a two-year term is \$1,320 [\$1,200]; and

(H) over 200,000 articles per term, [a one-year term is \$600 plus \$.01 for each article and] a two-year term is \$1,320 [\$1,200] plus \$.01 for each article.

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

(6) Processor Permit. Required of all manufacturers and/or processors of bulk filling materials prior to selling and shipping such filling materials into this state. The [annual] permit fee is \$110 for a two-year term. [;]

[~~(A)~~ \$50 for a one-year term; and]

[~~(B)~~ \$100 for a two-year term.]

(7) Germicidal Treatment Permit. Required of all persons prior to the application of a germicidal treatment process, approved by the department, to articles of bedding and/or filling materials to be shipped into or to be sold in this state. The [annual] permit fee is \$110 for a two-year term. [;]

[~~(A)~~ \$50 for a one-year term; and]

[~~(B)~~ \$100 for a two-year term.]

(8) Arts and Crafts Permit. Required of all persons who manufacture bedding articles other than mattresses (such as pillows, quilts, comforters), have no paid employees, and manufacture less than 250 articles per year for sale in this state. The [annual] permit fee is \$55 for a two-year term. [;]

[~~(A)~~ \$25 for a one-year term; and]

[~~(B)~~ \$50 for a two-year term.]

(c) Permit application.

(1) Application for an initial permit or to renew an expiring permit must be made through the department on an approved application form which may be obtained from the Product Safety Division, Department of State Health Services [Texas Department of Health], 1100 West 49th Street, Austin, Texas 78756.

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

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

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

Filed with the Office of the Secretary of State on October 7, 2005.

TRD-200504519
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Earliest possible date of adoption: November 20, 2005
For further information, please call: (512) 458-7236

◆ ◆ ◆
**SUBCHAPTER C. LABELING OF
HAZARDOUS SUBSTANCES**

25 TAC §205.44

STATUTORY AUTHORITY

The proposed amendments to §§205.11, 205.44 and 205.57 are authorized by Health and Safety Code, §345.043, which authorizes fees for an annual and renewal permit in amounts reasonable and necessary to defray the cost of administering the program; Health and Safety Code, §501.026, which authorizes reasonable registration fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license designed to recover all direct and indirect costs; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Health and Safety Code, Chapters 345, 485, 501, and 1001; and Government Code, Chapter 531.

§205.44. *Registration Fee for Manufacturers of Hazardous Substances.*

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

(f) Registration fees.

(1) Each initial registration statement and each refiling of the registration shall be accompanied by a registration fee of \$630 for a two-year term. [as follows:]

[(A) \$285 for a one-year term; and]

[(B) \$570 for a two-year term.]

(2) (No change.)

(g) - (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.

Filed with the Office of the Secretary of State on October 7, 2005.

TRD-200504520
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Earliest possible date of adoption: November 20, 2005
For further information, please call: (512) 458-7236

◆ ◆ ◆
SUBCHAPTER D. INHALANT ABUSE

25 TAC §205.57

STATUTORY AUTHORITY

The proposed amendments to §§205.11, 205.44 and 205.57 are authorized by Health and Safety Code, §345.043, which authorizes fees for an annual and renewal permit in amounts reasonable and necessary to defray the cost of administering the program; Health and Safety Code, §501.026, which authorizes reasonable registration fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license designed to recover all direct and indirect costs; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Health and Safety Code, Chapters 345, 485, 501, and 1001; and Government Code, Chapter 531.

§205.57. *Permit Fee.*

(a) Each application form submitted for a permit shall be accompanied by a fee of \$55 for a two-year term. [as follows:]

[(1) \$25 for a one-year term; and]

[(2) \$50 for a two-year term.]

(b) The fee shall be paid by money order, certified check, or personal check and shall be made payable to the Department of State Health Services [Texas Department of Health or its successor]. Payment in cash shall not be accepted.

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

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

Filed with the Office of the Secretary of State on October 7, 2005.

TRD-200504521
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Earliest possible date of adoption: November 20, 2005
For further information, please call: (512) 458-7236

◆ ◆ ◆
CHAPTER 229. FOOD AND DRUG

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §229.145 concerning the Narcotic Treatment Program fees, §229.182 concerning Food Manufacturers, Food Wholesalers, and Warehouse Operators fees, §229.372 concerning Permitting of Retail Food Establishments fees, and §229.439 concerning the Device Distributors and Device Manufacturers fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

Programs with regulatory authority over narcotic treatment, food manufacturers, food wholesalers, warehouse operators, retail food establishments, and device distributors and manufacturers, were evaluated to determine the level of increase in fees based on the following criteria: The date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

Amendments to §229.145 contain increases in fees for permits, patient certificates, renewal certificates and delinquency charges for renewing expired permits or submission of late status reports, for narcotic treatment licensees. References to one-year permits have been deleted because the program no longer issues one-year permits. Specifically, §229.145 increases the fees by 40%, including a \$300 increase in the initial application fee stated in §229.145(b)(1); §229.145(b)(2) increases the initial patient fee by \$50 and increases the patient fee certificate by \$20; §229.145(b)(4)(A) increases the delinquency fee for an expired patient certificate by \$2; §229.145(b)(4)(B) increases a delinquency fee for submission of a status report after expiration of a patient certificate by \$100; §229.145(b)(4)(C) increases the renewal fee of a patient certificate by \$20; and §229.145(b)(4)(D) increases the fee for each additional patient requiring a certificate by \$20.

Amendments to §229.182(a)(7) change the department name from "Texas Department of Health or its successor" to "Department of State Health Services" to state the new department name. Amendments to §229.182 contain increases in licensing fees for food manufacturers, food wholesalers, and wholesalers with combination products for initial and renewal applications per location, based upon gross annual sales. References to one-year permits have been deleted because the program no longer issues one-year permits. Specifically, new §229.182(b)(1)(A) increases the license fee for food manufacturers with gross annual sales of \$0.00 - \$9,999.99 by \$50; new §229.182(b)(1)(B) increases the license fee for food manufacturers with gross annual sales of \$10,000.00 - \$24,999.99 by \$50; new §229.182(b)(1)(C) increases the license fee for food manufacturers with gross annual sales of \$25,000.00 - \$99,999.99 by \$50; new §229.182(b)(1)(D) increases the license fee for food manufacturers with gross annual sales of \$100,000.00 - \$199,999.99 by \$60; new §229.182(b)(1)(E) increases the license fee for food manufacturers with gross annual sales of \$200,000.00 - \$999,999.99 by \$100; new §229.182(b)(1)(F) increases the license fee for food manufacturers with gross annual sales of \$1 million - \$9,999,999.99 by \$120; new §229.182(b)(1)(G) increases the license fee for food manufacturers with gross annual sales of greater than or equal to \$10 million by \$180; new §229.182(b)(2)(A) increases the license fee for food wholesalers with gross annual sales of \$0.00 - \$199,999.99 by \$50; new §229.182(b)(2)(B) increases the license fee for food wholesalers with gross annual sales of \$200,000.00 - \$499,999.99 by \$50; new §229.182(b)(2)(C) increases the license fee for food wholesalers with gross annual sales of \$500,000.00 - \$999,999.99 by \$80; new §229.182(b)(2)(D) increases the license fee for food wholesalers with gross annual sales of \$1 million - \$9,999,999.99

by \$100; and new §229.182(b)(2)(E) increases the license fee for food wholesalers with gross annual sales of greater than or equal to \$10 million by \$150.

Amendments to §229.372 contain increases in retail food establishment permit fees based on gross annual volume of food sales or establishment type. References to one-year permits have been deleted because the program no longer issues one-year permits. Specifically, §229.372(a)(1)(A) increases the fee for an establishment with a gross annual volume of food sales of \$0 - \$49,999.99 by 25% or \$50; §229.372(a)(1)(B) increases the fee for an establishment with a gross annual volume of sales of \$50,000 - \$149,999.99 by 25% or \$100; §229.372(a)(1)(C) increases the fee for an establishment with a gross annual volume of sales of \$150,000 or more by 17% or \$100; §229.372(a)(2) increases the fee for a for-profit school contractor by 25% or \$50; §229.372(a)(3)(B) increases the fee for mobile food unit by 25% or \$50; §229.372(a)(4) increases the fee for a roadside food vendor by 25% or \$50; and §229.372(a)(5) increases the fee for a child care center by 25% or \$50.

Amendments to §229.439 contain increases in fees for licenses and renewal licenses for device distributors or manufacturers. References to one-year permits have been deleted because the program no longer issues one-year permits. Specifically, §229.439 increases the fees by 20%, §229.439(a)(1)(A) increases the license fee for distributors with gross annual sales of \$0 - \$499,999.99 by \$80; §229.439(a)(1)(B) increases the license fee for distributors with gross annual sales of \$500,000 - \$9,999,999.99 by \$180; §229.439(a)(1)(C) increases the license fee for distributors with gross annual sales greater than or equal to \$10 million by \$280; §229.439(a)(3)(A) increases the license fee for manufacturers with gross annual sales of \$0 - \$499,999.99 by \$80; §229.439(a)(3)(B) increases the license fee for manufacturers with gross annual sales of \$500,000 - \$9,999,999.99 by \$360; and §229.439(a)(3)(C) increases the license fee for manufacturers with gross annual sales of greater than or equal to \$10 million by \$600.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each fiscal year of the first five years §§229.145, 229.182, 229.372, and 229.439 are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed.

The effect of §229.145 on state government will be an increase in revenue to the state of \$72,033 in 2006 and \$108,050 in 2007 through 2010.

The effect of §229.182 on state government will be an increase in revenue to the state of \$427,973 in 2006 and \$641,960 in 2007 through 2010.

The effect of §229.372 on state government will be an increase in revenue to the state of \$195,333 in 2006 and \$293,000 in 2007 through 2010.

The effect of §229.439 on state government will be an increase in revenue to the state of \$68,293 in 2006 and \$102,440 in 2007 through 2010.

These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with §§229.145, 229.182, 229.372, and 229.439 as proposed.

There will be an increase of 40% in the §229.145 licensing fees for businesses or persons operating a narcotic treatment program. The probable economic cost to persons required to comply with the section as proposed will be an increase in permit fees from between \$2 - \$300 for the two-year term of the license.

There will be an increase in the §229.182 licensing fees for businesses or persons required to maintain a food manufacturer license, food wholesaler license or wholesaler with combination license. The probable economic cost to persons required to comply with the §229.182 fee for the license will increase from \$50-\$180 for the two-year term of the license.

There will be an increase in the §229.372 licensing fees for businesses or persons required to maintain a retail food establishment license. The probable economic cost to persons required to comply with the §229.372 fee for the license will increase 25% or \$50 every two years if food sales are less than \$50,000, 25% or \$100 every two years if food sales are \$50,000 to \$150,000, or 17% or \$100 every two years if food sales are \$150,000 or more. Specific types of retail food establishments with flat rate fees will increase 25% or \$50 for the two-year term of the license.

There will be an increase of 20% in the §229.439 licensing fees for businesses or persons operating as device distributors and manufacturers. The probable economic cost to persons required to comply with the section as proposed will be an increase in license fees from \$80 - \$600 for the two-year term of the license.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of §§229.145, 229.182, 229.372, and 229.439.

The public benefit anticipated as a result of enforcing or administering §229.145 is to generate funding to operate the program to continue enforcement of the minimum standards for narcotic treatment programs to ensure the safety of patients enrolled in these substance abuse programs and the general public.

The public benefit anticipated as a result of enforcing or administering §229.182 is to generate funding to operate the program to ensure the safety of foods manufactured, stored and distributed to the public.

The public benefit anticipated as a result of enforcing or administering §229.372 is to generate funding to operate the program that conducts inspections of retail food establishments to ensure the reduction of the potential for food borne illness to the public and Texas consumers.

The public benefit anticipated as a result of enforcing or administering §229.439 is to generate funding to operate the program to continue enforcement of the minimum standards for device distributors and manufacturers, ensuring these medical products are safe and effective for use by the public and consumers.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code,

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal concerning §§229.145 and 229.439 may be submitted to Tom Brinck, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6755, extension 2388 or by email to Tom.Brinck@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Comments on the proposal concerning §229.372 may be submitted to John D. Lattimore, Food Establishment Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6753, extension 2023 or by email to John.Lattimore@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

Comments on the proposal regarding §229.182 may be submitted to Julie Loera, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6670, extension 2145 or by email to Julie.Loera@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

SUBCHAPTER J. MINIMUM STANDARDS FOR NARCOTIC TREATMENT PROGRAMS

25 TAC §229.145

STATUTORY AUTHORITY

The proposed amendment to §229.145 is authorized by Health and Safety Code, §466.023, which requires the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the

Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Health and Safety Code, Chapters 466 and 1001; and Government Code, Chapter 531.

§229.145. Applications, Fees, Permits.

(a) (No change.)

(b) Fees and fee assessments.

(1) Initial fees. All applicants for an NTP permit must submit an initial application fee of \$1,000 [~~\$700~~] with each application. All initial fees are nonrefundable. An application will not be processed unless it is submitted with the initial fees.

(2) Patient fees. A permit holder must submit a patient fee for each patient the NTP is approved to treat. The patient fee must be paid no later than 30 days from the date the permit is issued. A non-refundable initial fee of \$150 [~~\$100~~] must be submitted for each medication unit requested in the initial application. The NTP or medication unit will be issued a patient fee certificate for a [~~one or~~] two-year term [; as determined by the department]. The patient fee is \$60 per patient. [fees are as follows:]

~~[(A) \$20 for each patient for a one-year patient fee certificate; or]~~

~~[(B) \$40 for each patient for a two-year patient fee certificate.]~~

(3) (No change.)

(4) Renewal permit fees. A permit holder must submit a renewal application form, a current status report, and renewal fees prior to the expiration date of the current patient fee certificate. A renewal permit shall only be issued when all past due fees and delinquency fees are paid.

(A) A permit holder who submits a renewal application and fees after the expiration date must pay delinquency fees of \$5 [~~\$3~~] for each patient the NTP is approved to treat.

(B) A permit holder who submits a current status report after the expiration date must pay a delinquency fee of \$350 [~~\$250~~].

(C) Renewal patient fee certificates are issued for [~~one or~~] two-year terms [as determined by the department]. The renewal fee is nonrefundable and is \$60 per patient. [Renewal fees are nonrefundable and are as follows:]

~~[(i) \$20 for each patient for a one-year patient fee certificate; or]~~

~~[(ii) \$40 for each patient for a two-year patient fee certificate.]~~

(D) Increase in patient certificates. A permit holder who requests an increase in the number of patients the NTP is approved to treat prior to the expiration of a current patient certificate must provide documentation demonstrating adequate facility and staff capacity to accommodate an increase. Temporary transfer patients should not be included. The patient fee is \$60 for each additional patient. [Patient fees for each additional patient should be submitted based on the permit holders current permit term as follows:]

~~[(i) \$20 for each additional patient for a one-year certificate; or]~~

~~[(ii) \$40 for each additional patient for a two-year certificate.]~~

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

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504548

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236

◆ ◆ ◆
SUBCHAPTER L. LICENSURE OF FOOD
MANUFACTURERS, FOOD WHOLESALERS,
AND WAREHOUSE OPERATORS

25 TAC §229.182

The proposed amendment to §229.182 is authorized by Health and Safety Code, §431.222, which requires the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapters 431 and 1001; and Government Code, Chapter 531.

§229.182. Licensing/Registration Fee and Procedures.

(a) License/registration required.

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

(7) A retail food store that also manufactures food and is required to be permitted by the Department of State Health Services [Texas Department of Health or its successor] (department) pursuant to Health and Safety Code, Chapter 437, and the Texas Food Establishment Regulations, §229.370 and §229.371 of this title (relating to Permitting Retail Food Establishments), will be issued only one license or permit. The license or permit fee to be paid will be the higher of the two applicable fees.

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

(b) Licensing and registration fees.

~~[(1) Food manufacturer. This subsection applies to all new and renewal applications received by the department prior to January 1, 2005. Licenses issued under this subsection expire one year from the start date of the regulated activity. All food manufacturers in Texas shall obtain a license annually with the department and shall pay a license fee as follows:]~~

~~[(A) \$25 for each place of business having gross annual manufactured food sales of \$0.00 - \$9,999.99;]~~

~~[(B) \$50 for each place of business having gross annual manufactured food sales of \$10,000 - \$24,999.99;]~~

~~[(C) \$100 for each place of business having gross annual manufactured food sales of \$25,000 - \$99,999.99;]~~

~~{(D) \$250 for each place of business having gross annual manufactured food sales of \$100,000 - \$199,999.99;}~~

~~{(E) \$400 for each place of business having gross annual manufactured food sales of \$200,000 - \$999,999.99;}~~

~~{(F) \$500 for each place of business having gross annual manufactured food sales of \$1 million - \$9,999,999.99; and}~~

~~{(G) \$750 for each place of business having gross annual manufactured food sales greater than or equal to \$10 million.}~~

~~(1) [(2)] Food manufacturer. No person may operate or conduct business as a food manufacturer in this state without first obtaining a license from the department. [This subsection applies to all new and renewal applications received by the department on or after January 1, 2005.] Licenses issued under this subsection expire two years from the start date of the regulated activity. All applicants for a new or renewal food manufacturer's license [food manufacturers in Texas shall obtain a license every two years with the department and] shall pay a license fee as follows:~~

~~(A) \$100 [\$50] for each place of business having gross annual manufactured food sales of \$0.00 - \$9,999.99;~~

~~(B) \$150 [\$100] for each place of business having gross annual manufactured food sales of \$10,000 - \$24,999.99;~~

~~(C) \$250 [\$200] for each place of business having gross annual manufactured food sales of \$25,000 - \$99,999.99;~~

~~(D) \$560 [\$500] for each place of business having gross annual manufactured food sales of \$100,000 - \$199,999.99;~~

~~(E) \$900 [\$800] for each place of business having gross annual manufactured food sales of \$200,000 - \$999,999.99;~~

~~(F) \$1120 [\$1000] for each place of business having gross annual manufactured food sales of \$1 million - \$9,999,999.99; and~~

~~(G) \$1680 [\$1500] for each place of business having gross annual manufactured food sales greater than or equal to \$10 million.~~

~~{(3) Food wholesaler. This subsection applies to all new and renewal applications received by the department prior to January 1, 2005. Licenses issued under this subsection expire one year from the start date of the regulated activity. All food wholesalers in Texas shall obtain a license annually with the department. Except as provided for in paragraph (5) of this subsection, food wholesalers shall pay a license fee as follows:}~~

~~{(A) \$100 for each place of business having gross annual food sales of \$0.00 - \$199,999.99;}~~

~~{(B) \$200 for each place of business having gross annual food sales of \$200,000 - \$499,999.99;}~~

~~{(C) \$300 for each place of business having gross annual food sales of \$500,000 - \$999,999.99;}~~

~~{(D) \$400 for each place of business having gross annual food sales of \$1 million - \$9,999,999.99; and}~~

~~{(E) \$600 for each place of business having gross annual food sales of greater than or equal to \$10 million.}~~

~~(2) [(4)] Food wholesaler. No person may operate or conduct business as a food wholesaler in this state without first obtaining a food wholesaler's license from the department. [This subsection applies to all new and renewal applications received by the department on or after January 1, 2005.] Licenses issued under this subsection expire~~

two years from the start date of the regulated activity. Except as provided for in paragraph (4) [(7)] of this subsection, all food wholesalers [in Texas shall obtain a license every two years with the department and] shall pay a license fee as follows:

~~(A) \$250 [\$200] for each place of business having gross annual food sales of \$0.00 - \$199,999.99;~~

~~(B) \$450 [\$400] for each place of business having gross annual food sales of \$200,000 - \$499,999.99;~~

~~(C) \$680 [\$600] for each place of business having gross annual food sales of \$500,000 - \$999,999.99;~~

~~(D) \$900 [\$800] for each place of business having gross annual food sales of \$1 million - \$9,999,999.99; and~~

~~(E) \$1350 [\$1200] for each place of business having gross annual food sales of greater than or equal to \$10 million.~~

~~{(5) Wholesaler with combination products. This subsection applies to all new and renewal applications received by the department prior to January 1, 2005. Licenses issued under this subsection expire one year from the start date of the regulated activity. A food wholesaler who is required to be licensed under this section and who is also required to be licensed as a wholesale distributor of drugs under §229.252(a)(1) of this title (relating to Licensing Fee and Procedures) and/or as a device distributor under §229.439(a)(1) of this title (relating to Licensure Fees) shall pay a combined licensure fee for each place of business. The licensure fee shall be based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices) as follows:}~~

~~{(A) \$200 for each place of business having combined gross annual sales of \$0.00 - \$199,999.99;}~~

~~{(B) \$300 for each place of business having combined gross annual sales of \$200,000 - \$499,999.99;}~~

~~{(C) \$400 for each place of business having combined gross annual sales of \$500,000 - \$999,999.99;}~~

~~{(D) \$500 for each place of business having combined gross annual sales of \$1 million - \$9,999,999.99; and}~~

~~{(E) \$750 for each place of business having combined gross annual sales greater than or equal to \$10 million.}~~

~~(3) [(6)] Wholesaler with combination products. [This subsection applies to all new and renewal applications received by the department on or after January 1, 2005. Licenses issued under this subsection expire two years from the start date of the regulated activity.] A person who is required to be licensed as a food wholesaler [who is required to be licensed] under this section and who is also required to be licensed as a wholesale distributor of drugs under §229.252(a)(1) of this title or as a device distributor under §229.439(a)(1) of this title shall pay a combined licensure fee for each place of business. The licensure fee shall be based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices) as follows:~~

~~(A) \$400 for each place of business having combined gross annual sales of \$0.00 - \$199,999.99;~~

~~(B) \$600 for each place of business having combined gross annual sales of \$200,000 - \$499,999.99;~~

~~(C) \$800 for each place of business having combined gross annual sales of \$500,000 - \$999,999.99;~~

~~(D) \$1000 for each place of business having combined gross annual sales of \$1 million - \$9,999,999.99; and~~

(E) \$1500 for each place of business having combined gross annual sales greater than or equal to \$10 million.

(4) ~~[(7)]~~ Food wholesaler registration. Except as provided in paragraph (3) ~~[paragraphs (5) and (6)]~~ of this subsection, a food wholesaler is not required to obtain a license under this section for a place of business if all of the food distributed from that place of business will be stored in a warehouse licensed under this section. A food wholesaler that is not required to obtain a license for a place of business under this section shall register each place of business with the department pursuant to subsection (d)(2) of this section, but only one registration fee must be paid by each such food wholesaler. A food wholesaler who meets this subsection's requirements shall pay a registration fee of \$100. A registration issued under this subsection expires two years from the start date of the regulated activity. ~~[as follows:]~~

~~[(A) \$50 for a one year registration, on a form received by the department prior to January 1, 2005. A registration issued under this subsection expires one year from the start date of the regulated activity;]~~

~~[(B) \$100 for a two-year registration, on a form received by the department on or after January 1, 2005. A registration issued under this subsection expires two years from the start date of the regulated activity;]~~

~~[(8) Warehouse operator. This subsection applies to all new and renewal applications received by the department prior to January 1, 2005. Licenses issued under this subsection expire one year from the start date of the regulated activity. All warehouse operators in Texas shall obtain a license annually with the department. The fee paid must be based on the maximum amount of square feet dedicated to food storage during the licensing period. A warehouse operator shall pay a license fee as follows:]~~

~~[(A) \$175 for each place of business having food storage of 0 - 6,000 square feet;]~~

~~[(B) \$350 for each place of business having food storage of 6,001 - 24,000 square feet;]~~

~~[(C) \$525 for each place of business having food storage of 24,001 - 75,000 square feet;]~~

~~[(D) \$700 for each place of business having food storage of 75,001 - 250,000 square feet; and]~~

~~[(E) \$1000 for each place of business having food storage of 250,001 or more square feet.]~~

(5) ~~[(9)]~~ Warehouse operator. No person may operate or conduct business as a warehouse operator in this state without first obtaining a license from the department. ~~[This subsection applies to all new and renewal applications received by the department on or after January 1, 2005.]~~ Licenses issued under this subsection expire two years from the start date of the regulated activity. ~~[All warehouse operators in Texas shall obtain a license every two years with the department.]~~ License fees are ~~[The fee paid must be]~~ based on the maximum amount of square feet dedicated to food storage during the licensing period. A warehouse operator shall pay a license fee as follows:

(A) \$350 for each place of business having food storage of 0 - 6,000 square feet;

(B) \$700 for each place of business having food storage of 6,001 - 24,000 square feet;

(C) \$1,050 for each place of business having food storage of 24,001 - 75,000 square feet;

(D) \$1,400 for each place of business having food storage of 75,001 - 250,000 square feet; and

(E) \$2,000 for each place of business having food storage of 250,001 or more square feet.

(6) ~~[(4)]~~ A firm that has more than one business location may request a one-time proration of fees when applying for a license for each new location. Upon approval by the department, the expiration date of the license for the new location will be established the same as the firm's previously licensed locations.

(7) ~~[(4)]~~ For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(8) ~~[(4)]~~ All license/registration fees paid under this section are non-refundable.

(9) ~~[(4)]~~ If the license/registration category changes during the license period, the license shall be renewed in the proper category at the time of renewal.

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

(f) Issuance of license/registration. ~~The~~ ~~[As applicable, the]~~ department may license/register a manufacturer, food wholesaler, or warehouse operator who meets the requirements of this section and §229.183 of this title (relating to Minimum Standards for Licensure/Registration).

(1) The initial license/registration shall be valid for ~~[one year from the start date of the regulated activity which becomes the anniversary date, for all applications received by the department prior to January 1, 2005; and for]~~ two years from the ~~[anniversary]~~ date the license/registration was issued ~~[for all applications received on or after January 1, 2005].~~

(2) The renewal license/registration shall be valid for ~~[one year from the anniversary date, unless an amendment occurs, for all applications received by the department prior to January 1, 2005; and for]~~ two years from the ~~[anniversary]~~ date the license/registration was issued ~~[for all applications received on or after January 1, 2005].~~

(3) (No change.)

(g) - (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.

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504549

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER U. PERMITTING RETAIL FOOD ESTABLISHMENTS

25 TAC §229.372

The proposed amendment to §229.372 is authorized by Health and Safety Code, §437.0125, which requires the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapters 431, 437, and 1001; and Government Code, Chapter 531.

§229.372. *Permitting Fees and Procedures.*

(a) Permitting fees.

(1) A person who operates a food establishment shall obtain a permit from the department and pay a permit fee for each establishment unless specifically exempted under subsection (b) or (c) of this section. All permit fees are nonrefundable. Permits are issued for a ~~one or~~ two-year term [as determined by the department]. The fees are based on gross annual volume of sales as follows:

(A) for an establishment with gross annual volume of food sales of \$0 - \$49,999.99, the fee is \$250; [;]

~~[(i) \$100 for a one-year permit; or]~~

~~[(ii) \$200 for a two-year permit.]~~

(B) for an establishment with gross annual volume of food sales of \$50,000 - \$149,999.99, the fee is \$500; or [;]

~~[(i) \$200 for a one-year permit; or]~~

~~[(ii) \$400 for a two-year permit.]~~

(C) for an establishment with gross annual volume of food sales of \$150,000 or more, the fee is \$750. [;]

~~[(i) \$325 for a one-year permit; or]~~

~~[(ii) \$650 for a two-year permit.]~~

(2) A person who contracts with a school to provide food services on a for-profit basis shall obtain a permit and pay a permit fee for each school where food services are provided. Permits are issued for a ~~one or~~ two-year term [as determined by the department]. The permit fee is \$250. [fees are as follows:]

~~[(A) \$100 for a one-year permit; or]~~

~~[(B) \$200 for a two-year permit.]~~

(3) A person who operates a mobile food unit shall obtain a permit from the department for each mobile food unit operated.

(A) (No change.)

(B) Permits are issued for a ~~one or~~ two-year term [as determined by the department]. The permit fee is \$250. [Permit fees are as follows:]

~~[(i) \$100 for a one-year permit; or]~~

~~[(ii) \$200 for a two-year permit.]~~

(4) Each roadside food vendor shall obtain a permit and pay a fee. All fees are nonrefundable. A permit will be issued for a ~~one or~~ two-year term [as determined by the department]. The permit fee is \$250. [fees are as follows:]

~~[(A) \$100 for a one-year permit; or]~~

~~[(B) \$200 for a two-year permit.]~~

(5) Each child care center providing food services shall obtain a permit and pay a fee. All fees are nonrefundable. A permit will be issued for a ~~one or~~ two-year term [; as determined by the department]. The permit fee is \$250. [fees are as follows:]

~~[(A) \$100 for a one-year permit; or]~~

~~[(B) \$200 for a two-year permit.]~~

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

(b) - (l) (No change.)

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504550

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER X. LICENSING OF DEVICE DISTRIBUTORS AND MANUFACTURERS

25 TAC §229.439

The proposed amendment to §229.439, is authorized by Health and Safety Code, §432.009, which require the department to charge fees for issuing or renewing a license or permit; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapters 431, 432, and 1001; and Government Code, Chapter 531.

§229.439. *Licensure Fees.*

(a) License fee.

(1) No person may operate or conduct business as a device distributor without first obtaining a license from the department. All applicants for a device distributor license or a renewal license shall pay a licensing fee. All fees are nonrefundable. Licenses are issued for ~~one or~~ two-year terms [as determined by the department]. A license shall only be issued when all past due fees and delinquency fees are paid. License fees are based on gross annual device sales as follows:

(A) ~~for [För]~~ a distributor with gross annual device sales of \$0 - \$499,999.99, the fee is \$480; [;]

~~[(i) \$200 for a one-year license; or]~~

~~[(ii) \$400 for a two-year license.]~~

(B) ~~for [För]~~ a distributor with gross annual device sales of \$500,000 - \$9,999,999.99, the fee is \$1,080; or [;]

~~[(i) \$450 for a one-year license; or]~~

~~[(ii) \$900 for a two-year license.]~~

(C) ~~for [Før] a distributor with gross annual device sales greater than or equal to \$10 million, the fee is \$1,680. [;]~~

~~/(i) \$700 for a one-year license; or}~~

~~/(ii) \$1,400 for a two-year license.}~~

(2) A person who is required to be licensed as a device distributor ~~[who is required to be licensed]~~ under this section and who is also required to be licensed as a wholesale drug distributor under §229.252(a)(1) of this title (relating to Licensing Fee and Procedures) or as a wholesale food distributor under §229.182(a)(3) of this title (relating to Licensing Fee and Procedures) shall pay a combined licensure fee for each place of business. All fees are nonrefundable. Licenses are issued for ~~[one or]~~ two-year terms ~~[as determined by the department]~~. The licensing fee is based on the combined gross annual sales of these regulated products (foods, drugs, and/or devices) as follows:

(A) ~~for [Før] each place of business having combined gross annual sales of \$0 - \$199,999.99, the fee is \$400;~~

~~/(i) \$200 for a one-year license; or}~~

~~/(ii) \$400 for a two-year license.}~~

(B) ~~for [Før] each place of business having combined gross annual sales of \$200,000 - \$499,999.99, the fee is \$600;~~

~~/(i) \$300 for a one-year license; or}~~

~~/(ii) \$600 for a two-year license.}~~

(C) ~~for [Før] each place of business having combined gross annual sales of \$500,000 - \$999,999.99, the fee is \$800;~~

~~/(i) \$400 for a one-year license; or}~~

~~/(ii) \$800 for a two-year license.}~~

(D) ~~for [Før] each place of business having combined gross annual sales of \$1 million - \$9,999,999.99, the fee is \$1,000; or [;]~~

~~/(i) \$500 for a one-year license; or}~~

~~/(ii) \$1,000 for a two-year license.}~~

(E) ~~for [Før] each place of business having combined gross annual sales greater than or equal to \$10 million, the fee is \$1,500. [;]~~

~~/(i) \$750 for a one-year license; or}~~

~~/(ii) \$1,500 for a two-year license.}~~

(3) No person may operate or conduct business as a device manufacturer in this state without first obtaining a license from the department. All applicants for a device manufacturer license or renewal license shall pay a licensing fee. All fees are nonrefundable. Licenses are issued for ~~[one or]~~ two-year terms ~~[as determined by the department]~~. License fees are based on the gross annual device sales as follows:

(A) ~~for [Før] a manufacturer with gross annual device sales of \$0 - \$499,999.99, the fee is \$480;~~

~~/(i) \$200 for a one-year license; or}~~

~~/(ii) \$400 for a two-year license.}~~

(B) ~~for [Før] a manufacturer with gross annual device sales of \$500,000 - \$9,999,999.99, the fee is \$2,160 or;~~

~~/(i) \$900 for a one-year license; or}~~

~~/(ii) \$1,800 for a two-year license; and}~~

(C) ~~for [Før] a manufacturer with gross annual device sales greater than or equal to \$10 million, the fee is \$3,600. [;]~~

~~/(i) \$1,500 for a one-year license; or}~~

~~/(ii) \$3,000 for a two-year license.}~~

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

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

Filed with the Office of the Secretary of State on October 10, 2005.

TRD-200504551

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236

CHAPTER 267. PESTICIDE APPLICATORS

25 TAC §267.3

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §267.3, concerning Pesticide Applicators License fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Pesticide Applicator License Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

SECTION-BY-SECTION SUMMARY

The amendment to §267.3 contains increases in fees assessed against pesticide applicators for application fees, category examinations, category reexaminations, initial category licenses, renewal category licenses, license and/or identification card replacements, continuing education course reviews, and late fees. Specifically, §267.3(a)(1) increases the application fee by \$5; §267.3(a)(2) increases the category examination fee by \$20; §267.3(a)(3) increases the category reexamination fee by \$20; §267.3(a)(4) increases the initial category license fee for a two-year term by \$265; §267.3(a)(5) increases the renewal category license fee for a two-year term by \$265; §267.3(a)(6) increases the late fee by \$25; §267.3(a)(7) increases the license and/or identification card replacement fee by \$25; and

§267.3(a)(8) increases the continuing education course review fee by \$25 per course.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each fiscal year of the first five years the amendment is in effect, there will be fiscal implications to the state as a result of enforcing or administering the amended section as proposed. The effect on state government will be an estimated increase in revenue to the state of \$51,567 in 2006 and \$77,350 in 2007 through 2010. These additional revenues will offset a portion of the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement; however, many of the licensees are local governmental entities, and to raise the fees to fully cover the costs of the program would be detrimental to these local governmental entities. Implementation of the proposed amendment will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the amendment as proposed. This conclusion was determined by an interpretation of the rules that small businesses and micro-businesses will not be required to pay an increased fee in order to comply with the amended section because currently, all non-commercial pesticide applicators must be employed by political subdivisions of the state or federal government. There are no small businesses or micro-businesses licensed under this program. There will be an increase in the licensing fees for persons required to maintain a pesticide applicator license. The economic cost to persons required to comply with the fee for the license will increase from \$750 every two years to \$1,015 every two years, or a 35% increase in license fees. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amended section. The public benefit anticipated as a result of enforcing or administering the amended section is to generate funding to operate the program to continue enforcement of the safe operation of the mosquito control programs to ensure the public's safety.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Michael J. Minoia, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6773, extension 2305 or by e-mail to Michael.Minoia@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed amendment to §267.3 is authorized by Agriculture Code, §76.109(b), which authorizes a license fee to be set by the agency; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Agriculture Code, Chapter 76; the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§267.3. Fees.

(a) Term, Expiration, and Fee Schedule. [~~Prior to January 1, 2005, the term of all licenses is one year and expires on the anniversary of the effective date, unless renewed.~~] Effective January 1, 2005, the term of all licenses is two years and expires on the second anniversary of the effective date. [~~Some licenses will be renewed for a one-year term in 2005 in a manner to be determined by the department and two years thereafter.~~] The schedule of fees is as follows:

- (1) application fee--~~\$15~~ [\$10];
- (2) category examination fee--~~\$70~~ [\$50];
- (3) category reexamination fee--~~\$70~~; [\$50]
- (4) initial category license fee--~~\$1,015 for a two-year term.~~

[:]

~~{(A) for a one year term is \$375; and}~~

~~{(B) for a two year term is \$750.}~~

- (5) renewal category license fee--~~\$1,015 for a two-year term.~~ [:]

~~{(A) for a one year term is \$375; and}~~

~~{(B) for a two year term is \$750.}~~

- (6) late fee--~~\$50~~ [\$25];
- (7) license and/or identification card replacement fee--~~\$50~~ [\$25]; and
- (8) continuing education course review fee--~~\$50~~ [\$25] per course.

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

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

Filed with the Office of the Secretary of State on October 7, 2005.
TRD-200504525
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Earliest possible date of adoption: November 20, 2005
For further information, please call: (512) 458-7236

◆ ◆ ◆

CHAPTER 289. RADIATION CONTROL

SUBCHAPTER D. GENERAL

25 TAC §289.204

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §289.204, concerning Radiation Control fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85 makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The radiation control program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; and the cost of permits compared to other similar permits. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also evaluated to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

The amendment adds references to §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines) and §289.233 of this title (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine) in §289.204(b)(1)(C) for clarification and adds "and Intense-Pulsed Light Devices" after "Lasers" at the end of the subparagraph to state the correct title of the rule being cited.

In addition, the amendment changes the agency name from "Texas Department of Health/Bureau of Radiation Control" to "Department of State Health Services/Radiation Control" to state the new department name in §289.204(d)(8).

The amendment to §289.204 contains increases in fees for certificates of registration, radioactive material licenses, emergency planning and implementation, and other regulatory services. Specifically, the categories of fees contained in §289.204(e) for radioactive materials licenses increase by 28%, ranging from a two-year fee of \$704 for a gauge general license acknowledgement to a two-year fee of \$273,800 for a Class III waste processing license. Fees contained in §289.204(f) for evaluation of a sealed source or device increase by 28%, ranging from \$2,309 for an amendment requiring reevaluation of a sealed source to \$9,258 for an initial evaluation of a device. Fees contained in §289.204(m) for uranium recovery and byproduct material disposal facility licenses are also increased by 28% and range from a two-year fee of \$52,012 for an in

situ license in post-closure to a two-year fee of \$463,096 for a new application for a conventional uranium recovery license. In addition, the one-time fee adjustments contained in §289.204(o) for uranium recovery and byproduct material disposal facility licenses are increased by 28% and range from \$11,235 for the addition of a wellfield on contiguous property to \$71,651 for addition of an in situ satellite site. The fees contained in §289.204(j) for certificates of registration are increased by 15% for these categories of machine type or use: computerized tomography, fluoroscopy, accelerators, radiographic machines only, industrial radiography, other industrial machines, morgues and educational facilities with machines for non-human use, and other radiation machine services. The fees for these categories range from a two-year fee of \$253 for radiation machine services to a two-year fee of \$1,656 for computerized tomography. The fees contained in §289.204(j) for certificates of registration are increased by 10% for these categories of machine type or use: dental radiographic only, podiatric radiographic only, veterinary, and minimal threat machines. The fees for these categories range from a two-year fee of \$264 for podiatric radiographic machines to \$374 for minimal threat machines.

Section §289.204(j) adds language to clarify that the fees specified in this section are the applicable fees for persons using only dental radiographic machines and for persons using veterinary radiographic machines, including computerized tomography, fluoroscopy, and accelerators.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each fiscal year of the first five years that the amendment will be in effect, there will be fiscal implications to state or local governments as a result of enforcing and administering the amended section as proposed. The effect on state government will be an increase in revenue to the state of \$923,991 in 2006 and \$1,385,987 in 2007 through 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. State and local government entities that are licensed or registered with the department for possession of radioactive material or radiation machines will be required to pay the increased fee as specified in the rule.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the amendment as proposed. Small businesses or micro-businesses that have a license to possess radioactive material will have an increase of 28% in the two-year license fee. Small businesses or micro-businesses that have a certificate of registration will have a 15% increase in the two-year registration fee if they use a radiation machine in the following categories of machine type or use: computerized tomography, fluoroscopy, accelerators, radiographic machines only, industrial radiography, other industrial machines, morgues and educational facilities with machines for non-human use, and other radiation machine services. Small businesses or micro-businesses that have a certificate of registration will have a 10% increase in the two-year registration fee if they use a radiation machine in the following categories of machine type or use: dental radiographic only, podiatric radiographic only, veterinary, and minimal threat machines. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amended section. The public benefit anticipated as a result of enforcing or administering the amended section is to generate funding to operate the radiation control program to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Environmental and Consumer Safety Section, Radiation Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688, extension 2239, or by e-mail to Cindy.Cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control web site (www.tdh.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6688, extension 2239, or cindy.cardwell@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed amendment to §289.204 is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.302, which allows the department to collect fees from each nuclear reactor or other fixed nuclear facility in the state that uses special nuclear material; Health and

Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapters 12, 401, and 1001; and Government Code, Chapter 531.

§289.204. Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services.

(a) (No change.)

(b) Scope. Except as otherwise specifically provided, the requirements in this section apply to any person who is the following:

(1) an applicant for, or holder of:

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

(C) a certificate of registration for radiation machines and/or services, or sources of laser radiation, issued in accordance with §289.226 of this title (relating to Registration of Radiation Machine Use and Services), §289.230 of this title (relating to Certification of Mammography Systems and Accreditation of Mammography Facilities), a certificate of registration for dental radiation machines in accordance with §289.232 of this title (relating to Radiation Control Regulations for Dental Radiation Machines), a certificate of registration for radiation machines used in veterinary medicine in accordance with §289.233 of this title (relating to Radiation Control Regulations for Radiation Machines Used in Veterinary Medicine), or §289.301 of this title (relating to Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices); or

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

(c) (No change.)

(d) Payment of fees.

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

(8) Fee payments shall be in cash or by check or money order made payable to the Department of State Health Services [~~Texas Department of Health~~]. The payments may be made by personal delivery to the central office, Radiation Control [~~Bureau of Radiation Control~~], Department of State Health Services, [~~Texas Department of Health~~] 1100 West 49th Street, Austin, Texas, or mailed to Radiation Control, Department of State Health Services [~~the Bureau of Radiation Control, Texas Department of Health~~], 1100 West 49th Street, Austin, Texas, 78756-3189.

(9) (No change.)

(e) Schedule of fees for radioactive material licenses. The following schedule contains the fees for radioactive material licenses:

Figure: 25 TAC §289.204(e)
~~[Figure: 25 TAC §289.204(e)]~~

(f) Fee for evaluation of a sealed source and/or device.

(1) Each time a manufacturer submits a request for evaluation of a unique sealed source, one of the following fees shall be paid:

(A) for an initial evaluation, a fee of \$4,626 [~~\$3,614~~];

or

(B) for an amendment requiring re-evaluation, a fee of \$2,309 [~~\$1,804~~].

(2) Each time a manufacturer submits a request for evaluation of a unique device, one of the following fees shall be paid:

(A) for an initial evaluation, a fee of \$9,258 [~~\$7,233~~];
or

(B) for an amendment requiring re-evaluation, a fee of \$4,632 [~~\$3,619~~].

(3) (No change.)

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

(j) Schedule of fees for certificates of registration for radiation machines, lasers, and services. [~~The fee for certificates of registration for dental radiation machines is specified in §289.232 of this title. The fee for certificates of registration for radiation machines used in veterinary medicine is specified in §289.233 of this title.~~] The following schedule contains the fees for certificates of registration for radiation machines, lasers, and services. As of January 1, 2006, the fees for the dental radiographic only category and the veterinary category, as specified in the following schedule, are the applicable fees for those categories. [:]

Figure: 25 TAC §289.204(j)

[Figure: 25 TAC §289.204(j)]

(k) - (l) (No change.)

(m) Schedule of fees for uranium recovery and byproduct material disposal facility licenses. The following schedule contains the fees for uranium recovery and byproduct material disposal facility licenses:

Figure: 25 TAC §289.204(m)

[Figure: 25 TAC §289.204(m)]

(n) (No change.)

(o) One-time fee adjustments for uranium recovery and byproduct material disposal facility licenses. For the addition of the following items after an environmental assessment has been completed on a facility, a one-time fee corresponding to the item shall be paid:

(1) \$28,658 [~~\$22,389~~] for in situ wellfield on noncontiguous property;

(2) \$71,651 [~~\$55,977~~] for in situ satellite;

(3) \$11,235 [~~\$8,777~~] for wellfield on contiguous property;

(4) \$50,756 [~~\$39,653~~] for non-vacuum dryer; or

(5) \$71,651 [~~\$55,977~~] for disposal (including processing, if applicable) of byproduct material.

(p) (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 October 7, 2005.

TRD-200504528

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236



CHAPTER 295. OCCUPATIONAL HEALTH SUBCHAPTER C. TEXAS ASBESTOS HEALTH PROTECTION

25 TAC §§295.42 - 295.56, 295.61

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§295.42 - 295.56 and §295.61, concerning Asbestos Health Protection fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

Programs with regulatory authority over asbestos health protection were evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

SECTION-BY-SECTION SUMMARY

The amendments to §§295.42 - 295.56 and §295.61 contain increases in fees for two-year registration and license terms assessed against an asbestos abatement worker, asbestos operations and maintenance contractor (restricted), asbestos operations and maintenance supervisor (restricted), asbestos abatement contractor, asbestos abatement supervisor, individual asbestos consultant, asbestos consultant agency, asbestos project manager, asbestos inspector, asbestos management planner, air monitoring technician, asbestos management planner agency, asbestos laboratory, asbestos training provider, asbestos transporter, and asbestos notifications. References to one-year registration and license fees have been deleted because the program no longer issues one-year registrations and licenses. Specifically §295.42(b) increases the asbestos abatement workers license fee by \$5, §295.43(c) increases the asbestos operations and maintenance contractor (restricted) license fee by \$20, §295.44(b) increases the asbestos operations and maintenance supervisor (restricted) license fee by \$45, §295.45(c) increases the asbestos abatement contractor license fee by \$70, §295.46(b) increases the asbestos abatement supervisor license fee by \$45, §295.47(c) increases the individual asbestos consultant license fee by \$45, §295.48(c) increases the asbestos consultant agency license fee by \$30, §295.49(b) increases the asbestos project manager license fee by \$20, §295.50(b) increases the asbestos inspector license fee by \$10, §295.51(c) increases the asbestos management planner license fee by \$20, §295.52(c) increases the air monitoring technician license fee by \$10, §295.53(d) increases the asbestos management planner agency license fee by \$30, §295.54(b) increases the asbestos laboratory license fee by \$30, §295.55(b) increases the asbestos training provider license fee by \$70, §295.56(b) increases the asbestos transporters license fee by \$30, §295.61(g)(1) increases the administrative

fee by \$5; and §295.61(j)(3) increases the basis for notification fees by \$5 per asbestos reporting unit and increases the administrative fees by \$5. In addition, §295.61(j)(3) increases the maximum fee by \$210 per notification, except for schools, which have an increase of \$20 per notification.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each fiscal year of the first five years the amendments are in effect, there will be fiscal implications to the state as a result of enforcing or administering the amended sections as proposed. The effect on state government will be an estimated increase in revenue to the state of \$132,387 in 2006 and \$198,580 in 2007 through 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed amendments will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there are anticipated economic costs to small businesses or micro-businesses required to comply with the amendments as proposed. There will be an increase in the licensing fees for businesses or persons required to maintain an asbestos related license. The probable economic cost to businesses or persons required to comply with the fee for the license will be an increase of approximately 7% for a two-year license. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the amendments are in effect, the public will benefit from adoption of the amended sections. The public benefit anticipated as a result of enforcing or administering the amendments is to generate funding to operate the program to ensure the public and worker safety with regard to asbestos related projects.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Michael J. Minoia, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756,

(512) 834-6773, extension 2305 or by e-mail to Michael.Minoia@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed amendments to §§295.42 - 295.56 and §295.61 are authorized by the Occupations Code, §1954.056, which requires the department to adopt a schedule of fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Health and Safety Code, Chapters 12, 1954, and 1001; and Government Code, Chapter 531.

§295.42. *Registration: Asbestos Abatement Workers.*

(a) (No change.)

(b) Fee. [~~The fee for a one-year registration term is \$30.~~] The fee for a two-year registration term is \$65 [~~\$60~~].

(c) - (g) (No change.)

§295.43. *Licensure: Asbestos Operations and Maintenance Contractor (Restricted).*

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

(c) Fee. [~~The fee for a one-year license term is \$120.~~] The fee for a two-year license term is \$260 [~~\$240~~].

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

§295.44. *Licensure: Asbestos Operations and Maintenance Supervisor (Restricted).*

(a) (No change.)

(b) Fee. [~~The fee for a one-year license term is \$90.~~] The fee for a two-year license term is \$225 [~~\$180~~].

(c) - (f) (No change.)

§295.45. *Licensure: Asbestos Abatement Contractor.*

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

(c) Fee. [~~The fee for a one-year license term is \$500.~~] The fee for a two-year license term is \$1,070 [~~\$1,000~~].

(d) - (f) (No change.)

§295.46. *Licensure: Asbestos Abatement Supervisor.*

(a) (No change.)

(b) Fee. [~~The fee for a one-year license term is \$300~~] The fee for a two-year license term is \$645 [~~\$600~~].

(c) - (f) (No change.)

§295.47. *Licensure: Individual Asbestos Consultant.*

(a) - (b) (No change.)
(c) Fees. [~~The fee for a one-year license term is \$300.~~] The fee for a two-year license term is \$645 [~~\$600~~].

(d) - (i) (No change.)

§295.48. *Licensure: Asbestos Consultant Agency.*

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

(c) Fee. [~~The fee for a one-year license term is \$200.~~] The fee for a two-year license term is \$430 [~~\$400~~].

(d) - (f) (No change.)

§295.49. *Licensure: Asbestos Project Manager.*

(a) (No change.)

(b) Fee. [~~The fee for a one-year license term is \$150.~~] The fee for a two-year license term is \$320 [~~\$300~~].

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

§295.50. *Licensure: Asbestos Inspector.*

(a) (No change.)

(b) Fee. [~~The fee for a one-year license term is \$60.~~] The fee for a two-year license term is \$130 [~~\$120~~].

(c) - (f) (No change.)

§295.51. *Licensure: Asbestos Management Planner.*

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

(c) Fee. [~~The fee for a one-year license term is \$120.~~] The fee for a two-year license term is \$260 [~~\$240~~].

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

§295.52. *Licensure: Air Monitoring Technician.*

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

(c) Fee. [~~The fee for a one-year license term is \$50.~~] The fee for a two-year license term is \$110 [~~\$100~~].

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

§295.53. *Licensure: Asbestos Management Planner Agency.*

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

(d) Fee. [~~The fee for a one-year license term is \$200.~~] The fee for a two-year license term is \$430 [~~\$400~~].

(e) - (g) (No change.)

§295.54. *Licensure: Asbestos Laboratory.*

(a) (No change.)

(b) Fee. [~~The fee for a one-year license term is \$200.~~] The fee for a two-year license term is \$430 [~~\$400~~].

(c) - (f) (No change.)

§295.55. *Licensure: Asbestos Training Provider.*

(a) (No change.)

(b) Fee. [~~The fee for a one-year license term is \$500.~~] The fee for a two-year license term is \$1,070 [~~\$1,000~~].

(c) - (g) (No change.)

§295.56. *Licensure: Asbestos Transporters.*

(a) (No change.)

(b) Fee. [~~The fee for a one-year license term is \$200.~~] The fee for a two-year license term is \$430 [~~\$400~~].

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

§295.61. *Operations: Notifications.*

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

(g) Consolidated notifications of small operations. Notifications involving a series of small, separate asbestos O&M or abatement operations (each less than 160 square feet or 260 linear feet or 35 cubic feet in size) may be combined by listing the information on a single notification form. Predict the combined additive amount of asbestos to be removed or stripped during a calendar year of January 1 through December 31. If the total amount is less than one asbestos reporting unit per subsection (j) of this section, and the facility is not a public building, a notification is not required. If the facility is a public building, a notification is required for any amount. The department shall be notified at least 10 working days (not calendar days) before the end of the calendar year preceding the year for which notice is being given.

(1) The building owner shall keep records of the individual O&M projects in an O&M manual. An amendment of the annual notification shall be submitted if the amount of asbestos that is abated surpasses that amount of asbestos that was predicted in the original notification by 20%. Fees will be based upon the annual notification and any amendments. The fee that is calculated for the amended notification will only be for the amount of asbestos (number of ARUs) that increased from the original notification. The \$55 [~~\$50~~] administrative fee will not be reassessed.

(2) (No change.)

(h) - (i) (No change.)

(j) Asbestos notification fees.

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

(3) Basis for fees. The fees shall be based on the total amount of the regulated asbestos-containing material (RACM) reported to be removed as defined in 40 CFR §61.141 or asbestos-containing building material (ACBM) reported to be removed as defined in §295.31(c) of this title (relating to General Provisions) and notified in accordance with §295.34(f) of this title (relating to Asbestos Management in Facilities and Public Buildings), and subsection (a) of this section. The fee shall be calculated at the rate of \$30 [~~\$25~~] per asbestos reporting unit (ARU). The number of ARUs associated with the removal activity is determined by dividing the number of linear feet by 260, the number of square feet [~~reported~~] by 160, and the number of cubic feet by 35 and adding these individual results. The sum of this addition, minus any fraction, shall then be multiplied by the \$30 [~~\$25~~] rate to calculate the notification fee. The minimum fee shall be a \$55 [~~\$50~~] administration fee per original notification. The maximum fee shall be \$3,210 [~~\$3,000~~] per notification, except for schools, which shall be \$320 [~~\$300~~] per notification. The fee shall be assessed only for the amount of asbestos to be removed. If no asbestos is removed or if the amount of asbestos removed is less than two ARUs, only the minimum administrative fee shall be assessed. Annual notifications of maintenance activities subject to 40 CFR, Part 61, Subpart M and subsection (g) of this section, are included in the fee requirement. If less than the reported amount will be removed, a notification amendment should be provided to the department no later than five working days following the completion of the project. A refund request must be sent with the amended notification. A new invoice will be sent to the building owner which will reflect a new fee based upon the actual amount of asbestos that was removed. If the fee has been paid, refunds will be made, when appropriate, minus a \$55 [~~\$50~~] administrative fee. Revision of the form will require an additional fee only if the amount of reportable asbestos to be removed is increased.

(4) (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 October 7, 2005.

TRD-200504529

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236



CHAPTER 448. STANDARD OF CARE SUBCHAPTER D. FACILITY LICENSURE INFORMATION

25 TAC §448.408

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §448.408, concerning chemical dependency treatment facilities' licensure fees.

BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, a cost recovery fee is included in this amendment.

The Chemical Dependency Treatment Facility Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

SECTION-BY-SECTION SUMMARY

Amendments to §448.408(c) contain increases in fees assessed against licensed chemical dependency treatment facilities for base fees, fees per residential and outpatient site, and fees per bed, and eliminate the maximum fee per facility. Specifically, the separate \$100 fee for a license application is eliminated, and renumbered §448.408(c)(1) establishes a combined base fee for a license at \$1,200, which includes application and review fees, increasing the net fee for licensure by \$100; renumbered §448.408(c)(2) increases the fee per residential site by \$25, and adds a fee of \$125 per outpatient site; and renumbered §448.408(c)(3) increases the fee per bed by \$5. The maximum \$4,000 fee per facility is eliminated.

FISCAL NOTE

Cindy Bednar, Manager, Facility Licensing Group, Regulatory Licensing Unit, has determined that for each fiscal year of the first five years the section is in effect, there will be fiscal implications to the state as a result of enforcing or administering the section

as proposed. The effect on state government will be an increase in revenue to the state of \$24,100 in 2006, \$144,270 in 2007, \$33,710 in 2008, \$144,270 in 2009 and \$33,710 in 2010. These additional revenues will offset the increased costs associated with the legislative increase in pay, longevity pay, and travel reimbursement. Implementation of the proposed section would have fiscal implications for local government only if the local government owned or operated a licensed chemical dependency treatment facility.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bednar has also determined that there will be an adverse economic effect on both micro-businesses and small businesses that operate licensed chemical dependency treatment facilities related to the increase in licensing fees. It is assumed that a large percentage of chemical dependency treatment facilities will meet the definition of a micro-business or a small business. All facilities will experience some increase in fees. The average fee increase will be approximately \$590. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bednar has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is to generate funding sufficient for continued operation of the program to ensure that chemical dependency treatment facilities are licensed and maintain compliance with minimum licensing standards.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Nance Stearman, Health Care Quality Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Mail Code CEN, Austin, Texas 78756, (512) 834-6752 or by email to Nance.Stearman@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The proposed amendment to §448.408 is authorized by Health and Safety Code, §464.007, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapters 464 and 1001; and Government Code, Chapter 531.

§448.408. Licensure Fees.

(a) A facility shall pay the full licensure fee for any licensure period during which it provides chemical dependency treatment. Failure to notify the [Commission's] licensure department of closure does not excuse a licensee from paying fees.

(b) (No change.)

(c) The schedule for licensure fees is:

~~[(1) application fee--\$100;]~~

~~(1) [(2)] base fee for initial and renewal licenses, which includes application and review fees--\$1,200 [\$1,000];~~

~~(2) [(3)] fee [per] for each outpatient or residential site located at a separate physical address--\$125 [\$100]; and~~

~~(3) [(4)] fee per bed--\$35. [\$30;]~~

~~[(5) maximum fee per facility (excluding application fees)--\$4,000.]~~

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

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

Filed with the Office of the Secretary of State on October 7, 2005.

TRD-200504526

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 458-7236



TITLE 34. PUBLIC FINANCE

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 190. ALLOCATION OF STATE'S LIMIT ON CERTAIN PRIVATE ACTIVITY BONDS

SUBCHAPTER A. PROGRAM RULES

34 TAC §190.3

The Texas Bond Review Board (BRB) proposes an amendment to §190.3(g)(4)(F), concerning Filing Requirements for Applications for Reservation. House Bill 1901 necessitated the change.

The bill raised the limits on "all other issuers" from \$25 million to \$50 million. In 2005, only eight issuers applied for the maximum amount; and of those, only four issuers closed.

Rob Latsha, Program Administrator for the BRB, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Mr. Latsha has also determined that during the five-year period there will be no probable economic cost to persons, small businesses or micro businesses required to comply with the amended section. The public benefit will be realized by companies being able to complete larger projects sooner.

Comments on the proposal may be submitted in writing to Rob Latsha, Bond Review Board, P.O. Box 13292, Austin, Texas 78711. Comments may also be submitted electronically to pab@brb.state.tx.us or faxed to (512) 475-4802. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Executive Director of the BRB not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*

The amendment is proposed under Chapter 1231, Texas Government Code, which gives BRB the authority to adopt rules governing application for review, the review process, and reporting requirements involved in the issuance of state securities.

Chapter 1372, Government Code is affected by the proposed amendment.

§190.3. Filing Requirements for Applications for Reservation.

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

(g) Application restrictions.

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

(4) Except as provided by §1372.037(b) for any one project, no issuer, prior to September 1 of the program year, may exceed the following maximum application limits:

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

(F) \$50 [\$25] million for issuers described by §1372.022(a)(6).

(5) - (8) (No change.)

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

Filed with the Office of the Secretary of State on October 11, 2005.

TRD-200504581

Bob Kline

Executive Director

Texas Bond Review Board

Earliest possible date of adoption: November 20, 2005

For further information, please call: (512) 463-9892



ADOPTED RULES

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

TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 9. TITLE INSURANCE

The Commissioner of Insurance adopts amendments to §9.1 and §9.401 which concern the adoption by reference of certain amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (Basic Manual) and to the Texas Title Insurance Statistical Plan (Statistical Plan). The amended sections are adopted without change to the proposed text as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4602). There are changes to the items adopted by reference.

The amendments to §9.1 and §9.401 revise the date of the amended Basic Manual and the Statistical Plan. The amendments to the Basic Manual and Statistical Plan, which the amended sections adopt by reference, were considered at the 2004 Texas Title Insurance Biennial Hearing, Rulemaking Phase, Docket Number 2600 (rulemaking hearing), held on December 15, 2004. The adoption of new rules and forms and the modification or replacement of currently existing rules and forms in the Basic Manual and Statistical Plan facilitate the administration and regulation of title insurance in this state. These amendments clarify and standardize the rules and forms regulating the writing and the business of title insurance in the State of Texas. These amendments are identified in this Order by Agenda item number. Pursuant to Commissioner's Order No. 05-0688, August 9, 2005, Agenda items 2004-13, 2004-16, 2004-17, 2004-19, 2004-27, 2004-28, and 2004-32 were disapproved. This adoption order is also necessary to conclude Docket Number 2599 which involved a petition and request to withdraw, amend, and/or modify Procedural Rule P-53, the anti-rebating rule adopted pursuant to Commissioner's Order No. 04-0127 effective April 1, 2004. By agreement of the petitioner and all parties in the 2004 Texas Title Insurance Biennial Hearing, that petition was consolidated into the 2004 biennial rulemaking hearing.

The effective date of the adopted sections is November 1, 2005. The department has made typographical corrections to the items adopted by reference, and based on comments, the department has corrected the references to Forms T-40 and T-41 in the Statistical Plan by changing these form numbers to their newly adopted numbers, Forms T-98 and T-99, respectively. The department has further clarified that the Statistical Plan set forth in adopted Agenda Item 2004-43 combines only that portion of Agenda Item 2004-23 that calls for conforming the Statistical Plan to newly adopted forms and endorsements from the biennial hearing. Also in response to comments, the department

has clarified the sentence regarding zero reporting on the Policy Guaranty Fee Remittance Form (Agenda Item 2004-35) to read, "If you had no closings during the quarter and no policy guaranty fees were received, please enter '0' and mail this form." Likewise, Agenda Item 2004-38 has a corresponding change in the Administrative Rules G.1.II.E. concerning the Policy Guaranty Fee. The revised sentence now reads, "If no closings occurred during the quarter and no policy guaranty fees were received, the form must be sent in with the amount of '0.'" Further in response to comments, the department has made clarifying changes to Procedural Rule P-53 that capitalize the word "person" in subsection 1(c) and remove the limiting word "holiday" from subsection 1(d). The department has further added the words "or modified" in subsection 6 of Procedural Rule P-53 to provide additional options in administering this rule before its stated expiration date of January 1, 2008.

The items which are the subject of this adoption are as follows:

The items generally relate to: clean up and clarification of insuring forms and procedural rules, new or amended forms and procedural rules to conform to American Land Title Associate forms, updates and modernization of certain administrative rules, definitions and reporting forms in the Basic Manual, and revisions to the rebating and discounts Procedural Rule P-53 resulting from legislation enacted by the 79th Legislature. House Bill (HB) 2565 amended §2502.055 of the Texas Title Insurance Act to define four specific activities that are not rebating activities and to provide a definition of "market rate." Other activities not defined or identified by HB 2565 may be violations of the Texas Title Insurance Act and continue to be prohibited. The adopted revisions to P-53 continue to prohibit promotional and educational activities that are conditioned on the referral of title insurance business. The department made corrective and clarifying changes to certain of these items as proposed in the rulemaking hearing, added the words "if any" to the references to "premium" in the procedural rules, and assigned form and rule numbers to the applicable subject of each agenda item. The following is a brief description of each proposed Agenda item considered in the 2004 biennial rulemaking hearing that is adopted in this Order:

Item 2004-1--Adoption of an amendment to the Limited Pre-Foreclosure Policy Form T-40 to change the number of the form.

Item 2004-2--Adoption of an amendment to the Limited Pre-Foreclosure Policy Down Date Endorsement Form T-41 to change the number of the form and make other conforming amendments.

Item 2004-3--Adoption of an amendment to Procedural Rule P-43 to make conforming changes based on amendments to the Limited Pre-Foreclosure Policy and Limited Pre-Foreclosure Policy Down Date Endorsement.

Item 2004-4--Adoption of an amendment to the Verification of Services Rendered Form T-00 to update and clarify the form to comply with new and existing reporting requirements.

Item 2004-5--Adoption of an amendment to the Endorsement Instructions in Section II of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas and Procedural Rule P-8 to allow for issuance or affirmation of coverage under Forms T-19 or T-19.1 upon completion of contemplated improvements.

Item 2004-6--Adoption of a new Procedural Rule P-59 regarding recodification of the Texas Insurance Code and the reconciliation of references.

Item 2004-7--Adoption of an amendment to the First Loss Endorsement Form T-14 to conform to a new American Land Title Association form and to eliminate the 10% threshold loss requirement.

Item 2004-8--Adoption of a new Assignment of Rents/Leases Endorsement (Form T-27) to insure that the assignment of rents or leases was properly executed and that no existing prior assignment, unless excepted, appears in the public records.

Item 2004-9--Adoption of a new Procedural Rule (P-60) for the new Assignment of Rents/Leases Endorsement.

Item 2004-10--Repeal of the Adjustable Mortgage Loan Endorsement Form T-33 and adoption of a new Variable Rate Mortgage Endorsement Form T-33 and a new Variable Rate Mortgage- Negative Amortization Endorsement Form T-33.1 to conform to American Land Title Association forms.

Item 2004-11--Adoption of an amendment to Procedural Rule P-9 to conform to the issuance of the new Variable Rate Mortgage- Negative Amortization Endorsement.

Item 2004-12--Adoption of an amendment to the Texas Short Form Residential Mortgagee Policy- One-to-Four Family Form T-2R to conform to the issuance of the new variable rate mortgage endorsements and other endorsements.

Item 2004-14--Adoption of a new Condominium Endorsement (Form T-28) in accordance with an American Land Title Association endorsement.

Item 2004-15--Adoption of an amendment to Procedural Rule P-9 to add a new subparagraph b (15) to conform to the issuance of the new Condominium Endorsement form.

Item 2004-18--Withdrawal of certain Bulletins in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-20--Adoption of an amendment to Procedural Rule P-16, Mortgagee Title Policy Binder on Interim Construction Loan (Interim Binder) to re-define situations in which an Interim Construction Binder may be issued.

Item 2004-21--Adoption of a new Texas Master Indemnity Agreement (Form T-29) that will provide a standard master indemnity to address the most often encountered potential defects, such as unreleased liens, thus relieving an underwriter from executing separate indemnity letters on a transaction-by-transaction basis. Separate indemnity letters will still be required as to potential defects that are not covered by the terms of the standard promulgated master indemnity agreement.

Item 2004-22--Adoption of an amendment to Procedural Rule P-11 to conform to the new Texas Master Indemnity Agreement form.

Item 2004-23--Adoption of an amendment to the Texas Title Insurance Statistical Plan. This agenda item, insofar as it requests conforming the Statistical Plan to other adopted agenda items, has been combined with Agenda item 2004-43 in this adoption. As reflected in the adopted Agenda item 2004-43, the department has declined to delete the tables as requested by Item 2004-23 as these are still necessary in Statistical Plan reporting.

Item 2004-24--Adoption of an amendment to Administrative Rule L-1, Title Insurance Agent, in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-25--Adoption of an amendment to Administrative Rule L-2, Title Insurance Escrow Officer, in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

Item 2004-26--Adoption of an amendment to Procedural Rule P-58, Report on Directly Issued Policy to clarify that the reporting of gross premium is for the policy and all endorsements.

Combined Items 2004-30 and 2004-31--Adoption of an amendment to Procedural Rule P-53, Rebates and Discounts Prohibited, (i) to conform to the amendment enacted in HB 2565, 79th Legislature, Regular Session, to Insurance Code §2502.055 regarding certain promotional and educational activities that are statutorily permitted; (ii) to make additional clarifying and formatting changes; and (iii) to add a termination date to P-53. The newly amended statute is self-executing and enforceable as written. It is the department's position that promotional activities engaged in by a person on the condition of referral of title insurance business remains a violation of the statute, and the department will continue to scrutinize promotional activities that are clearly excessive or beyond what is considered reasonable in accordance with the new statute. The department will continue to gather information and collect data on promotional expenditures, including types and amounts, in furtherance of its statutory requirement to make recommendations to the legislature to improve the efficient and effective regulation of title insurance business in Texas. Additionally, the department may further explore rebating issues in other forums to better address continuing issues related to improper rebating and improper promotional activities. Additionally, the deletion of the limiting word "holiday" in P-53 results in further clarity of what activities are prohibited and helps to prevent potential claims that a party can be allowed because it is not a "holiday" party. The addition of the words "or modified" in subsection 6 will provide additional options in administering this rule before its stated expiration date of January 1, 2008.

Item 2004-33--Adoption of an amendment to Procedural Rule P-1. Definitions, aa. Directly Issued Policy and cc. Commitment for Title Insurance.

Item 2004-34--Adoption of an amendment to the Minimum Standards, Specific Instructions and Report Forms for Audit of Trust Funds Required of Texas Title Insurance Agents, Direct Operations, Title Attorneys and Attorneys Licensed as Escrow Officers.

Item 2004-35--Adoption of a new Policy Guaranty Remittance Form (T-G1) in Section V of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas and repeal of the existing form. The sentence regarding zero

reporting on this form is clarified to read, "If you had no closings during the quarter and no policy guaranty fees were received, please enter '0' and mail this form."

Item 2004-36--Adoption of an amendment to Procedural Rule P-28, Requirements for Continuing Education for Title Agents and Escrow Officers.

Item 2004-38--Adoption of an amendment to Section VI, Administrative Rules of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas. The sentence regarding policy guaranty fee remittances is revised to read, "If no closings occurred during the quarter and no policy guaranty fees were received, the form must be sent in with the amount of '0.'"

Item 2004-39--Adoption of a new procedural rule regarding the timely issuance of title policies.

Item 2004-40--Adoption of a new procedural rule regarding the licensing and location of title agents and direct operations. As a result of input at the rulemaking hearing, additional clarifying language is adopted in this rule.

Item 2004-41--Adoption of an amendment to the Mortgagee Title Policy Binder on Interim Construction Loan Form T-13 to clarify number references in response to inquiries concerning what number to include on the binder.

Item 2004-42--Adoption of an amendment to Procedural Rule P-21, Additional Requirements for Contents of Commitment for Title Insurance to conform this procedural rule with the Commitment for Title Insurance.

Item 2004-43--Adoption of an amendment to the Texas Title Insurance Statistical Plan to update references with conforming changes adopted as a result of the 2004 rulemaking hearing.

The following Agenda items are withdrawn:

Item 2004-29--Withdrawal of item concerning the exceptions from coverage in the forms of title insurance policies as they relate to "filled-in lands." The department will continue to work with interested parties in revising this submission for further proposal at a later date.

Item 2004-37--Withdrawal of item concerning a new procedural rule regarding persons or entities using the word "Title" in the name of their businesses. Because of the existing statutory prohibitions against false information and advertising, the department has withdrawn this item.

The department has filed a copy of each of the adopted items with the Secretary of State's Texas Register section. Copies of the adopted items can be obtained from the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. To request copies, please contact Sylvia Gutierrez at (512) 463-6327.

Comment: Several commenters either supported or had no objection to or position on the various new endorsements, corresponding procedural rules, and clean up, clarification, and modernization of certain insuring forms and administrative rules represented by Agenda Items 2004-1 through 2004-12, 2004-14, 2004-15, 2004-18, 2004-20 through 2004-26, 2004-36, 2004-42, and 2004-43. Commenters supported these items as clarifying and standardizing the rules and forms regulating title insurance as well as facilitating the administration and regulation of title insurance in this state. One commenter described the coverages provided by the new endorsements and stated that they were

not suitable for incorporation into the standard policy. Another commenter stated general concerns about new coverages that impose incremental costs to consumers and suggested either putting the endorsements into the policy or not adding a lot of premium for the endorsements.

Agency Response: The department agrees with the stated benefits of the new and amended endorsements, procedural, and administrative rules and further agrees with a commenter's statement that some of the endorsements may not be needed in every instance to justify inclusion in the regular policy of title insurance. It is noted, however, that experience with these endorsements will help the department determine whether the frequent use of these endorsements warrants their incorporation into standard policies.

Comment: One commenter noted that Agenda Item 2004-20, which re-defines situations in which an Interim Construction Binder may be issued, will put Procedural Rule P-16 back in its original position of a builder building a spec home with proper coverages provided to the consumer and the title company being compensated appropriately by getting the deal and issuing the policy at the ultimate end stage. Another commenter noted that the Interim Construction Binder is a builder product and is generally not suitable for the individual consumer.

Agency Response: The department agrees that this change more accurately reflects the original intent of Procedural Rule P-16.

Comment: Several commenters supported Agenda Item 2004-21 concerning the Texas Master Indemnity Agreement, Form T-29, as being a necessary streamlining to relieve an underwriter from executing separate indemnity letters on each transaction for frequently encountered potential defects, such as unreleased liens. The commenters also recognized that separate indemnity letters will still be required as to potential defects that are not covered by the terms of the standard promulgated master indemnity agreement.

Agency Response: The department agrees.

Comment: One commenter stated general support for Agenda Item 2004-26, Procedural Rule P-58, Report on Directly Issued Policy, but opposed removing the language "or as required by the Department" since once data comes in, the department may want to make other requirements.

Agency Response: The department agrees and has retained this language. The adopted amendment now contains a minor clarification to the reference of "gross premium." The department also notes that the distinction between "best evidence" and "multi-county" for reporting purposes refers to the descriptions stated in Insurance Code, §2704.002. Thus, "best evidence" applies to situations in which either a title agent or direct operation does not exist or refuses to provide title evidence; whereas, "multi-county" refers to situations in which the property is physically located in two or more counties. The department is aware of industry practices which may go beyond the scope of the statute concerning home office issuance (Insurance Code §2704.002) which the department includes in the "best evidence" category. The P-58 reporting requirements will aid in quantifying this activity. Ideally, the issuing agent should be the agent licensed for the county where the property is located.

Comment: Several commenters stated positions on the "filled-in lands" exception in title insurance policies and whether there is a

necessity for a definition of this standard exception. Many commenters pledged to work on this issue to address concerns which may result in an ultimate proposal being submitted to the department for review.

Agency Response: The department will review any suggestions or future proposals.

Comment: Procedural Rule P-53 regarding the prohibition of rebates and discounts generated many comments and suggested changes. Many commenters either supported the rule in its original form effective April 1, 2004, or argued against its constitutionality and urged various amendments of clarification and more specific definition. One commenter stated that amending the rule as suggested would open up a gray area that will only cause abuse of the rule and urged the department to let the rule play out through a full rate session so the effects on expenses could be measured. Another commenter stated that the groups working to modify P-53 have come together to help the consumers. One commenter stated that P-53 has had a leveling effect on competition within the industry and independent title agents can now compete with the larger operations. One commenter urged caution in throwing terms into P-53 that may be too broad and suggested that there is a need for data to see how P-53 has worked. Another commenter suggested specific changes regarding the references to "person", "parties or receptions", and promotion of "any property" that the commenter felt would be more clear and concise. Other commenters have continued to inquire about P-53 and its applicability to industry practices such as providing to realtors listing packages and copies of restrictions.

Agency Response: P-53 was adopted effective April 1, 2004 and since that time, it has been the subject of many inquiries and at least two hearings requesting either its withdrawal or modification. Indeed, the department's adopted version in this order is the result of a combined effort by several interested parties and the state legislature. HB 2565, 79th Legislature, Regular Session, amended Insurance Code §2502.055 regarding certain promotional and educational activities that are statutorily permitted. The newly amended statute is self-executing and enforceable as written. The department notes that promotional activities engaged in by a person on the condition of referral of title insurance business remains a violation of the statute, and the department will also scrutinize promotional activities that are clearly excessive or beyond what is considered reasonable in accord with the new wording of the statute. The department will continue to gather information and collect data on promotional expenditures, including types and amounts, in furtherance of its statutory requirement to make recommendations to the legislature to improve the efficiency and effective regulation of title insurance business in Texas. Additionally, the department may make further exploration of rebating issues in other forums to better address continuing issues related to improper rebating and improper promotional activities. Regarding a commenter's specific suggestions concerning "person", "parties or receptions", and promotion of "any property" that the commenter felt would be more clear and concise, the department agrees as to two of the suggestions and has modified the rule by capitalizing the word "person" in subsection 1(c) and removing the limiting word "holiday" from subsection 1(d). The department disagrees with the suggestion to delete the word "one" in reference to "any one property" because this makes clear that title agents and title companies are prohibited from placing ads on fliers advertising one particular property but they can advertise their own businesses in realtor magazines and other similar publications which describe

and promote various property listings. Regarding specific questions about particular activities, the department is not in a position to issue pre-approvals or otherwise micro-manage promotional activities. The department will rely on the wording of the statute and the rule to curb abusive practices.

Comment: One commenter stated that the revision of the Policy Guaranty Fee Remittance Form should be within the control of the Texas Title Insurance Guaranty Association. Another commenter asked for clarification concerning the sentence in the form that deals with zero reporting of policy guaranty fees.

Agency Response: The department disagrees concerning control of the form and believes that any changes to this form should be subject to the public comment process involved in rulemaking. In response to the request for clarification, the department has clarified the sentence regarding zero reporting on the Policy Guaranty Fee Remittance Form (Agenda Item 2004-35) to read, "If you had no closings during the quarter and no policy guaranty fees were received, please enter '0' and mail this form." Likewise, Agenda Item 2004-38 has a corresponding change in the Administrative Rules G.1.II.E. concerning the Policy Guaranty Fee. The revised sentence now reads, "If no closings occurred during the quarter and no policy guaranty fees were received, the form must be sent in with the amount of '0.'"

Comment: One commenter opposed removing the word "single" from the definition of "Directly Issued Policy" in Procedural Rule P-1, aa. The commenter felt that all activities regarding directly issued policies should be done in a single office.

Agency Response: The department understands the concerns regarding directly issued policies and would point out that Procedural Rule P-31, to which this amended definition conforms, was changed several years ago to remove the word "single" in response to title insurance and lending practices that require rapid delivery of title insurance forms to insureds. In conjunction with that change, however, the rule also contained amendments providing for continued quality control and safeguards concerning original signatures. The conformed definition of "Directly Issued Policy" adopted herein allows consistent application of departmental rules with attendant safeguards for regulation of title insurance practices.

Comment: One commenter opposed the revision that adds a line for the guaranty file (GF) number to Form T-13 concerning the Mortgagee Title Policy Binder on Interim Construction Loan (Agenda Item 2004-41). The commenter stated that this would result in additional costs to agents as well as underwriters and that the issue could be clarified by stating in this adoption order that the number blank in the form refers to the construction binder number assigned by the underwriter.

Agency Response: The department disagrees. This agenda item was in response to inquiries concerning what number to include on the Form T-13. The department was advised that even when agents were told to put the binder number on the form, they would sometimes put the GF number. By amending the form to require both numbers, the department believes that there will be less confusion and more certainty in tracking, and the minimal costs associated with reproducing updated forms resulting from the Title biennial hearing will be fully compensated by the existing premium schedule.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For with changes: Texas Land Title Association; Stewart Title Guaranty Company; Office of Public Insurance Counsel; Southern Title Insurance Corporation; individual consumers; Sierra Title Company, Inc., Metro Title Company, Inc., d/b/a Sierra Title of Cameron & Willacy Counties, Sierra Title of North Texas, Inc., and Sierra Title of Hidalgo County, Inc. (Sierra Group); Fidelity National Title Insurance Company/Alamo Title Insurance; South Texas Housing Development Corporation; Texas Title Insurance Guaranty Association; Title Professionals Association; Texas Association of Builders; Texas Association of Realtors; United General Title Insurance Company; RESPRO Chapter of Texas, Inc.; Title Data, Inc.; Charter Title of Houston; Rattikin Title; Texas Association of Abstractors & Title Agents; legislators; several independent title agents.

Against with changes: Office of Public Insurance Counsel; individual consumers; RESPRO Chapter of Texas, Inc.; Integrity Title Company; Mission Title of San Antonio; Title Texas; South Plains Abstract Company; Title Insurance Company of America; General American; Title Star of Texas.

Neither for or against (Procedural Rule P-16): Texas Land Title Association.

SUBCHAPTER A. BASIC MANUAL OF RULES, RATES AND FORMS FOR THE WRITING OF TITLE INSURANCE IN THE STATE OF TEXAS

28 TAC §9.1

The amended section is adopted pursuant to Insurance Code §§2502.051 - 2502.056, 2551.003, Chapter 2703, and §36.001 and HB 2565. Chapter 2703 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Section 2551.003 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices and to promulgate and enforce all other rules necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. Sections 2502.051 - 2502.056 prohibit the giving, allowance, acceptance or receipt of a rebate, discount, commission, or other thing of value directly or indirectly or for solicitation or referral of title insurance business. HB 2565, enacted by the 79th Legislature, Regular Session, amended §2502.055 to set forth specific promotional and educational activities that may be engaged in by a title insurance company or a title insurance agent. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§9.1. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas.

The Texas Department of Insurance adopts by reference the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas as amended effective November 1, 2005. The document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, 333 Guadalupe Street, Austin, Texas 78701-1998.

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 October 5, 2005.

TRD-200504509

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 1, 2005

Proposal publication date: August 12, 2005

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

SUBCHAPTER C. TEXAS TITLE INSURANCE STATISTICAL PLAN

28 TAC §9.401

The amended section is adopted pursuant to Insurance Code §§2502.051 - 2502.056, 2551.003, Chapter 2703, and §36.001 and HB 2565. Chapter 2703 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Section 2551.003 authorizes the commissioner to promulgate and enforce rules prescribing underwriting standards and practices and to promulgate and enforce all other rules necessary to accomplish the purposes of Chapter 9, concerning regulation of title insurance. Sections 2502.051 - 2502.056 prohibit the giving, allowance, acceptance or receipt of a rebate, discount, commission, or other thing of value directly or indirectly or for solicitation or referral of title insurance business. HB 2565, enacted by the 79th Legislature, Regular Session, amended §2502.055 to set forth specific promotional and educational activities that may be engaged in by a title insurance company or a title insurance agent. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§9.401. Texas Title Insurance Statistical Plan.

The Texas Department of Insurance adopts by reference the rules contained in the Texas Title Insurance Statistical Plan as amended effective November 1, 2005. This document is published by the Texas Department of Insurance and is available from the Property and Casualty Data Services Division, Mail Code 105-5D, Texas Department of Insurance, William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

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

Filed with the Office of the Secretary of State on October 5, 2005.

TRD-200504510

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 1, 2005

Proposal publication date: August 12, 2005

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

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 §15.30

The Texas General Land Office (GLO) adopts an amendment to §15.30, Certification Status of Town of South Padre Island Dune Protection and Beach Access Plan, without changes to the proposed text published in the August 19, 2005, issue of the *Texas Register* (30 TexReg 4790). The amendment is adopted to certify as consistent with state law amendments to the Dune Protection, Beach Renourishment, and Beach Access Plan (Plan) of the Town of South Padre Island (the Town), adopted as Ordinance No. 05-07 on May 4, 2005.

Pursuant to the Open Beaches Act (Texas Natural Resources Code, Chapter 61), the Dune Protection Act (Texas Natural Resources Code, Chapter 63), and the Beach/Dune Rules (31 TAC §§15.1 through 15.10), a local government with jurisdiction over gulf beaches must submit its beach management plan and amendments to the plan to the GLO for certification. The GLO is required to review such plans and certify by rule those plans that are consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules.

The Town's plan was adopted on October 5, 1994. The GLO subsequently certified amendments to the Town's plan adopted by the Board of Aldermen on May 7, 2003, as consistent with state law. The Town seeks approval of amendments to its Plan to modify the definition and location of the Historic Building Line (HBL) in its Plan in one specific area. The HBL is a line established by the Texas Attorney General that indicated the buildable depth line for construction of buildings or structures on or to the landward side of the line. The HBL was located on a map (drawn by Chas R. Hail Associates, Inc., Consulting Engineers, dated March 1981) provided by the Texas Attorney General and is on file with the Public Works Department of the Town of South Padre Island. The line was intended to retain a minimum of two hundred feet of open beach above the mean low tide line according to then available data.

The modification to the HBL is limited to its location on four lots identified as Lots 1, 2, 3, and 4 of Block 156, Padre Beach Subdivision, Section X as shown on the survey labeled and attached as Exhibit B to the Town's Plan Amendment. The existing HBL makes a right angle turn landward immediately south of the lots in question from an adjacent retaining wall. The site is the location of a motel, a facility that was in place before the HBL was drawn. For reasons unknown, the HBL was drawn directly through the structure when it was established in 1981. The adjustment to the HBL at this location will remove the right angle and establish a line connecting the easternmost points of retaining walls on either side of the identified lots.

No comments were received on the adopted amendment or its consistency with the CMP goals and policies.

As justification for the Plan amendments, the Town represented in its February 9, 2005, letter that by permitting construction that eliminates the right angle the potential for beach erosion and dune damage caused by a vortex of wave action is reduced at the location. The area between the existing HBL and the adjusted line is occupied by the existing structure and dunes and dune vegetation. The Town further represented in its February

9, 2005, letter that adjustment of the HBL at this location will preserve a minimum of 200 feet or more of beach from the HBL to a point above mean low tide at all times, and will not result in an encroachment on the public beach. The GLO finds that the adopted amendments to the Town's Plan provide an equal or better level of protection of dunes, dune vegetation, and public access to and use of the public beach. Accordingly, the GLO certifies the amendment to the Dune Protection, Beach Renourishment, and Beach Access Plan (Plan), adopted by the Board of Aldermen of the Town of South Padre Island as Ordinance No. 05-07 on May 5, 2005, as consistent with consistent with the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules. Certification of the Plan shall not be considered in any manner as a waiver of rights of the GLO concerning any previous failure by the Town to comply with its certified plan, the Open Beaches Act, the Dune Protection Act, and the Beach/Dune Rules.

The adopted amendment to certify the Town's Dune Protection and Beach Access Plan is subject to the Texas Coastal Management Program (CMP), as provided in 31 TAC §505.11(a)(1)(J), relating to the Actions and Rules Subject to the Coastal Management Plan, and must be consistent with the applicable CMP goals and policies under §501.14(k), relating to Construction in the Beach/Dune System. The GLO has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The adopted action is consistent with the GLO Beach/Dune regulations that the Council has determined to be consistent with the CMP. Consequently, the Land Office has determined that the adopted action is consistent with the applicable CMP goals and policies.

The GLO has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "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 amendment to §15.30 is not anticipated to 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 because the adopted rulemaking implements legislative requirements in Texas Natural Resources Code §61.011 and §61.015(b), which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas; and Texas Natural Resources Code §63.121 which provides the GLO with authority to adopt rules for the protection of critical dune areas.

No comments were received on the adopted amendment or its consistency with the CMP goals and policies.

The amendment is adopted under the Texas Natural Resources Code §61.011 and §61.015(b), which provide the Texas General Land Office with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches and Texas Natural Resources Code §63.121 which provides the Texas General Land Office with authority to adopt rules for protection of critical dune areas.

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

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

Filed with the Office of the Secretary of State on October 7, 2005.

TRD-200504515

Trace Finley

Policy Director

General Land Office

Effective date: October 27, 2005

Proposal publication date: August 19, 2005

For further information, please call: (512) 305-8598



PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 58. OYSTERS AND SHRIMP SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §58.11, §58.22

The Texas Parks and Wildlife Commission adopts amendments to §58.11, concerning Definitions, and §58.22, concerning Commercial Fishing, without changes to the proposed text as published in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4195).

Responsibility for adopting rules covering the taking, attempting to take, possession, purchase, and sale of oyster resources in the salt waters of Texas is set forth in Parks and Wildlife Code, Chapter 76. Currently, Parks and Wildlife Code, §76.001, defines a "barrel" and "box" for the purposes of measuring take in the oyster fishery; however, neither of these terms reflect the way oysters are packaged on vessels or purchased at the dock. The amendment to §58.11 adds a definition for the term 'sack.' The purpose of defining a sack is to create a volume definition that is in a context understandable to fishermen and to be consistent with other statutory requirements that are part of the oyster fishery. The amendment creates a standardized measurement (110 pounds of oysters, including the sack, equals the volume of one box as defined by statute). The amendment is intended to make it easier for fishermen to comply with limits and easier for enforcement of the rules. The amendment also makes the definition consistent with that used in the Health and Safety Code, §436.103(b), as it relates to the "sack" tax currently collected in the oyster industry.

The amendment to §58.22 also replaces the term 'barrel' with the term 'sack' throughout the section for purposes of establishing uniform nomenclature, which also requires the conversion of all values currently expressed in 'barrels' to their 'sack' equivalents. In the case of subsection (b), which establishes the volume of uncultured oysters that may be possessed aboard a vessel while on the reef, this conversion is straightforward, since the rulemaking does not alter the current value. However, in addition to the change in the units of measurement, the amendment also reduces the daily limit of oysters from 50 barrels (the equivalent of 150 sacks) of culled oysters to 90 sacks. The purpose of this

action is to promote efficiency in utilizing oyster resources by providing a more stable price structure for oysters taken throughout the duration of the open season. The amendment is expected to lengthen the productive part (in terms of sacks per vessel landed) of the season. If landings are more stable, a more stable average price throughout the season is expected, which should create overall economic benefits for the industry. An argument could be made that catching more sacks per trip will increase efficiency and create more catch per unit of effort leading to greater net profits. If price did not decline during these early harvest peaks that might in fact be the case; however, dealers have indicated that prices decline due to the high harvest levels at the beginning of the season.

The 2004 oyster season would be a good example of a volatile market. Landings declined during the season from an initial average of 7,973 sacks per day (November 2003) to an average 2,868 sacks per day by the last month of the season (April 2004). The corresponding average price per sack in November 2003 was \$14.11 per sack and the average of April 2004 was \$15.28 per sack. This indicates the price at the beginning of the season was 7% lower than the price at the end of the season without accounting for any quality differences that may occur between the fall and spring season for oysters. If a fisherman who could catch 150 sacks per day at the beginning the season maintained this proportion of the catch throughout the season, only fifty-three sacks per day would be caught in the last month. Gross receipts would begin the season at \$2,115 per day and drop to \$824 per day by the end of the season.

In contrast, the 2003 oyster season would be an example of a more stable market. Landings declined slightly during the season from an initial average of 5,753 sacks per day (November 2002) to an average 3,595 sacks per day by the last month of the season (April 2003). The corresponding average price per sack in November 2002 was \$14.42 per sack and the average of April 2003 was \$14.47 per sack. If a fisherman who could catch 150 sacks of oysters per day at the beginning the season maintained this proportion of the catch throughout the season, landings (total sacks) would be approximately 18% higher than total landings during the 2004 season example above. Gross receipts would begin the season at \$2,163 per day and end the season at \$1,356 per day, and total gross receipts under this scenario would be 19.7% higher than total gross receipts under the 2004 example above.

The rulemaking assumes that to receive the benefits of a stable market, each fisherman's daily harvest must be reduced from the current level of 150 sacks per day. The amendment establishes a bag limit of 90 sacks of oysters per day so that the total available oysters in Texas bays would be harvested at a slower rate through the season. This will lengthen the productive part of the season and support a higher price throughout the season. Fishermen will be impacted by this proposal; however, it is expected that the benefits to fishermen will offset the negative impacts of a reduced bag on early season efficiency.

Reducing the amount of oysters taken by an individual boat alone would not accomplish the goal of lengthening the season to support a higher price throughout the season. This rule coupled with the moratorium on licenses established by the 79th Legislature will accomplish this goal.

The amendment to §58.11 will function by establishing the precise meaning of the term 'sack' as it is used in the rule.

The amendment to §58.22 will function by establishing limits on the volume of culled and uncultured oysters that may be possessed on a licensed oyster boat.

The department received a total of 106 comments concerning adoption of the proposed amendments.

Three commenters opposed the reduction of the daily bag limit from 150 sacks per day to 90 sacks per day. One of the commenters stated that the preservation of market stability was used as an excuse to reduce the daily bag limit. The department agrees that market stability was the justification of the bag limit reduction, but disagrees that the bag limit should remain at 150 sacks per day as a result. No change was made as a result of the comment.

The remaining two commenters disagreed with the proposed amendment and suggested that the daily bag limit should be 50 sacks per day rather than the proposed 90 sacks per day. The department disagrees with the comments and responds that the intent of the reduction is to promote market stability while minimizing the impact on individual fishermen. Before making this proposal, the department diligently sought the opinions of individual fishermen as well as the Oyster Advisory Committee to determine the level of reduction that would be supported by fishermen and would be effective at accomplishing the goal of having a more stable market. Further reductions in bag limits may be warranted at a later time, but any further reduction beyond 90 sacks is not warranted at this time. No change was made as a result of the comments.

The department received 103 comments supporting adoption of the proposed amendments.

No groups or associations commented on adoption of the proposed amendments.

The amendments are adopted under Parks and Wildlife Code, §61.052, which requires the commission to regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by the chapter, §76.301, which authorizes the commission to regulate the taking, possession, purchase, and sale of oysters.

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 October 6, 2005.

TRD-200504512

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: October 26, 2005

Proposal publication date: July 22, 2005

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



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.

Adopted Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) readopts the administrative rules of 16 Texas Administrative Code (TAC) Chapter 61, Combative Sports, in accordance with the Texas Government Code, §2001.039. The Notice of Intent to Review was published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4653).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of 16 TAC Chapter 61, Combative Sports to determine if the rules were obsolete, reflected current legal and policy considerations, and reflected current procedures of the Department.

The Department's review has determined that the reasons for initially adopting the rules continue to exist. The rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 2052. Based on the Department's review, however, the Department proposes that amendments be made which may be helpful in clarifying statutory and administrative rule requirements and in bringing them more in line with current law and Department procedures.

Proposed changes will be published in the Proposed Rules Section of the *Texas Register* and will be open for public comment prior to final adoption or repeal by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on September 12, 2005. Several comments were received in response to the Notice of Intent to Review; however, only one comment addressed the rules subject to the Notice of Intent to Review. These comments are under consideration for possible rule changes. Other comments received addressed the rulemaking process regarding implementation of statutory changes and is not subject to the rules review as published.

The rules are readopted in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 61.

TRD-200504513

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: October 6, 2005

The Texas Department of Licensing and Regulation (Department) readopts the administrative rules of 16 Texas Administrative Code (TAC) Chapter 67, Auctioneers, in accordance with the Texas Government Code, §2001.039. The Notice of Intent to Review was published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4653).

In accordance with the requirements of Texas Government Code, §2001.039, the Department reviewed the administrative rules of 16 TAC Chapter 67, Auctioneers to determine if the rules were obsolete, reflected current legal and policy considerations, and reflected current procedures of the Department.

The Department's review has determined that the reasons for initially adopting the rules continue to exist. The rules are still essential in implementing the provisions of Texas Occupations Code, Chapter 1802. Based on the Department's review, however, the Department expects to propose that amendments be made to clarify statutory and administrative rule requirements and bring them more in line with current law and Department procedures.

Proposed changes will be published in the Proposed Rules Section of the *Texas Register* and will be open for public comment prior to final adoption by the Department in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The Notice of Intent to Review was distributed to persons internal and external to the agency. The public comment period closed on September 12, 2005. The Department received public comment from one individual with specific comments and suggested changes for consideration.

A licensed auctioneer from Houston, Texas was concerned about the continuing education requirements, that there are too few facilities that offer the continuing education, and that the cost for continuing education is too high. The commenter proposes that continuing education be removed or postponed for a couple of years to allow more facilities to be certified for continuing education.

The comment is under consideration for possible rule changes. The rules are readopted in accordance with Texas Government Code, §2001.039. This concludes the review of 16 TAC Chapter 67.

TRD-200504514

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: October 6, 2005



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: 19 TAC §153.1022(d)

Years Experience	Monthly Amount
0	<u>2,482</u> [2424]
1	<u>2,541</u> [2481]
2	<u>2,599</u> [2539]
3	<u>2,658</u> [2596]
4	<u>2,782</u> [2717]
5	<u>2,906</u> [2838]
6	<u>3,030</u> [2959]
7	<u>3,145</u> [3072]
8	<u>3,254</u> [3178]
9	<u>3,357</u> [3279]
10	<u>3,454</u> [3373]
11	<u>3,546</u> [3464]
12	<u>3,634</u> [3549]
13	<u>3,715</u> [3628]
14	<u>3,793</u> [3705]
15	<u>3,866</u> [3776]
16	<u>3,936</u> [3844]
17	<u>4,001</u> [3908]
18	<u>4,063</u> [3968]
19	<u>4,122</u> [4026]
20 & Over	<u>4,177</u> [4080]

Figure: 25 TAC §289.204(e)

<u>Category of License</u>		<u>Fee</u>
(1)	Accelerator (Used for Production of Radioactive Material)	\$15,319.00
(2)	Agency-Accepted Training Course (Involving Possession of Radioactive Material)	\$3,676.00
(3)	Bone Mineral Analyzer	\$1,987.00
(4)	Broad License	\$20,698.00
(5)	Calibration Service (Survey Instrument)	\$1,690.00
(6)	Calibration/Reference Source	\$1,267.00
(7)	Civil Defense	\$1,987.00
(8)	Decontamination Service	
	(A) Fixed Site	\$25,597.00
	(B) Mobile	\$8,392.00
(9)	Demonstration/Sales	\$3,830.00
(10)	Environmental Laboratory	\$1,564.00
(11)	Eye Applicator	\$1,564.00
(12)	Fine Leak Testing Device	\$4,815.00
(13)	Fixed Multi-Beam Teletherapy	\$8,617.00
(14)	X-Ray Fluorescence	\$1,987.00
(15)	Hand-held Light Intensifying Imaging Device	\$1,987.00
(16)	Gas Chromatograph	\$1,846.00
(17)	Gauge	
	(A) Spinning Pipe-Thickness/Portable	\$2,816.00
	(B) Fixed	\$2,268.00
(18)	General License Acknowledgement-Gauge	\$704.00
(19)	Industrial Radiography (Fixed Facility)	\$5,660.00
(20)	Industrial Radiography (Temporary Field Site)	\$11,912.00

<u>Category of License</u>		<u>Fee</u>
(21)	Installer, Repair, or Maintenance	\$3,126.00
(22)	Irradiator (Self-Contained)	\$3,126.00
(23)	Irradiator (Unshielded)	\$19,261.00
(24)	In-Vitro Use of Radioactive Material	\$945.00
(25)	In-Vitro Test Kit Manufacturer	\$4,915.00
(26)	Leak Test Service	\$1,846.00
(27)	Manufacturing and Commercial Distribution	
	(A) Processor of Radioactive Material	\$48,745.00
	(B) Other Manufacturing and Commercial Distribution	\$7,941.00
	(C) Commercial Distribution Only	\$3,676.00
	(D) Limited Manufacturing (loose material)	\$7,096.00
(28)	Medical Therapy (Sealed Source)	\$2,703.00
(29)	Medical Therapy (Unsealed Source)	\$2,268.00
(30)	Mineral Recovery (Byproduct Material)	\$66,895.00
(31)	Mobile Scanning Service	\$4,393.00
(32)	Naturally Occurring Radioactive Material (NORM)-Commercial Processing	\$25,597.00
(33)	Nuclear Medicine (Diagnostic)	\$2,409.00
(34)	Nuclear Pharmacy	\$7,096.00
(35)	Neutron Generator Target	
	(A) Sealed	\$2,028.00
	(B) Unsealed	\$4,055.00
(36)	Pacemaker	\$1,142.00
(37)	Pipe Joint Collar Marker	\$2,268.00
(38)	Radiopharmaceutical Manufacturing	\$20,979.00

<u>Category of License</u>		<u>Fee</u>
(39)	Remote Controlled Brachytherapy Device (Includes Low Dose-Rate and High Dose-Rate Remote Afterloaders and Intravenous Brachytherapy)	\$3,548.00
(40)	Research and/or Development	\$2,985.00
(41)	Source Material	\$3,830.00
(42)	Special Nuclear Material	\$2,268.00
(43)	Teletherapy	\$3,548.00
(44)	Tracer Studies (Used in Other Than Oil and Gas Industry Wellbores)	\$6,533.00
(45)	Tracer Studies (Used in Oil and Gas Industry Wellbores)	\$3,942.00
(46)	Waste Processing-Class I Exempt	\$3,830.00
(47)	Waste Processing-Class I	\$39,959.00
(48)	Waste Processing-Class II	\$94,661.00
(49)	Waste Processing-Class III	\$273,800.00
(50)	Well Logging	\$3,942.00
(51)	Other Specific License	\$1,987.00
(52)	Additional Authorized Use Sites Where Radioactive Material Is Stored Or Used Under Same License Or Where Only Records Are Stored	25% of Applicable Fee Not To Exceed 50 Additional sites
(53)	Reciprocity	Fee of Applicable Category

Figure: 25 TAC §289.204(j)

<u>Category of Machine/Type of Use</u>	<u>Fee</u>
(1) Computerized Tomography (CT)	\$1,656.00
(2) Fluoroscopy	\$816.00
(3) Accelerator, Simulator, or Other Therapeutic Radiation Machine	\$586.00
(4) Radiographic Machines Only	\$517.00
(5) Podiatric Radiographic Only	\$374.00
(6) Dental Radiographic Only	\$330.00
(7) Veterinary, Including CT, Fluoroscopy, and Accelerators	\$264.00
(8) Industrial Radiography	
(A) Fixed Facility	\$1,702.00
(B) Temporary Job Sites	\$2,852.00
(9) Other Industrial	\$575.00
(A) Diffraction	
(B) Computerized Tomography	
(C) Fluoroscopy	
(D) Flash Radiography	
(E) Hand-held Light Intensifying Image Devices	
(10) Morgues and Educational Facilities Utilizing Radiation Machines for Non- human Use, Including CT, Fluoroscopy, and Accelerators	\$575.00
(11) Minimal Threat Radiation Machines as Specified in 25 TAC §289.231(II)(3)	\$264.00
(A) Cathodoluminescence	
(B) Electron Beam Welding	
(C) Fluorescence X-Ray	
(D) Gauge - X-Ray	
(E) Ion Implantation	
(F) Package X-Ray	
(G) Particle Size Analyzer - X-Ray	
(H) Cabinet X-Ray (Certified)	
(I) Other	
(12) Exposure Rate or Dose Measurements performed by a Licensed Medical Physicist as Specified in 25 TAC §289.226(b)(9)	\$253.00

<u>Category of Machine/Type of Use</u>	<u>Fee</u>
(13) Services as Specified in 25 TAC §289.226(b)(10)	\$253.00
(A) Exposure Rate or Dose Measurements	
(B) Radiation Machine Output Measurements	
(C) Agency-Accepted Training Courses	
(D) Calibration	
(E) Demonstration/Sales	
(F) Assembly, Installation or Repair	
(G) Equipment Performance Evaluations on Dental Radiation Machines	
(H) Provider of Equipment	
(14) Laser - Medical/Research/Academic	\$200.00
(15) Laser - Industrial/Services/Entertainment	\$340.00
(16) Reciprocity	Fee of Applicable Category
(17) Additional Authorized Use Location Where Radiation Machines or Services are Authorized Under the Same Registration	30% of Applicable Fee

Figure: 25 TAC §289.204(m)

<u>License Category</u>	<u>New Application</u>	<u>Operational Status</u>	<u>Closure Only</u>	<u>Post-Closure</u>
(a) Conventional	\$463,096		\$121,859	\$104,023
(b) In Situ	\$322,633	\$121,859	\$121,859	\$52,012
(c) Heap Leach	\$325,910			
(d) Disposal Only	\$374,729	\$121,859	\$121,859	\$104,023

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.

Texas Department of Agriculture

Egg Administrative Penalty Matrix

The Texas Department of Agriculture (the department) is publishing the following administrative penalty matrix to inform the regulated public. This matrix has been developed for the enforcement of the Texas Agriculture Code (the "Code"), Chapter 132, and the rules adopted pursuant to this chapter, located in Title 4, Texas Administrative Code (4 TAC), Chapter 15. The department's authority for enforcement of Chapter 132 is found in §12.020 of the Code, whereby the department may assess and collect administrative penalties against violators of Chapter 132, and the rules adopted pursuant to this chapter, in an amount not to exceed \$500 per violation. Each day that a violation occurs or continues to occur may be considered a separate violation for purposes of administrative penalty assessment. Additional authority concerning license sanctions is found at §12.0201 of the Code.

This administrative penalty matrix is designed to ensure that the department's administrative enforcement actions are fair, uniform, consistent, and appropriate. The penalties provided in the matrix are intended to deter future violations of the Code, to penalize violators, stop the unlawful sale of eggs, and/or provide a warning through a Notice of Non-compliance (NNC) of a violation of Chapter 132 and/or 4 TAC Chapter 15. This matrix replaces the one previously published in the June 3, 1997, issue of the *Texas Register* (22 TexReg 4901). This matrix is effective immediately upon publication in the *Texas Register*.

The violations covered by the matrix are broken into categories based upon the specific type of violation with consideration given to the impact on consumers. Each violation is categorized based on the seriousness of the violation. Penalties are then established by determining whether the violation in a given category is (1) a first violation, (2) a warning through a Notice of Non-compliance (NNC) (with no penalty), (3) a repeat violation, or (4) a violation subsequent to a warning through an NNC.

First violations, resulting in a stop sale and a Notice of Violation (NOV) or an NNC are in the first column in the penalty matrix table and captioned "First Offense." For purposes of the penalty matrix, NNCs in Categories D and E are considered first offenses and do not result in orders. Repeat violation(s) NOV(s) in the same category in the "First Offense" column will also be sent to Respondents and result in orders. Stop sales and NOV(s) subsequent to NNCs or NOV(s) are located in the second column of the matrix captioned "Second Offense." The third column in the matrix table is captioned "Subsequent Offense" and sets forth the penalties for violation(s) that are subsequent to violation(s) in the same category in the "Second Offense" column for which Respondents have been issued an order based on the NOV sent to the Respondent. An NOV setting forth the violation(s) and reflecting the penalty or penalties for the violation(s) set forth in the "First Offense," "Second Offense," and "Subsequent Offense" columns for each category will be sent to the Respondent, pursuant to §12.020 and §132.072 of the Code, and Respondents are provided an opportunity for a hearing and an appeal of an order issued subsequent to a hearing. The process for challenging an order resulting from a hearing is provided in Chapter 2001 of the Government Code. Any order based on an NOV must be

final and no longer be subject to challenge by the Respondent to constitute a prior violation in the matrix.

Category A covers violations that fail to meet standards of quality or agency orders enforcing such standards. This category carries with it the most severe administrative penalties because it covers the most serious types of violations. It is the department's highest priority to enforce the portions of this chapter that could potentially cause harm to the health of the consumer or are inconsistent with a direct order of the department that the activity involved not be undertaken. For example, the highest penalty assessed under the matrix is for violation of a stop sale order, where an individual has sold eggs despite having been told by the department that the eggs cannot be sold.

Category B covers violations that mislead the consumer and are generally related to labeling. The penalties proposed for violations of this type are to ensure that the public is not misled by representations regarding egg quality, size, or grade.

Category C covers violations that interfere with the department's ability to protect consumers, either by failing to maintain required records or by refusing to allow the department access to records. A number of other reporting violations are also included within Category C.

Category D covers violations that constitute a substantial disregard for the licensing and administration provisions of the law, but which do not directly threaten the health of the consumer. This category includes a number of licensing and reporting violations that are less serious than those in Category C.

Category E covers violations that involve a failure to pay or collect fees provided under the chapter. This category carries the smallest penalties because the violations pose no threat to the consumer.

Penalties calculated pursuant to the matrix may be adjusted upward or downward based on previous compliance and efforts to correct any error. Such adjustments may be made on a case-by-case basis.

EGG ADMINISTRATIVE PENALTY MATRIX.

Category A: Failure to Meet Standards of Quality or Agency Orders Enforcing Such Standards.

§132.071(b). Selling eggs in violation of a Stop Sale Order that are unsanitary and/or inedible.

§132.082(a). Selling inedible eggs.

§132.045(a). Failure to handle eggs under reasonably sanitary conditions.

§132.046. Failure of shipped eggs to be transported under refrigeration at the temperature set by the department.

§132.046, §132.004 and 4 TAC §15.7. Failure of eggs to be stored and/or maintained at the temperature set by the department.

§132.082 and 4 TAC §15.10(c). Failure to remove from retail display on a daily basis cartons containing cracked eggs, leaking eggs or some combination of cracked and leaking eggs.

Category B: Misleading the Consumer.

§132.071(b). Selling eggs in violation of a Stop Sale Order.

§132.041(a). Grading or sizing eggs by a method other than by candling and weighing.

§132.042(2). Offering for sale eggs that are offered as graded eggs but are not graded by consumer grade and weight classes.

§132.044(a)(1) and 4 TAC §15.8(a)(1)(A). Failure to state grade of eggs.

§132.044(a)(1) and 4 TAC §15.8(a)(1)(A). Failure to state size of eggs.

§132.044 and 4 TAC §15.8(a)(1)(A). Failure to state quantity of eggs.

§132.044 and 4 TAC §15.8(a)(1)(A). Making reference to grade or type other than that claimed.

§132.044(a) and 4 TAC §15.8(e). Failure of each breakaway portion of a container to contain full information about the size and grade, quantity of eggs in divided portion, Texas egg license number and address of grader/packer.

§132.084(a)(1). Advertising or selling shell eggs below grade "A" by advertising as fresh, yard, selected, hennery, etc. or words having a similar meaning.

§132.084(a)(2). Advertising eggs by price without indicating the full, correct and unabbreviated designation of eggs' size and grade.

Category C: Impeding Departmental Powers.

§132.005(b). Denial of access to business during normal business hours to take samples of eggs and containers.

§132.006(a). Failure of out-of-state location shipping eggs to Texas to make records available for department inspection, where size and grade determinations are made out of state.

§132.061(c). Failure to make records available at all reasonable times for inspection by the department.

§132.071(b). Selling or distributing eggs in violation of a Stop Sale Order.

§132.072(b)(2). Failure of licensee under probated suspension to limit practice to the areas prescribed by the department.

§132.072(b)(3). Failure of licensee under probated suspension to comply with continuing education requirements set by the department.

§132.072(b)(1). Failure of licensee under probated suspension to report to the department as required.

§132.061(a). Failure of a licensed dealer/wholesaler or processor to keep on file for two years a complete record of all eggs bought or sold, including name of person to whom sold or from whom bought, number of cases in each transaction, and/or the date of the transaction.

§132.062(1). Failure of licensed dealer/wholesaler or processor to deliver with each transaction, sale or delivery a signed invoice listing date, quantity, grade and size of eggs sold.

§132.062(2) and 4 TAC §15.9(b). Failure of licensed dealer/wholesaler or processor or licensed broker to keep a copy of the invoice for two years.

§132.023. Failure of out-of-state license applicant to file with the department a designation of resident agent for service of process.

Category D: Licensing and Administration.

§132.071(b). Selling eggs in violation of a Stop Sale Order.

§132.021(a) and 4 TAC §15.2(a). Buying or selling eggs in Texas without first obtaining a license.

4 TAC §15.9(a). Failure of a licensed dealer/wholesaler, processor or broker to submit a monthly/quarterly egg reporting form not later than the tenth day of the following month/quarter.

4 TAC §15.9(a)(2). Failure of a licensed dealer/wholesaler to accurately report egg business during any month/quarter.

§132.022(a) and 4 TAC §15.3 and §15.4. Failure to apply for licensing under the appropriate category.

4 TAC §15.2(a)(2). Failure of dealer/wholesaler to obtain a separate license for each separate facility from which eggs are graded and/or stored.

4 TAC §15.2(a)(2). Failure of processor to obtain a separate license for each separate facility from which eggs are processed.

§132.024. Buying or selling eggs after the first anniversary of the date of issuance or renewal of license without renewing license.

§132.044 and 4 TAC §15.8. Failure of all required labeling information to be placed in a legible fashion on the top panel of carton in a space free of any competing printed matter.

§132.044 and 4 TAC §15.8(b)(3). Failure of printed matter to contrast sharply with the background of the space imprinted.

§132.046. Failure of shipped eggs to be at least grade "A".

§132.041. Failure to have eggs graded and sized at some place other than licensee's place of business in Texas, or designated location out of state by someone licensed under this chapter.

§132.044 and 4 TAC §15.8(a)(2). Failure to label eggs as ungraded where appropriate followed by producer's name, only when packed by producer and sold directly to consumer.

§132.044 and 4 TAC §15.8(b)(2). Failure of a producer exempt under §132.002 to label stock cartons with "Produced by" followed by producer's name and address where eggs are sold by producer directly to consumer.

§132.044(a)(2) and 4 TAC §15.8(a)(1)(B). Failure to provide packer's license number on the carton where designated.

§132.044 and 4 TAC §15.8(a)(1)(A), (B), and (C). Failure of egg carton labeling to contain required information in legible type or print on the egg carton in the locations specified.

Category E: Failing to Pay or Collect Fees.

§132.071(b). Selling eggs in violation of a Stop Sale Order.

§132.006(b). Failure of out-of-state licensee to reimburse the department for the actual and necessary expenses incurred in inspections authorized under this section.

§132.043(c) and 4 TAC §15.5(c). Failure to submit the correct fee with the monthly reporting form where due.

§15.4(a). Failure of dealer/wholesaler to pay appropriate license fee according to volume of eggs handled at each separate facility.

§132.027(a) and 4 TAC §15.4(b). Failure of processor to pay appropriate license fee according to volume of eggs handled at each separate facility.

§132.025(a). Failure of applicant to pay initial license fee prior to issuance of license.

§132.025. Failure of licensee to renew license and pay the license renewal fee prior to the first anniversary date of issuance or renewal.

§§132.025(b), 132.024, 12.024 and 4 TAC §15.3. Failure to pay late fee charged for late payment of renewal fee.

§132.043(b). Failure of a licensed processor to pay fee on first use or change in form of eggs processed.

§132.043(a). Failure of a licensee who first establishes grade, size and classification of eggs to collect fee on first sale of eggs.

Any violation not specifically cited or described herein is a Category E violation.

EGG PENALTY MATRIX			
Category	First Offense	Second Offense	Subsequent Offense*
A.	Stop Sale and \$300 per violation/Violation of Stop Sale - \$500	Stop Sale and \$400 per violation/Violation of Stop Sale - \$500	Stop Sale and \$500 per violation/License Suspension or Revocation
B.	Stop Sale and \$200 per violation/Violation of Stop Sale - \$500	Stop Sale and \$300 per violation/Violation of Stop Sale - \$500	Stop Sale and \$400 per violation/License Suspension or Revocation
C.	\$100 per violation	\$300 per violation	Stop Sale and \$400 per violation/License Suspension or Revocation
D.	Stop Sale and NNC/Violation of Stop Sale - \$500	Stop Sale and \$100 per violation/Violation of Stop Sale - \$500	Stop Sale and \$200 per violation/License Suspension or Revocation
E.	NNC	\$100 per violation per month	Stop Sale and \$200 per violation/License Suspension or Revocation

*Violation of Stop Sale for a "Subsequent Offense" by a licensee will result in License Suspension/Revocation and \$500 for a retailer or other non-licensee.

A. Failing to Meet Standards of Quality or Agency Orders Enforcing Such Standards--This category carries with it the most severe administrative penalties because it covers serious types of violations that could potentially cause harm to the health of the consumer. §§132.071(b), 132.082(a), 132.045(a), 132.046, 132.046 and 132.004 and 4 TAC §15.7; §132.082 and 4 TAC §15.10(c).

B. Misleading the Consumer--This category covers violations that mislead the consumer and are generally related to labeling. Violations of this type are to ensure that the public is not misled with regard to egg quality, grade and size. §§132.071(b), 132.041(a), 132.042(2), 132.044(a)(1) and 4 TAC §15.8(a)(1)(A); §132.044(a)(1) and 4 TAC §15.8(a)(1)(A); §132.044 and 4 TAC §15.8(a)(1)(A); §132.044 and 4 TAC §15.8(a)(1)(A); §132.044(a) and 4 TAC §15.8(e); §132.084(a)(1), §132.084(a)(2).

C. Impeding Departmental Powers--This category covers violations that interfere with TDA's ability to protect consumers by refusing TDA access to records or facilities or failing to maintain required records. §§132.005(b), 132.006(a), 132.061(c), 132.071(b), 132.072(b)(2), 132.072(b)(3), 132.072(b)(1), 132.061(a), 132.062(1), 132.062(2) and 4 TAC §15.9(b); §132.023.

D. Licensing and Administration--This category covers violations that constitute a failure to comply with licensing and administrative provisions. §132.071(b), §132.021, 4 TAC §15.2(a), §15.9(a); §131.021, §132.022(a), 4 TAC §15.3, §15.4; 4 TAC §15.2(a)(2); §132.024(a) and (b), §132.044 and 4 TAC §15.8; §132.044 and 4 TAC §15.8(b)(3); §§132.046, 132.041, 132.044 and 4 TAC §15.8(a)(2); §132.044 and 4 TAC §15.8(b)(2); and §132.002, §132.044(a)(2) and 4 TAC §15.8(a)(1)(B); §132.044 and 4 TAC §15.8(a)(1)(A), (B), and (C).

E. Failing to Pay or Collect Fees--This category covers violations that involve failure to pay or collect fees established under the Texas Agriculture Code, Chapter 132, or rules adopted there under. §§132.071(b), 132.006(b), 132.043(c) and 4 TAC §15.5(c) and §15.9; 4 TAC §15.4(a); §132.027(a) and 4 TAC §15.4(b); §§132.025(a), 132.025(b), 12.024 and 4 TAC §15.3; §132.024(a), §132.043(b).

Any violation not specifically cited or described herein is a category E violation.

TRD-200504524
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: October 7, 2005

◆ ◆ ◆
Office of the Attorney General

Notice of Agreed Final Judgment

The State of Texas hereby gives notice of the proposed resolution of an environmental enforcement lawsuit brought pursuant to the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: *State of Texas v. H.H.J, Inc.; Cause No. GV404024; in the 126th Judicial District, Travis County, Texas.*

Nature of Suit: This suit concerns the Decker Oaks Wastewater Treatment Plant located at the east end of Broken Bow, Montgomery County, Texas. H.H.J., Inc. (H.H.J.), is the owner and operator of the plant. The State sued, at the request of the Texas Commission on Environmental Quality (TCEQ), alleging that H.H.J. violated Chapters 7 and 26 of the Texas Water Code and TCEQ rules and failed to comply with discharge permit limitations on numerous occasions.

Proposed Agreed Final Judgment: The proposed Agreed Final Judgment settles all of the claims in the suit. The Proposed Agreed Final Judgment requires H.H.J. to pay \$75,000.00 in civil penalties, which penalties are subject to reduction based on timely compliance with certain permanent injunctive provisions of the judgment, and \$15,000.00 in attorney's fees. The Proposed Agreed Final Judgment further permanently enjoins the H.H.J. to complete construction of a 0.40 million gallons per day wastewater treatment facility by January 9, 2006, and to have such facility fully operational by March 10, 2006. The judgment further permanently enjoins H.H.J. to maintain permit limits for carbonaceous biochemical oxygen demand, total suspended solids, ammonia nitrogen, chlorine residual, and dissolved oxygen after that date and to report any deviations greater than 40% to the TCEQ within five working days.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Liz Bills, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200504536
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: October 10, 2005

Notice of Settlement of a Texas Solid Waste Disposal Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water and Health & Safety Codes. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Solid Waste Disposal Act and the Texas Clean Air Act.

Case Title and Court: Settlement Agreement in *Harris County, Texas and the State of Texas v. William Dell York, Jr., Individually and d/b/a His Soils, and His Disciples; Cause No. 2004-05021, in the 215th Judicial District Court of Harris County, Texas.*

Background: The State, on behalf of the Texas Commission on Environmental Quality, joined in this suit with Harris County to enforce against violations of the Texas Solid Waste Disposal Act and the Texas Clean Air Act at a mulching and composting facility in Houston, Texas. The defendants are His Disciples, a Texas non-profit corporation and the owner of the facility, and William Dell York, the facility's operator. The violations arise from York's and His Disciples' failure to comply with recycling regulations adopted pursuant to the Solid Waste Disposal Act and nuisance odors emanating from the facility.

Nature of Settlement: The proposed settlement with His Disciples and William Dell York orders injunctive relief designed to bring the facility into full compliance with recycling guidelines and eliminate nuisance odors; payment of \$40,000.00 in civil penalties, with \$15,000.00 deferred so long as the defendants remain in compliance with the recycling regulations; and payment of \$10,000.00 in attorney's fees to the State of Texas and Harris County.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Mary Smith, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200504535
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: October 10, 2005

◆ ◆ ◆
Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Public Safety, announces the issuance of **Request for Proposals (RFP) #303-6-10350**. TBPC seeks a 10 year lease of approximately 4,635 square feet of office space in the San Antonio area, Bexar County, Texas.

The deadline for questions is October 24, 2005, and the deadline for proposals is October 31, 2005 at 3:00 P.M. The award date is January 1, 2006. TBPC reserves the right to accept or reject any or all proposals

submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61510.

TRD-200504530

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: October 7, 2005



Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Transportation, announces the issuance of **Request for Proposals (RFP) #303-6-10388**. TBPC seeks a six year lease of approximately 10,000 square feet of office space in the Austin area, Travis County, Texas.

The deadline for questions is October 26, 2005, and the deadline for proposals is November 2, 2005 at 3:00 P.M. The award date is December 1, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=61503.

TRD-200504531

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: October 7, 2005



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 30, 2005, through October 6, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on October 12, 2005. The public comment period for these projects will close at 5:00 p.m. on November 14, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Taylor Lake Townhomes, Inc.; Location: The project site is located in and adjacent to Taylor Lake, approximately 300 feet south of Red Bluff Road, at 2917 South Red Bluff Road, in Seabrook, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 302466; Northing: 3274980. Project Description: The applicant is requesting authorization to excavate an inland canal in support of a 34-lot, 4.7-acre residential development. The canal will tie into Taylor Lake and will measure 455 feet long by 25 feet wide by 4 feet deep. Construction of the canal would occur in the dry and a small plug connecting the canal to Taylor Lake would be removed once the area is dredged and bulkheaded. Additionally, the applicant proposes to mechanically excavate a 750-foot-long segment of Taylor Lake, adjacent to the development, for access to the site. This area will also be dredged to a depth of -4 feet. The applicant proposes to subsequently erect 600 linear feet of timber bulkhead along the lakefront shoreline of the property. The bulkhead would be installed above the ordinary high water mark and no fill will be discharged into waters of the United States, including wetlands. Approximately 2,800 cubic yards of material would be excavated from Taylor Lake as a result of the proposed activity. All excavated material will be placed on upland portions of the property. Wetland areas adjacent to the site will be separated from the canal by a 40-foot buffer zone. These areas will not be impacted as a result of the proposed development. CCC Project No.: 06-0009-F1; Type of Application: U.S.A.C.E. permit application #23931 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P. O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200504574

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: October 11, 2005



Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapter 403, Chapter 2254, Subchapter A, Texas Government Code, and Chapter 111, Texas Tax Code, the Comptroller of Public Accounts (Comptroller) announces this notice of contract awards.

The Comptroller's Request for Qualifications 172k (RFQ) related to these contract awards was published in the July 1, 2005, *Texas Register* (30 TexReg 3897-3900).

The contractors will provide Professional Contract Auditing Services as authorized by Subchapter A, Chapter 111, §111.0045 of the Texas Tax Code as described in the Comptroller's RFQ.

The Comptroller announces that one (1) final contract under the RFQ was awarded as of October 6, 2005 as follows:

A contract is awarded to Clayborn Accounting and Financial Services, Inc., 100 IH 45 North, Suite 108, Conroe, Texas 77301. Examinations will be assigned in \$22,500, \$60,000, or \$75,000 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 or any extension thereof. The term of the contract is October 3, 2005 through August 31, 2006.

TRD-200504527

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: October 7, 2005



Notice of Request for Proposals

Pursuant to Chapters 403, 2155, and 2156, Sections 2155.001 and 2156.121, Texas Government Code and Senate Bill 1569 (SB 1569), 79th Texas Legislature, Regular Session 2005 (June 1, 2005), the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP #172m) from qualified, independent firms to provide overpayment recovery audit services to participating state agencies as assigned by Comptroller. One or more successful respondents will assist Comptroller in conducting overpayment recovery audits of participating state agencies and providing other related services, as directed by Comptroller. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, awarded under this RFP on or about January 2, 2006.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on or after Friday, October 21, 2005, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller will also make the complete RFP available electronically on the Texas Marketplace on or after Friday, October 21, 2005, 10:00 a.m. (CZT).

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Friday, November 4, 2005. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on November 10, 2005, or as soon thereafter as practical, on the Texas Marketplace at: <http://www.marketplace.state.tx.us>. Questions and inquiries received after the deadline will not be considered; respondents are solely responsible for verifying timely receipt in the Issuing Office of Letters of Intent and Questions.

Pre-Proposal Conference: A non-mandatory Pre-Proposal Conference will be held on Thursday, October 27, 2005, beginning at 1:30 p.m., in Room 114 of the LBJ State Office Building, 111 East 17th Street, Austin, Texas. Although attendance is not mandatory and is not a requirement for submission of a proposal, all interested persons and firms are encouraged to attend.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Friday, November 18, 2005. Proposals received in the Issuing Office after this time

and date will not be considered; respondents are solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - October 21, 2005; Pre-Proposal Conference - October 27, 2005, 1:30 p.m. CZT; Non-Mandatory Letters of Intent and Questions Due - November 4, 2005, 2 p.m. CZT; Official Questions and Responses posted - November 10, 2005 (or as soon thereafter as practical); Proposals Due - November 18, 2005, 2 p.m. CZT; Contract Execution - January 2, 2006, or as soon thereafter as practical; Commencement of Project Activities - January 2, 2005.

TRD-200504601

Pamela Smith

Deputy General Counsel, Contracts

Comptroller of Public Accounts

Filed: October 12, 2005



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 October 17, 2005 - October 23, 2005 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of October 17, 2005 - October 23, 2005 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200504589

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 11, 2005



Texas Commission on Environmental Quality

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 7, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Al Jodoin dba Lake Whitney RV Community; SOAH Docket No. 582-05-7639; TCEQ Docket No. 2004-1768-MWD-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Al Jodoin dba Lake Whitney RV Community on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35,

Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200504598
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 12, 2005



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on October 11, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Johnny M. Craven dba Craven Truck Center; SOAH Docket No. 582-05-2744; TCEQ Docket No. 2004-0539-PST-E. The commission will consider

the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Johnny M. Craven dba Craven Truck Center on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200504599
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 12, 2005



Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Duncanville	Surgery Center of Duncanville PA DBA Surgery Center of Duncanville	L05885	Duncanville	00	09/19/05
Fort Worth	Oncology Hematology Consultants PA DBA The Center For Cancer and Blood Disorders	L05919	Fort Worth	00	09/15/05
Grapevine	Grapevine Imaging & Pain Management LLC	L05922	Grapevine	00	09/29/05
Round Rock	Veterinary Diagnostic Imaging of Texas PA	L05917	Round Rock	00	09/20/05
Trophy Club	Trophy Club Medical Center LP	L05909	Trophy Club	00	09/27/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	88	09/28/05
Amarillo	Cardinal Health	L03398	Amarillo	34	09/29/05
Amarillo	Coffee Memorial Blood Center	L04705	Amarillo	04	09/20/05
Amarillo	The Don & Sybil Harrington Cancer Center	L03053	Amarillo	34	09/22/05
Arlington	Columbia Medical Center of Arlington Subsidiary LP DBA Medical Center of Arlington	L02228	Arlington	63	09/20/05
Arlington	USMD Hospital at Arlington	L05727	Arlington	03	09/28/05
Arlington	USMD Hospital at Arlington	L05727	Arlington	04	09/29/05
Aransas Pass	North Bay General Hospital	L03446	Aransas Pass	31	09/28/05
Austin	ARA Imaging	L05862	Austin	02	09/30/05
Austin	Austin Radiological Association	L00545	Austin	111	09/20/05
Austin	Austin Radiological Association	L00545	Austin	112	09/30/05
Austin	Columbia/St David's Healthcare System LP DBA St David's Medical Center	L05856	Austin	02	09/28/05
Austin	Daughters of Charity Health Services of Austin DBA Brackenridge Hospital	L00268	Austin	87	09/22/05
Austin	Daughters of Charity Health Services of Austin DBA Brackenridge Hospital	L00268	Austin	88	09/26/05
Austin	St David's Healthcare Partnership LP LLP DBA North Austin Medical Center	L04910	Austin	52	09/27/05
Austin	The University of Texas at Austin Environmental Health and Safety	L00485	Austin	71	09/26/05
Beaumont	Christus St Elizabeth Hospital DBA St Elizabeth Hospital	L00269	Beaumont	99	09/16/05
Beaumont	E I Dupont DE Nemours & Co. Inc.	L00517	Beaumont	70	09/15/05
Beaumont	Lifeshare Blood Centers	L04884	Beaumont	11	09/20/05
Bedford	Carter Bloodcare	L00630	Bedford	40	09/20/05
Carrollton	Medical Edge Healthcare Group PA DBA Heart First	L05555	Carrollton	06	09/28/05
Carrollton	Patients Comprehensive Diagnostic & Radiation Therapy Center Inc.	L05661	Carrollton	01	09/28/05
College Station	Texas A & M University Environmental Health & Safety	L00448	College Station	123	09/22/05
Corpus Christi	Clinical Nuclear Services Inc.	L05368	Corpus Christi	08	09/21/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Corpus Christi	Coastal Bend Blood Center	L05694	Corpus Christi	04	09/20/05
Corpus Christi	Spohn Healthcare System DBA Spohn Hospital	L02357	Corpus Christi	24	09/28/05
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	85	09/22/05
Dallas	Baylor University Medical Center	L01290	Dallas	74	09/20/05
Dallas	Baylor University Medical Center	L01290	Dallas	75	09/22/05
Dallas	Baylor Radiosurgery Center DBA Baylor University Medical Center	L05842	Dallas	02	09/28/05
Dallas	Mallinckrodt Inc.	L03580	Dallas	50	09/16/05
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	157	09/20/05
Dallas	Presbyterian Healthcare System DBA Presbyterian Hospital of Dallas	L04288	Dallas	21	09/22/05
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	85	09/28/05
Dallas	Tenet Health System Hospitals Dallas Inc. DBA RHD Memorial Medical Center	L02314	Dallas	51	10/03/05
Dallas	Texas Hematology/Oncology Center PA DBA Patients Comprehensive Cancer Center	L05397	Dallas	09	09/29/05
Dallas	Texas Oncology PA DBA Sammons Cancer Center	L04878	Dallas	27	09/28/05
Dallas	The University of Texas Southwestern Medical Center at Dallas	L00384	Dallas	89	09/22/05
Decatur	Wise regional Health System	L02382	Decatur	24	09/15/05
Denton	Neorx Manufacturing Group Inc.	L0543	Denton	14	09/27/05
Denton	Texas Oncology PA DBA Texas Cancer Center Denton	L05815	Denton	03	09/28/05
Denton	Texas Women's University	L00304	Denton	54	09/22/05
Denton	TTHR Limited Partnership DBA Presbyterian Hospital of Denton	L04003	Denton	38	09/22/05
El Paso	Blood Systems Inc DBA United Blood Services	L05841	El Paso	01	09/28/05
El Paso	Cardinal Health 200 Inc. Medical Products & Services Convertors Division	L02407	El Paso	29	09/20/05
El Paso	El Paso Cardiology Associates PA	L05162	El Paso	04	09/19/05
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	64	09/16/05
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	65	09/20/05
El Paso	Providence Memorial Hospital	L02353	El Paso	84	09/22/05
El Paso	Southwest Endocrine Consultants	L05617	El Paso	02	09/16/05
El Paso	Tenet Hospitals Limited DBA Sierra Medical Center	L04758	El Paso	18	09/22/05
El Paso	Texas Oncology PA DBA El Paso Cancer Treatment Center	L05771	El Paso	03	09/23/05
El Paso	Texas Oncology PA DBA El Paso Cancer Treatment Center	L05771	El Paso	04	09/30/05
Eules	COR Specialty Associates of North Texas	L05062	Eules	19	09/23/05
Fredericksburg	Fredericksburg Imaging Center DBA Hill Country Memorial Hospital	L03516	Fredericksburg	27	09/28/05
Freeport	Brazos Pipe & Fabricators Inc.	L02186	Freeport	22	09/21/05
Fort Worth	Consultants in Cardiology	L04445	Fort Worth	12	09/30/05
Fort Worth	Consultants in Radiology PA	L05014	Fort Worth	16	09/16/05
Fort Worth	Cooks Childrens Health Care System DBA Cooks Childrens Medical Center Department of Pathology	L04587	Fort Worth	08	09/20/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Fort Worth	David F Corral MD PA	L05650	Fort Worth	03	09/15/05
Fort Worth	Healthsouth of Texas Inc. DBA Baylor All Saints Gamma Knife Center	L05473	Fort Worth	16	09/23/05
Gainesville	Gainesville Hospital District DBA North Texas Medical Center	L02585	Gainesville	26	09/22/05
Galveston	The University of Texas Medical Branch Office of Environmental Health & Safety	L01299	Galveston	67	09/22/05
Garland	E+ Pet Imaging XII LP DBA Pet Imaging of Garland	L05875	Garland	01	09/29/05
Gilmer	Texas Forest Products Inc.	G01722	Gilmer	05	09/26/05
Grand Prairie	Texas OA Services Inc.	L04601	Grand Prairie	18	09/28/05
Houston	Baker Hughes Oilfield Operations Inc. DBA Baker Atlas	L5104	Houston	09	09/21/05
Houston	Baylor College of Medicine Office of Environmental Safety	L00680	Houston	85	09/16/05
Houston	Baylor College of Medicine Office of Environmental Safety	L00680	Houston	86	09/20/05
Houston	Baylor College of Medicine Office of Environmental Safety	L00680	Houston	87	09/23/05
Houston	Baylor College of Medicine, Department of Medicine, Section of Cardiology DBA Baylor Heart Clinic	L05436	Houston	04	09/16/05
Houston	Baylor University Medical Center	L01290	Houston	74	09/20/05
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	58	09/20/05
Houston	Ben Taub General Hospital Nuclear Medicine	L01303	Houston	59	09/27/05
Houston	CHCA West Houston LP DBA West Houston Medical Center	L05808	Houston	06	09/28/05
Houston	Columbia/HCA Healthcare Corp. DBA Spring Branch Medical Center	L02473	Houston	52	09/20/05
Houston	Deteq Services	L05778	Houston	02	09/19/05
Houston	Diagnostic Cardiology of Houston	L04888	Houston	07	09/28/05
Houston	Diagnostic Cardiology of Houston	L04888	Houston	08	09/30/05
Houston	Doctors Hospital 1997 LP DBA Doctors Hospital Parkway	L01964	Houston	44	10/03/05
Houston	E+ Pet Imaging VII, LP DBA Pet Imaging of Houston – West	L05806	Houston	02	09/26/05
Houston	E+ Pet Imaging XXI LP DBA Pet Imaging of Willow brook	L05916	Houston	01	09/26/05
Houston	Gulf Coast MRI & Diagnostic Center	L05333	Houston	04	09/30/05
Houston	Gulf Coast MRI & Diagnostic Center	L05333	Houston	05	10/04/05
Houston	Gulf Coast Regional Blood Center	L04755	Houston	04	09/22/05
Houston	Harris County Hospital District DBA LBJ General Hospital	L04412	Houston	30	09/27/05
Houston	Houston Northwest Medical Center	L02253	Houston	63	09/22/05
Houston	Kihei Industries Inc.	L05677	Houston	02	09/21/05
Houston	Lyondell-Citgo Refining LP	L00187	Houston	55	09/20/05
Houston	Memorial Cardiology Associates PA	L05349	Houston	02	09/30/05
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	25	09/28/05
Houston	Memorial Hermann Hospital System DBA Memorial Hermann Hospital	L00439	Houston	104	09/19/05
Houston	Memorial Hermann Hospital System DBA Memorial Hermann Hospital	L00439	Houston	105	09/28/05
Houston	Memorial Hermann Hospital System Inc. DBA Memorial Hermann Hospital	L00650	Houston	72	09/15/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Memorial Hermann Hospital System Inc. DBA Memorial Hermann Hospital	L00650	Houston	73	09/21/05
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	86	09/28/05
Houston	Opexa Pharmaceuticals Inc	L05592	Houston	04	09/28/05
Houston	Park Plaza Hospital	L01812	Houston	18	09/22/05
Houston	Park Plaza Hospital	L02071	Houston	50	09/26/05
Houston	Real Inspection Training Engineering	L05136	Houston	13	09/28/05
Houston	Rice Nuclear Diagnostics	L05830	Houston	04	09/23/05
Houston	Sisters of Charity of the Incarnate Word DBA St Joseph Hospital	L02279	Houston	57	09/23/05
Houston	St Luke's Episcopal Health System Corp DBA St Luke's Episcopal Health System and Texas Heart Institute	L00581	Houston	81	09/22/05
Houston	Texas Childrens Hospital Diagnostic Imaging 2-2521	L04612	Houston	36	09/22/05
Houston	The Methodist Hospital	L00457	Houston	135	09/22/05
Houston	The Methodist Hospital	L00457	Houston	136	09/28/05
Houston	The University of Texas Health Science Center at Houston	L02774	Houston	48	09/22/05
Houston	University of Houston Environmental Health and Risk Management	L01886	Houston	52	05/27/05
Houston	University of Houston Environmental Health and Risk Management	L01886	Houston	53	09/22/05
Houston	University of Houston Environmental Health and Risk Management	L01886	Houston	54	09/26/05
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	99	09/22/05
Houston	Westhollow Technology Center	L02116	Houston	43	09/21/05
Humble	Northeast Hospital Authority DBA Northeast Medical Center Hospital	L02412	Houston	57	09/30/05
Katy	Concept Phoenix Diagnostics LP DBA Radiant Imaging and Diagnostics	L05864	Katy	01	09/21/05
Kingsville	Christus Spohn Health System DBA Christus Spohn Hospital Kleberg	L02917	Kingsville	38	10/04/05
Laredo	Cancer Physicians Associated PA	L05790	Laredo	02	09/28/05
La Porte	J V Industrial Co. LTD.	L05785	La Porte	03	09/16/05
Linden	Good Shepherd Medical Center Linden Inc.	L02721	Linden	18	09/26/05
Lone Star	Scot Industries Inc.	G01970	Lone Star	05	09/27/05
Longview	Longview Cancer Center	L05017	Longview	06	09/20/05
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	35	09/20/05
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	77	09/22/05
Lufkin	Pickett Heart Clinic	L05681	Lufkin	02	09/27/05
McAllen	Valley Cardiology PA	L04692	McAllen	17	09/15/05
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	77	09/21/05
Midland	The University of Texas System	L04648	Midland	08	09/22/05
Nassau Bay	Christus Health DBA Christus St John Hospital	L03291	Nassau Bay	24	09/26/05
Odessa	Desert Industrial X-Ray LP	L04590	Odessa	43	09/20/05
Palestine	East Texas Physicians Alliance LLP	L05583	Palestine	01	09/27/05
Pasadena	Gulf Coast Cancer Center Inc.	L05194	Pasadena	06	09/22/05
Perryton	Midwest Inspection Services	L03120	Perryton	80	09/14/05
Plainview	Plainview Cardiology PA	L05446	Plainview	06	09/27/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Plano	Columbia Medical Ctr of Plano Subsidiary LP DBA Medical Center of Plano	L02032	Plano	77	09/30/05
Plano	Dallas Cardiology Associates DBA Heartplace Plano	L05699	Plano	02	09/20/05
Plano	North Texas Regional Cancer Center	L05357	Plano	03	09/15/05
Plano	Presbyterian Hospital of Plano	L04467	Plano	34	09/20/05
Port Arthur	The Medical Center of Southwest Texas LP	L01707	Port Arthur	60	09/23/05
San Angelo	Shannon Clinic	L04216	San Angelo	34	09/28/05
San Antonio	CTRC Clinical Foundation	L01922	San Antonio	78	09/20/05
San Antonio	Jeremy Nyle Wiersig MD PA DBA Concord Imaging	L05915	San Antonio	01	09/16/05
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	208	09/22/05
San Antonio	Methodist Healthcare System of San Antonio LTD DBA The Gamma Knife Center	L05076	San Antonio	16	09/28/05
San Antonio	Radiology Associates of San Antonio Pa DBA Advanced Medical Imaging	L05358	San Antonio	18	09/16/05
San Antonio	South Texas Blood & Tissue Center	L04381	San Antonio	10	09/22/05
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	47	09/16/05
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	139	09/16/05
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	140	10/03/05
San Antonio	Southwest Research Institute	L00775	San Antonio	73	09/22/05
San Antonio	Texas Cancer Clinic	L05786	San Antonio	03	09/28/05
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	99	09/21/05
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	100	09/26/05
San Antonio	University Physicians Group Nuclear Cardiology	L05410	San Antonio	05	09/16/05
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	146	09/29/05
San Marcos	Texas State University	L03321	San Marcos	19	09/21/05
Seguin	Guadalupe Valley Hospital	L02292	Seguin	27	09/30/05
Seymour	Baylor County Hospital District DBA Seymour Hospital	L03229	Seymour	15	09/19/05
Sherman	Texas Oncology PA DBA Texas Cancer Center Sherman	L05019	Sherman	10	09/28/05
Smithville	Smithville Regional Hospital	L04428	Smithville	14	10/03/05
Sugar Land	E+ Pet Imaging XI, LP	L05858	Sugar Land	03	09/26/05
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	01	09/30/05
Sugar Land	Texas Oncology PA DBA Texas Oncology Cancer Center Sugar Land	L05816	Sugar Land	02	09/20/05
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs	L5701	Sulphur Springs	06	09/27/05
Temple	Scott & White Memorial Hospital and Scott Sherwood & Brindley Foundation DBA Scott & White Memorial Hospital	L00331	Temple	75	09/22/05
Texarkana	Wadley Regional Medical Center	L02486	Texarkana	42	09/22/05
The Woodlands	E+ Pet VIII LP DBA Pet Imaging of The Woodlands	L05747	The Woodlands	08	09/26/05
The Woodlands	Lexicon Genetics Incorporated	L04932	The Woodlands	11	09/16/05
The Woodlands	Lexicon Genetics Incorporated	L04932	The Woodlands	12	09/22/05
The Woodlands	St Luke's Community Medical Center -The Woodlands	L05763	The Woodlands	04	10/04/05
Tulsa	Magellan Midstream Partners LP	L02229	Tulsa	03	09/27/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Tyler	East Texas Medical Center	L00977	Tyler	124	09/28/05
Tyler	East Texas Medical Center Healthcare Assoc. DBA First Physicians	L05702	Tyler	07	09/16/05
Tyler	East Texas Medical Center Healthcare Assoc. DBA First Physicians	L05702	Tyler	08	09/30/05
Tyler	Physician Reliance Network Inc DBA Tyler Cancer Center	L04788	Tyler	06	09/28/05
Tyler	Stewart Regional Blood Center	L04826	Tyler	08	09/22/05
Tyler	Tyler Cardiovascular Consultants PA CVC	L05242	Tyler	10	09/20/05
Tyler	The University of Texas Health Center at Tyler	L01796	Tyler	59	09/22/05
University Park	Cirrus Health DBA Park Cities Imaging Center	L05600	University Park	06	09/27/05
Victoria	Citizens Medical Center	L01544	Victoria	21	09/20/05
Wharton	Gulf Coast Hospital LP DBA Gulf Coast Medical Center	L01390	Wharton	22	09/22/05
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	99	09/22/05
Throughout Tx	Alliance Geotechnical Group Inc.	L05314	Dallas	08	09/19/05
Throughout Tx	Apex Geoscience Inc.	L04929	Tyler	22	09/21/05
Throughout Tx	Archana Inc	L05931	El Paso	01	09/29/05
Throughout Tx	Bell Helicopter Textron Inc.	L05929	Fort Worth	02	09/16/05
Throughout Tx	Champagne-Webber Inc. Texas	L04904	Corsicana	08	09/15/05
Throughout Tx	Escot NDE Inc	L05002	Corpus Christi	21	09/28/05
Throughout Tx	General Inspection Services Inc.	L02319	Hempstead	37	09/21/05
Throughout Tx	Geotel Engineering Inc.	L05674	Irving	01	09/14/05
Throughout Tx	H&G Inspection Company Inc. DBA Statewide Maintenance Company	L02181	Houston	203	09/21/05
Throughout Tx	Houston Inc.	L04362	Andrews	09	09/20/05
Throughout Tx	Kleinfelder	L01351	Austin	49	09/26/05
Throughout Tx	Ludlum Measurements Inc.	L01963	Sweetwater	72	09/23/05
Throughout Tx	Ludlum Measurements Inc.	L01963	Sweetwater	73	09/29/05
Throughout Tx	Metco	L03018	Houston	155	09/28/05
Throughout Tx	National Inspection Services LLC	L05930	Crowley	02	09/16/05
Throughout Tx	Nuclear Sources & Services Inc DBA NSSI/Sources & Services Inc	L02991	Houston	29	09/23/05
Throughout Tx	Precision Energy Services Inc.	L04286	Fort Worth	57	09/20/05
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	127	09/21/05
Throughout Tx	Southwest Research Institute	L00775	San Antonio	74	09/30/05
Throughout Tx	Southwest Research Institute	L04958	San Antonio	10	09/30/05
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	57	09/20/05
Throughout Tx	The University of Texas Health Science Center at Houston	L02774	Houston	49	09/28/05
Throughout Tx	Thermo Measuretech	L03524	Round Rock	68	09/22/05
Throughout Tx	Tracerco/Synetix Services a Business Unit of Johnson Matthey Inc.	L03096	Houston	56	09/15/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Pasadena	CHCA Bayshore LP	L00153	Pasadena	76	09/29/05
Wichita Falls	North Texas Isotopes	L04810	Wichita Falls	11	09/20/05
Throughout Tx	HIS Inspection Inc.	L04861	Midland	14	09/26/05
Throughout Tx	Hunter Industries LTD	L04175	San Marcos	06	09/29/05
Throughout Tx	NDE Inc.	L02355	Fort Worth	21	09/27/05
Throughout Tx	Rock Engineering and Testing Laboratory Inc.	L05168	Corpus Christi	05	09/19/05
Throughout Tx	Quantum Technical Services Inc.	L03731	Pasadena	23	09/15/05

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Clearsky MRI and Diagnostic Center	L05201	Dallas	09	09/27/05
Houston	Baylor College of Medicine	L05436	Houston	05	09/28/05
Houston	MBA Laboratories	L02571	Houston	14	09/21/05
San Antonio	Northeast Medical Center Radiology	L02926	San Antonio	09	09/26/05
Throughout Tx	Continental Airlines Inc.	L02718	Houston	38	10/03/05
Throughout Tx	Unitor Ships Service Inc.	L04483	Pasadena	07	09/21/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200504570
 Lisa Hernandez
 Deputy General Counsel
 Department of State Health Services
 Filed: October 11, 2005

30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Radiation Program Officer, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

◆ ◆ ◆
Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 TAC, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: Jeffrey D. Pick, D.C., R.Ph., PLLC, Cedar Park, R03286; B. Mark Hammonds, D.C., DACNB, Euless, R18000; Sanders Chiropractic, Galveston, R19448; Charles G. Holmsten, M.D., Houston, R21657; Fort Bend Chiropractic and Rehabilitation Center, Sugar Land, R21704; Kenneth D. Garrett, D.C., Richardson, R22032; Joseph G. Darragh, D.C., Kaufman, R23004; Vista Ridge Chiropractic, Lewisville, R23906; Joseph E. Lee, D.C., Glen Rose, R25254; Pain and Neuromuscular Clinic of Texas, PA, San Antonio, R28127; Valente Inc., Gainesville, Z00389; Tarrant County Hospital District, Fort Worth, Z00490; Las Palmas Medical Center, El Paso, Z00590; Terabeam Corporation, Redmond, Washington, Z01540.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200504573
 Lisa Hernandez
 Deputy General Counsel
 Department of State Health Services
 Filed: October 11, 2005

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

◆ ◆ ◆
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Joseph Novosel, D.P.M., P.C.

Notice is hereby given that the Department of State Health Services issued a notice of violation and proposal to assess an administrative penalty to Joseph Novosel, D.P.M., P.C. (registration # R13220-000) of Beaumont. A total penalty of \$8,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200504571

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the department within

Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Filed: October 11, 2005

◆ ◆ ◆
Texas Higher Education Coordinating Board

Notice of Contract Award

Pursuant to Chapter 2254, Chapter B, the Texas Higher Education Coordinating Board (Coordinating Board) announces this notice of consulting contract award.

The notice of request for proposals was published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4360).

The consultant will assist the Coordinating Board with the administrative oversight of the various teacher education activities at the member institutions of the Texas Association of Developing Colleges (TADC) by: (1) facilitating and coordinating a collaborative strategic planning process to involve TADC in planning for collaborative distance education, upgrading technology, curriculum development and redesign, and improvement of TExES/ExCET preparation; (2) working in collaboration with the Coordinating Board and TADC to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development, and improvement of TExES/ExCET preparation; (3) facilitating and coordinating college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign, and improvement of TExES/ExCET preparation; and (4) reporting progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures.

The contract was awarded to Ms. Genevieve Brembry, Director of Program Development, Texas Association of Developing Colleges, Inc., 1140 Empire Central, Suite 550, Dallas, TX 75247. The total amount of this contract is not to exceed \$35,000.00.

The term of the contract is September 30, 2005 through August 31, 2006.

TRD-200504572
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: October 11, 2005

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by MML ASSURANCE, INC., a foreign fire and/or casualty company. The home office is in New York, New York.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200504596
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 12, 2005

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C-H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Blue Cross and Blue Shield of Texas, A Division of Health Care Service Corporation

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Blue Cross and Blue Shield of Texas, A Division of Health Care Service Corporation, to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200504577
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 11, 2005

◆ ◆ ◆
Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C-H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

US Health and Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of US Health and Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance,

P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200504578
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 11, 2005



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of ECON-O-CHECK CORPORATION, a foreign third party administrator. The home office is MORROW, GEORGIA.

Application for incorporation in Texas of AUGUSTINE & ASSOCIATES INSURANCE AGENCY, INC. (using the assumed name of PROCESS ONE TPA), a domestic third party administrator. The home office is SAN ANTONIO, TEXAS.

Application to change the name of JOHN HEWITT & ASSOCIATES, INC. to JHA, a foreign third party administrator. The home office is PORTLAND, MAINE.

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-200504597

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 12, 2005



Texas Lottery Commission

Instant Game Number 611 "Big Money Doubler"

A. The name of Instant Game No. 611 is "BIG MONEY DOUBLER". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 611 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 611.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$100, \$500, \$5,000, \$50,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, POT OF GOLD SYMBOL, GOLD BAR SYMBOL, and PLAY SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 611 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
POT OF GOLD SYMBOL	DBL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTEEN
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUN
\$500	FIV HUN
\$5,000	FIV THOU
\$50,000	50 THOU
GOLD BAR SYMBOL	WIN ALL
PLAY SYMBOL	AGAIN

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. 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. 611 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, or \$15.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$5,000 or \$50,000.

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 (611), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 611-0000001-001.

L. Pack - A pack of "BIG MONEY DOUBLER" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BIG MONEY DOUBLER" Instant Game No. 611 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 "BIG MONEY DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 35 (thirty-five) Play Symbols. If a player matches any of the SERIAL NUMBERS play symbols to any of YOUR NUMBERS play symbols the player wins prize indicated. If a player reveals a Pot of Gold play symbol, the player wins double that prize shown automatically. If a player reveals Gold Bar play symbol in the BIG MONEY SPOT play area, the player wins all fifteen prizes indicated. 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 35 (thirty-five) 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 35 (thirty-five) 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 35 (thirty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
 17. Each of the 35 (thirty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's

discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win up to fifteen (15) times in this play area.

C. No duplicate non-winning YOUR NUMBERS on a ticket.

D. Non-winning prize symbols will not match a winning prize symbol on a ticket.

E. Non-winning tickets will not contain more than two like prize amounts.

F. No duplicate SERIAL NUMBERS will appear on a ticket.

G. The "Pot of Gold" symbol will never appear as a "SERIAL NUMBER".

H. The "Pot of Gold" symbol will win 2 times the prize amount shown and will win as per the prize structure.

I. On tickets that win with the GOLD BAR symbol, no YOUR NUMBER will match any SERIAL NUMBER.

J. YOUR NUMBERS will never equal the corresponding Prize symbol.

K Big Money Spot Play Area: The "Gold Bar" symbol will win all fifteen (15) prize amounts for that ticket and will win as per the prize structure.

L. Big Money Spot Play Area: Tickets that do not win in the BIG MONEY SPOT will display the non-winning play symbol.

2.3 Procedure for Claiming Prizes.

A. To claim a "BIG MONEY DOUBLER" Instant Game prize of \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$25.00, \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BIG MONEY DOUBLER" Instant Game prize of \$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.

C. As an alternative method of claiming a "BIG MONEY DOUBLER" 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 "BIG MONEY DOUBLER" 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 "BIG MONEY DOUBLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available

in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make

payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 611. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 611 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	720,000	8.33
\$10	720,000	8.33
\$15	160,000	37.50
\$25	70,000	85.71
\$50	52,500	114.29
\$100	20,000	300.00
\$500	1,200	5,000.00
\$5,000	12	500,000.00
\$50,000	3	2,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.44. 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. 611 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. 611, 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-200504575
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 11, 2005



North East Texas Regional Mobility Authority

Notice of Availability of a Request for Qualifications for General Engineering Consulting Services

The North East Texas Regional Mobility Authority ("NET RMA"), a political subdivision, is soliciting statements of interest and qualifications from experienced professional civil engineering firms interested in providing general engineering consulting ("GEC") services. The selected firm shall operate in complete coordination with the NET RMA and its staff and consultants with respect to current and future projects, with responsibilities to include managing the development of turnpike projects within the region served by the NET RMA, and with providing advisory services related to the operation and maintenance of NET RMA turnpikes.

A request for qualifications ("RFQ") packet will be available on October 21, 2005. It is anticipated that copies may be obtained electronically from the websites of Smith County (www.smith-county.com) or Gregg County (www.co.gregg.tx.us). Copies will also be available by contacting Jeff Austin, III at (903) 595-6585 or C. Brian Cassidy at (512) 305-4855. Periodic updates, addenda, and clarifications may be posted on the websites of Smith and Gregg Counties; and interested parties are responsible for monitoring the websites accordingly. Final proposals must be received by the North East Texas Regional Mobility Authority, c/o Jeff Austin, III, Chairman, 305 S. Broadway Ave, Suite

100, Tyler, Texas 75702 by 3:00 p.m. C.S.T., November 21, 2005, to be eligible for consideration.

Each firm will be evaluated based on the criteria and process set forth in the RFQ. The final selection of the GEC firm, if any, will be made by the NET RMA Board of Directors.

Questions concerning this RFQ shall be directed in writing to Jeff Austin, III, Chairman of the NET RMA, 305 S. Broadway Ave, Suite 100, Tyler, Texas 75702 and C. Brian Cassidy, General Counsel for the NET RMA, c/o Locke Liddell & Sapp LLP, 100 Congress Avenue, Suite 300, Austin, TX 78701, or via e-mail to jeff3@austinbank.com and bcassidy@lockeliddell.com. All questions must be received by November 10, 2005.

TRD-200504590
Mike Heiligenstein
Executive Director
North East Texas Regional Mobility Authority
Filed: October 12, 2005

◆ ◆ ◆

Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 10, 2005, for a State-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Southwestern Bell Telephone, L.P., d/b/a SBC Texas for a State-Issued Certificate of Franchise Authority, Project Number 31868 before the Public Utility Commission of Texas.

Applicant intends to provide video service. The requested CFA service area footprint includes all or portions of the following 21 municipalities and/or unincorporated area(s) in the Greater San Antonio area: Alamo Heights, Balcones Heights, Castle Hills, China Grove, Cibolo, Converse, Garden Ridge, Hill Country Village, Hollywood Park, Kirby, Leon Valley, Live Oak, Olmos Park, San Antonio, Schertz, Selma, Shavano Park, Terrell Hills, Timberwood Park, Universal City, and Windcrest.

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 31868.

TRD-200504587
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2005

◆ ◆ ◆

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on October 4, 2005, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary.

Docket Style and Number: Application of Southwestern Bell Telephone, L.P. d/b/a SBC Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries between the McKinney, Allen and Frisco; Prosper and Frisco Exchanges. Docket Number 31832.

The Application: The proposed amendment will (1) swap portions of the serving areas between the Allen and McKinney exchanges, and will transfer a small section of the Frisco serving area to the Allen and McKinney exchanges to create a more clearly-defined boundary between these exchanges to accommodate future growth; and (2) correct a previous revision between the Prosper and Frisco exchanges approved on August 22, 2005 in Docket Number 31327.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by October 28, 2005, 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 31832.

TRD-200504588
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2005

◆ ◆ ◆

Notice of Application for Approval of the ERCOT System Administration Fee Pursuant to P.U.C. Substantive Rule §25.363(b)

On October 3, 2005, the Electric Reliability Council of Texas (ERCOT) filed with the Public Utility Commission of Texas (commission) its Application for Approval of the ERCOT System Administration Fee pursuant to P.U.C. Substantive Rule §25.363(b). The existing and proposed Fees are as follows:

Amount of Existing Fee - \$0.42/MWh
Amount of Proposed Increase - \$0.00/MWh
Amount of Proposed Fee - \$0.4200/MWh

ERCOT stated the ERCOT System Administration Fee will affect all Qualified Scheduling Entities (QSEs). ERCOT also stated its Application does not propose a change in the ERCOT System Administration Fee and thus, the filing in itself will not cause a change in ERCOT's revenues. However, ERCOT asserted it needs the revenues that will be generated from the System Administration Fee to implement the 2006 ERCOT Budget, which was approved by the ERCOT Board on September 20, 2005.

The deadline for intervention in the proceeding is November 3, 2005. Persons who wish to intervene or comment should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. A request to intervene shall include a statement of position containing a concise statement of the requestor's position on the application; a concise statement of each question of fact, law, or policy that the requestor considers at issue; and a concise statement of the requestor's position on each issue identified. All comments and interventions should reference Docket Number 31824.

ERCOT has posted this notice and a copy of its fee and rate application on its web site at <http://www.ercot.com/Participants/Index.htm>. Interested parties may also access ERCOT's 2006 Fee Filing Package through the commission's web site at <http://www.puc.state.tx.us> under Docket Number 31824 - *Application of the Electric Reliability Council of Texas for Approval of the ERCOT System Administrative Fee*.

TRD-200504582
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2005



Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 7, 2005, for designation as an eligible telecommunications carrier pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Alltel Communications, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to 47 U.S.C. §214(e)(2) and P.U.C. Substantive Rule §26.418. Docket Number 31851.

The Application: The company is requesting ETC designation in the non-rural portions of its licensed service area in the State of Texas that are served by Southwestern Bell Telephone, L.P. d/b/a SBC Texas, and Verizon Southwest for purposes of receiving federal universal service support. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 10, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31851.

TRD-200504585
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2005



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 October 11, 2005, 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 October 17, 2005.

Docket Title and Number: Sugar Land Telephone Company's Application for Approval of LRIC Study to Implement a New Residential Custom Calling Package Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 31870.

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 31870. 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 31870.

TRD-200504602
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 2005



Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on October 6, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Verizon Southwest's (Verizon) request for an additional NXX code to satisfy the business requirements of the Rosharon, Texas rate center.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources. Docket Number 31848.

The Application: Verizon submitted a petition to the Pooling Administrator (PA) to provide it with an additional NXX code to satisfy the business requirements of the Rosharon, Texas rate center.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 27, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31848.

TRD-200504586
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2005



Notice of Petition Seeking to Determine Whether Markets of Incumbent Local Exchange Carriers in Texas Should Remain Regulated

On October 4, 2005, commission Staff (Staff) filed a petition seeking to determine whether markets of incumbent local exchange carriers (ILECs) in Texas should remain regulated. This petition directly affects ILECs.

Docket and Style: Staff's Petition to Determine Whether Markets of Incumbent Local Exchange Carriers (ILECs) Should Remain Regulated. Docket Number 31831

Summary: Pursuant to PURA §65.052, the commission is required to determine whether each market of an ILEC should remain regulated. In order to make this determination, the commission must ascertain whether the population within each ILEC exchange is (1) at least 30,000 but less than 100,000 or (2) 100,000 or more. For those exchanges with population of 100,000 or more, the commission may not determine that such market should remain regulated on and after January 1, 2006. For those markets with populations of at least 30,000 but less than 100,000, the commission must determine for each market whether there are at least three competitors as delineated in PURA §65.052(b)(2). If at least three such competitors are in a market in the 30,000 to 100,000 population range, the commission may not determine that such market should remain regulated on and after January 1, 2006. After making the above-referenced determinations, the commission must issue a final order classifying each ILEC having an exchange with 30,000 or more access lines as a regulated, deregulated or transitioning company effective January 1, 2006.

Staff believes that, in order for the commission to determine whether to continue to regulate a market, the population, and the number and type of competitors in each exchange must be determined. For these reasons, Staff petitioned the commission, pursuant to PURA §65.052, to initiate this proceeding to determine which ILEC markets should remain regulated. In accordance with the foregoing, Staff requested that the commission consider this Petition at its Open Meeting on October 12, 2005, and issue an Order requiring all ILECs to provide the evidence outlined in Section IV of its Petition.

The intervention deadline in this proceeding is Monday, October 24, 2005. Persons who wish to intervene or comment should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All interventions and comments should reference Docket Number 31831.

TRD-200504583
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2005



Public Notice of Workshop Regarding Review and Evaluation of the Texas Universal Service Fund Pursuant to PURA Section 56.029

The Public Utility Commission of Texas (commission) will hold a workshop regarding a review and evaluation of the Texas Universal Service Fund (TUSF) pursuant to PURA §56.029, on Thursday, November 10, 2005 at 9:30 a.m. in Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31863, *Review and Evaluation of the Texas Universal Service Fund Pursuant to PURA Section 56.029*, has been established for this proceeding.

The commission requests that interested persons come to the workshop prepared to discuss issues regarding the scope of the report, and information necessary for the commission to review and evaluate the TUSF in order to make recommendations to the Legislature. Specifically, the commission requests that parties be prepared to answer the following questions:

1. What are the major topic areas and/or issues that the commission must address in its report in order to meet the requirements delineated

in PURA §56.029? In identifying the topic area and/or issue that must be addressed, please cite the specific subsection of PURA, and explain the nature and extent of the review that you believe is required.

2. For each of the topic areas and/or issues identified in response to Question No. 1 above, what information or data must the commission obtain in order to satisfactorily review and evaluate the TUSF and make recommendations to the Legislature?

3. For information identified in response to Question No. 2, is the information currently collected and available for review by the commission?

a. If yes, where is the information located, and how may it be obtained?

b. If not, who could best provide the information to the commission? Would this information need to be compiled in some manner? If so, who should do the compilation?

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 by Monday, October 31, 2005. All responses should reference Project Number 31863. The commission requests that parties identify the question for which a response is being provided, and respond to the questions in sequential order. Parties are urged to include everything they wish to discuss in their comments; if a party wishes to make a presentation at the workshop, it must be included in the comments submitted on Monday, October 31, 2005. The commission requests that comments be limited to 20 pages (including attachments). Parties that wish to establish a conference bridge for non-local participants must contact commission Staff with the call-in number and passcode no later than 3:00 p.m. on Monday, November 7, 2005.

Prior to the workshop, the commission shall make available in Central Records under Project Number 31863 an agenda for the format of the workshop and conference call information, if available.

Questions concerning the workshop or this notice should be referred to Marshall Adair, Communications Industry Oversight Division at (512) 936-7214 or Rosemary McMahill, Communications Industry Oversight Division at (512) 936-7244. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200504584
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 11, 2005



Request for Proposals to Assist the Public Utility Commission of Texas by Providing Marketing and Customer Education Services

The Public Utility Commission of Texas (commission or PUCT) is issuing a Request for Proposals (RFP) to assist the PUCT by providing marketing and customer education services. The PUCT is responsible for educating the public about electric deregulation and for providing Texans the tools to help make informed choices of electric services and retail electric providers. This RFP is being undertaken pursuant to the commission's statutory responsibility as provided for in the Public Utility Regulatory Act (PURA) §39.902(a) and (c).

To be considered, the proposals must arrive at the PUCT on or before the deadline stated on the RFP. This deadline is available on the PUCT

website (www.puc.state.tx.us). The vendor must be prepared to commence service on Thursday, December 1, 2005.

Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code §2161.001, are encouraged to submit a proposal.

Project Description. The vendor will assist the PUCT in developing and executing strategies to inform Texans about electric choice, including a marketing program targeted at community "influencers" by leveraging these community contacts in spreading the word on electric choice to customers in all competitive areas in Texas. The vendor will devise methods for tracking response to all marketing activities. The vendor shall develop an appropriate creative strategy for informing Texans in areas of competition about their power to choose their electric provider. The vendor shall propose objective criteria for evaluating the total campaign effort. Upon approval of the creative strategy and marketing work plan by the PUCT, the vendor will produce the necessary campaign materials and implement the education partner campaign that targets Community Based Organizations and their constituents from the market segments identified and meets the goals for the project. The vendor will provide project management throughout the length of the contract through designated account service personnel.

Selection Criteria. A proposal will be selected based on the ability of the proposer to provide the best value to the state. In addition to the proposer's ability to carry out all of the requirements contained in this RFP and demonstrated competence and qualifications of the proposer, the reasonableness of the proposed fee will be considered.

Requesting the Proposal. A complete copy of the RFP may be obtained by written request to Ben Delamater, Purchaser, Public Utility Commission of Texas, William B. Travis Building, 1701 North Congress Avenue, Austin, TX 78701, or by fax (512) 936-7058, or by e-mail ben.delamater@puc.state.tx.us. You may also download the RFP from the PUC website www.puc.state.tx.us, under Hot Topics, and from the Electronic Business Daily website sponsored by the Texas Department of Economic Development at <http://esbd.tbpc.state.tx.us>.

Deadline for Receipt of Proposals. Proposals must be received on or before the deadline stated on the RFP in the Public Utility Commission of Texas Central Records Division. Proposals received after the deadline will not be considered. Proposals may be received in Central Records between 9:00 a.m. and 5:00 p.m., Monday through Friday, except on holidays. In determining the time and date of receipt, the commission will rely solely on the time/date stamp of Central Records.

TRD-200504603
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 2005

◆ ◆ ◆
Texas Council on Purchasing from People with Disabilities

Request for Comment Regarding the Management Fee Rate Charged by TIBH Industries Inc. (Central Nonprofit Agency)

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) will review and approve the management fee rate charged by the Central Nonprofit Agency (TIBH Industries Inc) for its services to the Community Rehabilitation Programs (CRPs) for Fiscal Year 2006 as required by §122.019 (e) of the Texas Human Resources Code. This review will be considered at the next Council meeting. The Council's meeting will be held at 1400 North

Congress Ave., Capitol Extension, Austin, Texas, Room E2.026. TIBH Industries Inc. has requested that the Council set the Management fee rate at 6.25% of the selling price for products and 6% of the contract price for services. The Council seeks public comment on TIBH Industries management fee rate request as required by §122.030 (a)(b) of the Texas Human Resource Code.

Comments should be submitted in writing on or before Monday, December 19, 2005 to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 1711 San Jacinto Blvd., Suite 100, Austin, Texas 78711.

For all other questions or comments contact the Texas Council on Purchasing from People with Disabilities at (512) 436-3244. In addition, hearing and speech-impaired individuals with text telephones (TTY) may also contact the Council on Purchasing from People with Disabilities at (512) 463-3244.

TRD-200504594
John W. Luna
Chairman of the Council
Texas Council on Purchasing from People with Disabilities
Filed: October 12, 2005

◆ ◆ ◆
Request for Comment Regarding the Services Performed by TIBH Industries Inc. (Central Nonprofit Agency)

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) intends to review the services provided by the Central Nonprofit Agency TIBH Industries Inc. for Fiscal Year 2005 as required by §122.019 (c) of the Texas Human Resources Code. This review will be considered at the next Council meeting. The Council's meeting will be held at 1400 North Congress Ave., Capitol Extension, Austin, Texas, Room E2.026. The Council requests that interested parties submit comments regarding the services of TIBH Industries Inc. in its operation of the State Use Program, under §122.019 (a)(b) of the Texas Human Resource Code.

Comments should be submitted in writing on or before Monday, December 19, 2005 to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 1711 San Jacinto Blvd., Suite 100, Austin, Texas 78711.

For all other questions or comments contact the Texas Council on Purchasing from People with Disabilities at (512) 436-3244. In addition, hearing and speech-impaired individuals with text telephones (TTY) may also contact the Council on Purchasing from People with Disabilities at (512) 463-3244.

TRD-200504595
John W. Luna
Chairman of the Council
Texas Council on Purchasing from People with Disabilities
Filed: October 12, 2005

◆ ◆ ◆
Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Brenham, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Brenham, Brenham Municipal Airport. TxDOT CSJ No.: 06HGBRENM. Scope: Provide engineering/design services for site development and associated appurtenances for a 10-unit T-hangar pre-engineered metal aircraft hangar building system with hangar access paving at the Brenham Municipal Airport.

The DBE goal is set at 0%. TxDOT Project Manager is Megan Caffall.

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 "Brenham Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. Attention: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Seven completed, unfolded copies of Form AVN-550 must be post-marked by U. S. Mail by midnight November 14, 2005 (CST). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on November 15, 2005 (CST). Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. November 15, 2005 (CST). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The Consultant Selection Committee (Committee) will be composed of local government members. The final selection by the Committee will generally be made following the completion of review of proposals. The Committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The Committee does, however, reserve the right to conduct interviews for the top rated firms if the Committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Megan Caffall, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504547

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: October 10, 2005



Aviation Division - Request for Proposal for Aviation Engineering Services

Crockett 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:

Airport Sponsor: Crockett County, Ozona Municipal Airport. TxDOT CSJ No.:0607OZONA. Scope: Provide engineering/design services to install PAPI's runway 16-34, install hold position sign, rehabilitate, mark and repair runway 16-34, rehabilitate and mark stub taxiway and rehabilitate apron.

The HUB goal is set at 6%. TxDOT Project Manager is Alan Schmidt, P.E.

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 "Ozona Municipal Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Four completed, unfolded copies of Form AVN-550 must be post-marked by U. S. Mail by midnight Monday, November 14, 2005. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on Tuesday, November 15, 2005. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. Tuesday, November 15, 2005. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of Aviation Division staff 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 www.dot.state.tx.us/business/avnconsultinfo.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 of the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Alan Schmidt, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).



TRD-200504600
Joanne Wright
Associate General Counsel
Texas Department of Transportation
Filed: October 12, 2005

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).

SALES AND CUSTOMER SUPPORT

Sales - To purchase additional subscriptions or back issues (beginning with Volume 30, Number 36 – Issued September 9, 2005), you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday.

***Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (800) 226-7199.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844

Fax: (518) 487-3584

E-mail: customer.support@lexisnexis.com

Website: www.lexisnexis.com/printcdsc



LexisNexis[®]

It's how you know[™]