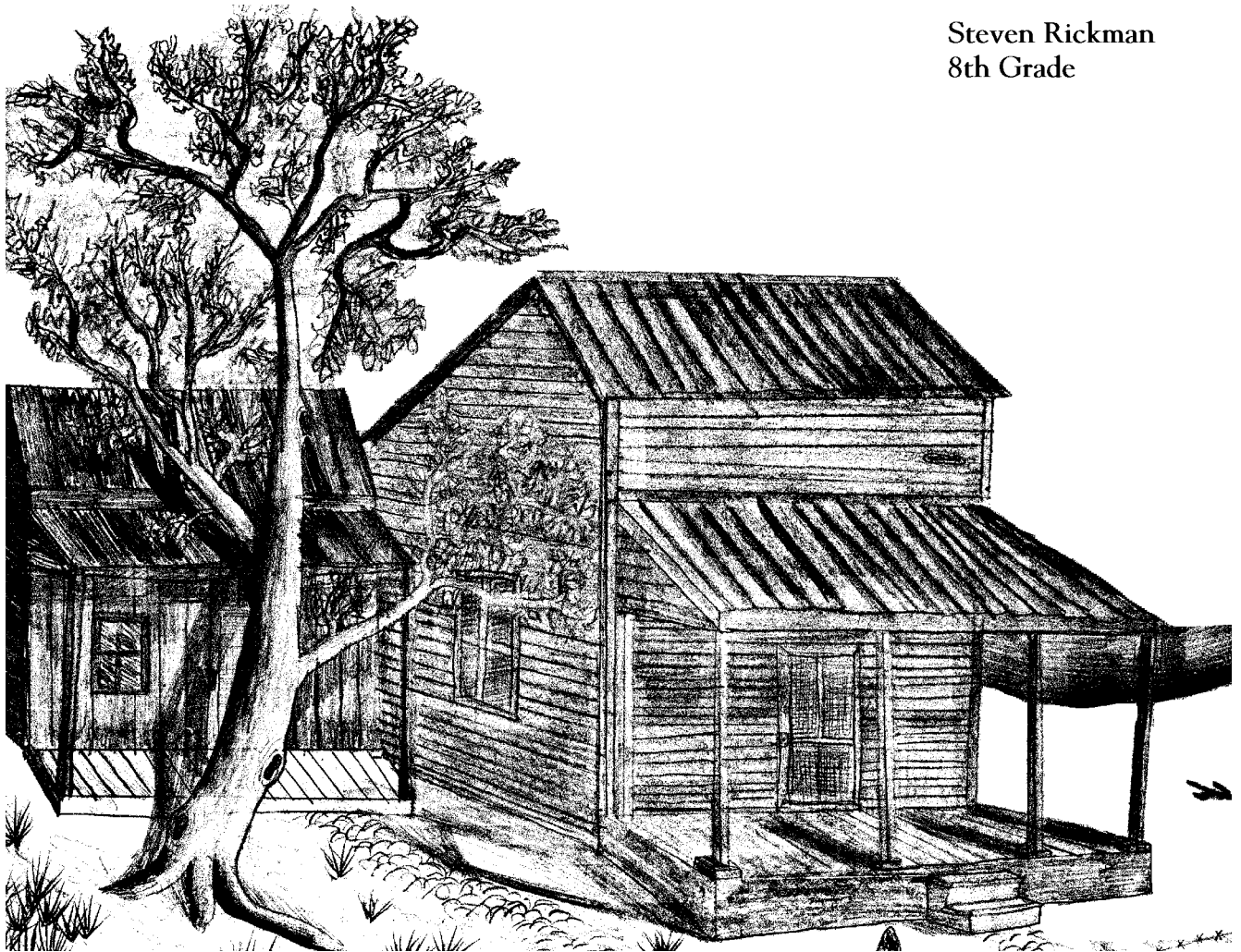

TEXAS REGISTER

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Steven Rickman
8th Grade



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Open Meetings

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

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

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

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

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 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. EXAMINATION

22 TAC §571.19

The Texas Board of Veterinary Medical Examiners (Board) adopts, on an emergency basis, a new rule to this title, §571.19, relating to the temporary licensure of veterinarians displaced by Hurricane Katrina. As authorized by Texas Government Code §2001.034, The Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice. An emergency rule adopted under §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days. In addition, under Texas Occupations Code §801.258, the Board may by rule provide for the issuance of a temporary license.

The Board finds that there is a continuing imminent peril to public welfare due to the number of Louisiana, Mississippi, and Alabama veterinarians who may have been displaced by Hurricane Katrina and who desire to temporarily practice in Texas as a means of providing for themselves and their families. On September 1, 2005, Governor Rick Perry issued an executive order certifying that Hurricane Katrina had created an emergency disaster and emergency conditions for Texas. On October 13, 2005, the Board held a meeting at 8:00 a.m. in the Board's offices in Austin to consider this emergency rule.

Under this emergency rule, the Board will issue a temporary license to veterinarians who can demonstrate that they are licensed in good standing in Alabama, Louisiana, or Mississippi. The veterinarian must complete and file an Application for Temporary Emergency License, and the application fee is waived. An application for a Texas Department of Public Safety Controlled Substances Registration must also be submitted to that agency.

The new rule is adopted on an emergency basis under Texas Government Code §2001.034, relating to emergency rule-making, Texas Occupations Code §801.151, relating to rules, and Texas Occupations Code §801.258, relating to temporary license. Texas Government Code §2001.034 authorizes the adoption of an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing if an 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. Texas Occupations Code §801.151 authorizes the Board to adopt rules as necessary to

administer the Veterinary Licensing Act. Texas Occupations Code §801.258 authorizes the Board by rule to issue temporary licenses.

No other statutes, articles, or codes are affected by this emergency rule.

§571.19. Temporary Licensure of Veterinarians Displaced by Hurricane Katrina.

(a) An individual who is licensed to practice veterinary medicine in the states of Alabama, Louisiana, or Mississippi may be issued a temporary license under the following circumstances:

(1) The applicant must complete an Application for Temporary Emergency License

(2) The Board will verify that the veterinarian is licensed in the states indicated in the Application and will confirm good standing.

(3) The applicant must file an application with the Texas Department of Public Safety for a controlled substances registration.

(4) An application fee is waived.

(b) A veterinarian granted a temporary emergency license under this section shall abide by the Texas Veterinary Licensing Act and the Board's rules. Violations of the Act, Board rules, or the temporary emergency license will subject the temporary licensee to disciplinary action by the Board.

(c) A temporary emergency license issued under this emergency rule will be valid until February 28, 2006 unless the Executive Director extends this emergency rule for an additional 60 days, in which case, a temporary license will be valid until April 29, 2006.

(d) A temporary emergency license issued prior to the expiration of this emergency rule will remain in effect until the temporary license expires even if this emergency rule is no longer in effect.

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 14, 2005.

TRD-200504614

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective Date: October 14, 2005

For further information, please call: (512) 305-7555

22 TAC §571.20

The Texas Board of Veterinary Medical Examiners (Board) adopts, on an emergency basis, a new rule to this title, §571.20,

relating to the temporary licensure of veterinarians displaced by Hurricane Rita and other out-of-state veterinarians who wish to provide emergency veterinary services needed in Texas because of Hurricane Rita. As authorized by Texas Government Code §2001.034, The Board may adopt an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing, if the Board finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice. An emergency rule adopted under §2001.034 may be effective for not longer than 120 days and may be renewed for not longer than 60 days. In addition, under Texas Occupations Code §801.258, the Board may by rule provide for the issuance of a temporary license.

The Board finds that there is a continuing imminent peril to public welfare due to the number of Louisiana veterinarians who may have been displaced by Hurricane Rita and who desire to temporarily practice in Texas as a means of providing for themselves and their families. In addition, the disaster along the upper Texas coast has created a need for additional veterinarians, including out-of-state veterinarians, to assist with veterinary medical issues in the area. On September 20, 2005, Governor Rick Perry issued an executive order certifying that Hurricane Rita had created an emergency disaster and emergency conditions for Texas. On October 13, 2005, the Board held a meeting at 8:00 a.m. in the Board's offices in Austin to consider this emergency rule.

Under this emergency rule, the Board will issue a temporary license to veterinarians who can demonstrate that they are licensed in good standing in Louisiana or other states. The veterinarian must complete and file an Application for Temporary Emergency License, and the application fee is waived. An application for a Texas Department of Public Safety Controlled Substances Registration must also be submitted to that agency.

The new rule is adopted on an emergency basis under Texas Government Code §2001.034, relating to emergency rule-making, Texas Occupations Code §801.151, relating to rules, and Texas Occupations Code §801.258, relating to temporary license. Texas Government Code §2001.034 authorizes the adoption of an emergency rule without prior notice or hearing, or with an abbreviated notice and hearing if an 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. Texas Occupations Code §801.151 authorizes the Board to adopt rules as necessary to administer the Veterinary Licensing Act. Texas Occupations Code §801.258 authorizes the Board by rule to issue temporary licenses.

No other statutes, articles, or codes are affected by this emergency rule.

§571.20. Temporary Licensure of Veterinarians Displaced by or Responding to Hurricane Rita.

(a) An individual who is licensed to practice veterinary medicine in a state other than Texas, may be issued a temporary license under the following circumstances:

(1) The applicant must complete an Application for Temporary Emergency License

(2) The Board will verify that the veterinarian is licensed in the states indicated in the Application and will confirm good standing.

(3) The applicant must file an application with the Texas Department of Public Safety for a controlled substances registration.

(4) An application fee is waived.

(b) A veterinarian granted a temporary emergency license under this section shall abide by the Texas Veterinary Licensing Act and the Board's rules. Violations of the Act, Board rules, or the temporary emergency license will subject the temporary licensee to disciplinary action by the Board.

(c) A temporary emergency license issued under this emergency rule will be valid until February 28, 2006 unless the Executive Director extends this emergency rule for an additional 60 days, in which case, a temporary license will be valid until April 29, 2006.

(d) A temporary emergency license issued prior to the expiration of this emergency rule will remain in effect until the temporary license expires even if this emergency rule is no longer in effect.

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 14, 2005.

TRD-200504615

Julie A. Barker

Executive Assistant

Texas Board of Veterinary Medical Examiners

Effective Date: October 14, 2005

For further information, please call: (512) 305-7555

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

**CHAPTER 800. GENERAL ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS**

40 TAC §800.8

The Texas Workforce Commission (Commission) adopts on an emergency basis the following new section to Chapter 800 relating to General Administration:

Subchapter A, General Provisions, §800.8

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission adopts this new rule on an emergency basis because of the imminent peril to the public's health, safety, and welfare caused by two recent hurricanes that affected the Texas population at-large. The purpose of the rule is to allow the Commission to suspend sections of rules or portions of sections of rules in order to ensure timely and appropriate administration of the Agency's employment and training and unemployment insurance benefits.

Two extraordinary natural disasters, Hurricanes Katrina and Rita, have unexpectedly impacted Texas residents, property, and resources. Both were declared major disasters by President Bush on August 29, 2005, and September 21, 2005, respectively. On September 20, 2005, the Governor of Texas certified that Hurricane Rita posed a threat of immediate disaster along the Texas Gulf Coast and authorized implementation of all necessary and

appropriate public measures to respond. The disasters have resulted in thousands of individuals evacuating from Louisiana to Texas, the flooding of nine eastern Texas counties, and the complete destruction of the infrastructure of several communities. These federal disasters have prevented many affected persons from receiving Agency services and left tens of thousands in need of Agency services.

The Commission finds that an imminent peril to the public health, safety, and welfare exists, as exemplified by the U.S. Secretary of Health and Human Services' declaration of a public health emergency. The U.S. Secretary of Health and Human Services has declared a public health emergency for Texas. The U.S. Department of Labor (DOL) announced on September 3, 2005, that Texas will receive funds for relief efforts through a National Emergency Grant (NEG), which covers all Texas counties for Hurricane Katrina. Further, the Federal Emergency Management Agency (FEMA) declared all 254 counties in Texas eligible for its public assistance program. On September 30, 2005, DOL also provided that the NEG funds may be used to provide services to persons affected by Hurricane Rita in the thirteen Texas counties declared eligible for public assistance by FEMA. The services include temporary jobs for cleanup and humanitarian assistance purposes as well as workforce development services.

Many dislocated workers affected by the disasters are also eligible for unemployment insurance benefits or Disaster Unemployment Assistance (DUA). Because of the extent of the affected areas and based on the fact that there is widespread dislocation of workers and damage to the affected areas' infrastructure, DOL has extended the filing period for DUA initial applications through November 30, 2005. Likewise, the time frame for submission of applicant documentation was extended to 90 days after the filing of the initial claim for DUA.

The Commission must take immediate action regarding funding and implementation to provide the required services and benefits to the affected individuals. Immediate action is required to address funding and delivery of available resources for relief services to evacuees and victims of both disasters. The required services and benefits will assist with the immediate threat to the public health and welfare brought about by the hurricane disasters and subsequent evacuations to Texas of approximately 450,000 individuals from Hurricane Katrina and the impact to Texas residents from Hurricane Rita.

The Commission must take immediate action on operations, implementation, and use of funds and related matters to provide required services in response to the immediate threat to the public. In responding to the emergency, the Commission has found that some existing rule provisions may act as impediments and prevent the victims of the disasters from receiving the necessary benefits as efficiently and effectively as possible. Moreover, compliance with all Commission rules is currently impossible for the majority of those affected by the disasters, as circumstances have required that they immediately evacuate to areas that are geographically far from their homes. Some provisions in the Commission's rules, which serve the public welfare in regular circumstances, may not be appropriate in emergency circumstances.

The suspension of specific rules that are unmistakably inapplicable or unenforceable for compliance in an urgent public emergency will allow the Commission to provide necessary employment and training services to those in greatest need. Additionally, DOL has approved the Commission's request for NEGs to

assist those affected. The suspension of specific rules will enable the Commission to implement the NEGs and the unemployment insurance benefits by providing locale-appropriate benefits, training, temporary employment assistance, and other support services. The new rule will give the Commission more effective flexibility to fulfill its mission by providing employment and training services and unemployment insurance benefits to those affected, and therefore will allow the Commission to respond appropriately to the emergency caused by the hurricane disasters.

The rule provides that the Commission will suspend a rule only after it finds a public emergency or imperative public necessity, and only after the Commission finds that the suspension will best serve the public health, safety, or welfare. The Commission finds that this language is appropriate and necessary to respond to unforeseen circumstances and emergency situations. In particular, the Commission finds that the emergency rule will greatly assist in providing necessary services and benefits to persons affected by Hurricanes Katrina and Rita. The Commission will suspend, in open meeting, only those rules whose suspension will best serve the public health, safety, or welfare. The Commission anticipates that any suspension will be articulated in open meeting with particularity and with specific duration. The Commission will not suspend any rule that merely restates federal statute or regulation or state statute that is beyond the Commission's authority to suspend or defer.

This rule is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which provides the Commission with the authority to adopt rules on an emergency basis; Texas Labor Code §301.0015(a)(5) and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Labor Code §301.062, which provides the Commission with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

The effective date of the rule shall be immediate upon the date of filing the adoption with the Secretary of State pursuant to Texas Government Code §2001.036(a)(2).

§800.8. Suspension of Rules.

The Commission may suspend the operation of one or more of the provisions in this title, on either a statewide or other basis, if the Commission finds a public emergency or imperative public necessity exists, and the Commission finds that the suspension will best serve the public health, safety, or welfare.

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

Filed with the Office of the Secretary of State on October 11, 2005.

TRD-200504579

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Effective Date: October 11, 2005

For further information, please call: (512) 475-0829



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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER A. VOTER REGISTRATION

1 TAC §81.10

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

The Office of the Secretary of State, Elections Division, proposes to repeal rule, §81.10, concerning distribution of surplus computer equipment to counties under §18.063 of the Texas Election Code. The rule is no longer necessary since the county eligibility formula outlined in §81.10 no longer applies; however, the state will continue to distribute surplus computer equipment in accordance with Title 1, Part 5, Chapter 126, Subchapter A of the Texas Administrative Code, which governs the use and distribution of surplus and salvage property owned by the State of Texas.

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

Ms. McGeehan has determined also that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be to eliminate an outdated rule. There will be no effect on small or micro-businesses. There will be no economic cost to persons required to comply because the rule is being repealed.

Written comments concerning the repeal may be submitted to Ann McGeehan, Director of Elections, Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

The repeal is proposed under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

No other statutes affect this proposed repeal.

§81.10. Distribution of Surplus Computer Equipment to Eligible Counties Under §18.063 of the Texas Election Code.

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

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504626

Ann McGeehan

Director of Elections

Office of the Secretary of State

Earliest possible date of adoption: November 27, 2005

For further information, please call: (512) 463-5562

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 2. LICENSING

SUBCHAPTER B. CONSOLIDATED LICENSES

4 TAC §2.11

The Texas Department of Agriculture (the department) proposes amendments to §2.11 concerning expiration dates for consolidated licenses. Amendments to §2.11 are proposed to change the expiration dates for all consolidated licenses to the last day of the month corresponding to the license anniversary date. The amendments are further proposed to remove reference to specific expiration dates for component licenses that are encompassed by a consolidated license. The amendments delete subsection (d)(1), which provided for an expiration date of August 31 for licenses required by the Code, Chapter 132 and Chapter 15 of this title. The amendments also delete subsection (d)(2), which provides for an expiration date of May 31 for licenses required by the Code, Chapter 14 and Chapter 13 of this title.

Stephen Pahl, regulatory programs branch chief, 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 rule amendments, as proposed.

Mr. Pahl 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 allow the department to more evenly distribute licensing workflow throughout the year, thereby providing a better turnaround time to customers. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendment.

Comments on the proposal may be submitted to Stephen Pahl, Regulatory Programs Branch Chief, 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 §2.11 are proposed under Texas Agriculture Code (the Code), §12.033, which provides the department with the authority to adopt any rules necessary to implement a consolidated license program; and §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.

The code affected by the proposal is the Texas Agriculture Code, Chapters 12 and 71.

§2.11. License Specifications.

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

(d) Expiration. A consolidated license will expire on the last day of the month corresponding to the license anniversary date. [in accordance with the following schedule:]

[(1) If one of the component licenses encompassed by the consolidated license is a license required by the Texas Agriculture Code, Chapter 132, and Chapter 15 of this title (relating to Egg Law), the consolidated license shall expire on August 31 of each year.]

[(2) If one of the component licenses encompassed by the consolidated license is a license required by the Texas Agriculture Code, Chapter 14, and Chapter 13 of this title (relating to Grain Warehouse), the consolidated license shall expire on May 31 of each year.]

[(3) All other consolidated licenses shall expire one year from the date of issuance or renewal.]

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-200504576

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: November 27, 2005

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

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TITLE 10. COMMUNITY DEVELOPMENT
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 90. MIGRANT LABOR HOUSING FACILITIES

10 TAC §§90.1 - 90.8

The Texas Department of Housing and Community Affairs (the Department) proposes new Chapter 90, §§90.1 - 90.8, concerning Migrant Labor Housing Facilities.

The purpose of this chapter is to provide for the licensing and supervision of migrant labor housing facilities, in accordance with Texas Government Code, §§2306.921 - 2306.933.

Edwina P. Carrington, Executive Director, has determined that for the first five-year period the proposed new chapter is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the chapter.

Ms. Carrington also has determined that for each year of the first five years the proposed new chapter is in effect, the public benefit anticipated as a result of enforcing this chapter will be improved supervision of migrant labor housing facilities and reduced licensing fees. There will be no effect on persons, small businesses or micro-businesses. There are no anticipated economic costs to persons, small businesses or micro-businesses who are required to comply with the chapter as proposed. The proposed new chapter will not have an impact on any local economy.

Comments may be submitted to Anne O. Reynolds, Deputy General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941 or by e-mail at the following address: anne.reynolds@tdhca.state.tx.us.

The new chapter is proposed pursuant to the authority of the Texas Government Code, Chapter 2306.

The new chapter affects no other code, article or statute.

§90.1. Definitions.

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

(1) Act--The state law that governs the operation and licensure of migrant labor housing facilities in the State of Texas, found at Texas Government Code, §§2306.921 - 2306.933.

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

(3) Business Day--Any day that is not a Saturday, Sunday, or a holiday observed by the State of Texas.

(4) Business hours--8 a.m. to 5 p.m., local time.

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

(6) Director--The Executive Director of the Department.

(7) Facility--A structure, trailer, or vehicle, or two or more contiguous or grouped structures, trailers, or vehicles, together with the land appurtenant.

(8) Family--A group of people, whether legally related or not, that act as and hold themselves out to be a family; provided, however, that nothing herein shall be construed as creating or sanctioning any unlawful relationship or arrangement such as the custody of an unemancipated minor by a person other than their legal guardian.

(9) Licensee--Any person that holds a valid license issued in accordance with the Act.

(10) Migrant labor housing facility--A facility that is established, operated, or used for more than three days as living quarters for two or more seasonal, temporary, or migrant families or three or more seasonal, temporary, or migrant workers, whether rent is paid or reserved in connection with the use of the facility.

(11) Occupant--Any person, including a worker, who uses a migrant labor housing facility for housing purposes.

(12) Operator--Any individual designated in an application for a license to operate a migrant labor housing facility or in signed correspondence from a licensee to the Department as having authority to act on behalf of the a licensee to administer day-to-day operation of that migrant labor housing facility and to respond to complaints, investigations, inspections, orders, and other matters as set forth in these rules.

(13) Worker--A migrant agricultural worker, as defined in the Act, being an individual who is

(A) working or available for work seasonally or temporarily in primarily an agricultural or agriculturally related industry and

(B) moves one or more times from one place to another to perform seasonal or temporary employment or to be available for seasonal or temporary employment.

§90.2. Facilities.

(a) Facility site.

(1) Facility sites shall be well drained and free from depressions in which water may stand. Sinkholes, pools, swamps, or other surface collectors of water within 200 feet of the periphery of the site shall be drained, filled, or treated on an ongoing basis to prevent mosquito breeding. If they are drained or filled, this must be done so as not to create a hazard. If they are treated, they must be appropriately fenced if they present would present a hazard or attractive nuisance, such as a place where children might play or pets might drink.

(2) Facility sites shall be made and kept free from any conditions not conducive to housing such as conditions which create offensive odors, attract flies, create excessive noise, allow unregulated traffic, create a risk of fire, pose any other risk to safety, contribute to or permit flooding, result in or contribute to overcrowding, or create or promote the creation, perpetuation, or exacerbation of any other condition which would reasonably be viewed as hazardous or inappropriate to a living facility.

(3) Grounds within the facility site shall maintained so as to be free from debris, noxious plants (poison ivy, etc.) uncontrolled weeds, or brush.

(4) Facility sites shall have recreation space for the facility occupants based on the maximum facility capacity.

(5) Facility sites shall be located at least 500 feet from livestock pens or any place where livestock is kept or fed.

(6) The housing site shall not be subject to periodic flooding or located so the drainage from and through the site will endanger any domestic or public water supply or enter or surround any living facility.

(b) Water supply.

(1) A water supply which meets the provisions of Health and Safety Code, Chapter 341, and the Texas Commission on Environmental Quality's public drinking water standard, 30 TAC Chapter 290, Subchapter F, §§290.101 - 290.115, 290.117 - 290.119, 290.121, and 290.122 (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Systems), shall be available at all times in each facility.

(2) When the water supply does not meet the standards, notice shall be given to facility occupants and posted in a conspicuous location in the facility site. Such notice shall be given in English the language primarily used at the migrant labor housing facility if other than English AND shall display a universal symbol that such water is

unsafe for consumption. Approved bottle water shall be provided to the occupants.

(3) Facilities shall be connected to an existing public water supply system, if one is available.

(4) Adequate arrangements for provision of hot water for bathing, laundering, culinary, and dishwashing purposes shall be available in all facility sites.

(5) Facility sites shall provide water under pressure (a minimum of 20 psi and a minimum static of 35 psi) to each living arrangement and utility building.

(6) In common use arrangements, dining halls, recreation, and meeting rooms, drinking fountains shall be provided for each 100 occupants or fraction thereof and all such drinking fountains shall meet American National Standards Institute standards, "Specification for Drinking Fountains 2.4.2-1942."

(c) Excreta and liquid waste disposal.

(1) Arrangements shall be provided and maintained for effective sewage disposal. Raw or treated liquid waste shall not be discharged or allowed to accumulate on the ground surface or in any place other than a proper sewage disposal facility.

(2) Arrangements for disposal of excreta and liquid waste shall be connected to a public sewer system, if available.

(3) All other disposal systems, (such as septic tanks, liquid waste treatment, privies, and portable toilets) shall be constructed and maintained as required by the Department of State Health Services.

(4) Portable toilet rooms not ventilated by mechanical means shall be provided with adequate screened (16 mesh) ventilation openings.

(d) Facilities.

(1) Facilities shall be constructed in a manner to insure the protection of occupants against the elements. Facilities shall be maintained in good repair and in a sanitary condition.

(2) Facilities shall have flooring constructed of smooth finished, rigid materials and be readily cleanable. The flooring shall be installed so as to prevent entrance of ground or surface water into the facility.

(3) In living arrangements utilized for combined cooking, eating, and sleeping purposes, no less than 100 square feet of floor space shall be provided for each occupant over 18 months of age. Rooms used for sleeping purposes only shall provide at least 50 square feet of floor space for each intended occupant.

(4) Facilities utilized by families with children shall have a separate room or partitioned sleeping area for the husband and wife. The partition shall provide privacy and shall not adversely affect the meeting of any other standard hereunder, including the availability of light and access to exits.

(5) In dormitory-type facilities, separate sleeping accommodations shall be provided for each sex. In family housing units, separate sleeping accommodations shall be provided for each family unit.

(6) Adequate, separate arrangements for each person or family to hang clothes and store personal effects shall be provided.

(7) The total floor area of each habitable room in a facility shall have a minimum ceiling height of seven feet.

(8) Each habitable room shall have at least one window or skylight opening directly to the outside. The minimum total window or skylight area, including windows and doors, shall equal at least 10% of the usable floor area. The total area that can be opened shall equal at least 45% of the minimum window or skylight area required, except where comparable adequate ventilation is supplied by mechanical or some other method.

(9) Facilities previously used to mix, load, or store pesticides and toxic chemicals may not be used for cooking, dishwashing, eating, sleeping, housing purposes, or other similar purposes.

(e) Cooking and eating arrangements.

(1) When workers or their families cook in their individual units, space shall be provided and equipped for cooking and eating. Each such space shall be provided with:

(A) a working stove with a minimum of four operating burners;

(B) adequate food storage shelves and a counter for food preparation; if children under the age of six years will be present, such storage facilities shall include a container with childproof locks in which to store any cleaning agents or similar dangerous substances that may be used in connection with food preparation and clean-up, and this container shall be separate and apart for any place or container for food storage;

(C) provisions for mechanical refrigeration of food at a temperature of not more than 45 degrees F;

(D) eating arrangements (table and chairs or equivalent) commensurate with the maximum capacity of the unit;

(E) adequate sinks with hot and cold water under pressure; and

(F) adequate lighting and ventilation.

(2) When workers or their families cook and eat in a communal room or building separate from their sleeping accommodations, each such room or building shall be provided with:

(A) a working stove with a minimum of four operating burners, in a ratio of one stove to 10 persons, or one stove to two families;

(B) adequate food storage shelves and a counter for food preparation;

(C) mechanical refrigeration for food at a temperature of not more than 45 degrees F;

(D) eating arrangements (tables and chairs or equivalent) commensurate with the intended use of the room or building;

(E) adequate lighting and ventilation; and

(F) nonabsorbent floors of easily cleanable materials.

(3) In a central mess or multifamily feeding operation, the kitchen and mess hall shall be constructed in accordance with department rules on food services sanitation, 25 TAC §§229.161 - 229.171 (relating to Food Service Sanitation), and

(A) shall be a size in proper proportion to the facility capacity and separate from the sleeping quarters;

(B) floors, walls, ceiling, tables, and shelves of all kitchens, dining rooms, refrigerators, and food storage rooms shall be maintained in a clean, sanitary condition;

(C) the exterior wall opening of all dining rooms shall be screened (16 mesh) and rendered fly-tight; and,

(D) screen doors shall be self-closing and installed to open outward from the area to be protected.

(f) Sleeping arrangements.

(1) Sleeping arrangements (beds, metal frame cots, or bunks complete with springs, mattresses, and mattress covers) in good repair shall be provided for facility occupants. Sleeping arrangements shall be cleaned and maintained in a sanitary condition. No bed shall be used by more than two occupants.

(2) Mattresses and mattress covers shall be laundered and sanitized between assignment to different occupants.

(3) Beds, bunks, or cots shall have a clear space of at least 12 inches from the floor. Triple-deck facilities shall be prohibited. Single beds shall be spaced not closer than 36 inches laterally or end to end. Bunk beds shall be spaced not less than 48 inches laterally or 36 inches end to end. There shall be a clear ceiling height above a mattress of not less than 36 inches. The clear space above the lower mattress of the bunk beds and the bottom of the upper bunk shall not be less than 27 inches.

(g) Heating.

(1) All living quarters and service rooms shall be provided with properly installed, operable heating equipment that capable at all times of maintaining a temperature of at least 68 degrees F. If heating is centrally controlled, all areas affected shall be maintained at least 68 degrees F at all times.

(2) All heating systems shall be failsafe in case of failure or interruption of the power or fuel source.

(3) All walls or ceilings within 18 inches of the stovepipe of a solid or liquid fuel stove shall be of fireproof material.

(4) All stoves or other sources of heat utilizing combustible fuel shall be installed to prevent fire and safety hazards. A vented metal collar shall be installed around a stovepipe, or any vent passing through a wall, ceiling, floor, or roof.

(5) All stove or other sources of heat utilizing combustible fuel shall be vented to prevent fire and safety hazards. All vents shall extend above the peak of the roof.

(6) If solid or liquid fuel stoves are used in a room with wooden or other combustible flooring, they shall be placed on a concrete slab, insulated metal sheets, or other fireproof materials sufficient to prevent the transfer of heat to the floor and such material shall extend at least 18 inches beyond the perimeter of the base of the stove.

(7) If portable heaters are provided they must be electric and UL approved, and the electricity supply to the unit where they are to be used must be sufficient to permit their operation without disruption other things in that unit requiring electricity to operate, such as stoves, lights, and other appliances.

(h) Bathrooms and laundry rooms.

(1) Bathrooms in family living accommodations shall be separate from other rooms to insure privacy.

(2) Sufficient bathrooms (including bathtubs, showers, and lavatory sinks) and laundry rooms for the occupants of each living arrangement shall be located within 200 feet of each living arrangement.

(3) Bathrooms and laundry rooms shall be constructed in a manner conducive to good repair and shall be maintained in good repair and in a sanitary condition.

(4) Shower flooring shall be constructed of nonabsorbent, nonskid materials and shall have properly constructed and functioning floor drains.

(5) Communal bathrooms shall have bathing arrangements, hand washing arrangements, and dry dressing space for each sex separated by a solid nonabsorbent wall extending from the floor to ceiling to insure privacy. Communal bathrooms shall be designated "men" or "women" in English and in the language of the facility occupants, or in the universal symbols.

(6) Communal bathrooms shall have a minimum of one showerhead per 10 persons and one lavatory sink per six persons. Showerheads shall be spaced at least three feet apart to insure a minimum of nine square feet of showering space per showerhead.

(7) In all communal bathrooms separate shower stalls shall be provided.

(8) Mechanical clothes washers shall be provided in a ratio of one per 50 persons. In addition to mechanical clothes washers, one laundry tray per 100 persons shall be provided. In lieu of mechanical clothes washers, one laundry tray or tub per 25 persons may be provided.

(9) Arrangements for drying clothes shall be provided.

(i) Toilets.

(1) Toilets shall be located within 200 feet of each living arrangement. No privy shall be located within 100 feet of any living arrangement, dining room, mess hall, or kitchen.

(2) Sufficient toilets for the occupants of each living arrangement shall be constructed in a manner conducive to good repair and maintained in a sanitary condition. Privies shall be fly proof and of adequate capacity.

(3) Communal accommodations shall have toilets for each sex separated by a solid wall from floor to ceiling and shall be designated "men" or "women" in English and in the language of the facility occupants, or in universal symbols.

(4) Communal toilet rooms shall be lighted naturally or artificially by a safe type of lighting and shall be well ventilated, all outside openings shall be screened with 16 mesh material.

(5) Water closets or privy seats shall be provided in a ratio of one per 15 persons of each sex. A minimum of one for each sex shall be provided in communal accommodations. Family living accommodations containing private toilets will not be considered when establishing the number of shared toilets.

(6) Urinals may be substituted for men's toilet seats in a ratio of one urinal of 24 inches of trough-type urinals per toilet seat to a maximum of one-third of the required toilet seats.

(7) Urinals and the surrounding walls and floor shall be constructed of nonabsorbent material.

(j) Garbage and other refuse.

(1) Containers with tight fitting lids for garbage and other refuse storage shall be provided to and located within 100 feet of each living accommodation. Containers of up to 32 gallon capacity may be used. They shall be supplied in a ratio of one per living accommodation. Bulk type containers may be used. Lost or damaged containers must be promptly replaced.

(2) Containers shall be durable, in good repair, and maintained in a sanitary condition.

(3) Garbage and refuse shall be collected at least twice a week. Disposal of garbage and refuse shall be in accordance with requirements of the Department of State Health Services concerning solid waste management, 25 TAC Chapter 325 (relating to Solid Waste Management).

(k) Electricity and lighting.

(1) All facility sites shall be provided with electricity. The electrical systems shall conform to all applicable codes and shall be sufficient to provide the electricity with sufficient amperage to operate all required and available features, including but not limited to lighting, stoves, hot water heaters, heating systems, portable heaters, refrigeration, and such other devices as may be connected to wall type convenience outlets.

(2) Each habitable room and all communal rooms and areas (laundry rooms, toilets, privies, hallways, stairways, etc.) shall contain ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet shall be provided in each individual living room.

(3) Lighting shall be provided in the yard area and pathways to communal arrangements.

(4) All wiring and lighting fixtures shall be installed and maintained in a safe condition in accordance with National Electrical Code and state and local codes.

(5) Light levels in toilet and storage rooms shall be at least 20 foot candles 30 inches from the floor. Other rooms, including kitchens and living quarters, shall be at least 30 foot candles 30 inches from the floor.

(l) Screening.

(1) All outside opening shall be protected with screening of 16 mesh or less.

(2) All screen doors shall be tight and equipped with self-closing devices.

(3) All screens shall be maintained in good repair.

(m) Insect and rodent control.

(1) Housing sites, housing units, and utility areas shall be constructed to exclude insects, rodents, and other vermin.

(2) A vector control program shall be maintained to insure effective control of all insects, rodents, and other vermin.

(3) All vector control programs shall be designed and executed to insure maximum protection of the occupants.

(n) Fire, safety, and first aid.

(1) All buildings or structures shall be maintained and used in accordance with the provisions of the state and local regulations.

(2) In one story facilities utilized by less than 10 persons, two means of escape shall be provided. One of the two required means of escape may be a readily accessible window with a space that can be opened of not less than 24 inches by 24 inches.

(3) Central dining facilities, assembly rooms, and all sleeping quarters intended for use by 10 or more persons shall have, as alternate means of escape, at least two remotely separated doors that open to an interior hallway or to the outside.

(4) Sleeping quarters and assembly rooms located on a second story shall have a stairway, plus permanently affixed exterior ladder or a second stairway.

(5) Fire extinguishing equipment shall be provided in an accessible place located within 100 feet from each facility. Such equipment shall provide protection equal to a 2 1/2 gallon stored pressure of five gallon pump type water extinguisher.

(6) First aid supplies shall be provided and be accessible at all times. The supplies shall be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and shall be provided in a ratio of one to 50 persons. First aid kits shall be distributed and placed conspicuously throughout the migrant labor housing facility.

(7) Flammable or volatile liquids or materials, except those needed for household use other than use as fuel, shall not be stored in or adjacent to rooms used for living purposes.

(8) Agricultural pesticides and toxic chemicals other than those commonly regarded as being for household use, such as cleaning agents, shall not be stored within the facility site. Any pesticide or other toxic materials, and any potentially hazardous implements or equipment, kept within 500 feet of the facility site shall be stored in a secure, locked enclosure.

§90.3. Licensing.

(a) Texas Government Code, §2306.922 requires the licensing of migrant labor housing facilities.

(b) Any person who wants to apply for a license to operate a facility may obtain the application form from the Department. The required form is in §90.8 of this chapter.

(c) An application must be submitted to the Department at least 45 days prior to the intended operation of the facility, but no more than 60 days.

(d) The fee for a license is \$250, and the license is valid for one year unless sooner revoked or suspended.

(e) Fees shall be tendered by check or money order payable to the Texas Department of Housing and Community Affairs. If any check or other instrument given in payment of a licensing fee is returned for any reason, any license that has been issued in reliance upon such payment being made is null and void.

(f) A fee, when received in connection with an application is earned and is not subject to refund.

(g) Within 30 days of the receipt of a complete application and fee, the facility shall be inspected by an authorized representative of the Department. Inspections shall be conducted during business hours on business days.

(h) The person performing the inspection on behalf of the Department shall prepare a report of findings of that inspection.

(1) If the person performing the inspection finds that the migrant labor housing facility, based on the inspection, will be in compliance with §90.2 of this chapter, and the Director finds that there is no other impediment to licensure, the license will be issued.

(2) If the person performing the inspection finds that although one or more deficiencies were noted that will require timely corrective action which may be confirmed by the operator without need for re-inspection, and the Director finds that there is no other impediment to licensure, the license will be issued subject to such conditions as the Director may specify. The applicant may, by signed letter, agree to these conditions, request a re-inspection within 60 days from the date of the Director's letter advising of the conditions, or treat the Director's imposing of conditions as a denial of the application.

(3) If the person performing the inspection finds that although one or more deficiencies were noted that will require timely

corrective action, the deficiencies are of such a nature that a re-inspection is required, the applicant shall address these findings and advise the inspector, within 60 days from the date of written notice of the findings, of a time when the facility maybe re-inspected. If the results of the re-inspection are satisfactory and the Director finds that there is no other impediment to licensure, the license will be issued.

(4) If the person performing the inspection finds that the migrant labor housing facility is in material non-compliance with §90.2 of this chapter or that one or more imminent threats to health or safety are present, the Director may deny the Application.

(i) If the Director determines that an application for a license ought to be granted subject to one or more conditions, the Director shall issue an order accompanying the license, and such order shall:

(1) Be clearly incorporated by reference on the face of the license;

(2) Specify the conditions and the basis in law or rule for each of them; and

(3) Such conditions may include limitations whereby parts of a migrant labor housing facility may be operated without restriction and other parts may not be operated until remedial action is completed and documented in accordance with the requirements set forth in the order.

(j) Correspondence regarding an application should be addressed to: Texas Department of Housing and Community Affairs, Attention: Migrant Labor Housing Facilities, PO BOX 12489, AUSTIN, TX 78711-2489

(k) Within 14 days of the date of receipt of an application and license fee, the Department shall issue a written notice informing the applicant that the application is complete and accepted for filing, or, if the application is deficient, a letter specifying what is else needed in order to process the application.

(l) An applicant or licensee that wishes to appeal any order of the Director, including the appeal of a denial of an application for a license or an election to appeal the imposing of conditions upon a license, may appeal such order by sending a signed letter to the Director within 30 days from the date specified on such order, indicating the matter that they wish to appeal.

§90.4. Records.

(a) Each licensee shall maintain on premises, available for inspection by the Department, the following records:

(1) Copies of all correspondence to and from the Department. This shall include the current designation of each Operator;

(2) A current list of the occupants of the facility and the date that the occupancy of each commenced;

(3) Documentation establishing that all bedding facilities were sanitized prior to their being assigned to the current occupant; and

(4) Copies of any and all required federal, state, or local approvals and permits, including but not limited to any permits to operate a waste disposal system or a well or other water supply, and any correspondence or from such approving or permitting authorities.

(b) All such records shall be maintained for a period of at least two years.

§90.5. Complaints.

(a) If the Department receives any complaint, it shall investigate it by appropriate means, including the conducting of a complaint

inspection. Any complaint inspection will be conducted after giving the Operator notice of the inspection and an opportunity to be present.

(b) A licensee, through its Operator, shall be provided a copy of any complaint and given a reasonable opportunity to respond. Generally, this shall be 10 business days.

(c) If any complaint involves matters that could pose an imminent threat to health or safety, all time frames shall be accelerated, and such complaint shall be addressed as expeditiously as possible.

(d) The Department may conduct interviews, including interviews of operators and occupants, and review such records as it deems necessary to investigate a complaint.

(e) The Department shall review the findings of any inspection and its review and, if it finds a violation of the Act or these rules to have occurred, issue a notice of violation.

(f) A notice of violation and order will be sent to the Licensee to the attention of the Operator.

(g) The notice of violation will set forth:

(1) The complaint or other matter made the subject of the notice;

(2) The findings of fact;

(3) The specific provisions of the Act and or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction to be assessed; and

(6) The timeframe for the Licensee either to agree to the recommended corrective action, and accept the administrative penalties and/or sanctions or appeal or to appeal the matter.

(h) The order will set forth:

(1) The complaint or other matter made the subject of the order;

(2) The findings of fact;

(3) The specific provisions of the Act and or these rules found to have been violated;

(4) The required corrective action;

(5) Any administrative penalty or other sanction assessed; and

(6) The date on which the order becomes effective if not appealed or otherwise resolved.

§90.6. Administrative Penalties and Sanctions.

(a) When the Director finds that the requirements of the Act or these rules are not being met, he or she may assess administrative penalties or impose other sanctions as set forth below. Nothing herein limits the right, as set forth in the Act, to seek injunctive relief.

(b) For each violation of the Act or rules a penalty of up to \$200 may be assessed.

(c) For violations that present an imminent threat to health or safety, if not promptly addressed, the Director may suspend or revoke the affected license.

§90.7. Dispute Resolution, Appeals, and Hearings.

(a) A licensee is entitled to appeal any order issued by the Director, including any order as a result of an inspection or a complaint

and any order denying a license or issuing a license subject to specified conditions.

(b) In lieu of or during the pendency of any appeal, a licensee may request to meet with the Director or, at his or her option, his or her designee to resolve disputes. Any such meeting may be by telephone or in person. Meetings in person shall be in the county where the migrant labor housing facility affected is located unless the licensee agrees otherwise.

(c) A licensee may request alternative dispute resolution in accordance with the Department's rules regarding such resolution set forth at §1.17 of this title.

(d) All appeals are contested cases subject to and to be handled in accordance with Chapter 2001, Texas Government Code.

§90.8. Forms.

Appendix A--Application for a License to Operate a Migrant Labor Housing Facility form

Figure: 10 TAC §90.8

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 17, 2005.

TRD-200504648

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: November 27, 2005

For further information, please call: (512) 475-4595

TITLE 22. EXAMINING BOARDS

PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners (board) proposes amendments to §§781.102, 781.203, 781.209, 781.210, 781.217, 781.301, 781.302, 781.305, 781.306, 781.310, 781.311, 781.503, 781.508, 781.509, 781.514, 781.602, 781.607, 781.608, 781.701, 781.803, the repeal of §§781.702 - 781.707, and new §§781.318, 781.702 - 781.704, concerning the licensure and regulation of social workers.

BACKGROUND AND PURPOSE

The proposed amendments, repeals, and new sections are necessary to comply with Senate Bill 415, 79th Texas Legislature, 2005 (Sunset legislation), which amended the board's enabling statute as part of the review of the board by the Sunset Advisory Commission. The bill modified requirements relating to the board's licensing and enforcement authority and applied certain across-the-board standards and requirements for regulatory boards. The rule proposal implements the requirements of the bill.

Additionally, the Texas Legislature passed the General Appropriations Act, House Bill 1, 79th Regular Session (2005). Article 2

of the General Appropriations Act, Rider 85 Contingent Appropriation of Additional Fee Revenues authorized the collection of additional revenue in the form of fees, which would then be appropriated to pay for expenses of Health Care Professional programs, including licensed social workers.

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

SECTION BY SECTION SUMMARY

Amendments to §781.102 are proposed to add a new definition of AMEC; to eliminate obsolete definitions of LMSW-ACP, LSW, and SWA; and to renumber the definitions accordingly. The amendment to §781.203 is proposed to clarify that the board's training program must meet the requirements of Occupations Code, Chapter 505. Amendments to §781.209 are proposed to reflect requirements of the Sunset legislation. The amendment to §781.210 is proposed to eliminate the obsolete reference to the executive director as an appointee of the Commissioner of Health.

Amendments to §781.217 (a) are proposed based on the provisions for contingent appropriation of additional fee revenue authorized by the General Appropriations Act, 79th Regular Session (2005), by increasing the amount of the fee for renewal of a license. The amendment to §781.217(b) is proposed to correct a minor error.

The amendment to §781.301 is proposed to reflect the jurisprudence examination requirement of the Sunset legislation. The amendment to §781.302 is proposed to clarify that only one supervisory plan may be in place at any time. Amendments to §§781.305 - 781.306 are proposed to clarify that accredited institutions must be accredited by CSWE, to update license level terminology, and to reflect the jurisprudence examination requirement of the Sunset legislation. Amendments to §§781.310 - 781.311 are proposed to update license level terminology and delete obsolete license terms. New §781.318 is proposed to reflect new language regarding issuance of licenses to certain out-of-state applicants. This language reflects the requirements of the Sunset legislation.

Amendments to §781.503 are proposed to reflect the requirements of the Sunset legislation relating to the refusal to renew a license for failure to pay an administrative penalty; and to require that licensed social workers must complete the board's jurisprudence examination each renewal period in order to renew the license, effective January 1, 2007. This requirement is intended to increase knowledge of, and compliance with, Texas social work law and rules among the board's license holders. Amendments to §§781.508 - 781.509 are proposed to clarify the number of continuing education hours required as a result of the move to two-year license terms; to improve draftsmanship and understanding; and to reflect the requirement for license holders to take the jurisprudence examination as part of the biennial continuing education requirements, effective January 1, 2007. The amendment to §781.514 is proposed to reflect the requirement for license holders to take the jurisprudence examination as part of the biennial continuing education requirements, effective January 1, 2007.

The amendment to §781.602 is proposed to reflect the board's authority to issue a cease and desist order, as added by the Sunset legislation. The amendment to §781.607 is proposed to reflect the board's authority to refuse to renew a license for failure

to pay an administrative penalty, as added by the Sunset legislation. The amendment to §781.608 is proposed to reflect the board's authority to order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference, as added by the Sunset legislation.

The amendment to §781.701 is proposed to update and clarify the subchapter's purpose. New §781.702 is proposed to reflect current operational and legal considerations relating to notice of formal hearings and informal conferences, and to eliminate obsolete or unnecessary language. New §781.703 is proposed to reflect current operational and legal considerations relating to default and to eliminate obsolete or unnecessary language. New §781.704 is proposed to reflect current operational and legal considerations relating to action after a hearing and to eliminate obsolete or unnecessary language. The repeals of §§781.702 - 781.707 are proposed as those sections are deemed obsolete or unnecessary, and they no longer reflect current legal and operational considerations.

Amendments to §781.803 are proposed to implement the requirement of the Sunset legislation to establish an administrative penalty schedule.

FISCAL NOTE

Charles Horton, Executive Director, has determined that for each fiscal year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of \$128,400 the first fiscal year and \$192,600 each year for fiscal years two through five due to the increase in license renewal fees and the two-year license requirement. Implementation of the proposed sections will not result in any fiscal implications for local governments.

In addition to the increase in license renewal fees, there will be other costs for persons required to comply with the sections as proposed. Effective January 1, 2007, each license holder must complete the board's jurisprudence examination each two-year licensing period. The cost is estimated to be \$40 per person every two years. Fees for the jurisprudence examination are remitted directly to the third-party vendor; therefore, this new requirement will not result in fiscal implications for the state.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Horton has also determined that there may be anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. There will be an increase in the licensing fees for sole proprietors who are engaged in the independent practice of social work and for other small or micro-businesses that choose to cover licensing costs for their employees who are required to hold a social worker license. The probable economic cost to those persons and businesses will increase from either \$60 to \$80 biennially or from \$80 to \$100 biennially, depending upon the level of license held.

Additionally, there will be anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. The requirement for completion of the jurisprudence examination as part of the continuing education requirements will affect sole proprietors who are engaged in the independent practice of social work and other small and micro-businesses that choose to cover continuing education costs for their employees who are required to hold a social worker license.

The costs for affected persons and businesses will be an estimated increase of \$40 biennially.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

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

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Charles Horton, Executive Director, Texas State Board of Social Worker Examiners, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by email to lsw@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.102

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

The proposed amendment affects Occupations Code, Chapter 505.

§781.102. Definitions.

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

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

(5) AMEC--alternative method of examining competency, as referenced in Occupations Code, §505.356(3).

(6) [~~5~~] APA--The Administrative Procedure Act, Government Code, Chapter 2001.

(7) [~~6~~] Association of Social Work Boards (ASWB)--National organization representing regulatory boards of social work. Administers the national examinations utilized in the assessment for licensure.

(8) [~~7~~] Board--Texas State Board of Social Worker Examiners.

(9) [~~8~~] Case record--Any information related to a client and the services provided to that client, however recorded and stored.

(10) [~~9~~] Client--An individual, family, couple, group or organization that seeks or receives social work services from a person identified as a social worker who is either licensed or unlicensed by the board. An individual, family, couple, group or organization remains a client until the formal termination of services.

(11) [~~10~~] Clinical social work--A specialty within the practice of social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. Treatment methods include the provision of individual, marital, couple, family, and group therapy and psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems in assessment, diagnosis, and other activities.

(12) [~~11~~] Clinical supervision--An interactional professional relationship between a supervisor and a social worker that provides evaluation and direction over the supervisee's practice of clinical social work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.

(13) [~~12~~] Confidential information--Individually identifiable information obtained from a client or records relating to a client, including the client's identity, demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of social work services to an individual; the past, present, or future payment for the provision of social work services to an individual; and identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual which is not discloseable under applicable law or court rules of evidence. Client information is "confidential" if it is intended to be disclosed to third persons to further the interest of the client in the diagnosis, examination, evaluation, or treatment, or those reasonably necessary for the transmission of the communication, or those who are participating in the diagnosis, examination, evaluation, or treatment under the direction of the professional, including members of the patient's family.

(14) [~~13~~] Completed application--The official social work application form, fees and all supporting documentation which meets the criteria set out in this title (relating to Required Application Materials).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

orientation, health and temperament) and its socio-cultural and historic position in its larger environment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(44) LMSW-ACP--Licensed master social worker-advanced clinical practitioner.]

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

[(46) LSW--Licensed social worker.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(60) [(61)] Social work practice--Services and actions performed as an employee, independent practitioner, consultant, or volunteer for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. For the purpose of this definition, the practice of social work is guided by special knowledge, acquired through formal social work education development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Social work practice involves the disciplined application of social work values, principles, and methods, including psychotherapy, marriage and family therapy, couples therapy, group therapy, case management, supervision of social work services, counseling, assessment, and evaluation. Social work practice may also be referred to as social work services, of social welfare policies and services, social welfare systems and resources, human services.

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

[(63)] SWA--A person licensed as a social worker associate.]

(62) [(64)] Supervisor--A person meeting the requirements set out in §781.302 of this title (relating to Supervisor Requirements), to supervise a licensee towards the LCSW, LMSW-AP or Independent Practice recognition.

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

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

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

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

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

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

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

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

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504640

Charles Horton

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: November 27, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER B. THE BOARD

22 TAC §§781.203, 781.209, 781.210, 781.217

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

establish mandatory continuing education requirements for license holders.

The proposed amendments affect Occupations Code, Chapter 505.

§781.203. *Board Training.*

A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that meets the requirements established in the Act. [The board adopts the Health Professions Council's approved board member training as the official training required of all new board members.]

§781.209. *Committees of the Board.*

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

(c) Only members of the board may be appointed to board committees. [The chair may appoint non board members to serve as committee members on a consultant or voluntary basis subject to board approval.]

(d) - (f) (No change.)

(g) Each committee shall consist of least one public member and one professional member, unless the board authorizes otherwise. At least one public member of the board shall be appointed to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

§781.210. *Executive Director.*

(a) The executive director of the board shall be an employee of the department who serves [appointed by the Commissioner of Health,] as the administrator of board activities.

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

§781.217. *Fees.*

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

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

(3) renewal fee for LBSW or LMSW--\$80 [\$60] biennially;

(4) license fee for LCSW--\$100 [\$80] biennially;

(5) renewal fee for LCSW--\$100 [\$80] biennially;

(6) - (21) (No change.)

(b) Fees paid to the board by applicants are not refundable except in accordance with §781.305 of this title (relating to Application for Licensure) [§781.303 of this title (relating to Independent Practice Recognition)].

(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 17, 2005.

TRD-200504641

Charles Horton

Executive Director

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: November 27, 2005

For further information, please call: (512) 458-7236

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SUBCHAPTER C. LICENSES AND
LICENSING PROCESS

**22 TAC §§781.301, 781.302, 781.305, 781.306, 781.310,
781.311, 781.318**

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

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

§781.301 *Qualifications for Licensure.*

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

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

§781.302. *Supervision for LCSW or LMSW-AP.*

A LMSW who plans to apply for the LCSW or LMSW-AP must:

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

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

(5) (No change.)

§781.305. *Application for Licensure.*

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

(g) When the applicant has met all other qualifications for licensure and on receipt of the license fee in the board office, licensure for the LCSW, LMSW, LBSW [~~;~~ SWA] or specialty recognition will be immediately granted [~~and the license will be mailed to the licensee within 10 working days~~].

(h) - (i) (No change.)

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

(a) (No change.)

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts. Educational requirements must be met by completion of educational programs at [~~accredited~~] colleges or universities accredited by CSWE.

(2) Degrees for licensure as a LBSW [~~L~~SW] or LMSW must be from programs accredited or in candidacy for accreditation by CSWE. (Current written verification of a program's CSWE candidacy status must be on file with the board.) College or university degrees from outside of the United States and its territories must be from programs judged by the CSWE to be equivalent to a CSWE accredited program in the United States.

(c) Experience verification.

(1) Experience required for licensure [as a LCSW, SWA] or for specialty recognition must meet the requirements of §781.301 of this title (relating to Qualifications [~~qualifications~~] for Licensure [~~licen-~~sure]). Private, independent practice within the scope of the definition

of professional social work practice will not be counted as experience in this subsection. Required written documentation includes:

- (A) - (E) (No change.)
- (2) - (5) (No change.)
- (d) (No change.)

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

§781.310. Provisional Licenses.

(a) The board may grant a provisional license as a social worker [LMSW, LSW, or SWA] to a person who holds, at the time of application, a license or certificate as a social worker [~~or social work associate~~] issued by another state, the District of Columbia, or a territory of the United States that is acceptable to the board. An applicant for a provisional license must:

- (1) (No change.)
- (2) be licensed in good standing as a social worker [~~or social work associate~~] in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Act;
- (3) - (4) (No change.)
- (b) - (h) (No change.)

§781.311. Temporary License.

(a) Prior to examination, an applicant for licensure may obtain a temporary license as a social worker [LMSW, LSW, or SWA] as long as the applicant meets all the requirements, with the exception of the examination, for the level of license sought.

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

§781.318. Issuance of Licenses to Certain Out-of-State Applicants.

(a) Notwithstanding any other licensing requirement of this chapter or the Act:

(1) the board may not require an applicant who is licensed in good standing in another state to pass a licensing examination conducted by the board under the Act if an applicant with substantially equivalent experience who resides in this state would not be required to take the licensing examination; and

(2) the board may issue a license to an applicant who is currently licensed in another state to independently practice social work if:

- (A) after an assessment, the board determines that the applicant:
 - (i) demonstrates sufficient experience and competence;
 - (ii) has passed the jurisprudence examination conducted by the board under Occupations Code, §505.3545; and
 - (iii) at the time of the application, is in good standing with the regulatory agency of the state in which the applicant is licensed; and
- (B) the applicant presents to the board credentials that the applicant obtained from a national accreditation organization and

the board determines that the requirements to obtain the credentials are sufficient to minimize any risk to public safety.

(b) When assessing the experience and competence of an applicant for the purposes of this section, the board may take into consideration any supervision received by the applicant in another state or jurisdiction if the board determines that the supervision would be taken into consideration for the purpose of licensing or certification in the state or jurisdiction in which the applicant received the supervision.

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 17, 2005.

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Charles Horton
Executive Director
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7236

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SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§781.503, 781.508, 781.509, 781.514

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

The proposed amendments affect Occupations Code, Chapter 505.

§781.503. License Renewal.

- (a) - (j) (No change.)

(k) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed in accordance with the Act unless the enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

(l) Effective January 1, 2007, a licensee must complete the jurisprudence examination each renewal period in order to renew the license. Completion of the jurisprudence examination shall count as part of the continuing education requirement for professional ethics and social work values, as referenced in §781.508(c) of this title relating to (Hour Requirements for Continuing Education).

§781.508. Hour Requirements for Continuing Education.

(a) A licensee must complete a total of 30 clock-hours of continuing education biennially obtained from board approved continuing education providers.[:]

[(1) 30 clock hours of continuing education biennially from board approved providers. A clock hour is defined as 60 minutes of standard time; and]

[(2) a minimum of three hours of continuing education biennially in professional ethics and social work values each year as part

of the required 30 clock hours. A licensee may earn credit for ethics hours as a presenter or participant.]

(b) As part of the required 30 clock-hours, a licensee must complete a minimum of three clock-hours of continuing education in professional ethics and social work values each year of the biennial renewal period.

(c) Effective January 1, 2007, as part of the required 30 clock-hours, a licensee must complete a minimum of three hours of continuing education in professional ethics and social work values and successful completion of the jurisprudence examination during the biennial renewal period.

(d) A clock-hour is defined as 60 minutes of standard time.

(e) A licensee may earn credit for ethics as a presenter or a participant.

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

§781.509. *Types of Acceptable Continuing Education.*

Continuing education undertaken by a licensee shall be acceptable to the board as credit hours if the education falls in one or more of the following categories:

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

(4) providing professional guidance as a field instructor for social work interns in connection with a college or university accredited by or in candidacy status with CSWE; [ø]

(5) providing supervision to a social worker participating in the program in accordance with §781.313 of this title (relating to the Alternative Method of Examining Competency (AMEC) Program); or [-]

(6) completion of the board's jurisprudence examination no more than once per renewal period, unless the board directs otherwise.

§781.514. *Credit Hours Granted.*

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

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

(8) Effective January 1, 2007, completion of the jurisprudence examination shall count as part of the continuing education requirement in professional ethics and social work values, as referenced in §781.508(c) of this title (relating to Hour Requirements for Continuing Education).

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

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Charles Horton
Executive Director
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SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

22 TAC §§781.602, 781.607, 781.608

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

The proposed amendments affect Occupations Code, Chapter 505.

§781.602. *Disciplinary Action and Notices.*

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

(g) If it appears to the board that a person who is not licensed under this chapter is violating this chapter, a rule adopted under this chapter, or another state statute or rule relating to the practice of social work, the board after notice and opportunity for a hearing, as described in this section, may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of an order under this subsection constitutes grounds for the imposition of an administrative penalty by the board.

§781.607. *Suspension, Revocation, or Non-renewal.*

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

(d) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed in accordance with the Act unless the enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed.

§781.608. *Informal Disposition.*

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

(g) The board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of or in addition to imposing an administrative penalty. The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this title. The board may not require payment of other damages or estimate harm in a refund order.

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

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SUBCHAPTER G. FORMAL HEARINGS

22 TAC §§781.701 - 781.704

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

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

§781.701. Purpose.

These rules cover the hearing procedures and practices that are available to persons or parties who request formal hearings from the board. The intended effect of these rules is to supplement the contested case provisions of the Texas Government Code, Chapter 2001, Administrative Procedure Act (APA), the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003, and Rules of Procedure, 1 Texas Administrative Code, Chapter 155), and to make the public aware of these procedures and practices. [This subchapter covers the formal hearing procedures and practices that will be used by the board in handling denials, suspensions, probations, and revocations of a license and implements the contested case provisions of the APA.]

§781.702. Notice.

(a) For purposes contested case proceedings before the State Office of Administrative Hearings, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001 and the State Office of Administrative Hearings Rules of Procedure, 1 Texas Administrative Code, Chapter 155.

(b) For purposes of informal conferences, proper notice shall include the name and style of the case, the date, time, and place of the informal conference, and a short statement of the purpose of the conference.

(c) The following statement shall be attached to the notice of hearing or notice of informal conference, in bold letters of at least 10 point type:

Figure: 22 TAC §781.702(c)

§781.703. Default.

(a) For purposes of this section, default means the failure of the respondent to appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, in accordance with the notice of hearing or notice of informal conference.

(b) Remedies available upon default in a contested case before the State Office of Administrative Hearings (SOAH). The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The

ALJ shall grant any motion by the department to remove the case from the contested hearing docket and allow for informal disposition by the board.

(c) Remedies available upon default in an informal conference. The board may proceed to make such informal disposition of the case as it deems proper, as if no request for hearing had been received.

(d) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of violation or notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party.

(e) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) A motion to set aside the default order and reopen the record shall be filed with the board prior to the time that the order of the board becomes final pursuant to the provisions of the Texas Government Code.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Texas Government Code.

(f) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the department's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address.

§781.704. Action after Hearing.

(a) Reopening of hearing for new evidence.

(1) The board may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) The department shall reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Notice of any reopened hearing shall be provided to all previously designated parties, by certified mail, return receipt requested.

(b) Final orders or decisions.

(1) The final order or decision of the department will be rendered by the board or its designee.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law, either in the body of the order, by attachment, or by reference to an ALJ's proposal for decision.

(3) Unless otherwise permitted by statute or by these sections, all final orders shall be signed by the board chair, or her designee.

(c) Motion for rehearing. A motion for rehearing shall be governed by the APA or other pertinent statute and shall be filed with the board.

(d) Appeals. All appeals from final department orders or decisions shall be governed by the APA or other pertinent statute and shall be addressed to the board.

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

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Charles Horton

Executive Director

Texas State Board of Social Worker Examiners

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22 TAC §§781.702 - 781.707

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

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

The proposed repeals affect Occupations Code, Chapter 505.

§781.702. *General.*

§781.703. *Notice.*

§781.704. *Subpoenas.*

§781.705. *Pre-hearing Conferences.*

§781.706. *Hearing Procedure.*

§781.707. *Action after the Hearing.*

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

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SUBCHAPTER H. SANCTION GUIDELINES

22 TAC §781.803

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

The proposed amendment affects Occupations Code, Chapter 505.

§781.803. *Severity Level and Sanction Guide.*

The following severity levels and sanction guides are based on the relevant factors in §781.802 of this title (relating to Relevant Factors):

(1) Level One--Revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure. The board may also impose an administrative penalty of not less than \$250 or more than \$5,000 for each Level One violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require termination of licensure for a period of not less than one year. The board may also impose an administrative penalty of not less than \$250 or more than \$4,000 for each Level Two violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require termination of licensure for some period of time. The board may also impose an administrative penalty of not less than \$250 or more than \$3,000 for each Level Three violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Possible probationary terms are set out as in §781.806 of this title (relating to Probation) and may be ordered as appropriate. The board may also impose an administrative penalty of not less than \$250 or more than \$2,000 for each Level Four violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

(5) Level Five--Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue. The board may also impose an administrative penalty of not less than \$250 or more than \$1,000 for each Level Five violation. Each day a violation continues or occurs is a separate violation for the purpose of imposing a penalty.

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

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS

28 TAC §7.9

The Texas Department of Insurance proposes new §7.9, concerning the examination of the actuarial opinion of an insurer which is required to file an actuarial opinion with its property and casualty annual statement adopted by the commissioner. The proposed section will require a domestic property and casualty insurer to submit to the department an Actuarial Opinion Summary which will facilitate the examination of the actuarial opinion submitted in accordance with Insurance Code §802.002 which requires an actuarial opinion to be submitted with an insurer's annual statement. In addition, the proposed section will provide that the commissioner may request a domestic property and casualty insurer to furnish its Actuarial Report and Workpapers and a foreign insurer to furnish its Actuarial Opinion Summary and Actuarial Report and Workpapers. The proposed section will further provide that the Actuarial Opinion Summary and the Actuarial Report and Workpapers be completed in accordance with the National Association of Insurance Commissioners' Annual Statement Instructions, Property and Casualty (Instructions) which are adopted annually by the department in conjunction with its adoption of the annual statement forms.

Ms. Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Patterson has also determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the section will be improved identification of insurers in hazardous financial condition. The proposed section will require an Actuarial Opinion Summary to be submitted to the department annually on or before March 15th. It is a summary of the Actuarial Report and Workpapers and will provide information on the opining actuary's point estimate and/or range of reasonable estimates, explanation of any exceptional adverse development, and other information required by the Instructions. The Actuarial Opinion Summary will assist the department in identifying insurers requiring further analysis to determine their financial condition. Conversely, it will help the department determine which insurers do not need further examination. Based

on the department's experience, the probable economic cost to persons required to comply with the proposed section will be less than \$1,000. The section requires the appointed actuary to prepare the Actuarial Opinion Summary in accordance with the Instructions. The department estimates that this will take the appointed actuary no more than four hours. Consulting actuary rates range from \$200 to \$300 per hour and represent the high end of the cost per hour, so the cost of compliance should not exceed \$1,000. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between micro, small and larger businesses affected by this section. The department finds it neither legal nor feasible to waive or reduce the effect of the proposed section on micro or small insurers subject to the section since the information required by the section is necessary to effectively regulate and monitor the financial condition of property and casualty insurers licensed in Texas, regardless of their size.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 28, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The new section is proposed under the Insurance Code Article 1.15, which authorizes the commissioner to examine each insurer doing business in this state; Article 1.32, which authorizes the commissioner to establish criteria for hazardous conditions; Article 21.39, which requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance; §802.001 which authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business; §802.002, which requires an insurance company's annual statement to include an actuarial opinion relating to the loss and loss adjustment expense reserves for property and casualty risks; Article 21.54, §§861.254, 862.001, 883.203, 883.204, 885.401, 911.002, 911.304, 912.301, 941.252, 942.201, 982.004, 984.153, and 984.202, which require insurers subject to the proposed section to file an annual statement, other financial reports and other information and specify particular rulemaking authority of the commissioner relating to those insurers; and §36.001, which provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Articles 1.15 and 1.32, and §802.002.

§7.9. Examination of Actuarial Opinion for Property and Casualty Insurers.

(a) Scope. This section applies to all insurers that are required to file an actuarial opinion with the property and casualty annual statement adopted by the commissioner under Insurance Code §802.001, including fire, fire and marine, general casualty, fire and casualty, or U.S. branch of an alien insurer, county mutual insurance company, mutual insurance company other than a life insurance company, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention

group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement that had gross written premiums in excess of \$5,000,000, any Mexican non-life insurer licensed under any provision of the Insurance Code other than, or in addition to, Insurance Code Chapter 984, domestic joint underwriting association, the Texas Mutual Insurance Company, and the Texas FAIR Plan Association.

(b) Purpose. The section will facilitate the examination of the statement of actuarial opinion required to be attached to an insurer's annual statement under Insurance Code §802.002. The Actuarial Opinion Summary will provide information which will assist the department in identifying those insurers which require additional analysis to determine their financial condition.

(c) Actuarial Opinion Summary. By March 15th of each year a domestic insurer subject to this section shall submit to the department an Actuarial Opinion Summary completed in accordance with applicable National Association of Insurance Commissioners Annual Statement Instructions, Property and Casualty.

(d) Additional Documents. Upon request of the commissioner:

(1) a domestic insurer shall submit the Actuarial Report and Workpapers that support its actuarial opinion, and

(2) a foreign insurer shall submit its Actuarial Opinion Summary and/or Actuarial Report and Workpapers that support its actuarial opinion.

(e) Submission of Documents. The documents described in subsections (c) and (d) of this section shall be submitted to the Actuarial Division, Financial Program, M.C. 302-3A, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104, or they may be submitted electronically to ActuarialDivision@tdi.state.tx.us.

(f) Confidentiality. The Actuarial Opinion Summary, Actuarial Report and Workpapers, and any documents, materials or other information provided by an insurer under subsections (c) or (d) of this section to the department will be used to examine the company's financial condition. The documents will be considered information obtained during the course of an examination under Insurance Code Article 1.15 and treated as confidential.

(g) Applicability. This section is applicable to the actuarial opinion included with an insurer's 2005 Property and Casualty Annual Statement and thereafter.

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

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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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28 TAC §7.68

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas Department of Insurance or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Insurance proposes the repeal of §7.68, concerning the 1998 annual and 1999 quarterly statements, other reporting forms, and diskettes or electronic filings with the NAIC via the Internet. The section is proposed for repeal to facilitate the proposal of a new §7.68 concerning 2005 annual and quarterly statement blanks, other reporting forms, electronic data filings with the National Association of Insurance Commissioners via the internet and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities during the 2005 calendar year. The department is proposing the new §7.68 which appears elsewhere in this issue of the *Texas Register*.

Betty Patterson, Senior Associate Commissioner, Financial Program has determined that, for the first five years the repeal of the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal, and there will be no effect on local employment or local economy as result of the proposal.

Ms. Patterson also has determined that, for each year of the first five years the repeal of the section will be in effect, the public benefit anticipated as a result of the repeal will be the elimination of obsolete regulations. There will be no economic cost to the general public, or small or micro business or individuals who are required to comply with the repeal as proposed.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 28, 2005 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P.O. Box 149099, Austin, Texas 78714-9099. A request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The repeal of the section is proposed under Insurance Code §§802.001 - 802.003 and 802.051 - 802.056 and 36.001. Sections 802.001 - 802.003 and 802.051 - 802.056 authorize the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles and sections of the Insurance Code will be affected by this proposed section: Articles 21.39 and 21.54, §§32.041, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1506.057 and 2551.001.

§7.68. *Requirements for Filing the 1998 Annual and 1999 Quarterly Statements, Other Reporting Forms, and Diskettes or electronic filings with the NAIC via the Internet.*

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

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28 TAC §7.68

The Texas Department of Insurance proposes new §7.68 concerning the adoption by reference of reporting forms, electronic data filings with the National Association of Insurance Commissioners (NAIC) and instructions to be used by insurers, health maintenance organizations (HMOs), nonprofit legal service corporations, Texas Health Insurance Risk Pool, Texas Fair Plan Association and Texas Windstorm Insurance Association. The reporting forms include the 2005 annual and quarterly statement blanks, stockholder information supplement, management discussion and analysis, supplemental compensation exhibit, overhead assessment for insurance company examination expenses, analysis of surplus, separate accounts, supplemental information for county mutuals and HMOs, release of contributions, reserve summary, inventory of insurance in force, and summary of insurance in force. The insurers and other regulated entities will use these forms to report their financial condition and business operations and activities during the 2005 calendar year. The information provided by the completion of the forms is necessary to allow the department to monitor the solvency, business activities, and statutory compliance of the insurers and the other entities regulated by the department. The proposed new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; and proposes to adopt by reference the NAIC 2005 annual and quarterly statement blanks, other reporting forms and instructions for reporting the financial condition and business operations and activities and require insurance companies and other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the NAIC as directed. Proposed subsection (a) explains the purpose of the section and adopts by reference the forms described in the section. Proposed subsection (b) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the commissioner. Proposed subsection (c) specifies the hierarchy of laws in the event of a conflict between the Insurance Code, this new section and other department regulations and the NAIC instructions specified in the new section. Proposed subsections (d) - (l) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Proposed subsection (m) provides that the department may request financial reports other than those specified in this section. The forms and instructions are available for inspection in the office of the Financial Analysis and Examinations Activity of

the Texas Department of Insurance, William P. Hobby Jr. State Office Building, 333 Guadalupe, Building 3, Third Floor, Austin, Texas. The NAIC forms and instructions may also be reviewed at www.naic.org. The new section will replace the existing §7.68 concerning the adoption of the 1998 annual and 1999 quarterly statements, other reporting forms, and diskettes or alternative electronic method of filing which is proposed for repeal elsewhere in this issue of the *Texas Register*.

Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that, for the first five years the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There will be no effect on local employment or the local economy as a result of the proposal.

Ms. Patterson has also determined that, for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurers and other regulated entities licensed in Texas to better assure financial solvency. The probable economic cost to persons required to comply with the section depends on several factors. Generally, insurers and other regulated entities are required by statute to provide the department with annual reports on their operations. Insurance Code §802.055 provides that an insurance company shall pay all costs of preparing and furnishing to the NAIC the information required under Insurance Code §802.052, including any related filing fees. The fees associated with each company to file electronically with the NAIC database can range from \$260 to \$65,000 per company depending on the amount of premium base, with a limit for insurer groups of \$195,000. To that extent, the cost of preparing and filing the annual statement is attributable to statute and not the proposed section. Additionally, the reports and forms generally request information that is already captured or created by the insurer or other regulated entity as necessary to its business operations; therefore, the only cost involved is the transfer of that information from the company's records to the report or form. The cost of software to prepare the financial statements is approximately \$2,000 for a single company. The cost of software may be greater or less depending on the amount charged by the vendor and any extra services that are agreed to between the company and the vendor. Such estimated cost may be lower based upon factors such as the type of company (e.g., life, accident and health, or property and casualty); the size of the company (e.g., large or small); and the type of business written by a company. The department assumes that micro, small and large businesses will utilize employees who are familiar with the records of the insurer or health maintenance organization and accounting practices in general. Such individuals are compensated from \$17 to \$30 per hour based on information obtained by the department. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between micro, small and larger businesses affected by this section. The department finds that it is neither legal nor feasible to reduce the effect of the proposed section on micro or small insurers subject to the section since the information required by the forms is necessary to effectively regulate and monitor the activities of insurers and other regulated entities licensed in Texas, regardless of their size.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on November 28, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104,

Austin, Texas 78714-9104. An additional copy of the comments should be submitted simultaneously to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, Texas Department of Insurance, P. O. Box 149099, Austin, Texas 78714-9099. A request for a public hearing on the proposal should be submitted separately to the Office of the Chief Clerk.

The new section is proposed under the Insurance Code §§802.001 - 802.003 and 802.051 - 802.056, which authorize the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business, and require certain insurers to make filings with the National Association of Insurance Commissioners; Articles 21.49 and 21.54 and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.004, 982.101, 982.103, 984.101 - 984.103, 984.153, 984.201, 984.202, 1506.057, 2551.001 which require the filing of financial reports and other information by insurers and other regulated entities and provide specific rulemaking authority to the commissioner relating to those insurers and other regulated entities; §§982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, 982.302 - 982.306, which provide the conditions under which foreign insurers are permitted to do business in this state and require foreign insurers to comply with the provisions of the Insurance Code; §§844.001 - 844.005, 844.051 - 844.054, and 844.101 which authorize the commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under Insurance Code, Title 2, Chapter 844; Article 21.39 which requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance; §32.041 which requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements; and §36.001 which provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following articles and sections of the Insurance Code will be affected by this proposed section: Articles 21.39 and 21.54, §§32.041, 802.001 - 802.003, 802.051 - 802.056, 841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 844.001 - 844.005, 844.051 - 844.054, 844.101, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 886.107, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.001, 982.002, 982.004, 982.052, 982.101, 982.102, 982.103, 982.104, 982.106, 982.108, 982.110 - 982.112, 982.251 - 982.255, 982.302 - 982.306, 984.153, 984.201, 984.202, 1506.057, and 2551.001.

§7.68. Requirements for Filing the 2005 Quarterly and 2005 Annual Statements, Other Reporting Forms, and Electronic Data Filings with the Texas Department of Insurance and the NAIC.

(a) Scope. This section specifies the requirements for insurers and other regulated entities for filing the 2005 quarterly statements, 2005 annual statement, other reporting forms, and electronic data filings with the Texas Department of Insurance (department) and the National Association of Insurance Commissioners (NAIC) necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and certain other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; U.S. branches of an alien insurers; Mexican casualty insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; statewide mutual assessment companies; local mutual aid associations; mutual burial associations; exempt associations; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Mutual Insurance Company; the Texas Windstorm Insurance Association; and the Texas FAIR Plan Association. The commissioner adopts by reference the 2005 quarterly statement blanks, the 2005 annual statement blanks and the related instruction manuals published by the NAIC, and other supplemental reporting forms specified in this section. The forms are available from the Texas Department of Insurance, Financial Analysis and Examinations Activity, Mail Code 303-1A, P. O. Box 149104, Austin, Texas 78714-9104. The NAIC annual and quarterly statement blanks and other NAIC supplemental reporting forms can be produced as part of the annual statement software available from vendors. Insurers and other regulated entities shall properly report to the department and the NAIC by completing, in accordance with applicable instructions, the appropriate annual and quarterly statement blanks, other reporting forms, and electronic data filings.

(b) Definition. In this section "Texas Edition" refers to the blanks and forms promulgated by the commissioner.

(c) Conflicts with other laws. In the event of a conflict between the Insurance Code, any currently existing department rule, form, instructions, or any specific requirement of this section and the NAIC instructions listed in this section, the Insurance Code, the department rule, form, instruction, or the specific requirement of subsections of this section shall take precedence and in all respects control.

(d) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, group hospital service corporation, and the Texas Health Insurance Risk Pool shall complete and file the blanks, forms, or electronic data filings as directed in this subsection. This subsection does not apply to entities licensed as health maintenance organizations under Insurance Code Chapter 843. Insurers specified in this subsection and engaged in business authorized under Insurance Code Chapter 843 may have additional reporting requirements under subsection (h) of this section. Insurers described under this subsection may elect to file on the 2005 Health Quarterly Statement for the three quarters of 2005 and the 2005 Health Annual Statement if the insurer passes the Health Statement Test as outlined in the "2005 Annual Statement, Health Instructions." If a reporting entity qualifies under this subsection to use the 2005 Health Annual Statement, it must continue to use that annual statement for a minimum of three years or obtain written approval from the department to change

to another type of annual statement. Insurers filing the 2005 Life, Accident and Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2005 Annual Statement Instructions, Life, Accident and Health." Life insurers meeting the test set forth in this subsection to file the 2005 Health Annual Statement and the supplemental forms and reports identified in these subsections shall complete filings in accordance with the "2005 Annual Statement Instructions, Health." The electronic filings of these forms or reports with the NAIC shall be in accordance with the NAIC data specifications and instructions for electronic filing and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2005 Life, Accident and Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2006 (stipulated premium insurance companies, April 1, 2006);

(B) 2005 Life, Accident and Health Annual Statement of the Separate Accounts for the 2005 calendar year (required of companies maintaining separate accounts), due on or before March 1, 2006;

(C) 2005 Life, Accident and Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2005. A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) 2005 Health Annual Statement, including the printed investment schedule detail, due on or before March 1, 2006 if the company qualifies as described in this subsection;

(E) 2005 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2005 if the company qualifies as described in this subsection;

(F) All the paper copies of the annual and quarterly supplements (Note: the Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department) prepared and filed on dates specified in the forms and instructions;

(G) Management's Discussion and Analysis, due on or before April 1, 2006; and

(H) Statement of Actuarial Opinion, due on or before March 1, 2006. The actuarial opinion shall be prepared in accordance with paragraph (5) of this subsection.

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS and Stockholder Information Supplement, due on or before March 1, 2006. This filing is also required if filing a Health Annual Statement, as applicable;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2006 (stipulated premium companies, April 1, 2006). This filing is also required if filing a Health Annual Statement, as applicable;

(C) The Texas Health Insurance Risk Pool shall file the 2005 Life, Accident and Health Annual Statement and 2005 Quarterly Statements as follows:

(i) 2005 Life, Accident and Health Annual Statement with only pages 1 - 5, and Schedule E Part 1, Part 2, and Part 3 to be completed and filed on or before March 1, 2005; and

(ii) 2005 Life, Accident and Health Quarterly Statements, with only pages 1 - 5, and Schedule E, Part 1-Cash to be completed and filed on or before May 15, August 15, and November 15, 2005.

(iii) The Texas Health Insurance Risk Pool is not required to file any reports, diskettes, or electronic data filings with the NAIC.

(D) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2006 (stipulated premium insurance companies, April 1, 2006);

(E) Analysis of Surplus (Texas Edition) for life, accident and health insurers, due on or before March 1, 2006 (stipulated premium insurance companies, April 1, 2006).

(3) Foreign companies filing electronically with the NAIC and not filing paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2006 (stipulated premium insurance companies, April 1, 2006);

(B) Separate accounts electronic filing and PDF filing, due on or before March 1, 2006;

(C) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2005. A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly electronic data filings with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are filed by domestic insurers only with the department in paper copy) due on the dates specified in the forms and instructions;

(5) Statement of Actuarial Opinion required by paragraph (1)(H) of this subsection shall be prepared in accordance with the following:

(A) Unless exempted, the Statement of Actuarial Opinion, attached to either the 2005 Life, Accident and Health Annual Statement or the 2005 Health Annual Statement, should follow the applicable provisions of §§3.1601-3.1608 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(B) For those companies exempted from §§3.1601-3.1608 of this title, instructions 1 - 12, established by the NAIC, must be followed.

(C) Any company required by §3.4505(b)(3)(I) of this title (relating to General Calculation Requirements for Basic Reserves and Premium Deficiency Reserves) to opine on the application of X factors, shall attach this opinion to the 2005 Life, Accident and Health Annual Statement or the 2005 Health Annual Statement, as applicable.

(6) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(7) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for life, accident and health insurers with the department, on or before March 1, 2006.

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, or U.S. branch of an alien insurer, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement for the 2004 calendar year or had gross written premiums in 2005 in excess of \$5,000,000, any Mexican non-life insurer licensed under any article of the Insurance Code other than, or in addition to, Insurance Code Chapter 984, domestic joint underwriting association, the Texas Mutual Insurance Company, the Texas Windstorm Insurance Association, and the Texas FAIR Plan Association shall complete and file the following blanks, forms, and diskettes or electronic data filings as described in this subsection. The forms and reports identified in this subsection shall be completed in accordance with the "2005 Annual Statement Instructions, Property and Casualty." The electronic filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing, as applicable. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2005 Property and Casualty Annual Statement, due on or before March 1, 2006;

(B) 2005 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2005;

(C) 2005 Combined Property/Casualty Annual Statement, due on or before May 1, 2006. This statement is required only for those affiliated insurers that wrote more than \$35 million in direct premiums as a group in calendar year 2005, as disclosed in Schedule T of the Annual Statement(s);

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions. Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department.

(E) The actuarial opinion submitted shall be prepared in accordance with the "2005 Annual Statement Instructions, Property and Casualty."

(2) Domestic insurer reports and forms to be filed in paper copy only with the department:

(A) Schedule SIS and the Stockholder Information Supplement, due on or before March 1, 2006;

(B) Supplemental Compensation Exhibit, due on or before March 1, 2006;

(C) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2006;

(D) Supplement for County Mutuals (Texas Edition) (required of Texas county mutual companies only), due on or before March 1, 2006;

(E) Texas Supplemental A for county mutuals (Texas Edition) (required of Texas county mutual companies only), due on or before March 1, 2006; and

(F) Analysis of Surplus (Texas Edition) for property and casualty insurers except Texas county mutual companies, due on or before March 1, 2006.

(G) Actuarial Opinion Summary prepared in accordance with §7.9 of this title (relating to Examination of Actuarial Opinion for Property and Casualty Insurers).

(H) The Texas Windstorm Insurance Association shall complete and file the following:

(i) 2005 Property and Casualty Annual Statement, due on or before March 1, 2006;

(ii) 2005 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2005; and

(iii) Management's Discussion and Analysis, due on or before April 1, 2006.

(iv) The Texas Windstorm Insurance Association is not required to file any reports with the NAIC.

(I) The Texas FAIR Plan Association shall complete and file the following:

(i) 2005 Property and Casualty Annual Statement, due on or before March 1, 2006;

(ii) 2005 Property and Casualty Quarterly Statements, due on or before May 15, August 15, and November 15, 2005;

(iii) Statement of Actuarial Opinion, due on or before March 1, 2006;

(iv) Actuarial Opinion Summary prepared in accordance with §7.9 of this title (relating to Examination of Actuarial Opinion for Property and Casualty Insurers); and

(v) Management's Discussion and Analysis, due on or before April 1, 2006.

(vi) The Texas FAIR Plan Association is not required to file any reports with the NAIC.

(3) Foreign property and casualty insurers filing only electronically with the NAIC and not filing paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2006;

(B) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2005;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for electronic Schedule SIS and Supplemental Compensation Exhibit, required of domestic insurers only) due on the dates specified in the forms and instructions;

(D) Electronic combined insurance exhibit, due on or before May 1, 2006;

(E) Combined annual statement electronic filing and PDF filing, due on or before May 1, 2006.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that files an application with the department for approval of a policyholder dividend shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the application.

(7) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for property and casualty insurers with the department, on or before March 1, 2006.

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and electronic data filings for the 2005 calendar year and the three quarters for the 2005 calendar year. The forms and reports identified in this subsection shall be completed in accordance with the "2005 Annual Statement Instructions, Fraternal." The electronic data filings with the NAIC shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2005 Fraternal Annual Statement, including the printed investment schedule detail, due on or before March 1, 2006;

(B) 2005 Fraternal Annual Statement of the Separate Accounts (required of companies maintaining separate accounts), due on or before March 1, 2006;

(C) 2005 Fraternal Quarterly Statements, due on or before May 15, August 15, and November 15, 2005;

(D) All the paper copies of the annual and quarterly supplements prepared and filed on dates specified in the forms and instructions. The Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department by domestic insurers.

(2) Domestic insurer paper copy reports and forms to be filed only with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2006;

(B) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2006; and

(C) Analysis of Surplus (Texas Edition) for fraternal benefit societies, due on or before March 1, 2006.

(3) Foreign fraternal insurers filing only electronically with the NAIC and not filing paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings by domestic and foreign insurers to be filed with the NAIC:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2006;

(B) Separate accounts electronic filing and PDF filing, due on or before March 1, 2006;

(C) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2005; and

(D) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for the Supplemental Compensation Exhibit) due on the dates specified in the forms.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for fraternal benefit societies with the department on or before March 1, 2006.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 2005 calendar year and the three quarters of the 2005 calendar year. The reports and forms identified in this subsection shall be completed in accordance with the "2005 Annual Statement Instructions, Title." The electronic version of the filings with the NAIC identified in this subsection shall be in accordance with the NAIC data specifications and instructions and shall include PDF format filing. The filings for insurers described in this subsection are as follows:

(1) Domestic insurer reports and forms in paper copy to be filed with the department and the NAIC as follows:

(A) 2005 Title Annual Statement, including printed investment schedule details, due on or before March 1, 2006;

(B) 2005 Title Quarterly Statements, due on or before May 15, August 15, and November 15, 2005;

(C) All the paper copies of the annual and quarterly supplements prepared and filed on dates described in the forms and instructions. The Schedule SIS and the Supplemental Compensation Exhibit are filed only with the department.

(D) Management's Discussion and Analysis, due on or before April 1, 2006; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2006.

(2) Domestic insurer paper copy filings and reports to be filed only with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2006;

(B) Schedule SIS and Stockholder Information Supplement, due on or before March 1, 2006;

(C) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2006; and

(D) Analysis of Surplus (Texas Edition) for title companies, due on or before March 1, 2006.

(3) Foreign companies filing electronically with the NAIC and not filing paper copy with the department shall file a signed jurat page with the department in lieu of filing the entire paper filing.

(4) Electronic filings with the NAIC by domestic and foreign insurers:

(A) Annual statement electronic filing and PDF filing, due on or before March 1, 2006;

(B) Quarterly statements electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2005;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Management Discussion and Analysis, due on or before April 1, 2006; and

(E) Statement of Actuarial Opinion, due on or before March 1, 2006.

(5) The commissioner reserves the right to request paper copies of any paper or electronic filings made by foreign companies in their state of domicile or the NAIC.

(6) A foreign insurer that is classified as a commercially domiciled insurer under Insurance Code §823.004 shall file an Analysis of Surplus (Texas Edition) for title insurers on or before March 1, 2006.

(h) Requirements for health maintenance organizations. Each health maintenance organization licensed pursuant to Insurance Code Chapter 843 shall complete the 2005 Health Annual Statement and the 2005 Quarterly Statements. Insurers that are subject to life insurance statutes and are permitted or allowed to do the business of health maintenance organizations shall file the Texas HMO supplement form as part of their annual and quarterly statement filings. The forms and reports required in this subsection shall be completed in accordance with the "2005 Annual Statement Instructions, Health." The Texas supplemental forms required in this subsection and provided by the department shall be completed in accordance with the instructions on the forms. The Statement of Actuarial Opinion shall include the additional requirements of the department set forth in paragraph (1)(D) of this subsection. The electronic data filings with the NAIC shall be in accordance with NAIC data specifications and instructions and shall include PDF format filing. The Texas specific electronic filings regarding HMO data requested by the department shall be filed in accordance with the instructions provided by the department. The filings for insurers described in this subsection are as follows:

(1) Domestic and foreign insurer reports and forms in paper copy to be filed with the department and the NAIC:

(A) 2005 Health Annual Statement, including printed investment schedule detail, due on or before March 1, 2006;

(B) 2005 Health Quarterly Statements, due on or before May 15, August 15, and November 15, 2005. With each quarterly filing, include a completed copy of Schedule E- part 3- Special Deposits, from the 2005 Health Annual Statement;

(C) Management's Discussion and Analysis, due on or before April 1, 2006; and

(D) Statement of Actuarial Opinion, due on or before March 1, 2006. In addition to the requirements set forth in the "2005 Annual Statement Instructions, Health," the department requires that the actuarial opinion include the following:

(i) The Statement of Actuarial Opinion must include assurance that an actuarial report and underlying actuarial work papers supporting the actuarial opinion will be maintained at the company and available for examination for seven years. The foregoing must be available by May 1 of the year following the year-end for which the

opinion was rendered or within two weeks after a request from the commissioner. The suggested wording used will depend on whether the actuary is employed by the company or is a consulting actuary. The wording for an actuary employed by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion will be retained for a period of seven years in the administrative offices of the company and available for regulatory examination." The wording for a consulting actuary retained by the company should be similar to the following: "An actuarial report and any underlying actuarial work papers supporting the findings expressed in this Statement of Actuarial Opinion have been provided to the company to be retained for a period of seven years in the administrative offices of the company and available for regulatory examination."

(ii) Under the scope paragraph requirements of section 5 of the "2005 Annual Statement Instructions, Health," relating to the Actuarial Certification, the department requires that the actuarial opinion specifically list the premium deficiency reserve as an item and disclose the amount of such reserve.

(2) Domestic insurer paper copy and Texas specific filings and reports to be filed with the department:

(A) Supplemental Compensation Exhibit, due on or before March 1, 2006;

(B) Texas HMO Supplement (Texas Edition), due on or before May 15, August 15, and November 15, 2005, and March 1, 2006;

(C) Department formatted diskettes containing annual statement data (diskettes provided by the department), to be completed according to the instructions provided by the department, due on or before March 1, 2006;

(D) Department formatted diskettes containing quarterly statement data (diskettes provided by the department), to be completed according to the instructions provided by the department, due on or before May 15, August 15, and November 15, 2005; and

(E) Texas Overhead Assessment Form (Texas Edition), due on or before March 1, 2006.

(3) Electronic filings with the NAIC by domestic and foreign insurers.

(A) Annual statement electronic filing, and PDF filing, due on or before March 1, 2006;

(B) Quarterly statement electronic filing and PDF filing, due on or before May 15, August 15, and November 15, 2005;

(C) All annual and quarterly supplemental electronic filings together with the related PDF filings (except for Schedule SIS and Supplemental Compensation Exhibit which are only filed by domestic insurers with the department in paper copy) due on the dates specified in the forms and instructions;

(D) Statement of Actuarial Opinion, due on or before March 1, 2006; and

(E) Management Discussion and Analysis, due on or before April 1, 2006.

(i) Requirements for farm mutual insurers not subject to the provisions of subsection (e) of this section. Farm mutual insurance companies not subject to subsection (e) of this section shall file the following blanks and forms for the 2005 calendar year with the department only, on or before March 1, 2006:

(1) Annual Statement (Texas Edition);

(2) Texas Overhead Assessment Form (Texas Edition); and

(3) Statement of Actuarial Opinion, unless exempted under §7.31 (relating to Annual Statement Instructions for Farm Mutual Insurance Companies).

(j) Requirements for statewide mutual assessment associations, local mutual aid associations, mutual burial associations and exempt associations. Each statewide mutual assessment association, local mutual aid association, mutual burial association and exempt association shall complete and file the following blanks and forms for the 2005 calendar year with the department only, on or before April 1, 2006:

(1) Annual Statement (Texas Edition) (exempt companies are required to complete all pages except lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4 - 7);

(2) Texas Overhead Assessment Form (Texas Edition);

(3) Release of Contributions Form (Texas Edition);

(4) 3 1/2 % Chamberlain Reserve Table (Reserve Valuation) (Texas Edition);

(5) Reserve Summary (1956 Chamberlain Table 3 1/2 %) (Texas Edition);

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas Edition); and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas Edition).

(k) Requirements for nonprofit legal service corporations. Each nonprofit legal service corporation doing business as authorized by a certificate of authority issued under Chapter 961 shall complete and file the following blanks and forms for the 2005 calendar year with the department only. An actuarial opinion is not required. The following forms are to be filed on or before March 1, 2006:

(1) Annual Statement (Texas Edition); and

(2) Texas Overhead Assessment Form (Texas Edition).

(l) Requirements for Mexican casualty companies. Each Mexican casualty company doing business as authorized by a certificate of authority issued under the Insurance Code Section 984, shall complete and file the following blanks and forms for the 2005 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed in to the extent specified in paragraph (1) of this subsection and in accordance with the "2005 Annual Statement Instructions, Property and Casualty." An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The following blanks or forms are to be filed on or before March 1, 2006:

(1) 2005 Property and Casualty Annual Statement; provided, however, only pages 1 - 4, and 104 (Schedule T) are required to be completed;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English);

(3) A copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the 2005 annual statement; and

(4) A copy of the current license to operate in the Republic of Mexico.

(m) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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

Filed with the Office of the Secretary of State on October 12, 2005.

TRD-200504591

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: November 27, 2005

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §65.310

The Texas Parks and Wildlife Department (the department) proposes an amendment to §65.310, concerning Means, Methods, and Special Requirements.

In the August 5, 2005, issue of the *Texas Register* (30 TexReg 4482), the department adopted an amendment to §65.310 that reinstated specific language from federal regulations delineating the means and methods that are lawful and unlawful for the take of migratory game birds. The federal rules consist of a list of lawful means, methods, and manners and a list of unlawful means, methods, and manners. In the process of that rulemaking several provisions were inadvertently omitted and should not have been omitted: the prohibition on the possession and/or use of non-toxic shot for the hunting of waterfowl, the requirement that the head or one fully-feathered wing remain on all migratory game birds except doves until the birds reach the possessor's personal residence, and a prohibition on the placement of bait to cause, induce, or allow hunting over a baited area. The proposed amendment would restore those provisions. The prohibition of toxic shot is necessary to maintain parallelism with federal law; toxic shot is prohibited by 50 CFR §20.21(j). The requirement that a head or one fully-feathered wing remain on all migratory game birds except doves until the birds reach the possessor's personal residence is also necessary to be consistent with federal law; the federal requirement is located at 50 CFR §20.43. The department notes that while these provisions were omitted from the current rule, they are federal requirements that are in full force and effect and are enforceable by state wardens acting under federal commission.

The provision prohibiting the placement of bait is a state requirement that was promulgated in response to the placement of bait on, over, or near an area by a third party without the knowledge of persons who subsequently hunt over or near the area, thus placing the unsuspecting hunter in jeopardy of being cited for hunting over a baited area. The rule is necessary to discourage unscrupulous conduct. The department notes that while this particular state provision was omitted from the current rule, all federal requirements regarding baiting remain in full force and effect and are enforceable by state wardens acting under federal commission.

The proposed amendment also corrects an internal reference. The current rule states that the provisions of subsection (a) are subject to the control of subsection (b). In fact, the provisions of subsection (a) are subject to the control of subsections (b) and (c). The amendment is necessary for the sake of accuracy.

Robert Macdonald, regulations coordinator, has determined that for the first five years that the amendment as proposed is in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the amendment.

Mr. Macdonald also has determined that for each of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the discouragement of unscrupulous conduct by third parties and the establishment of state regulations that are consistent with federal regulations, both of which reduce the potential for hunter confusion and unfortunate situations.

There will be no adverse economic effect on small businesses or microbusinesses, as the rule does not affect small businesses or microbusinesses. There will be no additional economic costs to persons required to comply with the rule as proposed, as the rule does not require the purchase of any additional permit, license, or equipment, or cause the alteration or disruption of any lawful activity involving the hunting of migratory game birds.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rule as proposed will not impact local economies.

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

Comments on the proposed rule may be submitted to Robert Macdonald, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4775 or 1-800-792-1112 (ext. 4775).

The amendment is proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The amendment affects Parks and Wildlife Code, Chapter 64.

§65.310. Means, Methods, and Special Requirements.

(a) The following means and methods are lawful, subject to control of subsections [subsection] (b) and (c) of this section, in the taking of migratory game birds:

(1) dogs, artificial decoys, manual or mouth-operated bird-calls, lawful archery equipment (except crossbows), legal shotguns, and by means of falconry;

(2) positions in the open or from a blind or other place of concealment except a sinkbox;

(3) taking from floating craft (other than a sinkbox), provided that at the time of take:

(A) any motion by the craft is the result of manual propulsion or natural current or wind, and not by sail or motive power; and

(B) any sails are furled and any motor is completely shut off;

(4) taking on or over unbaited areas;

(5) taking by the use of power boats, sailboats, or other craft when used solely as a means of picking up dead or injured birds; and

(6) taking by means of falconry, but the hunting is limited to persons holding valid falconry permits issued under the authority of Parks and Wildlife Code, Chapter 49.

(b) Paraplegics and single or double amputees of the legs may take migratory game birds from a stationary motor vehicle or motor-driven land conveyance.

(c) Except as specifically provided in §65.321 of this title (relating to Special Management Provisions), the following means and methods are unlawful in the taking of migratory game birds:

(1) trap, snare, net, crossbow, fish hook, poison, drug, explosive, or stupefying substance;

(2) any firearm other than a legal shotgun;

(3) from, or by means, aid, or use of a sinkbox, motor-driven conveyance, motor vehicle, or aircraft of any kind;

(4) by the use of recorded or electrically amplified birdcalls or sounds;

(5) by the use of live birds as decoys;

(6) by the means or aid of motor-driven land, water, or air conveyance or sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of any migratory game bird; and

(7) by the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited. However, nothing in this paragraph prohibits:

(A) the taking of any migratory game bird, including waterfowl, coots, and cranes, on or over the following lands or areas that are not otherwise baited areas:

(i) standing crops or flooded standing crops (including aquatics);

(ii) standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice;

(iii) from a blind (or any other place of concealment) camouflaged with natural vegetation;

(iv) from a blind (or any other place of concealment) camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing or scattering of grain or other feed; or

(v) standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(B) the taking of any migratory game bird, except waterfowl, coots and cranes, on or over lands or areas that are not otherwise baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation.

(d) No person may possess shotgun shells containing any shot material, or loose shot for muzzleloading firearms, other than nontoxic shot approved as lawful for the hunting of waterfowl by the U.S. Fish and Wildlife Service, while hunting waterfowl anywhere in Texas, including the shooting of privately owned banded pen-reared mallards on licensed private bird hunting areas.

(e) Except for migratory birds processed at a cold storage or processing facility, or doves, one fully-feathered wing or the head must remain attached on dressed migratory game birds while the birds are being transported between the place where taken and the personal residence of the possessor.

(f) No person may place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area.

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 17, 2005.

TRD-200504638

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: November 27, 2005

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



TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.8

The Texas County and District Retirement System proposes an amendment to §103.8, concerning the manner of paying retirement annuities with respect to retirees whose benefits are subject to the limitations of §415(b) of the Internal Revenue Code. The proposed amendment sets forth the method of distribution to be used depending on whether the annuitant is a participant in the Texas County and District Retirement System Qualified Replacement Benefit Arrangement.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System has determined that for

the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the certainty that the annual retirement benefit payable with respect to a retiree will be the full annual benefit accrued by the retiree not exceeding the limitations of IRC §415(b). There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendment is proposed under the Government Code §845.102 which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system, and under §845.504 which authorizes the board to adopt rules for the establishment of an excess benefit program under §415(m) of the Internal Revenue Code.

The Government Code, §845.504 is the basis for the proposed amendment.

§103.8. Limits[~~Limit~~] on Payments During the Limitation Year.

(a) The limitation year used by the retirement system for determining the maximum annual benefit which may be paid under [Section] §415(b) of the Internal Revenue Code of 1986 is the calendar year. Notwithstanding anything to the contrary, the system will make no payments of a retirement annuity with respect to a retiree in excess of the annual limit as determined in accordance with §415(b) of the Internal Revenue Code and the regulations thereunder.

(b) If the benefit recipient is not a participant in the Texas County and District Retirement System Qualified Replacement Benefit Arrangement (34 TAC §§113.1, et seq), the [The] maximum monthly amount of the retirement annuity payable with respect to the retiree during the limitation year shall be the lesser of:

(1) the amount determined under the provisions of Chapter 844, [the] Government Code, without regard to [Chapter 844 (excluding) the limitations of §844.008]; or

(2) the amount determined by dividing the annual limit for the limitation year [(as) determined in accordance with [Section] §415(b) of the Internal Revenue Code] by the number of monthly payments scheduled to be paid with respect to the retiree during the limitation year.

(c) If the benefit recipient is a participant in the Texas County and District Retirement System Qualified Replacement Benefit Arrangement, the maximum monthly amount of the retirement annuity payable with respect to the retiree shall be the amount determined under the provisions of Chapter 844, Government Code, without regard to the limitations of §844.008. The system shall cease making monthly payments of the retirement annuity payable with respect to the retiree at that time during the limitation year that the total of payments made with respect to such limitation year equals the maximum annual benefit payable in accordance with IRC §415(b).

(d) In no event shall the total amount paid during the limitation year be less than the lesser of that amount payable with respect to the retiree as determined under the provisions of Chapter 844, Government

Code without regard to §844.008; or the annual limit for the limitation year determined in accordance with IRC §415(b).

(e) The system will make retroactive or prospective adjustments to any benefit payment as appropriate to comply with this section.

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

Filed with the Office of the Secretary of State on October 17, 2005.

TRD-200504635

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Proposed date of adoption: December 1, 2005

For further information, please call: (512) 637-3230



CHAPTER 107. MISCELLANEOUS RULES

34 TAC §107.15

The Texas County and District Retirement System proposes new rule §107.15, concerning the resumption of enrollment of new employees in the retirement system by a subdivision that previously had elected to discontinue enrollment of its new employees.

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

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the new rule will be a clarification of the procedure and effect of a subdivision's action to resume enrollment. There will be no costs to small businesses. There are no anticipated economic costs to persons who are affected by the rule.

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

The new rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §842.008 is the basis for the proposed new rule.

§107.15. Resumption of Enrollment.

(a) In accordance with §842.008(e), Government Code, as in effect on December 31, 2005, and with the approval of the board of trustees, a subdivision that had elected under prior law to discontinue enrolling non-members may, before January 1, 2006, elect to resume the enrollment in the retirement system of new members effective January 1, 2006.

(b) A person who is employed on December 31, 2005, by a subdivision that elects to resume enrollment pursuant to subsection (a)

of this section, who is enrolled in the system under this section and whose membership in the system begins on January 1, 2006, will be credited with service performed for the subdivision prior to January 1, 2006, provided the person performed such service as an employee described in §841.001(8), Government Code, as that section read on December 31, 2005. Notwithstanding the foregoing, a person shall not be credited under this subsection with service performed prior to January 1, 2006, to the extent that such service is credited under another provision of the Act or another rule adopted by the board. A new member receiving credit under this subsection for service performed prior to January 1, 2006, is not eligible to make employee contributions or receive monetary service credits with respect to such credited service.

(c) As soon as practicable after the board approves a subdivision's election to resume enrollment, the subdivision shall certify to the retirement system the service to be credited under subsection (b) of this section to each new member.

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 17, 2005.

TRD-200504636

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Proposed date of adoption: December 1, 2005

For further information, please call: (512) 637-3230



CHAPTER 111. TERMINATION OF PARTICIPATION: SUBDIVISIONS

34 TAC §§111.1 - 111.4

The Texas County and District Retirement System ("TCDRS") proposes new Chapter 111, consisting of new §§111.1 - 111.4, concerning the definitions and notice procedures for the termination of a subdivision's participation in TCDRS. The option to terminate subdivision participation and the authority to adopt rules to implement the termination option are provided under §6, of House Bill 633 as passed during the 2005 Regular Session of the 79th Legislature.

Tom Harrison, Deputy Director and General Counsel of TCDRS, has determined that there will be no fiscal implications for state or local government as a result of the rules under this chapter.

Mr. Harrison has determined that the public benefit anticipated as a result of administering the new chapter will be the development of a procedure for the orderly termination of a subdivision's participation in TCDRS, a process to ensure that adequate and timely notice is provided to members and annuitants with respect to the subdivision in advance of its termination of participation. Mr. Harrison has also determined that there will be no costs to small businesses. There are no anticipated economic costs to persons who are affected by the new chapter.

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

The new chapter is generally proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system; and are proposed in anticipation of the authority granted in §842.051(c), Government Code, to be effective January 1, 2006.

The Government Code, Chapter 842, Subchapter A-1, as in effect on January 1, 2006, is the basis for these new rules.

§111.1. Purpose.

The participation in the Texas County and District Retirement System ("TCDRS") by a subdivision that is not a county may be terminated on a voluntary or involuntary basis in accordance with the provisions of Chapter 842, Subchapter A-1, Government Code. The board of trustees of the retirement system has been given rulemaking authority to establish standards, definitions, and procedures it considers necessary to administer Subchapter A-1, and is to take reasonable actions and exercise its discretion in a fair and equitable manner on a case-by-case basis to preserve accrued benefits. Therefore, the board has adopted rules and definitions of general application as set forth in this chapter for the voluntary and involuntary termination of subdivisions.

§111.2. Definitions.

For purposes of this chapter only:

(1) The term "accrued benefit" means the actuarial equivalent value of the sum of the member's accumulated contributions and service credits as of the determination date without regard to credited service.

(2) The term "actuarial equivalent value" is the accrued benefit for members, and the actuarial equivalent, as described in §841.001(1), Government Code, of the supplemental annuity as of the determination date.

(3) The term "determination date" means the date specified in the termination agreement under §842.052(a)(1), Government Code, or the date specified by the board under §842.053(d), Government Code, as applicable, for determining the actuarial equivalent values of all accrued benefits and supplemental annuities.

(4) The term "full performance" means the complete and timely performance of all terms of the termination agreement, as originally agreed to by the subdivision or as thereafter modified or amended in writing by the subdivision and TCDRS. On full performance of the termination agreement, the subdivision is released from all future liability for the accrued benefits and supplemental annuities payable with respect to the subdivision under the retirement system.

(5) The term "supplemental annuity" means the annuity described in §844.002(c), Government Code. In determining the actuarial equivalent value of a supplement annuity as of the determination date, the retirement system may take into consideration facts in existence on the determination date such as the prior death of a retiree or joint annuitant.

§111.3. Notices--Voluntary Termination.

(a) In the case of a voluntary termination under §842.052, Government Code, the subdivision must provide to the system at least 12 days advance written notice of the date, hour and place of the meeting at which the subject of the termination of participation in TCDRS will be considered by the subdivision's governing body.

(b) The system will provide written notice of the subdivision's consideration of the termination of its participation in the retirement

system to each member and annuitant of the subdivision by first class mail to the person's most recent address of record with the system. The notice will be a summary of the process and the general effect of plan termination, and will include the date, hour and place of the meeting as provided by the subdivision to the system under subsection (a) of this section.

(c) Copies of the notice described in subsection (b) of this section will be provided to the subdivision for posting in one or more conspicuous places readily accessible to its workforce and in a manner where the notice is likely to be seen. In lieu of posting, the subdivision may have notices personally distributed to its employees.

(d) The subdivision must post or distribute the notice described in subsection (b) of this section no later than the time that the subdivision posts notice of the date, hour, place, and agenda of the meeting at which the subject of the termination of participation in TCDRS is to be considered, but in no event less than 72 hours before such meeting.

§111.4. Notices--Involuntary Termination.

(a) In the case of an involuntary termination under §842.053, Government Code, the retirement system will provide written notice to the presiding officer of the subdivision's governing body, if any, or its successor, if any, and to each member and annuitant with respect to the subdivision of the consideration by the board of trustees of the retirement system to terminate the participation of the subdivision in the retirement system. The written notice shall be sent by first class mail to each person's most recent address of record with the system. The notice will be a summary of the process and the general effect of plan termination, and will state the date of the meeting at which the subject of the termination of the subdivision's participation in TCDRS will be considered by the board of trustees.

(b) The written notices described in subsection (a) of this section will be mailed on or before the tenth day preceding the date of the meeting at which the subject of the termination of the subdivision's TCDRS participation will be considered by the board of trustees.

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 17, 2005.

TRD-200504639

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Proposed date of adoption: December 1, 2005

For further information, please call: (512) 637-3230

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CHAPTER 113. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM QUALIFIED REPLACEMENT BENEFIT ARRANGEMENT

34 TAC §§113.1 - 113.6

The Texas County and District Retirement System proposes new Chapter 113, consisting of new §§113.1 - 113.6, concerning the establishment and operation of a qualified governmental excess benefit arrangement under §415(m) of the Internal Revenue Code in accordance with the authority granted to the board in §845.504, Government Code.

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

Mr. Harrison has also determined that for each year of the first five years the new rules are in effect the public benefit anticipated as a result of administering the new rules will be the availability of a program to allow adopting subdivisions to provide annuitants with that portion of their accrued benefit that can not be paid by the system because of the limitations of §415(b) of the Internal Revenue Code. There will be no costs to small businesses. There are no anticipated economic costs to persons who are affected by the new rules.

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

The new rules are proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §845.504 is the basis for the proposed new rules.

§113.1. Purpose.

The Board of Trustees of the Texas County and District Retirement System hereby establishes a qualified governmental excess benefit program in accordance with §415(m) of the Internal Revenue Code and as authorized under §845.504, Government Code. The program entitled as the "Texas County and District Retirement System Qualified Replacement Benefit Arrangement" is maintained solely for the purpose of providing for the payment of that portion of the annual retirement benefits that had been accrued by and would otherwise be payable with respect to a member of the Texas County and District Retirement System but for the limitation on the payment of benefits under §415(b) of the Internal Revenue Code of 1986, as amended.

§113.2. Definitions.

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

(1) "Act" means the provisions of Texas Government Code, Title 8, Subtitle F, as amended from time to time, establishing the Texas County and District Retirement System.

(2) "Arrangement" means the Texas County and District Retirement System Qualified Replacement Benefit Arrangement, as set forth herein and as amended from time to time.

(3) "TCDRS" or "System" means the Texas County and District Retirement System, as established under the provisions of the Act.

(4) "Benefit Recipient" means any individual who receives a retirement benefit from TCDRS as a Retiree or as a surviving beneficiary of a deceased Member or Retiree. The term may include an alternate payee of a deceased Member or Retiree.

(5) "Benefit" means a retirement benefit accrued under the provisions of the Act.

(6) "Board" means the Board of Trustees of TCDRS.

(7) "Code" means the Internal Revenue Code of 1986, as amended (and corresponding provisions of any subsequent federal tax laws) and the regulations thereunder.

(8) "Effective Date" means January 1, 2006, the effective date of the Arrangement.

(9) "Eligible Member" means a Retiree or a deceased Member or Retiree with respect to an Employer, from and after the date the Employer adopts the Arrangement.

(10) "Employer" means an Employer whose employees are Members of TCDRS with respect to retirement benefits paid by TCDRS under the provisions of the Act; provided that the Employer signs an adoption agreement in the form specified by the Board to adopt the Arrangement.

(11) "Restricted Benefit" means the maximum Benefit permitted to be paid to a Benefit Recipient under the Retirement Plan of the Employer, as limited by Code §415, in accordance with §844.008 of the Act.

(12) "Member" means any individual who accrues or has accrued a Benefit under the Act.

(13) "Participant" means any Benefit Recipient with respect to an Employer who is eligible to participate in the Arrangement in accordance with Article 2.

(14) "Retirement Plan" means the defined benefit plan established under TCDRS for employees of the Employer, and their beneficiaries, in accordance with the Act, and qualified under Code §401(a).

(15) "Retiree" means a Member who receives a Benefit under the Act with respect to an Employer.

(16) "Unrestricted Benefit" means the benefit that would be payable to a Benefit Recipient under the Retirement Plan of the Employer if the limits of Code §415 were not applicable in accordance with §844.008 of the Act.

§113.3. Eligibility and Payments.

(a) Eligibility to Receive Payments. If, at the time an Eligible Member becomes a Retiree or dies or at any time thereafter, the Unrestricted Benefit of the Benefit Recipient under the Retirement Plan of the Employer exceeds the Restricted Benefit payable to the Benefit Recipient at that time, the Benefit Recipient shall become a Participant and shall be entitled to receive payments under this Arrangement, in accordance with the terms hereof, and may not waive or defer the receipt of such payments. A Benefit Recipient shall in no event become a Participant until the later of:

(1) January 1, 2006, the Effective Date of the Arrangement, or

(2) the effective date of the applicable Employer's adoption of the Arrangement.

(b) Amount of Payments. A Participant shall receive payments under this Arrangement equal to the difference between the Participant's Unrestricted Benefit and his or her Restricted Benefit, provided that the amount of payments so determined shall be subject to change and to such adjustments as TCDRS deems appropriate, from time to time. In no event shall a Participant be entitled to receive a payment under this Arrangement if such payment, when combined with other payments under this Arrangement and under the Retirement Plan of the Employer, would result in the Participant receiving total payments in excess of the Participant's Unrestricted Benefit.

(c) Form and Timing of Payments. Payments under this Arrangement shall be paid by the applicable Employer to each Participant at the time and in the form and manner as the System may direct. Any election made by an Eligible Member with regard to the distribution of Benefits under the System, including the designation of a named beneficiary, as defined in §841.001(4) of the Act, shall be equally applicable to and binding on such Eligible Member and on all persons who at any time have or claim to have any interest in connection with payments under this Arrangement.

(d) Effect on TCDRS. Any Benefit payable under the Retirement Plan of the Employer established under TCDRS shall be paid solely in accordance with the terms and provisions thereof and shall be subject to §415 of the Code and other applicable tax limitations; nothing in this Arrangement shall operate or be construed in any way to modify, amend or affect the Benefits payable thereunder.

(e) Tax Withholding. All payments under this Arrangement shall be subject to and reduced by applicable federal, state and local income, payroll and other tax withholding requirements and all other applicable deductions required by this Arrangement or by law.

(f) Participation Determined Annually. Participation in the Arrangement shall be determined annually for each plan year. In any plan year, benefits shall only be paid under the Arrangement to a Participant after the date in the plan year that the benefits paid to such person from TCDRS under the Retirement Plan of the Employer have reached the maximum annual benefit that can be paid by TCDRS under Code §415 for that plan year. The date the maximum annual benefit payment from TCDRS is reached is the beginning date of participation by the Participant for that plan year. The beginning date of a Participant's participation in the Arrangement may change from plan year to plan year as the amount payable under this Arrangement is re-determined. An individual's participation in the Arrangement will cease for any plan year or portion of a plan year for which the individual's Benefit is not limited by Code §415.

(g) No Election to Defer Compensation. No election shall be provided at any time to a Participant or any other individual, directly or indirectly, to defer compensation under the Arrangement.

§113.4. Administration.

(a) Administrator. TCDRS shall be the Administrator of the Arrangement and shall be responsible for the supervision and control of the operation and administration of the Arrangement, except as otherwise provided herein. Subject to the authority of the Board, TCDRS shall have the exclusive right and full discretion to construe and interpret the Arrangement, to establish rules and procedures for its operation and administration, and to decide any and all questions of fact, actuarial valuation, interpretation, definition or administration arising under or in connection with the administration of the Arrangement. The interpretation and construction of any provisions of the Arrangement by the Administrator and its exercise of any discretion granted under the Arrangement shall be binding and conclusive on all persons who at any time have or claim to have any interest whatever under this Arrangement.

(b) Contributions and Payments.

(1) As soon as administratively feasible following the receipt of Employer contributions, TCDRS shall segregate from each Employer's contributions the portion of the contributions necessary to make the payments due to Benefit Recipients of that Employer for the next payment period and for any applicable expenses under this Arrangement. Notwithstanding the foregoing, if TCDRS determines, in its sole discretion, that the allocation of contributions to the Arrangement would jeopardize the actuarial soundness of the Retirement Plan of the Employer, TCDRS shall cease to segregate contributions for the

Arrangement and shall notify the participating Employer and affected Benefit Recipients.

(2) Contributions segregated for payments and expenses under the Arrangement shall be separately accounted for and shall be used exclusively for payments and expenses under the Arrangement and shall not be commingled with any other assets of TCDRS.

(3) Within a reasonable period of time before each payment date, TCDRS shall distribute to each participating Employer the gross amount necessary, as determined by TCDRS, to satisfy such Employer's liability for amounts due on such payment date under the Arrangement.

(4) The Employer from whom the Eligible Member retired or died while a Member with respect to such Employer shall be solely responsible for paying any amounts received from TCDRS and due to the Participant under the terms of the Arrangement. TCDRS shall have no obligation to pay any amounts due under the terms of the Arrangement.

(5) The Employer shall be responsible for satisfying all tax withholding, payroll tax payments, other applicable tax payments and reporting requirements applicable to the Arrangement, if any, and shall be responsible for administering all payments due under the Arrangement.

(c) Plan Unfunded. This Arrangement shall at all times be entirely unfunded within the meaning of the federal tax laws. Nothing contained herein shall be construed as providing for assets to be held in trust for the Participants. No Participant or any other person shall have any interest in any assets of TCDRS or any Employer by reason of the right to receive a payment under the Arrangement. Nothing contained herein shall be construed as a guarantee by TCDRS, any Employer, or any other entity or person that the assets of the Employer will be sufficient to pay any benefit hereunder.

(d) Appeal Procedure. In the event a dispute arises between the Employer and the Administrator relating to the determination of the Administrator or the interpretation, operation or administration of this Arrangement, the Administrator's decision shall be final, conclusive and binding unless the Employer submits an appeal directly to the Board within 20 days from the date of notice of the decision, for consideration and action in accordance with the administrative review procedures set forth in 34 TAC §§101.19 - 101.23. The action of the Board, taken on its own motion or as the result of an appeal, is final, conclusive, and binding.

§113.5. Amendment and Termination.

(a) Amendment and Termination of the Arrangement. The Board reserves the right, in its sole discretion, to amend or terminate the Arrangement at any time and from time to time. By way of example, and not limitation, the Arrangement may be amended or terminated to eliminate all payments with respect to any Member or other individual who has not become eligible to participate in the Arrangement as of the date of such amendment or termination by reason of retirement or death in accordance with §113.3(a) of this chapter. In addition, an amendment or termination may be retroactive to the extent that the Board deems such action necessary, in its sole discretion, to maintain the tax-qualified status of the System or the status of this Arrangement as a qualified governmental excess benefit arrangement as defined in Code §415(m) or to avoid jeopardizing the actuarial soundness of the Retirement Plan of the Employer.

(b) Termination of Employer's Participation.

(1) An Employer may terminate its participation in the Arrangement at any time with the consent of and on terms established by the Administrator.

(2) The Administrator may terminate the participation of an Employer if the Employer fails to comply with the rules established by the Board for the administration of the Arrangement as from time to time amended or modified, or fails to perform in accordance with the adoption agreement. The determination of an Employer's failure to comply and subsequent involuntary termination of participation is within the sole discretion and authority of the Administrator. The Administrator's decision is final, conclusive and binding unless timely appealed directly to the Board in accordance with §113.3(d) of this chapter.

(c) Participants. If an Employer's participation in the Arrangement is voluntarily or involuntarily terminated, then any person who is a Benefit Recipient with respect to that Employer and who is a Participant in the Arrangement shall immediately cease such participation and shall be entitled to no benefits under this Arrangement and no benefits shall be paid or due to such Participant on or after the date of such termination. On the termination of an Employer in the Arrangement, the Employer shall have sole and complete responsibility and liability for paying any benefits that would otherwise be payable under the Arrangement with respect to its Participants, and the System and all other participating Employers shall have no responsibility or liability for any such benefits.

§113.6. General Provisions.

(a) Applicable Law.

(1) All questions pertaining to the validity, construction and administration of the Arrangement shall be determined in conformity with the laws of the State of Texas, except to the extent federal law preempts state law.

(2) If any provision of the Arrangement or the application thereof to any circumstance or person is invalid, the remainder of the Arrangement and the application of such provision to other circumstances or persons shall not be affected thereby.

(b) Indemnification. By participating in the Arrangement, an Employer agrees to indemnify, defend, and hold harmless the System, the employees of the System, the Board, and all other Employers participating in the Arrangement from and against any and all direct or indirect liabilities, demands, claims, losses, costs and expenses, including reasonable attorney's fees, arising out of or resulting from the Employer's participation in the Arrangement and/or the Employer's voluntary or involuntary termination of participation in the Arrangement. The agreement of the Employer to indemnify, defend and hold harmless survives the termination of the Employer's participation in the Arrangement and the termination of the Arrangement.

(c) Nonalienation. Benefits under this Arrangement shall not be subject to alienation or legal process, except to the extent permitted under Government Code, Chapter 804.

(d) No Enlargement of Employment Rights. The establishment of the Arrangement shall not confer any legal rights upon any employee or other person for a continuation of employment, nor shall it interfere with the rights of the Employer to discharge any employee and to treat the employee without regard to the effect which that treatment might have upon the employee as a Participant in the Arrangement.

(e) Information Required by Arrangement. Benefit Recipients, other individuals and Employers shall furnish to the Administrator such evidence, data and information as the Administrator considers necessary or desirable for the purpose of administering the Arrangement.

(f) Paying Benefits, Costs and Expenses from TCDRS Assets is Prohibited. No assets of the System shall be used directly or indirectly to pay benefits under the Arrangement or to pay any costs or expenses of administering the Arrangement. Expenses of administering the Arrangement may include expenses for professional, legal, accounting, and other services, and other necessary or appropriate costs of administration.

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 17, 2005.

TRD-200504637

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Proposed date of adoption: December 1, 2005

For further information, please call: (512) 637-3230



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

The Texas Youth Commission (the commission) proposes an amendment to §85.5, concerning Assessment/Evaluation. The amendment to the section will limit automatic psychiatric referrals of youth at Marlin Orientation and Assessment Unit to those who are admitted while currently prescribed psychotropic medication or have been prescribed such medication within the past six months, rather than the past year.

The commission proposes an amendment to §85.51, concerning Definitions. The amendment to the section clarifies certain definitions that pertain to rules in subchapter D of this chapter.

The commission proposes the repeal of §§85.55, 85.59, 85.61, 85.65, 85.69, and 85.95 concerning program completion, parole placement and discharge. The repeal of these rules will allow for significantly revised rules to be published in their place.

The commission simultaneously proposes new §§85.55, 85.59, 85.61, 85.65, 85.69, and 85.95. The new sections are necessary in order to better organize information relating to program completion by offender type and age and placement upon release, transfer and discharge.

The new sections are also proposed in order to revise existing agency rules relating to the procedures and eligibility criteria for program completion and discharge. Specifically, new §§85.55, 85.59, and 85.61 will allow the 120-day deadline for release following the exit interview to be extended by 30 days when a youth is placed on remediation in specific phase objectives or demoted to the next lower phase after the exit interview. Such extension allows the youth to regain eligibility for release to a community placement or transfer to adult parole. If the youth does not regain eligibility for release or transfer, the youth will lose release or transfer eligibility until such time as the youth meets program completion criteria.

Additionally, new §85.59 and §85.61 provide that the commission may consider transferring (without court approval) a sentenced offender youth whose offense was committed on or after September 1, 2005, and whose sentence expires before the minimum period of confinement, to Texas Department of Criminal Justice (TDCJ) when the youth completes all but nine months of his/her sentence and meets required transfer criteria.

New §85.65 establishes rules and an approval process for discharging sentenced offenders whose offense was other than capital murder, who have met transfer criteria to TDCJ, or whose sentence has expired.

New §85.69 will uphold the existing rules relating to the procedures and eligibility criteria for program completion, as well as, give staff and volunteers the opportunity to speak on the behalf of youth who are being considered for transfer to TDCJ-Institution Division (TDCJ-ID) at the Special Services Committee (SSC) meeting. In order to transfer custody to the Parole or Institutions Division of the Texas Department of Criminal Justice, new §85.69 will require that youth who were sentenced for capital murder committed before September 1, 2003, and who have not completed their minimum period of confinement, must return to court for a transfer hearing no later than when the youth reaches 20 years and six months of age.

New §85.95 will allow several new offender classifications, namely Chronic Serious Offender, Controlled Substances Dealer and Firearms Offender, to be eligible for discharge when the youth completes the initial six months on parole status and meets parole discharge criteria. Finally, new §85.95 will allow Chronic Serious Offenders, Controlled Substances Dealers, Firearms Offenders and Type B Violent Offenders to be discharged after completion of 30 days on parole status after the youth reaches 20 years and six months of age, receives two face-to-face contacts within the same 30 days, and has no pending criminal charges.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, 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 enforcing or administering the sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be promoting efficient and effective use of psychiatric resources, an efficient process for release and transfer approval, as well as better organization of and enhanced access to agency rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposals may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

SUBCHAPTER A. COMMITMENT AND RECEPTION

37 TAC §85.5

The amendment is proposed under the Human Resources Code, §61.071, which provides the commission with the authority to

establish rules to determine psychiatric services and §61.076 which provides the commission with the authority to provide psychiatric treatment that is necessary.

The proposed rule affects the Human Resources Code, §61.034.

§85.5. *Assessment/Evaluation.*

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

(c) Intake staff at the appropriate diagnostic unit conducts [~~units conduct~~] the following routine evaluations:

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

(11) psychiatric interview of youth when: [psychiatric interview of youth who have been on psychotropic medication and/or who have had a diagnosis of a major affective or psychotropic disorder in the past year; and]

(A) a youth has been identified during admission as being currently prescribed psychotropic medication; or

(B) a youth has been prescribed psychotropic medication within the past six (6) months; and

(12) (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 17, 2005.

TRD-200504628

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 27, 2005

For further information, please call: (512) 424-6301



SUBCHAPTER D. PROGRAM COMPLETION

37 TAC §§85.51, 85.55, 85.59, 85.61, 85.65, 85.69

The amendment and new rules are proposed under the Human Resources Code, §61.075, which provides TYC with the authority to order a youth's confinement under conditions it believes best designed for the youth's welfare and the interests of the public; §61.076, which provides TYC the authority to require a child to participate in correctional training and activities; §61.081, which provides TYC the authority to release under supervision any child in its custody and place the child in his or her home or in any situation or family approved by TYC; §61.084, which provides TYC the authority to transfer youth sentenced under a determinate sentence to the institutional division or parole division of the Texas Department of Criminal Justice. The commission shall from its custody discharge a youth whose sentence has not expired no later than the youth's 21st birthday; and §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed amendment, repeals and new rules affect the Human Resources Code, §61.034.

§85.51. *Definitions.*

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

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

(3) Exit review/interview--is a process by which the Special Service Committee (SSC), for high restriction, or the superintendent/~~quality assurance supervisor,~~ for medium restriction or the quality assurance supervisor for contract care programs, determines whether the youth meets program completion criteria and whether the transition/release Individual Case Plan (ICP) adequately addresses the youth's identified risk factors for re-offending. The SSC is required to conduct a face-to-face interview with sentenced and Type A offenders, along with review and approval of the release packet.

(4) (No change.)

(5) Home placement--is a placement in the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian, or an independent living arrangement (excluding contract independent living programs), for youth who have earned parole status. Parole status is defined in paragraph (9) ~~(7)~~ of this section.

(6) - (9) (No change.)

(10) Program completion criteria--the criteria which a youth must meet while in the current program in order to move to a placement of ~~equal or~~ less restriction. Program completion criteria are based on youth's classification and the phase of the Resocialization program, which are outlined in Subchapter C of this chapter (relating to Program Completion and Discharge).

(11) Release under supervision--also referred to as "release", when the youth remains under the jurisdiction of TYC and is subject to the conditions of parole supervision. ~~[is the release of a youth from high restriction to a home or home substitute placement when the youth has earned parole status. The youth remains under the jurisdiction of TYC and is subject to the conditions of parole supervision.]~~

(12) (No change.)

(13) Release packet--includes specific documents for review and approval prior to a youth's release. The documents are organized in tabbed sections in a notebook to form the release packet. The release packet includes the following information:

(A) (No change.)

(B) transition/release plan [release plan];

(C) - (F) (No change.)

(14) (No change.)

(15) Transfer--is a movement of sentenced offenders to either Texas Department of Criminal Justice-Institution Division (TDCJ-ID) or Texas Department of Criminal Justice-Parole Division (TDCJ-PD) when:

(A) (No change.)

(B) meets transfer criteria pursuant to §85.65 of this title (relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Expiration of Sentence); or

~~(C)~~ (B) youth at age 21 who was sentenced for capital murder where the offense was committed on or after September 1, 2003 and who has not completed the sentence will be transferred to TDCJ-PD without the juvenile courts approval; or

~~(D)~~ (C) youth at age 21 who was sentenced for any offense other than capital murder and who has not completed the sentence in high restriction facilities will be transferred to TDCJ-PD without the juvenile courts approval.

(16) Transfer packet--includes specific documents for review and approval prior to transfer of a youth to the Texas Department of Criminal Justice - Institutional Division (TDCJ-ID) or Texas Department of Criminal Justice - Parole Division (TDCJ-PD). The documents are organized in tabbed sections in a notebook to form the transfer packet.

(A) The transfer packet for TDCJ-PD includes the following information:

(i) (No change.)

(ii) transition/release plan [release plan];

(iii) - (v) (No change.)

(B) (No change.)

(17) (No change.)

(18) Transition/Release plan [Transition/Release individual case plan (ICP)]--consist of a transition/release individual case plan (ICP) for youth who are moving from one program to another or from one facility to a different facility. ~~[is an individual case plan that is developed for a youth when he/she is moving from one program to another, or from one facility to a different facility.]~~ The transition/release ICP identifies risk factors and protective factors that enable youth and staff to develop plans to minimize risk and take advantage of protective factors.

~~[(19) Transition/Release plan--includes specific documents such as a success plan, risk factors for re-offending, and strategies and recommendations to minimize risk factors.]~~

(19) ~~[(20)]~~ Type A Violent Offender, Type B Violent Offender, Chronic Serious Offender, Controlled Substances Dealer, Firearms Offender, and General Offender--see definitions in §85.23 of this title (relating to Classification).

(20) ~~[(21)]~~ Type 1 offenses--the offenses for which a youth has been given a determinate sentence, specifically: the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit murder, capital murder, sexual assault, or aggravated sexual assault.

(21) ~~[(22)]~~ Type 2 offenses--all other offenses, except Type 1 offenses, for which a youth has been given a determinate sentence.

§85.55. Program Completion for Other Than Sentenced Offenders.

(a) Purpose. The purpose of this rule is to establish criteria and the approval process for release of youth upon program completion.

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not address disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(3) This rule does not apply to sentenced offenders. Rules pertaining to sentenced offenders are:

(A) §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age of 19);

(B) §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older);

(C) §85.65 of this title (relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Expiration of Sentence); and

(D) §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(4) This policy does not apply to youth transitioning to medium restriction placement, see §85.45 of this title (relating to Movement Without Program Completion).

(5) For discharge criteria, see §85.95 of this title (relating to Parole Completion and Discharge).

(c) General Requirements.

(1) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(2) A plan to minimize risk factors for re-offending shall be developed for each youth prior to release, unless youth is to be discharged.

(3) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(4) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals).

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(6) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(d) Program Completion Criteria.

(1) Youth Whose Classifying Offense is Other Than a Sentenced Offender. Youth whose classifying offense is other than a sentenced offender will be eligible for release to TYC parole (home or home substitute) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the Special Services Committee (SSC) exit interview; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process, as outlined in subsection (e)-(h) of this section; and

(C) completion of the minimum length of stay; and

(D) the youth is currently assessed at Resocialization phase A4, B4, C4 with no main objectives or sub-objective indicators under remediation; and

(E) for youth committed after April 1, 2005, completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(2) Youth in Contract Care Programs Where Resocialization is Not Administered. Youth in high or medium restriction contract

care programs where Resocialization is not administered will be eligible for release to TYC parole (home or home substitute) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the exit review; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsection (e)-(h) of this section; and

(C) completion of the minimum length of stay; and

(D) identify personal motivations for delinquent behavior; and

(E) demonstrate an understanding of their personal delinquent behavior patterns and demonstrate the ability to interrupt their offense patterns; and

(F) complete a plan that:

(i) identifies goals and a plan of action to achieve the identified goals; and

(ii) identifies obstacles that will support successful re-entry into the community.

(e) Decision Authority for Approval of Release.

(1) For Type A Violent Offenders. The final decision authority shall approve the youth's release upon a determination that the youth meets all program completion requirements and the transition/release Individual Case Plan (ICP) adequately addresses risk factors. The final decision authority is the deputy executive director.

(2) For Other Than Type A Violent Offenders. The final decision authority shall approve the youth's release upon a determination that the youth meets all program completion requirements and the transition/release ICP adequately addresses risk factors. The final decision authority is:

(A) the superintendent, for other than Type A violent offenders; or

(B) the quality assurance supervisor, for other than Type A violent offenders assigned to contract placements.

(f) Phase Ineligibility.

(1) Remediation. To maintain eligibility for release, a Type A violent offender youth may receive only one remediation placement in any Resocialization phase area pursuant to §87.3 of this title (relating to Resocialization Phase Requirements and Assessment) at anytime after the exit interview. If the youth does not maintain Academic/Workforce Development (A) or Correctional Therapy (C) phase 4 objectives, the youth will be phase ineligible and will lose release eligibility pursuant to subsection (g) of this section.

(2) Demotion. To maintain eligibility for release, a Type A violent offender youth may only receive one demotion in Behavior (B) phase at anytime after the exit interview. If the youth does not regain B4 at the next phase assessment, the youth will be phase ineligible and will lose release eligibility pursuant to subsection (g) of this section.

(g) Loss of Release Eligibility. A youth who loses release eligibility will not be eligible for release until such time as the youth meets program completion criteria and a subsequent SSC exit interview confirms release eligibility. Eligibility for release is lost when any of the following occur after the exit interview:

(1) youth commits a Category I rule violation as confirmed through a due process hearing; or

(2) youth is phase ineligible as described in subsection (f) of this section.

(h) Release Date.

(1) For Type A Violent Offenders. Youth who meet the program completion requirements for release to TYC parole under this rule must be released within 120 calendar days of the exit interview, unless a youth:

(A) is placed on remediation in A or C phase after the exit interview, in which case the 120-day deadline may be extended up to 30 days to allow the youth to meet phase objectives to avoid possible demotion. Such extension will be determined by the Department of Sentenced Offender Disposition; or

(B) receives a demotion in B phase, after the exit interview, in which case the 120-day deadline may be extended up to 30 days to allow the youth to regain phase B4. Such extension will be determined by the Department of Sentenced Offender Disposition.

(2) For Other Than Type A Violent Offenders. Youth who meet the program completion requirements for release to TYC parole under this rule must be released within 14 calendar days of the exit review, unless an extension has been granted beyond the 14 calendar days. Upon the approval by the appropriate director of juvenile corrections, additional time may be granted beyond the 14 calendar days, but not to exceed 30 calendar days from the exit review, to address serious concerns related to the well-being of the youth and/or the community.

(i) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the release.

§85.59. Program Completion for Sentenced Offenders Under Age 19.

(a) Purpose. The purpose of this rule is to establish criteria and approval process for release of youth upon program completion.

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not address disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(3) This rule does not apply to youth committed to TYC on indeterminate commitments. See §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders).

(4) This rule does not apply to the discharge of sentenced offenders to the Texas Department of Criminal Justice - (TDCJ). See §85.65 of this title (relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Expiration of Sentence), §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older) and §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(c) General Restrictions. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, discharge and disciplinary movement of sentenced offenders must be applied differently. Specifically:

(1) Classification. A youth classified at commitment as a sentenced offender shall retain a sentenced offender classification as long as the youth remains under the jurisdiction of TYC as a result of that commitment. The offense for which the youth received the determinate sentence will remain the youth's classifying offense until

the sentence has expired even if the youth's TYC parole is revoked following a Level I hearing. See §85.23 of this title (relating to Classification).

(2) Initial Placement. On initial placement, all sentenced offenders shall be assigned to high restriction facilities unless the deputy executive director waives such placement for a particular youth.

(d) General Requirements.

(1) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(2) Sentenced Offender Review. The Special Services Committee (SSC) shall evaluate the youth:

(A) six (6) months after admission to TYC;

(B) when the minimum period of confinement (MPC) is complete; and

(C) at other times as requested by the committee.

(3) A plan to minimize risk factors for re-offending shall be developed for each youth prior to release, unless youth is to be discharged.

(4) TYC shall comply with Chapter 57, Family Code and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(5) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(6) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(7) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to notify parents or guardians of any movement.

(8) Placement. Sentenced offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless the youth:

(A) is transferred to TDCJ-Institution Division in accordance with legal requirements or committing court approval. See §85.65 of this title; or

(B) is approved by the committing court to attain parole status prior to completion of serving the MPC; or

(C) sentence expires before the MPC.

(9) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when he/she is transferred to TDCJ (before or at age 21) or his/her sentence is complete (except as specified in subsection (d)(10) of this section).

(10) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:

(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a

youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, but the indeterminate commitment order will be given effect until normal discharge criteria are met.

(C) Both orders are given effect, i.e., the MPC under the determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently. The youth will not be considered for release until the minimum length of stay and the MPC has been completed.

(e) Program Completion Criteria.

(1) A sentenced offender youth whose offense was committed before September 1, 2005 will be eligible for a release from a high restriction facility to TYC parole (home or home substitute) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsections (f)-(i) of this section; and

(C) completion of the MPC; and

(D) the youth is currently assessed at Resocialization phase A4, B4, C4 with no objectives or sub-objectives under remediation; and

(E) for youth committed after April 1, 2005, completion of specialized treatment (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(2) A sentenced offender youth whose offense was committed on or after September 1, 2005, will be eligible for a release from a high restriction facility to TYC parole (home or home substitute) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsections (f)-(i) of this section; and

(C) completion of all but nine (9) months of his/her sentence if the youth's sentence expires before the MPC or upon completion of the MPC; and

(D) the youth is currently assessed at Resocialization phase A4, B4, C4 with no objectives or sub-objectives under remediation; and

(E) completion of specialized treatment (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(f) Decision Authority for Approval of Release. The final decision authority shall approve the youth's release upon a determination that the youth meets program completion requirements and the transition/release individual case plan (ICP) adequately addresses risk factors. The final decision authority for approval of release is:

(1) the deputy executive director, for Type 1 sentenced offenders; or

(2) the appropriate director of juvenile corrections, for Type 2 sentenced offenders.

(g) Phase Ineligibility.

(1) Remediation. Except as specified in subsection (h)(2) of this section, to maintain eligibility for release, a youth may receive only one remediation in Academic/Workforce Development (A) or Correctional Therapy (C) phase pursuant to §87.3 of this title (relating to Resocialization Phase Requirements and Assessment) at anytime after the exit interview. If the youth does not maintain A or C phase 4 objectives, the youth will be phase ineligible and will lose release eligibility pursuant to subsection (h) of this section.

(2) Demotion. Except as specified in subsection (h)(2) of this section, to maintain eligibility for release, a youth may only receive one demotion in Behavior (B) phase at anytime after the exit interview. If the youth does not regain B4 at the next phase assessment, the youth will be phase ineligible and will lose release eligibility pursuant to subsection (h) of this section.

(h) Loss of Release Eligibility.

(1) Except as described in paragraph (2) below, a youth who loses release eligibility will not be eligible for release until such time as the youth meets program completion criteria and a subsequent SSC exit interview confirms release eligibility. Eligibility for release is lost when any of the following occur after the exit interview:

(A) youth commits a Category 1 rule violation as confirmed through a due process hearing; or

(B) youth is phase ineligible as described in subsection (g) of this section.

(2) A youth whose offense was committed on or after September 1, 2005, and who is being considered for release nine (9) months prior to his/her sentence completion (pursuant to subsection (e)(2) of this section) will lose eligibility for release, and will remain in high restriction until his/her sentence has expired, when any of the following occur after the exit interview:

(A) youth commits a Category 1 rule violation as confirmed through a due process hearing; or

(B) youth receives a demotion of one or more phases in any Resocialization phase area; or

(C) youth is placed on remediation in A or C phase.

(i) Release Date. Youth who meet the program completion requirements for release to TYC parole under this rule must be released within 120 calendar days of the exit interview, unless a youth:

(1) is placed on remediation in A or C phase after the exit interview, in which case the 120-day deadline may be extended up to 30 days to allow the youth to meet phase objectives to avoid possible demotion. Such extension will be determined by the Department of Sentenced Offender Disposition; or

(2) receives a demotion in B phase after the exit interview, in which case the 120-day deadline may be extended up to 30 days to allow the youth to regain phase B4. Such extension will be determined by the Department of Sentenced Offender Disposition.

(j) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the release.

§85.61. Program Completion for Sentenced Offenders Age 19 or Older.

(a) Purpose. The purpose of this rule is to establish criteria and approval process for transferring a sentenced offender youth age 19 or older upon program completion to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD).

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not address disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(3) This rule does not apply to:

(A) youth committed to TYC on indeterminate commitments. See §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders);

(B) sentenced offenders who are under the age of 19. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19);

(C) sentenced offenders who have not met program completion criteria or whose sentence has expired. See §85.65 of this title (relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Expiration of Sentence).

(D) sentenced offenders adjudicated for capital murder. See §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(c) General Restrictions. Refer to §85.59 of this title for the list of general restrictions.

(d) General Requirements.

(1) The Special Services Committee (SSC) shall evaluate the youth:

(A) six (6) months after admission to TYC;

(B) when the minimum period of confinement (MPC) is complete;

(C) on or about the youth's 20th birthday to determine eligibility for transfer to TDCJ-Institution Division (TDCJ-ID) or TDCJ-PD; and

(D) at other times as requested by the committee.

(2) A plan to minimize risk factors for re-offending shall be developed for each youth prior to transfer to TDCJ-PD.

(3) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(4) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(5) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(6) Youth 18 or older must give consent to disclose any movement information to a parent.

(7) Placement. Sentenced offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless the youth:

(A) is transferred to TDCJ- ID in accordance with legal requirements or committing court approval. See §85.65 of this title; or

(B) is approved by the committing court to attain parole status prior to completion of serving the MPC; or

(C) sentence expires before the MPC.

(8) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when he/she is transferred to TDCJ or his/her sentence is complete (except as specified in subsection (d)(9) of this section).

(9) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:

(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, and the youth is discharged from the indeterminate commitment order upon completion of the indeterminate offense.

(C) The determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently. The youth will not be considered for transfer until the minimum length of stay and the MPC has been completed.

(e) Program Completion Criteria.

(1) A sentenced offender youth who is between age 19 and 21 in high restriction facilities will be transferred to TDCJ-PD (court approval is not required) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsections (f)-(g) of this section; and

(C) completion of the MPC; and

(D) the youth is currently assessed at Resocialization phase A4, B4, C4 with no main objectives or sub-objectives indicators under remediation; and

(E) for youth committed after April 1, 2005, successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(2) A sentenced offender youth in a high restriction facility whose offense was committed on or after September 1, 2005 and whose sentence expires before the MPC may be considered for transfer to TDCJ-PD (court approval is not required) when the following criteria have been met:

(A) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview;

(B) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsections (f)-(i) of this section;

(C) completion of all but nine (9) months of his/her sentence;

(D) the youth is currently assessed at Resocialization phase A4, B4, C4 with no objectives or sub-objectives under remediation; and

(E) completion of specialized treatment (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(f) Decision Authority for Approval of Transfer. Sentenced offender youth between age 19 and 21 shall not be transferred to TDCJ-PD until the final decision authority has determined that the youth meets program completion criteria and the transfer packet adequately addresses risk factors. The final decision authority is the deputy executive director.

(g) Phase Ineligibility.

(1) Remediation. Except as specified in subsection (h)(2) of this section, to maintain eligibility for transfer, a youth may receive only one remediation in Academic/Workforce Development (A) or Correctional Therapy (C) phase pursuant to §87.3 of this title (relating to Resocialization Phase Requirements and Assessment) at anytime after the exit interview. If the youth does not maintain A or C phase 4 objectives, the youth will be phase ineligible and will lose transfer eligibility pursuant to subsection (h) of this section.

(2) Demotion. Except as specified in subsection (h)(2) of this section, to maintain eligibility for transfer, a youth may only receive one demotion in Behavior (B) phase at anytime after the exit interview. If the youth does not regain B4 at the next phase assessment, the youth will be phase ineligible and will lose transfer eligibility pursuant to subsection (h) of this section.

(h) Loss of Transfer Eligibility.

(1) Except as described in paragraph (2) below, a youth who loses transfer eligibility will not be eligible to transfer until such time as the youth meets program completion criteria. Eligibility for transfer is lost when any of the following occur after the exit interview:

(A) youth commits a Category 1 rule violation as confirmed through a due process hearing; or

(B) youth is phase ineligible as described in subsection (g) of this section.

(2) A youth whose offense was committed on or after September 1, 2005, and who is being considered for transfer under subsection (e)(2) will lose eligibility for such a transfer, and will remain in high restriction until his/her sentence has expired, when any of the following occur after the exit interview:

(A) youth commits a Category 1 rule violation as confirmed through a due process hearing; or

(B) youth receives a demotion in B phase; or

(C) youth is placed on remediation in A or C phase.

(i) Transfer Date. Youth who meet the program completion requirements for transfer to TDCJ-PD under this rule must be transferred within 120 calendar days of the exit interview, unless a youth:

(1) is placed on remediation in A or C phase after the exit interview, in which case the 120-day deadline may be extended up to 30 days to allow the youth to meet phase objectives to avoid possible demotion. Such extension will be determined by the Department of Sentenced Offender Disposition; or

(2) receives a demotion in B phase after the exit interview, in which case the 120-day deadline may be extended up to 30 days to allow the youth to regain phase B4. Such extension will be determined by the Department of Sentenced Offender Disposition.

(j) Transfer Process to TDCJ-PD.

(1) TYC will submit the required documentation requesting a transfer of the offender to TDCJ-PD along with an adjudication form and a case summary, which includes recommendations for parole conditions within 30 days from the final decision authority transfer approval date.

(2) TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for parole within 90 days of receiving TYC's transfer notification.

(3) On receipt of the conditions from TDCJ, the TYC/TDCJ liaison will contact TDCJ-PD to confirm the transfer date, notify the sending facility of the parole conditions and the transfer date, coordinate the transfer process and make final arrangements for the discharge.

(4) TDCJ personnel will serve their Order of Transfer in person on the scheduled day, at which time the sentenced offender youth is transferred to the TDCJ-PD and discharged from the TYC.

(k) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the transfer.

§85.65. Discharge of Sentenced Offenders Upon Transfer to TDCJ or Expiration of Sentence.

(a) Purpose. The purpose of this rule is to establish criteria and an approval process for discharging sentenced offenders whose offense was other than capital murder, who has not met the Texas Youth Commission's (TYC) program completion criteria upon transferring to the Texas Department of Criminal Justice (TDCJ) or expiration of their sentence.

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule only applies to the disposition of the original determinate sentence.

(3) This rule does not address disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices).

(4) This rule does not apply to:

(A) sentenced offenders who completed the program completion criteria for transferring to TDCJ-Parole Division (TDCJ-PD), see §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older);

(B) sentenced offenders adjudicated for capital murder, see §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder); and

(C) the discharge of non-sentenced offenders, see §85.95 of this title (relating to Parole Completion and Discharge).

(c) General Restrictions. Refer to §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19) for the list of general restrictions.

(d) General Requirements.

(1) Sentenced offenders shall by law, be transferred from TYC's custody no later than the youth's 21st birthday.

(2) If a sentenced offender has been discharged due to expiration of sentence and subsequently recommitted to TYC, he/she shall be discharged based on the classification applicable to the new commitment order.

(3) The Special Services Committee (SSC) shall evaluate the youth six (6) months after admission to TYC, when the minimum period of confinement (MPC) is complete, on or about the youth's 20th birthday to determine eligibility for transfer to TDCJ-Institution Division (TDCJ-ID) or TDCJ-PD, and at other times as requested by the committee.

(A) The SSC agenda identifying sentenced offenders that are being considered for transfer to TDCJ-ID should be distributed among TYC staff within a reasonable time, prior to the scheduled SSC meeting.

(B) All TYC staff and volunteers should be given the opportunity to attend the SSC meeting and speak on the behalf of a youth.

(C) All TYC staff and volunteers must be informed (given written notice) that they may submit a written statement to be considered by the SSC and the local chief administrator (CLA).

(4) A plan to minimize risk factors for re-offending shall be developed for each youth prior to transfer to TDCJ-PD.

(5) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when he/she is transferred to TDCJ or his/her sentence has expired (except as specified in subsection (d)(6) of this section).

(6) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:

(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, and the youth is discharged from the indeterminate commitment order upon completion of the indeterminate offense.

(C) The determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently.

(7) Military Enlistment. Sentenced offenders may be allowed to enlist in the military while on TYC parole if certain conditions are met. A sentenced offender who is accepted for enlistment by the military will not be discharged from the determinate sentence until the sentence is complete. His/her TYC parole supervision will be conducted via phone calls, letters, and through face-to-face contacts

(when possible) until the sentence is completed. The following conditions must be met:

(A) the youth must be able to complete his/her sentence prior to his/her 21st birthday; and

(B) the youth must have complete 12 consecutive months on TYC parole prior to the enlistment date; and

(C) the youth must have been assigned to the minimum level of parole supervision for at least three (3) months consecutively prior to the enlistment date; and

(D) the youth must have no more than six (6) months left to serve on the sentence on the enlistment date; and

(E) the youth must reside in Texas at the time of enlistment.

(8) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(9) All residential programs transferring an undocumented foreign national youth to TDCJ must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(10) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(11) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(e) Transfer Criteria.

(1) Sentenced Offenders Whose Parole has been Revoked or Who have been Adjudicated or Convicted for a Felony Offense. TYC may request a juvenile court hearing for transfer to TDCJ-ID for a youth whose parole has been revoked or who have been adjudicated or convicted for a felony offense and the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has not completed his/her sentence; and

(C) youth's conduct indicates that the welfare of the community requires the transfer; and

(D) youth's conduct occurred while on parole status.

(2) Sentenced Offenders in High Restriction Transferring to TDCJ-ID. TYC may request a juvenile court hearing to transfer a sentenced offender in high restriction to TDCJ-ID if the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has spent at least six (6) months in a high restriction facility; and

(C) youth has not completed his/her sentence; and

(D) youth has met at least one of the following behavior criteria:

(i) youth has committed a felony or Class A misdemeanor; or

(ii) youth has committed Category I rule violations (on three or more occasions); or

(iii) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(iv) youth has demonstrated an inability to progress in his/her Resocialization Program due to persistent non compliance with treatment objectives; and

(E) alternative interventions have been tried without success. (For example: special treatment plans, disciplinary transfer, extended stay); and

(F) youth's conduct indicates that the welfare of the community requires the transfer.

(3) Sentenced Offenders in High Restriction Transferring to TDCJ-PD. A youth in high restriction, whose offense was other than capital murder, who has not completed transfer criteria as outlined in §85.61 of this title and who has not received court approval for transfer to TDCJ-ID, will be transferred to TDCJ-PD no later than the youth's 21st birthday to complete the sentence.

(4) Sentenced Offenders on TYC Parole Transferring to TDCJ-PD. Transfer from TYC parole (home or home substitute) to TDCJ-PD shall occur (court approval not required), no later than the youth's 21st birthday, if the youth has not completed his/her sentence.

(f) Discharge Criteria. A sentenced offender shall be discharged from TYC jurisdiction when one of the following occurs:

(1) expiration of the sentence imposed by the juvenile court unless under concurrent commitment orders as specified in subsection (d)(6) of this section. Time on the sentence includes the time spent in detention in connection with the committing case plus time spent at TYC under the order of commitment:

(A) Time spent in detention in connection with the committing case includes all time in detention from the time of arrest for the committing offense until admission to TYC, including pre-hearing detention for adjudication/disposition of the offense; or

(B) for modification of the disposition, but excluding detention time that is ordered as a condition of probation; or

(2) the youth meets transfer criteria to TDCJ as set forth in this rule.

(g) Decision Authority for Approval to Transfer.

(1) A youth shall not be transferred from high restriction to TDCJ-PD until the final TYC decision authority has determined that the youth's plan adequately addresses risk factors to minimize re-offending. The final TYC decision authority is the deputy executive director.

(2) A youth shall not be transferred from high restriction to TDCJ-ID until the final TYC decision authority has determined that the youth meets transfer criteria.

(3) When a determination has been made that the youth meets transfer criteria to TDCJ, the final TYC decision authority approves the request for a hearing by the committing juvenile court to transfer the youth to TDCJ-ID or approves the transfer process to TDCJ-PD.

(4) The final transfer approval authority for transfer to TDCJ-ID is the committing juvenile court.

(h) Transfer Process.

(1) Transfer Process to TDCJ-ID.

(A) Following the committing court's decision to transfer a sentenced offender to TDCJ-ID, upon receipt of a signed order of transfer, the youth is returned to the assigned program location and then transported to TDCJ-ID.

(B) The youth will be transported to the diagnostic unit at TDCJ in Huntsville, Texas. The TYC court liaison in Central Office will provide the address or location to the diagnostic unit, if needed.

(C) Upon transfer to TDCJ-ID, the youth may only bring the following personal property items to TDCJ-ID:

(i) Bible/Other Religion Text--some offenders write addresses and telephone numbers in it since they cannot take separate paper into TDCJ-ID.

(ii) Trust fund--offender must use TDCJ personal property envelopes. Use the TDCJ Inmate Trust Fund form, ITF-16 (available through TDCJ) when sending offender's trust fund after the offender has already been transported to TDCJ-ID. The guards at the Diagnostic Unit can provide the Inmate Trust Fund form, ITF-16, if needed.

(2) Transfer Process to TDCJ-PD.

(A) TYC will submit the required documentation requesting a transfer of the offender to TDCJ-PD along with an adjudication form and a case summary, which includes recommendations for parole conditions within 30 days from the final approval date.

(B) TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for parole within 90 days of receiving TYC's transfer notification.

(C) On receipt of the conditions from TDCJ, the TYC/TDCJ liaison will contact TDCJ-PD to confirm the transfer date, notify the sending facility of the parole conditions and the transfer date, coordinate the transfer process and make final arrangements for the discharge.

(D) TDCJ personnel will serve their Order of Transfer in person on the scheduled day, at which time the sentenced offender youth is transferred to the TDCJ-PD and discharged from the TYC.

(i) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the discharge.

§85.69. Program Completion for Sentenced Offenders Adjudicated for Capital Murder.

(a) Purpose. The purpose of this rule is to establish criteria and an approval process for transferring, upon program completion, sentenced offenders adjudicated for capital murder to the Texas Department of Criminal Justice-Parole Division (TDCJ-PD) or the Texas Department of Criminal Justice-Institutions Division (TDCJ-ID).

(b) Applicability.

(1) Definitions pertaining to this rule are under §85.51 of this title (relating to Definitions).

(2) This rule does not apply to:

(A) disciplinary movements. See Chapter 95, Subchapter A of this title (relating to Disciplinary Practices);

(B) sentenced offender youth adjudicated for any offense other than capital murder. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19) and §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older).

(c) General Restrictions. Refer to §85.59 of this title for the list of general restrictions.

(d) General Requirements.

(1) TYC shall not accept the presence of a detainer as an automatic bar to earned release. The agency shall release a youth to authorities pursuant to a warrant.

(2) The Special Services Committee (SSC) shall evaluate the youth six (6) months after admission to TYC, when the minimum period of confinement (MPC) is complete, on or about the youth's 20th birthday to determine eligibility for transfer to TDCJ-ID or TDCJ-PD, and at other times as requested by the committee.

(A) The SSC agenda, identifying sentenced offender youth that are being considered for transfer to TDCJ-ID, should be distributed among TYC staff within a reasonable time prior to the scheduled SSC meeting.

(B) All TYC staff and volunteers should be given the opportunity to attend the SSC meeting and speak on the behalf of a youth, if they are inclined to do so, and a brief summary of their testimony should be included in the SSC minutes.

(C) All TYC staff and volunteers must be informed (given written notice) that they may submit a written statement to be considered by the SSC and the local chief administrator (CLA).

(3) A plan to minimize risk factors for re-offending shall be developed for each youth prior to transferring to TDC-PD.

(4) TYC shall comply with Chapter 57, Family Code, and Article 56.02, Code of Criminal Procedure, regarding victim notification. Refer to §81.35 of this title (relating to Rights of Victims).

(5) All residential programs releasing an undocumented foreign national youth must notify Immigration and Customs Enforcement (ICE). Refer to §85.79 of this title (relating to Parole of Undocumented Foreign Nationals) for procedures.

(6) TYC shall comply with the Sex Offender Registration Program, pursuant to Chapter 62, Code of Criminal Procedure, regarding youth who are subject to sex offender registration. Refer to §87.85 of this title (relating to Sex Offender Registration).

(7) Parents or guardians of youth under the age of 18 will be notified of all movements. Youth 18 or older must give consent to disclose any movement information to a parent.

(8) Minimum Period of Confinement (MPC). The MPC is ten (10) years for youth sentenced for capital murder or completion of the sentence, whichever occurs first.

(9) Placement. Sentenced offenders shall serve the entire MPC applicable to the youth's classifying offense in high restriction facilities unless the youth is:

(A) transferred to TDCJ-ID in accordance with legal requirements or committing court approval. See §85.65 of this title (relating to Discharge of Sentenced Offenders Upon Transfer to TDCJ or Completion of Sentence); or

(B) approved by the committing court to attain parole status prior to completion of serving the MPC for youth whose offense committed before September 1, 2003; or

(C) approved by the executive director to attain parole status prior to completion of MPC for youth whose offense committed on or after September 1, 2003.

(10) Jurisdiction Termination. TYC jurisdiction shall be terminated and a sentenced offender discharged when the youth is

transferred to TDCJ (prior to age 21) or his/her sentence is complete (except as specified in subsection (d)(11) of this section).

(11) Concurrent Commitments. In the event that a youth is committed to TYC under concurrent determinate sentence and indeterminate commitment orders, both commitment orders will be given effect, with the determinate sentence order having precedence. Other exceptions are as follows:

(A) The youth will be classified and managed as a sentenced offender until such time as the determinate sentence order is completed or TYC jurisdiction expires, whichever occurs first. If a youth's determinate sentence is complete prior to the expiration of TYC jurisdiction, the youth will be newly classified in accordance with the classifying offense associated with the indeterminate commitment.

(B) The youth is discharged from the determinate sentence order upon completion of the determinate sentence, and the youth is discharged from the indeterminate commitment order upon completion of the indeterminate offense.

(C) The determinate sentence and the minimum length of stay associated with the indeterminate commitment will run concurrently.

(e) Release/Transfer Criteria. A sentenced offender youth adjudicated for capital murder in a high restriction (prior to the completion of the MPC) will be transferred to TDCJ-PD/TDCJ-ID or may be released to TYC parole.

(1) Youth Whose Offense was Committed Before September 1, 2003.

(A) TYC will request a hearing by the committing juvenile court with a recommendation to transfer to TDCJ-PD, if a youth (before age 20.6) meets the following criteria:

(i) no confirmed Category I rule violations through a due process hearing, within 90 days prior to the SSC exit interview; and

(ii) no confirmed Category I rule violations through a due process hearing during the approval process as outlined in subsection (f) of this section; and

(iii) completion of three (3) years toward the MPC; and

(iv) the youth is currently assessed at Resocialization phase A4,B4,C4 with no main objectives or sub-objectives indicators under remediation.

(B) If the youth does not meet the criteria in subsection (e)(1)(A)(i-iv), TYC will request a hearing by the committing juvenile court with a transfer recommendation to either TDCJ-PD or TDCJ-ID when the youth reaches the age of 20.6.

(C) A youth who has not received court approval to transfer to TDCJ-PD will be transferred to TDCJ-ID no later than the youth's 21st birthday.

(2) Youth Whose Offense was Committed On or After September 1, 2003.

(A) Release to TYC Parole (Before Age 19). A youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003 may be released to TYC parole without court approval if the youth meets criteria listed in subsection (e)(1)(A)(i-iv) and, for youth committed after April 1, 2005, successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director

for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(B) Transfer to TDCJ-PD (After Age 19).

(i) A youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003 may be transferred to TDCJ-PD without court approval if the youth meets criteria listed in subsection (e)(1)(A)(i-iv) and, for youth committed after April 1, 2005, successful completion of specialized treatment for Priority 1 youth (unless this requirement is waived by the assistant deputy executive director for rehabilitation services and the assistant deputy executive director for juvenile corrections).

(ii) A youth who was sentenced for capital murder where the offense was committed on or after September 1, 2003 who does not meet transfer criteria listed in subsection (e)(1)(A)(i-iv) including completion of specialized treatment will remain in high restriction until age 21. No later than the youth's 21st birthday, he/she will be transferred to TDCJ-PD without court approval.

(3) For Transferring to TDCJ-ID (Before Age 21). TYC may request a court hearing regardless of when the youth's offense was committed and no later than the youth's 21st birthday if the following criteria have been met:

(A) youth is at least age 16; and

(B) youth has spent at least six (6) months in a high restriction facility; and

(C) youth has not completed his/her sentence; and

(D) youth has met at least one of the following behavior criteria:

(i) youth has committed a felony or Class A misdemeanor while assigned to residential placement; or

(ii) youth has committed Category I rule violations (on three or more occasions); or

(iii) youth has engaged in chronic disruption of program (five security admissions or extensions in one month or ten in three months); or

(iv) youth has demonstrated an inability to progress in his/her Resocialization program due to persistent non compliance with treatment objectives; and

(E) alternative interventions have been tried without success. (For example: special treatment plans, disciplinary transfer, extended stay); and

(F) youth's conduct indicates that the welfare of the community requires the transfer.

(f) Decision Authority.

(1) The executive director (final TYC decision authority) must:

(A) determine if youth, before age 21, whose offense was before September 1, 2003 meets criteria under this rule for release to TYC parole or transfer to TDCJ-PD; or

(B) determine if youth, before age 21, meets criteria under this rule for transfer to TDCJ-ID; and

(C) approve the request for a hearing by the committing juvenile court to release youth to TYC parole or transfer to TDCJ-PD/TDCJ-ID.

(2) The committing juvenile court is the final decision authority for releasing to TYC parole or transferring to TDCJ-PD for youth whose offense was before September 1, 2003.

(3) If the youth's offense was committed before September 1, 2003, the youth will be transferred to TDCJ-ID upon receipt of the committing juvenile court order no later than the youth's 21st birthday. Court approval is required.

(4) The final TYC decision authority does not have to request a hearing for youth whose offense was on or after September 1, 2003 to be released to TYC parole or transferred to TDCJ-PD.

(g) Transfer Process.

(1) Transferring to TDCJ-PD.

(A) TYC will submit the required documentation requesting a transfer of the offender to TDCJ-PD along with an adjudication form and a case summary, which includes recommendations for parole conditions.

(B) TDCJ will process the information and forward to the Texas Board of Pardons and Paroles who will set the conditions for parole or transfer within 90 days of receiving TYC's transfer notification.

(C) On receipt of the conditions, the TYC/TDCJ liaison will contact TDCJ-PD to confirm the transfer date, notify the sending facility of the parole conditions and the transfer date, coordinate the transfer process and make final arrangements for the discharge.

(D) TDCJ personnel will serve their Order of Transfer in person on the scheduled day, at which time the sentenced offender youth is transferred to the TDCJ-PD and discharged from the TYC.

(2) Transferring to TDCJ-ID.

(A) Following the committing court's decision to transfer a sentenced offender to TDCJ-ID, the youth is returned to the assigned program location and then transported to TDCJ-ID.

(B) The youth will be transported to the diagnostic unit at TDCJ in Huntsville, Texas. The TYC court liaison in Central Office will provide the address or location to the diagnostic unit, if needed.

(C) Upon transfer to TDCJ-ID, the youth may only bring the following personal property items to TDCJ-ID:

(i) Bible/Other Religion Text--some offenders write addresses and telephone numbers in it since they cannot take separate paper into TDCJ-ID;

(ii) Trust fund--offender must use TDCJ personal property envelopes. Use the TDCJ Inmate Trust Fund form, ITF-16 (available through TDCJ) when sending offender's trust fund after the offender has already been transported to TDCJ-ID. The guards at the Diagnostic Unit can provide the Inmate Trust Fund form, ITF-16, if needed.

(h) Notification. TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved no later than ten (10) calendar days prior to the discharge.

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 17, 2005.

TRD-200504630
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: November 27, 2005
For further information, please call: (512) 424-6301



37 TAC §§85.55, 85.59, 85.61, 85.65, 85.69

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

The repeals are proposed under the Human Resources Code, §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

- §85.55. *Program Completion for Other Than Sentenced Offenders.*
- §85.59. *Program Completion for Sentenced Offenders Under Age 19.*
- §85.61. *Program Completion for Sentenced Offenders Age 19 or Older.*
- §85.65. *Transfer of Sentenced Offenders to TDCJ-ID.*
- §85.69. *Program Completion for Sentenced Offenders Adjudicated for Capital Murder.*

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

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Dwight Harris
Executive Director
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SUBCHAPTER E. PAROLE PLACEMENT AND DISCHARGE

37 TAC §85.95

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

The repeal is proposed under the Human Resources Code, §61.034, which provides TYC the authority to make rules appropriate to the proper accomplishment of its functions.

§85.95. *Discharge/Transfer of Custody.*

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 17, 2005.

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37 TAC §85.95

The new rule is proposed under the Human Resources Code, §61.081, which provides the commission with the authority to resume the care and custody of any youth released under supervision at any time before discharging the youth; and §61.075, which provides the commission with the authority to discharge a youth to best serve the youth's welfare and the protection of the public.

The proposed rule affects the Human Resources Code, §61.034.

§85.95. Parole Completion and Discharge.

(a) Purpose. The purpose of this rule is to establish criteria for discharge from agency jurisdiction for any youth committed to the Texas Youth Commission (TYC).

(b) Applicability. This policy does not apply to the sentenced offenders, see §85.65 of this title (relating Discharge of Sentenced Offenders Upon Transfer to TDCJ or Expiration of Sentence).

(c) Discharge Criteria.

(1) Discharge Due to Completion of Parole.

(A) For General Offenders.

(i) A youth whose most serious classification under the current commitment order(s) is general offender shall be discharged when the youth:

(I) has completed the initial six (6) months on parole status;

(II) has had no delinquency adjudications or criminal convictions during the initial six (6) month period;

(III) has no pending delinquency petitions or criminal charges;

(IV) has completed the minimum surveillance level requirements;

(V) has completed the parole phase of Resocialization; and

(VI) has completed the required constructive activities.

(ii) A youth whose most serious classification under the current commitment order(s) is general offender and does not meet the criteria listed in subsection (c)(1)(A)(i) shall be discharged when he/she:

(I) completes nine (9) consecutive months on parole status;

(II) has had no delinquency adjudications or criminal convictions during the nine (9) consecutive month period;

(III) has no pending delinquency petitions or criminal charges;

(IV) has completed the minimum surveillance level requirements;

(V) has completed the parole phase of Resocialization; and
(VI) has completed the required constructive activities.

(B) For Chronic Serious Offender, Controlled Substances Dealer and Firearms Offender.

(i) A youth whose most serious classification is chronic serious offender, controlled substances dealer or firearms offender under the current commitment order(s) shall be discharged when the youth:

(I) has completed the initial six (6) months on parole status;

(II) has had no delinquency adjudications or criminal convictions during the initial six (6) month period;

(III) has no pending delinquency petitions or criminal charges;

(IV) has completed the minimum surveillance level requirements;

(V) has completed the parole phase of Resocialization; and

(VI) has completed the required constructive activities.

(ii) A youth whose most serious classification is chronic serious offender, controlled substances dealer or firearms offender under the current commitment order(s) and does not meet the criteria listed in subsection (c)(1)(B) shall be discharged when he/she:

(I) has completed the 12 consecutive months on parole status;

(II) has had no delinquency adjudications or criminal convictions during the 12 consecutive month period;

(III) has no pending delinquency petitions or criminal charges;

(IV) has completed the minimum surveillance level requirements;

(V) has completed the parole phase of Resocialization; and

(VI) has completed the required constructive activities.

(C) For Type B Violent Offenders. A youth whose most serious classification is Type B violent offender under the current commitment order(s) shall be discharged when the youth:

(i) has completed 12 consecutive months on parole status;

(ii) has had no delinquency adjudications or criminal convictions during the 12 consecutive month period;

(iii) has no pending delinquency petitions or criminal charges;

(iv) has completed the minimum surveillance level requirements;

(v) has completed the parole phase of Resocialization; and

(vi) has completed the required constructive activities.

(2) Discharge Due to Age.

(A) For Type A Violent Offenders. Youth whose most serious classification is a Type A violent offender shall be discharged on:

(i) the day before the 21st birthday, if the youth is assigned to a residential placement; or

(ii) the last working day prior to the 21st birthday, if the youth is assigned to a non-residential placement.

(B) For All Other Classifications.

(i) A youth whose most serious classification is either general offender, Type B violent offender, chronic serious offender, controlled substances dealer, or firearms offender under the current commitment order(s) shall be discharged when the youth:

(I) completes 30 days on parole status after the youth turns 20.6 years of age;

(II) receives two (2) face-to-face contacts within the 30 day period listed in subclause (I) of this clause; and

(III) no pending criminal charges.

(ii) If such a youth does not meet the criteria listed in clause (i) of this subparagraph above, the youth shall be discharged on:

(I) the day before the 21st birthday, if the youth is assigned to a residential placement; or

(II) the last working day prior to the 21st birthday, if the youth is assigned to a non-residential placement.

(3) Special Circumstances.

(A) Youth of any classification except sentenced offender may be discharged prior to completion of parole requirements to enlist in the military. The executive director must approve such discharge.

(B) Youth placed out of the state who are of any classification except sentenced offender may be discharged when requested by the placement state for satisfactory adjustment or when court action is taken by the placement state in accordance with §85.85 of this title (relating to Interstate Compact for TYC Youth). The assistant deputy executive director for juvenile corrections must approve such discharge.

(C) Youth who have completed length of stay requirements and who are unable to progress in the agency's rehabilitation program because of mental illness or mental retardation may be discharged as specified in §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth). The assistant deputy executive director for rehabilitation services must approve such discharge.

(D) Youth of any classification except sentenced and Type A violent offender who are age 18 or older may be discharged prior to completion of parole requirements in order to obtain appropriate services. The executive director must approve such discharge.

(E) Youth may be discharged for special circumstances, other than those addressed in subsection (d)(3)(A)-(D) of this section, upon the executive director's approval.

(4) Other Types of Discharges.

(A) Youth of any classification except sentenced offender and Type A violent offender shall be discharged under the following circumstances:

(i) placement on adult probation for conduct which occurred while on TYC parole status; or

(ii) sentenced for a minimum of six (6) months in a state or county jail as part of the disposition of a criminal case.

(B) Youth of any classification shall be discharged:

(i) if the court orders the reversal of the commitment; or

(ii) upon closing of records following a youth's death or recommitment.

(C) Youth of any classification except sentenced offender shall be discharged when sentenced or transferred to Texas Department of Criminal Justice- Institutional Division (TDCJ-ID).

(d) Notification.

(1) A youth's primary service worker (PSW) shall immediately notify the youth of the discharge. The PSW shall provide the youth a written explanation on procedures for sealing records utilizing the Sec. 58.003 Sealing of Files and Records form and a copy will be provided to the parent/guardian or custodian.

(2) TYC will notify the committing juvenile judge, the prosecuting attorney, parole officer, and the county chief juvenile probation officer in the county to which the youth is being moved not later than ten (10) calendar days prior to the discharge.

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

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Dwight Harris

Executive Director

Texas Youth Commission

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CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.1

The Texas Youth Commission (the commission) proposes an amendment to §87.1, concerning Case Planning. The amendment to the section will include an updated reference number and delete a definition that is not used within the rule.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be the availability of an up-to-date policy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which authorizes the commission to make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§87.1. Case Planning.

(a) (No change.)

(b) Definitions.

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

~~[(4) Phase Assessment Team (PAT)—a team of staff consisting of the PSW, an educator and the juvenile correctional officer supervisor to facilitate, assess and document each youth's progress through the Resocialization program.]~~

(c) Case Planning.

(1) An ICP will be developed with and for each youth by the PSW. The plan will be updated monthly. The plan will be developed in accordance with the Resocialization program and identified needs and strengths and must specify measurable objectives, expected outcomes and a means to evaluate progress. See §87.2 [(GAP) §87.3] of this title (relating to Resocialization Program).

(2) - (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.

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Dwight Harris

Executive Director

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CHAPTER 91. PROGRAM SERVICES

SUBCHAPTER A. BASIC SERVICES

37 TAC §91.7

The Texas Youth Commission (the commission) proposes an amendment to §91.7, concerning Youth Personal Property. The amendment to the section will add a reference on how to dispose of contraband money and clarify that care, custody or control of prohibited items is considered possession of contraband.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be a constructive environment conducive to the youth's rehabilitation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.045, which provides the commission with the authority to limit and restrict personal property of youth while in a residential placement.

The proposed rule affects the Human Resources Code, §61.034.

§91.7. Youth Personal Property.

(a) (No change.)

(b) Applicability. ~~Contraband or other unauthorized possessions are disposed of according to (GAP) §97.11 of this title (relating to Control of Unauthorized Items Seized).~~

(1) Contraband items other than contraband money will be disposed of in accordance with §97.11 of this title (relating to Control of Unauthorized Items Seized).

(2) Contraband money as defined in subsection (d)(7) of this section will be disposed of in accordance with §95.11 of this title (relating to Disciplinary Consequences).

(c) General Requirements.

(1) [(e)] The Texas Youth Commission (TYC) assessment center shall prohibit youth possessing personal property except for medically necessary items. All personal property except for medically necessary items, will be inventoried, receipted and returned to the person transporting the youth to the facility to be returned to the youth's home. The county transporter is responsible for ensuring that all personal items are returned to the youth's home.

(2) [(d)] Other residential programs may prohibit youth from possessing personal property except for medically necessary items, personal letters, and photographs that are otherwise acceptable. Programs may allow youth to possess limited personal property consistent with the program's privilege system and/or interaction in the community in accordance with ~~[(GAP)]~~ §93.1 of this title (relating to Basic Youth Rights).

(d) [(e)] Prohibited Items/Contraband. Possession (care, custody or control) of the following items [The following lists of items] are prohibited and will be considered contraband within a TYC operated or contract residential facility.

(1) Any item which is a crime to possess under municipal ordinances or state or federal law, including solvent inhalants, drugs, and alcohol.

(2) Unauthorized possession of prescription drugs or over the counter medication. For example: medication not prescribed to the youth, or in excess of the amount prescribed to the youth, or without the consent or knowledge of staff, or at an unauthorized time, etc.

(3) Narcotics paraphernalia.

(4) Items that can be used, made, or adapted to use as weapons against self or others.

(5) Pictures or drawings that depict exploitive or sexually explicit male or female nudity or partial nudity or sexual acts, including magazines or periodicals, which routinely publish such pictures. No forms of nudity will be allowed to be posted.

(6) Any items with slogans, mottos or emblems which are obscene, advocate illegal or immoral conduct, hold individuals or groups up to ridicule, advocate violence, or reinforce delinquent subcultural values, or in any way disrupt programs or activities, including but not limited to posters, pictures, magazines, periodicals, or clothing.

(7) Money in excess of the amount or not in a form permitted by facility rules.

(8) Gambling paraphernalia (dice, playing cards, etc.).

(9) Devices which have been fashioned to produce tattoos.

(10) Any item not listed on the youth's Personal Property and Clothing Inventory form, CCF-510 (other than personal letters or photographs).

(e) [(f)] Due to space limitations, youth may be restricted to possessions that will fit in their designated storage space in a neat and orderly manner. This includes letters, pictures, books and magazines.

(1) The amount of space a youth has to store personal belongings will be left up to the facility, dependent on local issues such as the configuration of the dorm.

(2) No youth will be denied the right to possess what the agency allows based on inadequate storage space; however, local administration may limit the number or amount of these items based on space limitations.

(f) [(g)] Youth with a documented history of self-injury may have restricted access to certain possessions otherwise authorized under this policy that might be used to cause themselves harm. These restrictions will be made on an individual basis and documented in the youth's Individual Case Plan (ICP).

[(h) Unauthorized possessions will be returned to the youth's parents or guardian.]

(g) [(h)] A program is neither liable for nor will replace lost, stolen or damaged personal items of youth unless loss or damage can be shown to have resulted from staff negligence.

(h) [(j)] An inventory of any personal property or clothing a youth is allowed to possess will be established and maintained. Any item not listed on this inventory will be considered contraband and disposed of according to ~~[(GAP)]~~ §97.11 of this title.

(i) [(k)] Any personal property or clothing a youth is allowed to possess will move with the youth to each assigned placement.

(j) [(h)] Youth may not give, take, borrow, steal, barter, or trade possessions with other youth.

(k) [(m)] A youth who escapes shall be considered to have abandoned his property. The administrator will notify the youth and his or her parents, head of household, or managing conservator of the inventory of property and that the property will be disposed of in 30 days unless shipping COD is authorized. If authorization is given, all property is shipped COD by the least expensive means available. If after 30 days in storage the property has not been demanded, then the property is disposed of. Should a youth subsequently return from an escape, reasonable efforts will be made to return any property remaining

at the facility. However, a youth shall not be entitled to compensation for any loss or damage caused by disposition or shipping of property in accordance with this procedure.

(l) ~~[(n)]~~ Parents and youth will be notified in writing of the rules relating to personal possessions.

(m) ~~[(o)]~~ TYC Operated Institutions. With the exception of the TYC assessment center, youth in TYC operated institutions will be allowed or denied the following possessions in accordance with the standards outlined in this policy.

(1) Clothes and Shoes.

(A) Dress code requirements will be based upon the youth's progress in the agency's established treatment program in order to easily identify a youth's phase, and in order to enhance the youth's incentive to participate in such program. Facilities will provide all youth with standardized clothing.

(B) Youth on phases III and IV will be provided with clothing that reflect their success in the Resocialization program. Each facility will develop a local policy specifying dress code requirements. At a minimum, youth on phase III and IV will be provided with blue jeans or khaki pants that fit properly, and youth on phase IV will be provided with collared shirts. Facilities where youth wear military attire are exempt from this requirement.

(C) Youth of all phases will be provided with standard shoes. Phase III and IV youth will be allowed to possess one pair of their own tennis shoes. Shoes must be black, white, or black and white. Shoes may be purchased with money from the youth's student trust fund, either through a commissary or through store runs. The family may provide shoes to the youth only if they are shipped directly from the store, in an effort to prevent contraband from entering the facility. Shoes will not be provided by the family at visitation.

(D) Facilities may allow youth to possess additional appropriate clothing to wear to off-campus privileges such as community jobs or school. Personal clothing for these purposes will be either provided by the facility or purchased with money from the youth's trust fund. The family may provide this clothing to the youth only if they are shipped directly from the store, in an effort to prevent contraband from entering the facility.

(E) If a youth loses a phase, the youth may be allowed to keep personal clothing/shoes in his/her possession. However, the youth will not be allowed to wear the clothing/shoes until he/she has achieved the required phase again.

(F) Youth of any phase will be allowed to possess personal shoes if they are medically necessary; however, the facility may choose to provide this to the youth in lieu of the family.

(2) Jewelry. Because jewelry represents a risk to facility safety (e.g. items may be used as a weapon or may injure staff/student during a restraint), youth are not allowed to possess any jewelry.

(3) Watches. To provide an incentive to participate and progress in the agency's Resocialization program, phase III and IV youth will be provided a personal inexpensive watch, preferably provided by the Volunteer Council or purchased by the facility using money from the Student Benefit Fund.

(4) Foods.

(A) As food on the dorm has demonstrated to be a risk to sanitary living conditions, youth are not allowed to have personal food items in their possession.

(B) Facilities will provide vending machines or a commissary in the visitation area accessible to visitors to purchase food and drinks for youth and families to consume during visitation only.

(C) There will not be a limit to the amount of money brought into the facility by the family for use in the commissary or vending machines.

(D) Family members may not bring food to visitation, and youth will not be allowed to take food away from visitation, nor will they be allowed to receive food through the mail.

(5) Hygiene Products and Makeup.

(A) Facilities will provide appropriate and adequate hygiene products to all youth.

(B) To provide an incentive to participate and progress in the agency's Resocialization program, phase IV youth will be allowed to possess the following individually-purchased personal hygiene products: Bar soap, shampoo, toothpaste and toothbrush, deodorant, lotion, and/or hair products.

(C) Females will be allowed to possess and wear makeup based upon the youth's progress in the agency resocialization program in an effort to:

(i) encourage youth to maintain a pro-social appearance and increased self-respect;

(ii) provide TYC an opportunity to teach girls personal grooming skills such as how to apply makeup appropriately to avoid an anti-social or deviant appearance; and

(iii) provide an incentive for youth to progress through the agency's rehabilitation program.

(D) Phase II female youth will also be allowed to possess and wear facility-provided lip-gloss, and personal pressed powder.

(E) Phase III female youth will be allowed to possess and wear facility-provided lip-gloss, as well as personal pressed powder, blush, mascara (non-waterproof brown or black only), and facial moisturizer (tinted or non-tinted).

(F) Phase IV female youth will be allowed to possess and wear facility-provided lip-gloss, as well as personal pressed powder, blush, mascara (non-waterproof brown or black only), facial moisturizer (tinted or non-tinted), lipstick, and base (in a compact, stick form, or plastic container only).

(G) Tweezers will be provided to girls at all phases to groom their eyebrows / facial hair. However, the youth will have only controlled access, and shared tweezers will be sterilized between uses. Any youth may be prohibited access to tweezers if there is concern that the youth will use the tweezers inappropriately. This restriction will be documented on the youth's ICP.

(6) Restrictions on the Use of Makeup.

(A) For sanitary reasons, makeup may not be shared among youth.

(B) Girls may lose the privilege of wearing makeup while on restriction for category I or II rule violations.

(C) Girls on the Corsicana Stabilization Unit may not wear makeup.

(D) Boys will not be allowed access to makeup for safety issues (violating the social norms would leave the boys vulnerable to ridicule and/or harassment).

(E) Youth will not be allowed to possess any talcum powder, aerosol products, or products in glass containers or cans. The following types of makeup will be prohibited: Lip liner pencils, eye-liner (liquid or pencil), eye shadow (cream, powder or pencil), eye-brow pencil, eyelash curler, loose powder, waterproof cosmetics, and nail polish. Institution administrators may place local restrictions on certain types or brands of hygiene products based on safety concerns, e.g. alcohol content, toxicity, etc.

(7) Youth of any phase will be allowed to possess additional hygiene products deemed medically necessary. Facial cleanser will be supplied to youth as needed/as appropriate to remove cosmetics and/or control acne.

(8) Makeup and other hygiene products may be controlled by staff and issued only at times the youth are in need of them.

(9) Obtaining Clothing, Shoes, makeup and Hygiene Products.

(A) Personal clothing for off-campus privileges, shoes, makeup and other hygiene products may be purchased by the youth through a local commissary or purchased by the facility on the youth's behalf, using money from the youth's student trust fund.

(B) Youth will be allowed to receive phase-appropriate shoes or clothing through the mail, only if it is shipped directly from the store. These items will be searched for contraband by staff in the presence of the youth and placed on the youth's inventory the day they are received.

(C) If a facility chooses to purchase these items on the youth's behalf, a local procedure shall be outlined to include a standard approval procedure and proper accounting procedures. Staff shall not take money directly from youth for this purpose.

(D) No more than one of a particular hygiene product will be kept by the youth at any one time.

(10) Youth may possess personal magazines, books or other publications; however, the policy on contraband will limit the content. The youth will be limited in the number or the amount of publications based on storage space limitations, and based on what the local fire marshal will allow (e.g. three books, four publications, etc).

(11) In order to encourage and assist youth in concentrating on learning and practicing their Resocialization skills and goals, youth will not be allowed to possess radios, stereos, cassette tapes, computer diskettes, compact discs, cell phones, batteries, walkmans, television sets, or other electronic equipment with the following exception outlined below.

(A) As an incentive to participate and progress in the agency's Resocialization program, Phase III and IV youth will possess their own (or have access to) battery-operated personal radios and/or tape players (e.g. Walkmans). The radios and/or tape players/tapes will preferably be provided by the volunteer council or purchased with money from the Student Benefit Fund. The youth may not receive electronics or music through the mail or through visitation.

(B) Youth will only be allowed to use the radios or tape players during designated free time.

(C) TYC will provide batteries.

(D) In facilities that can access radio stations in the dorm, the youth will be provided only radios. In facilities that cannot access radio stations inside the dorm, the youth will be provided with tape players and tapes.

(E) CD's and CD players will not be allowed.

(12) Youth may not possess any item that is not expressly allowed in TYC policy.

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 17, 2005.

TRD-200504634

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 27, 2005

For further information, please call: (512) 424-6301



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.8

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 800 relating to General Administration:

Subchapter A, General Provisions, §800.8

PURPOSE, BACKGROUND, AND AUTHORITY

EXPLANATION OF INDIVIDUAL PROVISIONS

IMPACT STATEMENTS

PURPOSE, BACKGROUND, AND AUTHORITY

The Commission proposes a new rule relating to suspension of rules. The purpose of the rule is to allow the Commission to suspend rules in order to ensure timely and appropriate administration of the Commission's employment and training and unemployment insurance services.

In August and September 2005, two extraordinary natural disasters, Hurricanes Katrina and Rita, unexpectedly impacted Texas residents, property, and resources. Both were declared major disasters by President Bush. On September 20, 2005, the Governor of Texas certified that Hurricane Rita posed a threat of immediate disaster along the Texas Gulf Coast and authorized implementation of all necessary and appropriate public measures to respond to the threat. The disasters resulted in thousands of individuals evacuating from Louisiana to Texas, the flooding of thirteen eastern Texas counties, the complete destruction of the infrastructure of several communities, and have prevented many affected persons from receiving Agency services and left tens of thousands in need of Agency services.

The Commission believes that the imminent peril to the public health, safety, and welfare posed by the two hurricanes requires that the Commission have the flexibility to suspend specific rules that are unmistakably inapplicable or unenforceable for compliance in an urgent public emergency. The new rule allows the

Commission to respond immediately and effectively to a public emergency or imperative public necessity, while continuing to provide unimpeded services.

Furthermore, the proposed new rule provides that the Commission will suspend a rule only after it finds a public emergency or imperative public necessity, and only after the Commission finds that the suspension will best serve the public health, safety, or welfare. The Commission believes that this language is appropriate and necessary to respond to unforeseen circumstances and emergency situations. The Commission will suspend, in open meeting, only those rules whose suspension will best serve the public health, safety, or welfare and will not suspend any rule that merely restates federal statute or regulation or state statute that is beyond the Commission's authority to suspend or defer.

EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

800.8. Suspension of Rules

The Commission proposes adding new §800.8, Suspension of Rules, which provides the Commission with the authority to suspend the operation of one or more of the provisions in this title, on either a statewide or other basis, if the Commission finds a public emergency or imperative public necessity exists, and the Commission finds that the suspension will best serve the public health, safety, or welfare.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There may be additional estimated costs to the state and local governments expected as a result of enforcing or administering the rules, although the amounts cannot be estimated.

There may be estimated reductions in costs to the state and local governments as a result of enforcing or administering the rules, although the amounts cannot be estimated.

There are no estimated losses or increases in revenue to the state, although there may be a possible loss of revenue to local governments (i.e., Local Workforce Development Boards on behalf of their local workforce development areas) as a result of enforcing or administering the rules, the amounts cannot be estimated.

There are no foreseeable implications relating to revenue; while there may be implications to the costs of the state or local governments as a result of enforcing or administering the rules, the impacts cannot be estimated.

There may be anticipated economic costs to persons required to comply with the rules, although the amounts cannot be estimated.

There may be anticipated economic impact on small or microbusinesses as a result of enforcing or administering the rules, although it cannot be estimated whether these impacts will be adverse.

We estimate that there may be additional costs, reductions in costs, and losses in revenue to state or local governments, and

economic costs to persons required to comply, as a result of enforcing or administering the rule, largely because the considerable number of Commission rules potentially subject to this provision, the potentially wide range of effects, together with the presumed infrequency of times of public emergency or imperative public necessity, make it difficult, if not impossible, to complete an accurate fiscal note. Therefore, we have assumed that there may be associated costs, losses, and impacts, although we cannot estimate them specifically. Such action by the Commission could be imposed only if they find that such suspension will best serve the public health, safety, or welfare.

Mark Hughes, Director, Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to respond immediately to address issues arising as a result of emergencies involving the public health, safety, and welfare.

Comments on the proposed rules may be submitted to TWC Policy Comments, Policy and Development, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to 512-475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The new rule is proposed pursuant to Texas Labor Code §301.0015(a)(5) and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities and Texas Labor Code §301.062, which provides the Commission with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.8. Suspension of Rules.

The Commission may suspend the operation of one or more of the provisions in this title, on either a statewide or other basis, if the Commission finds a public emergency or imperative public necessity exists, and the Commission finds that the suspension will best serve the public health, safety, or welfare.

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-200504580

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: November 27, 2005

For further information, please call: (512) 475-0829



WITHDRAWN RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

SUBCHAPTER B. REGISTRATION

4 TAC §7.10

The Texas Department of Agriculture withdraws the proposed amendment to §7.10 which appeared in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4548).

Filed with the Office of the Secretary of State on October 13, 2005.

TRD-200504610

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: October 13, 2005

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



ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 7. PESTICIDES

The Texas Department of Agriculture (the department) adopts amendments to §7.20, §7.23, §7.24, and §7.35 concerning pesticide registration and regulation, without changes to the proposal published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4547). The department is withdrawing its proposed amendments to §7.10, relating to fees for registration of pesticides, in a separate submission.

The amendments to §7.20, relating to commercial and noncommercial pesticide applicator licenses, are made to comply with amendments made by HB 901, enacted by the 79th Legislature, 2005. HB 901 amends Section 76.113 of the Texas Agriculture Code to provide that all new commercial, noncommercial, and private applicator licenses will no longer expire on the last day of February, but rather, by the first anniversary of the date of issuance or renewal. This change does away with the need to prorate license fees. The amendment to §7.20(c) is adopted to delete language relating to fee proration. The amendment to §7.20(e) is adopted to eliminate proration of pesticide applicator fees. In addition, the amendments to §7.20 will create less confusion for the applicant about the correct license 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.

The amendments to §7.23 provide that an applicator business must provide proof of financial responsibility to the department on a form prescribed by the department and that the applicator business must notify the department of any changes of information provided as part of the registration application. Prior to the implementation of the department's new resource integration licensing database, applicator businesses did not have a mechanism to file proof of financial responsibility as required by statute. With the implementation of the new database, this mechanism was created along with the development of a form for applicator businesses to use in registering their application equipment and providing proof of financial responsibility. The form does specify all information required to be filed by an applicator business. The change in the regulation essentially formalizes the current process. In addition, the requirement for reporting changes is to assure that current information is posted on the department's database as soon as possible.

The amendment to §7.24(s) is adopted to provide that CEU information may be audited by the department, and the process by which the department will verify that an applicator has obtained

the required CEUs. The department has conducted some random audits in the past, but the conducting of more extensive audits and possible performing of audits during an inspection are now necessary because the reporting of CEU information is no longer included on the license renewal application. The amendment to §7.24(t) is adopted to clarify when CEU credits must be obtained and provides that an applicator must obtain the required number of CEUs prior to the expiration of the license.

The amendment to §7.35 provides that application equipment used to apply a restricted use or state-limited-use pesticide or regulated herbicide is required to be registered with the department on a prescribed form. These amendments, like the similar amendments to §7.23, are adopted to formalize the current practice of providing information on a form provided by the department, which is now available with the implementation of the department's new resource integration licensing database.

Comments generally in favor of the proposed amendments to §7.20, §7.23, §7.24 and §7.35 were submitted by the Texas Ag Industries Association (TAIA). TAIA complimented the department in the changes made to §7.20, §7.23, and §7.24, and stated that the proposed changes will simplify the licensing requirements for new pesticide applicators and dealers and will help the department with its workload. In regard to the proposed amendments to §7.35, TAIA commented that it hopes the department develops a reasonable solution to registering applicator equipment and puts the information collected to a use beneficial to the department and the industry. The department agrees with the general comments submitted by the TAIA and does intend to utilize information collected on equipment registration to ensure that applications of restricted use and state-limited-use pesticides and regulated herbicides are made by properly trained and supervised applicators, and that applicator businesses are maintaining proof of financial responsibility as required by statute. The information will also be used to develop a conduit for the department to relay information to applicators and applicator businesses in a timely and efficient manner.

SUBCHAPTER C. LICENSING

4 TAC §§7.20, 7.23, 7.24

The amendments to §7.20, §7.23 and §7.24 are adopted under Texas Agriculture Code (the Code), §76.004, which provides that the department may adopt rules for carrying out the provisions of the Code, Chapter 76; the Code, §76.005, which provides that a person may not purchase or use a restricted-use or state-limited-use pesticide or regulated herbicide unless the person is licensed as a commercial applicator, noncommercial applicator, or private applicator; the Code, §76.072, which provides that a pesticide dealer license expires on the second anniversary of the date of its granting or renewal unless the department by rule adopts a system under which licenses expire on specified

dates during a year; the Code, §76.104, which provides the department with the authority to adopt rules related to the use and application of pesticides; §76.111, which provides that each applicator business licensed by the department shall file with the department a liability insurance policy, certification of a policy, or other proof of financial responsibility considered acceptable by the department; and the Code, §76.113, as amended by HB 901, 79th Legislature, 2005, which provides an expiration period for commercial and noncommercial pesticide applicators.

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 13, 2005.

TRD-200504611
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: November 2, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 463-4075



SUBCHAPTER D. USE AND APPLICATION

4 TAC §7.35

The amendments to §7.35 are adopted under Texas Agriculture Code (the Code), §76.004, which provides that the department may adopt rules for carrying out the provisions of the Code, Chapter 76; the Code, §76.104, which provides the department with the authority to adopt rules related to the use and application of pesticides; and the Code, §76.115, which provides that the department may inspect equipment used in the application of a restricted-use or state-limited-use pesticide, and that the department by rule may provide requirements for and inspect equipment.

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 13, 2005.

TRD-200504612
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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Proposal publication date: August 12, 2005
For further information, please call: (512) 463-4075



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1004

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," Figure: 19 TAC §97.1004(b) is not included in the print version of the Texas Register. The Figure is available in the on-line version of the October 28, 2005, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1004, concerning adequate yearly progress (AYP). The amendment is adopted with changes to the proposed text as published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4894). No changes have been made to the rule since published as proposed; however, a minor technical edit was made correcting footer information in a section of the 2005 AYP Guide. The section describes the procedures for determining AYP and adopted applicable excerpts of the *2004 Adequate Yearly Progress Guide*, dated September 2004. The amendment adopts applicable excerpts of the *2005 Adequate Yearly Progress Guide*, dated June 2005.

Under the accountability provisions in the federal No Child Left Behind Act, all public school campuses, school districts, and the state are evaluated for AYP. Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). If a campus, district, or state that is receiving Title I, Part A funds fails to meet AYP for two consecutive years, that campus, district, or state is subject to certain requirements such as offering supplemental educational services, offering school choice, or taking corrective actions. To implement these requirements, the agency developed the AYP Guide. Agency legal counsel determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to AYP. The intention is to annually update the rule to incorporate provisions from the most recently published AYP Guide and communicate that information with school districts and charters.

Through 19 TAC §97.1004, adopted to be effective July 14, 2005, the commissioner exercised rulemaking authority to establish provisions related to AYP and set forth the process for evaluating campus and district AYP status. This rule also adopted applicable excerpts, *Sections II-IV*, of the *2004 Adequate Yearly Progress Guide*, dated September 2004, that describe specific features of the system, AYP measures and standards, and appeals. The adopted amendment to 19 TAC §97.1004 updates the rule to adopt applicable excerpts, *Sections II-IV*, of the *2005 Adequate Yearly Progress Guide*, dated June 2005. The amendment also adds language to specify that the AYP Guide adopted for the previous school year will remain in effect with respect to that school year.

No changes have been made to the rule since published as proposed; however, a minor technical correction was made to the 2005 AYP Guide. The footer of Section IV has been changed to correct the title and pagination.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code (TEC), §7.055(b)(32), which authorizes the commissioner to perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; TEC, §39.073, which authorizes the commissioner to determine how all indicators adopted under TEC, §39.051(b), may be used to determine accountability ratings; and TEC, §39.075(a)(4), which authorizes the commissioner to conduct special accreditation investigations in response to state and federal program requirements.

The amendment implements the Texas Education Code, §§7.055(b)(32), 39.073, and 39.075(a)(4).

§97.1004. Adequate Yearly Progress.

(a) In accordance with the federal No Child Left Behind Act and Texas Education Code, §§7.055(b)(32), 39.073, and 39.075, all public school campuses, school districts, and the state are evaluated for Adequate Yearly Progress (AYP). Districts, campuses, and the state are required to meet AYP criteria on three measures: reading/language arts, mathematics, and either graduation rate (for high schools and districts) or attendance rate (for elementary and middle/junior high schools). The performance of a school district, campus, or the state is reported through indicators of AYP status established by the commissioner of education.

(b) The determination of AYP for school districts and charter schools in 2005 is based on specific criteria and calculations, which are described in excerpted sections of the 2005 AYP Guide provided in this subsection.

Figure: 19 TAC §97.1004(b)

(c) The specific criteria and calculations used in AYP are established annually by the commissioner of education and communicated to all school districts and charter schools.

(d) The specific criteria and calculations used in the AYP Guide adopted for the school year prior to 2005-2006 remain in effect for all purposes, including accountability, data standards, and audits, with respect to that school year.

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 14, 2005.

TRD-200504613

Cristina De LaFuente-Valadez

Director, Policy Coordination

Texas Education Agency

Effective date: November 3, 2005

Proposal publication date: August 26, 2005

For further information, please call: (512) 475-1497



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 135. AMBULATORY SURGICAL CENTERS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health

Services (department), adopts amendments to §§135.1 - 135.4, 135.9, 135.10, 135.14, 135.18 - 135.25, 135.41, 135.42 and 135.52, the repeal of §§135.11, 135.15 and 135.26, and new §§135.11, 135.15, 135.26 and 135.29, concerning the regulation of ambulatory surgical centers. The amendments to §§135.2, 135.4, 135.9 and 135.22, and new §135.11 and §135.15 are adopted with changes to the proposed text as published in the June 17, 2005, issue of the *Texas Register* (30 TexReg 3542). Amendments to §§135.1, 135.3, 135.10, 135.14, 135.18 - 135.21, 135.23 - 135.25, 135.41, 135.42 and 135.52, and new §135.26 and §135.29 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments, repeals, and new sections are adopted in accordance with Health and Safety Code (HSC), Chapter 243, which charges the department with the responsibility to license ambulatory surgical centers. The amendments, repeals, and new sections are necessary to comply with Government Code, Chapter 2054, Subchapter K, which requires the department to participate in an electronic system for occupational licensing transactions (Texas Online); Acts, 2003, 78th Legislature, Regular Session, Chapter 198, (House Bill 2292), §2.42, added Health and Safety Code, §12.0111, which requires the department to charge a fee sufficient to cover the cost of administering and enforcing the licensing program; Health and Safety Code, §12.0112, which requires that the term for licenses issued or renewed after January 1, 2005, to be two years; Government Code, Chapter 2005, which requires state agencies to adopt procedural rules for processing permit applications; and as a response to a request by stakeholders for clarification of certain provisions of the rules.

SECTION-BY-SECTION SUMMARY

The amendments to §§135.1, 135.14 and 135.18 - 135.22, 135.25, and 135.41 update and correct references within the sections. The amendment to §135.2 adds definitions for "extended observation" and "premises", updates and clarifies the definitions of "advanced practice nurse", "ambulatory surgical center", "available", "licensed vocational nurse" and "registered nurse", and deletes the definition of "director" which is deemed unnecessary. The amendment to §135.3 clarifies that the fee for a one-year license is doubled when a license is issued for a two-year period. Department rules for the issuance of two-year licenses beginning January 1, 2005, became effective on April 4, 2004. Wording is also added to the section concerning the department's authorization to collect subscription and convenience fees, in amounts to be determined by the Texas Online Authority, to recover costs associated with application and renewal application processing. The amendment to §135.4 requires the ASC governing body to adopt, implement and enforce policies relating to accurate billing for services and supplies and for compliance with applicable state laws. The amendment to §135.9 requires an evaluation of nutritional needs when a patient is in the ASC more than eight hours. The amendment to §135.10 adds a requirement for an emergency call system. The amendment to §135.23 clarifies the physical location or premises the ASC license covers. The amendment to §135.24 is to make the enforcement section language the same as other facility licensing rules. The amendment to §135.42 allows flammable germicides to be used for preoperative surgical skin preparation under specified conditions, establishes a requirement for the ASC to report surgical suite fires to the department within two business days and to implement a corrective action

plan within 30 days. The amendment to §135.52 updates language to reflect current terminology used in other guidelines and standards and updates references for patient spaces.

The sections for repeal address anesthesia and surgical services, nursing services, and reporting of incidents. New §§135.11, 135.15 and 135.26 reflect reorganization of existing sections and contain new language to clarify the requirements for providing anesthesia and surgical services, nursing services, and reporting requirements. New §135.11 identifies anesthesia that a hospital's governing body may approve for use in the ASC including the equipment and supply needs for each; requires the facility to develop policies and guidelines related to the administration of anesthesia; names the practitioners who may administer anesthesia or sedation; and requires that a physician shall be on call and able to respond physically or by telephone within 30 minutes until all patients have been discharged. New §135.15 requires a registered nurse with certification in basic cardiac life support to be on duty and on the premises whenever patients are in the facility, and establishes staffing requirements for the particular anesthesia to be administered. New §135.26 establishes specific incidents that must be reported to the department within 10 business days, and data that the ASC must provide annually on a form prescribed by the department. New §135.29 provides time periods for processing applications for initial and renewal licenses.

COMMENTS

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

Comment: Concerning §135.2, one commenter requested that anesthesiologist's assistant be added to the definitions and included in the list of those authorized to administer anesthesia.

Response: The department disagrees with the commenter. This would be considered a substantive change from the current rules as well as the proposed rules, requiring further research by the department, and an opportunity for additional stakeholder input; therefore, this change will not be incorporated at this time. This recommendation may be revisited during future reviews of the ASC rules. No changes were made as a result of this comment.

Comment: Concerning §135.2(4), one commenter requested that the definition of Advanced Practice Nurse include a reference to the multi-state licensure privilege from another compact state.

Response: The department agrees and has added the requested language to the definition.

Comment: Concerning 135.2(6), one commenter opposed allowing planned stays of up to 23 hours. The commenter recommended that ASCs be required to discharge patients no later than 1:00 a.m. local time, and discharges past 1:00 a.m. should be allowed only in those cases where additional time for post-surgical recovery could not be anticipated prior to surgery. The commenter also referenced the Medicare policy which states there should be no planned overnight stays in Medicare certified facilities.

Response: The department disagrees. In developing the proposed definition, the department conducted research of rules and enforcement practices in other states. This research revealed that the majority of states that had licensing rules or state policies addressing length of stay used the 23-hour limit. The department also considered the Medicare policy. The Centers for

Medicare and Medicaid Services (CMS) was contacted for clarification since their policy does not define the term "overnight". The response from CMS was that, in terms of enforcement of the policy, a stay of less than 24 hours was not considered overnight. The department has included in the rules a requirement that all patient stays greater than 23 hours be reported to the department so that any quality of care and patient safety concerns related to extended stays can be evaluated. No change was made to the rule as a result of this comment.

Comment: Concerning §135.4(k), one commenter supported the proposed rule, stating that they believed that some ASCs, in competing for patients, might inappropriately steer patients away from contracted inpatient facilities. Another commenter opposed the proposed rule, and provided extensive legal citations to support their assertion that the rule exceeded the department's general and specific rule-making authority.

Response: The department agrees with the commenter who asserted that the rule as proposed exceeded our general and specific rule-making authority. The rule has been revised to include a general requirement that the governing body is responsible for ensuring compliance with applicable state laws.

Comment: Concerning §135.9(j)(11), a commenter suggested that changing the words "was dismissed", which was not defined in the rule, to "leaving the facility," would serve to clarify the intent of the rule.

Response: The department agrees and the term "was dismissed" has been replaced by "left the facility" to be consistent with changes to §135.11(b)(18).

Comment: Regarding the proposed deletion of §135.10(a)(4) from the existing rules, one commenter was concerned that the department was proposing to eliminate the requirement that the ASC have staff trained in cardiopulmonary resuscitation (CPR) and the use of emergency equipment on duty during all hours of operation.

Response: The department disagrees with the commenter, as we have not proposed the elimination of this requirement. To the contrary, staffing and training requirements have been strengthened in §135.15. The rules require that there be a minimum of two individuals on duty on the premises at all times who are certified in CPR. One of the individuals required to be on duty at all times is a registered nurse who is certified in CPR. The rules add additional requirements for staff certified in advanced cardiac life support to be on duty, based on the type of anesthesia being administered. No change was made to the rule as a result of this comment.

Comment: Regarding §135.11(a)(1)(A) - (G), one commenter recommended adopting the American Society of Anesthesiologists (ASA) document "Continuum of Sedation--Definition of General Anesthesia and Levels of Sedation/Anesthesia."

Response: The department disagrees. Although the department did not adopt the ASA document, the definitions and descriptions of the types of anesthesia that may be administered in an ASC were taken directly from the referenced document. No change was made to the rule as a result of this comment.

Comment: Regarding §135.11(a)(2), two commenters requested the rule be clarified to indicate that the physician was supervising the anesthesia "department," not the individual administration of anesthesia. Another commenter requested that the rule be clarified by adding the word "medical" before

the word "direction" to better define the duties of the physician related to the oversight of the anesthesia service.

Response: The department agrees. Although the rule as proposed contained the same language as appears in the current rule, and the department was unaware of any issues related to the interpretation of this rule, the department has no objection to adding the recommended language for clarification of the rule. The requested changes have been included.

Comment: Regarding §135.11(a)(3), one commenter stated that the medical staff should only be responsible for establishing practice guidelines and standards, and the governing body should be responsible for enforcing them.

Response: The department agrees and has made the requested change.

Comment: Regarding §135.11(a)(3)(A), three commenters stated that requiring a certified registered nurse anesthetist (CRNA) to follow the ASA standards would be in direct conflict with the rules and practice guidelines of the Board of Nurse Examiners (BNE). One of the commenters suggested that it would be more appropriate for the policies of the anesthesia service to require that the anesthesia provider practice in accordance with the practice standards and regulations of their own licensing boards.

Response: The department agrees. The rule has been revised to require that policies and guidelines for the anesthesia service include only "consideration" of the standards and guidelines of the ASA, as well as the American Association of Nurse Anesthetists (AANA), and the licensing rules and standards of each relevant professional licensing board. The requirement that ASCs follow the ASA guidelines and standards has been deleted.

Comment: Regarding §135.11(a)(3)(A), a commenter requested clarification of the application of the term "anesthesiologist" in the ASA guidelines and whether this would apply to all types of providers qualified to administer anesthesia under state law.

Response: The department has deleted the language in §135.11(a)(3)(A) - (C) requiring that ASCs follow the ASA standards and guidelines.

Comment: Regarding §135.11(a)(3)(A), one commenter requested that the department also include the following ASA standards and guidelines in the final rules: Practice Guidelines for Preoperative Fasting; Practice Advisory for Pre-Anesthesia Evaluation; Guidelines for Non-Operating Room Anesthetizing Locations; and Guidelines for Sedation and Analgesia by Non-Anesthesiologist.

Response: The department agrees in part. Based on consideration of other comments received, the department has deleted the language requiring that ASCs follow the ASA standards and guidelines. The revised rules only require that the ASA guidelines and standards be considered, along with the guidelines and standards of the AANA, as well as practice standards from relevant licensing boards. Each ASC should consider those guidelines and standards they deem appropriate to their organization. No changes were made as a result of this comment.

Comment: Concerning proposed §135.11(a)(4)(C), one commenter was concerned because the rule implied that a CRNA must practice under the supervision of the operating physician or anesthesiologist, which is not consistent with Attorney General's Opinion JC-0117. The opinion states that the Medical

Practice Act does not require that a physician supervise a nurse anesthetist's selection and administration of anesthesia. Another commenter recommended adding a reference to the Dental Practice Act and changing operating "physician" to operating "surgeon." Another commenter requested that a requirement for physician delegation be included in this section.

Response: The department agrees with the first commenter and has revised the rule in renumbered §135.11(a)(4)(A)(iii) to remove references to the CRNA practicing under the "supervision" of the operating physician or anesthesiologist. The revised rule states the CRNA must practice in accordance with the Nurse Practice Act and the rules and regulations of the BNE, which include the parameters for CRNA practice. It is not within the scope of the department's authority to enforce nursing practice issues. It is therefore not appropriate to include any reference to the CRNA being required to practice under the "delegation" or "supervision" of a physician since this is a practice issue. The requested change regarding reference to the Dental Practice Act is also not included in the revised rule since the reference to the Medical Practice Act has been deleted.

Comment: Regarding §135.11(a)(4)(D), one commenter requested that operating "physician" be replaced by operating "surgeon" to include other types of surgeons who may practice in an ASC settings

Response: The department agrees and the requested change has been made in renumbered §135.11(a)(4)(B) because §135.11(a)(4)(D) was deleted.

Comment: Regarding §135.11(a)(4)(D), two commenters believed that the rule, as proposed, was misleading and implied that a registered nurse (RN) who was not a CRNA could administer any level of sedation or anesthesia. Another commenter believed the proposed rule was consistent with the BNE's position statement regarding RNs who are not CRNAs administering sedation under certain circumstances, but recommended that the department add a qualifier to the rule to address the likelihood of the differing perceptions among the various stakeholders related to this issue.

Response: The department agrees in part. Although the department believes that the rule, as proposed, clearly only allowed the RN who was not a CRNA to administer topical or local anesthesia and minimal or moderate sedation, the recommendations of the commenters have been incorporated by reorganizing this section and including clarifying language in §135.11(a)(4)(B).

Comment: Regarding §135.11(a)(4)(D), two commenters stated that the rule, as proposed, inappropriately deferred to the BNE to establish the parameters of medical acts that could be delegated by a physician. One of the commenters added that the rule should be deleted, or at least clarified to reflect that the act was one of following an order for administration of a medication. The other commenter added that RNs who were not CRNAs should not be allowed to administer moderate sedation.

Response: The department disagrees. The rule, as proposed, did not defer to the BNE to establish parameters of medical acts that could be delegated by a physician. The department recognizes that this is a determination that must be made only by the physician. However, unlike unlicensed personnel, a licensed nurse is required to follow the rules, guidelines and practice parameters issued by the BNE related to his or her nursing practice, even when practicing under physician's orders or physician delegation. The proposed rule was not deleted, but the section was reorganized and renumbered in §135.11(a)(4)(B), and

clarifying language was added to indicate that sedation would be provided in accordance with the orders of the operating surgeon or anesthesiologist. It is already an established practice for qualified RN's who are not CRNAs, practicing in accordance with the guidelines issued by the BNE, to provide both minimal and moderate sedation under a physician's order in ASCs and office-based practices. The rule requires that the facility share responsibility for ensuring that certain safeguards are in place if RNs are allowed to administer minimal and moderate sedation under a physician's order.

Comment: Regarding §135.11(a)(6), one commenter requested that the term "operating physician" be replaced with "operating surgeon" to address other types of surgeons who may practice in an ASC.

Response: The department concurs, and has made the requested change.

Comment: Regarding §135.11(a)(6), two commenters recommended that the term "discharged" be clarified by adding the word "medically" to indicate that the provider is clearing the patient for discharge, even though the patient may not be leaving the facility.

Response: The department disagrees that the rule requires clarification. In §135.11(a)(7), it is clear that the patient can only be discharged from the post-anesthesia care unit (PACU) after the surgeon or person administering the anesthesia has made the determination that the patient has recovered from the anesthesia and can be discharged from the PACU. This is a medical evaluation. No changes were made as a result of these comments.

Comment: Regarding §135.11(a)(7), one commenter recommended that a physician be required to evaluate all patients for proper anesthesia recovery, and requested clarification of the conflict between the proposed state rules and the Medicare and Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) standards, which require that a physician complete this evaluation.

Response: The department disagrees with the commenter. The department recognizes that the Medicare regulations and JCAHO standards do require that a physician complete the evaluation for proper anesthesia recovery. However, these are state rules that establish minimum requirements, and they must reflect what is allowed under Texas state law. Under state law and BNE rules and regulations, it is within the scope of practice of the CRNA to complete this evaluation. Participation in Medicare is voluntary, as is JCAHO accreditation. Ambulatory surgical centers which desire to be Medicare certified or accredited by JCAHO will need to be cognizant of the differences between state, federal and JCAHO requirements. No changes were made as a result of this comment.

Comment: Regarding §135.11(a)(8), one commenter believed that the rule appeared to require an RN, who was not an advanced practice nurse, to exercise independent medical judgment, which would be beyond the scope of the RN's license.

Response: The department disagrees. The rule as proposed does not require an RN to make an "independent medical judgment." The surgeon or the person administering the anesthesia must have already evaluated the patient and determined that the patient had recovered from anesthesia and was stable for discharge from the PACU, but the patient remained in the facility for some extended period of time for additional observation or comfort measures. The rule allows the medical staff to develop

policies and procedures that predefine the criteria for final discharge, usually in the form of standing orders or protocols. The department did revise the language in the final rule to clarify the intent of the evaluation to be completed by the RN.

Comment: Regarding §135.11(a)(10)(B)(ii), one commenter requested that "laryngeal mask airways" be added to the list of required equipment.

Response: The department disagrees. The purpose of these rules is to establish minimum requirements for equipment that must be maintained on the premises. The department has no information to support the absolute necessity of this piece of equipment. The decision as to whether this piece of equipment will be maintained on the premises will be left to the discretion of the facility's medical staff. No changes were made as a result of this comment.

Comment: Regarding §135.11(a)(10)(B)(v), two commenters recommended changing the term "cardiac defibrillator" to "cardioverter-defibrillator" in accordance with ACLS protocols, and adding a requirement for Pediatric Advanced Life Support (PALS) guidelines if surgery is performed on pediatric patients.

Response: The department agrees with these recommendations. The change to "cardioverter-defibrillator" was incorporated into this section. The recommendation to include a requirement for PALS certification was incorporated into §135.15(b)(2)(B) and §135.15(b)(3)(B), relating to Facility Staffing and Training.

Comment: Regarding §135.11(a)(10)(B)(vi), a commenter requested that the phrase "drugs, including" be added before the word "pharmacologic."

Response: The department disagrees that the addition of these words will change the interpretation of, or add value to, the rule. It is understood that there will be a variety of drugs available in the ASC, as recommended by the medical staff based on the types of procedures performed and the types of anesthesia administered. The intent of the rules in this section is to establish only minimum standards for the emergency equipment and supplies that must be available. Medical staff has the discretion to require additional equipment and supplies. No change was made to rule as a result of this comment.

Comment: Regarding §135.11(b)(9), one commenter questioned why the department would allow exceptions for the pathology review of surgical tissues. The commenter recommended that the allowance of this exception be removed from the rule.

Response: The department disagrees. The rule language as proposed is the same as existing rule §135.9(j)(7), and has been standard practice for many years. The intent is to allow the medical staff and governing body to designate certain types of tissues that do not need to be subjected to pathology analysis. This will help to prevent unnecessary costs to both patients and third party insurers. The medical staff may only exempt tissues known to be without potential abnormality or pathology. An example would be normal fatty tissue removed during an elective cosmetic procedure. No change was made to the rule as a result of this comment.

Comment: Regarding §135.11(b)(14), one commenter requested that the rule include more specific maintenance requirements, including a requirement that only qualified bio-medical personnel complete the equipment service, and that a separate maintenance log be maintained by the facility.

Response: The department disagrees. The proposed rule language is identical to the language that was repealed in §135.11(v). There is no evidence to support that the existing rule has been ineffective in assuring that facilities properly maintain their equipment. No change was made as a result of this comment.

Comment: Regarding §135.11(b)(18), one commenter suggested that changing the word "dismissed", which was not defined in the rule, to "leaving the facility," would serve to clarify the intent of the rule.

Response: Although the rule as proposed used the same language as the existing rule, the department agrees with the commenter and has made the recommended change.

Comment: Regarding §135.11(b)(18), one commenter stated that the word "physician" should be replaced with "operating surgeon."

Response: The department agrees and has made the recommended change.

Comment: Regarding §135.11(b)(19), three commenters expressed concerns related to this rule, and recommended that the rule not be adopted. They believed it was not feasible for all physicians that had privileges at an ASC to also have staff privileges at local hospitals. The commenters pointed out that some hospitals are refusing to grant privileges to physicians who have an "interest" in an ASC. They also stated that competitive market pressures could preclude a hospital from entering into a transfer agreement with an ASC, which in essence placed the ability of an ASC to open and operate in the hands of the hospitals. Two commenters recommended that hospitals be required to enter into transfer agreements with any ASC licensed by the department.

Response: The department disagrees. Although the department recognizes that some ASCs may experience challenges in complying with this requirement, the rule as proposed contains the same language that appears in the current rule under §135.4(c)(11) and repealed §135.11(aa). This same language is also included in the Medicare Conditions of Participation under 42 CFR 418.41. The purpose of the requirement is to ensure that the ASC maintains responsibility for assuring that the patient receives appropriate continuing care should complications develop, and that the transfer to a higher level of care can be effected in an organized and timely manner. The department believes this existing requirement will require additional study and stakeholder input before being removed or modified. In the interim, facilities that are able to demonstrate a good faith effort to comply with the requirement may request a waiver or exception to the licensing rule, subject to the review and approval of the department; however, those facilities desiring to maintain Medicare certification must recognize that the department cannot grant an exception to the Medicare requirement. No changes were made as a result of these comments.

Comment: Regarding §135.15(a)(2)(C), a commenter suggested that the rule be modified to require that licensed vocational nurses and surgical technicians assisting with circulating duties be under the "direct" supervision of the RN circulator.

Response: The department agrees. The rule has been revised to clarify that the supervision by the RN circulator must be "direct" supervision.

Comment: Regarding §135.15(b), a commenter believed the rule should require that all individuals who administer, supervise and/or delegate anesthesia be trained in advanced cardiac life support (ACLS).

Response: The department disagrees. Although the department recognizes that this level of training would be the ideal, we also believe this is a practice issue that should be addressed by the medical staff, not mandated by the department. This section of the rules seeks only to establish minimum qualifications regarding the staff that must be on duty in the facility. The facility is free to decide which ACLS qualified personnel will fulfill this requirement. No changes were made as a result of this comment.

Comment: Regarding §135.26(d), one commenter requested clarification that the reporting requirement relating to the performance of abortions was in addition to the other reporting requirements under §135.26(a).

Response: The department disagrees. Each rule under §135.26 is a separate reporting requirement that is clearly prescribed as presented in the rule. No change was made as a result of this comment.

The department is making the following change to eliminate duplication in the rules.

Change: Concerning §135.22(b)(1), subparagraphs (D) and (E) are deleted to eliminate duplication because submission requirements for annual events reports and best practices reports are provided in §135.27, relating to Patient Safety Program. Therefore, §135.22(b)(1)(B) and (C) were corrected for grammar and punctuation since (D) and (E) were deleted.

The department initially planned to accept only written comments related to the proposed rules. However, one commenter who submitted written testimony also requested, pursuant to Government Code, §2001.29(B)(3), that the department hold a public hearing before adopting the rule. The hearing was held on August 25, 2005. All comments received during the public hearing had previously been received by the department during the 30 day written comment period. All comments have been addressed in this preamble.

The commenters were the American Association of Oral and Maxillofacial Surgeons, Austin Anesthesiology Group, the Board of Nurse Examiners for the State of Texas, the Coalition for Nurses in Advanced Practice, the Texas Ambulatory Surgery Center Society, the Texas Association of Nurse Anesthetists, the Texas Hospital Association, the Texas Medical Association, the Texas Nurses Association, the Texas Society of Anesthesiologists, the law firm of Haynes and Boone, LLP, and the Honorable Frank J. Corte, Jr. All commenters were not against the rules in their entirety, however they expressed concerns, asked questions and suggested recommendations for change as discussed in the summary of comments.

LEGAL CERTIFICATION

The Department of State Health Services Deputy General Counsel, Lisa Hernandez, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §§135.1 - 135.4, 135.9 - 135.11, 135.14, 135.15, 135.18 - 135.26, 135.29

The amendments and new sections are adopted under Health and Safety Code, §243.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §12.0112, which requires the term of each license issued to be two years; 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.

§135.2. Definitions.

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

(1) Act--Texas Ambulatory Surgical Center Licensing Act, Health and Safety Code, Chapter 243.

(2) Action plan--A written document that includes specific measures to correct identified problems or areas of concern; identifies strategies for implementing system improvements; and includes outcome measures to indicate the effectiveness of system improvements in reducing, controlling or eliminating identified problem areas.

(3) Administrator--A person who is a physician, registered nurse, has a baccalaureate or postgraduate degree in administration or a health-related field, or has one year of administrative experience in a health care setting.

(4) Advanced Practice Nurse (APN)--A registered nurse, currently licensed in the State of Texas, or under a multi-state licensure privilege with another compact state, who has been approved by the Board of Nurse Examiners for the State of Texas (board) to practice as an advanced practice nurse based on completing an advanced educational program of study acceptable to the board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist.

(5) Adverse event--An event that results in unintended harm to the patient by an act of commission or omission rather than by the underlying disease or condition of the patient.

(6) Ambulatory Surgical Center (ASC)--A facility that primarily provides surgical services to patients who do not require overnight hospitalization or extensive recovery, convalescent time or observation. The planned total length of stay for an ASC patient shall not exceed 23 hours. Patient stays of greater than 23 hours must be the result of an unanticipated medical condition and shall occur infrequently. The 23-hour period begins with the induction of anesthesia.

(7) Autologous blood units--Units of blood or blood products derived from the recipient.

(8) Available--Able to be physically present in the facility to assume responsibility for the delivery of patient care services within five minutes.

(9) Certified registered nurse anesthetist (CRNA)--A currently licensed registered nurse who has current certification from the Council on Certification of Nurse Anesthetists and who is currently authorized to practice as an Advanced Practice Nurse by the Board of Nurse Examiners.

(10) Change of ownership--

(A) A sole proprietor who transfers all or part of the ASC's ownership to another person or persons;

(B) The removal, addition, or substitution of a person or persons as a general, managing, or controlling partner in an ASC owned by a partnership and the tax identification number of that ownership changes; or

(C) A corporation that transfers all or part of the corporate stock which represents the ASC's ownership to another person or persons and the tax identification number of that ownership changes.

(11) Dentist--A person who is currently licensed under the laws of this state to practice dentistry.

(12) Department--The Department of State Health Services.

(13) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharge into any waters, including ground waters.

(14) Electronic Signature--Signature produced or generated on a computer.

(15) Extended observation--The period of time that a patient remains in the facility following recovery from anesthesia and discharge from the post anesthesia care unit, during which additional comfort measures or observation may be provided.

(16) FDA-approved blood bank--A facility that has been licensed in accordance with the Food and Drug Administration requirements in the preparation of blood and blood products.

(17) Health care practitioners (Qualified Medical Personnel)--Individuals currently licensed under the laws of this state who are authorized to provide services in an ASC.

(18) Licensed vocational nurse (LVN)--A person who is currently licensed under the Nursing Practice Act by the Board of Nurse Examiners for the State of Texas as a licensed vocational nurse or who holds a valid vocational nursing license with multi-state licensure privilege from another compact state.

(19) Medical error--The failure of a planned action to be completed as intended, the use of a wrong plan to achieve an aim, or the failure of an unplanned action that should have been completed, that results in an adverse event.

(20) Medicare-approved reference laboratory--A facility that has been certified and found eligible for Medicare reimbursement, and includes hospital laboratories which may be Joint Commission on Accreditation of Healthcare Facilities or American Osteopathic Association accredited or nonaccredited Medicare approved hospitals, Medicare certified independent laboratories.

(21) Physician--A person who is currently licensed under the laws of this state to practice medicine and who holds a doctor of medicine or a doctor of osteopathy degree.

(22) Person--Any individual, firm, partnership, corporation, or association.

(23) Premises--A building where patients receive outpatient surgical services.

(24) Prescriber--A person who is legally authorized to write an order or prescription for a health care service, medical device, or drug.

(25) Registered nurse (RN)--A person who is currently licensed by the Board of Nurse Examiners for the State of Texas as a registered nurse or who holds a valid registered nursing license with multi-state licensure privilege from another compact state.

(26) Root cause analysis--An interdisciplinary review process for identifying the basic or contributing causal factors that underlie a variation in performance associated with an adverse event or reportable event as listed under §135.27 of this title (relating to Patient Safety Program). It focuses primarily on systems and processes, includes an analysis of underlying cause and effect, progresses from special causes in clinical processes to common causes in organizational processes, and identifies potential improvements in processes or systems.

(27) Title XVIII--Title XVIII of the United States Social Security Act, 42 U.S.C. §1395 et seq.

§135.4. ASC Operation.

(a) The ASC must have a governing body that sets policy and assumes full legal responsibility for the total operation of the ASC.

(b) The governing body shall be responsible for assuring that medical staff bylaws are current and on file.

(c) The governing body shall address and is fully responsible, either directly or by appropriate professional delegation, for the operation and performance of the ASC. Governing body responsibilities include, but are not limited to:

(1) determining the mission, goals, and objectives of the ASC;

(2) assuring that facilities and personnel are adequate and appropriate to carry out the mission;

(3) establishing an organizational structure and specifying functional relationships among the various components of the ASC;

(4) adopting bylaws or similar rules and regulations for the orderly development and management of the ASC;

(5) adopting policies or procedures necessary for the orderly conduct of the ASC;

(6) assuring that the quality of care is evaluated and that identified problems are addressed;

(7) reviewing all legal and ethical matters concerning the ASC and its staff and, when necessary, responding appropriately;

(8) maintaining effective communication throughout the ASC;

(9) establishing a system of financial management and accountability that includes an audit appropriate to the ASC;

(10) developing, implementing, and enforcing a policy on the rights of patients;

(11) approving all major contracts or arrangements affecting the medical care provided under its auspices, including, but not limited to, those concerning:

(A) the employment of health care practitioners;

(B) an effective procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC. The ASC must have a written transfer agreement with a

hospital or all physicians performing surgery at the ASC must have admitting privileges at a local hospital;

(C) the use of external laboratories;

(D) an effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services if laboratory, X-ray, and pharmacy services are not provided on-site;

(E) the provision of education to students and postgraduate trainees if the ASC participates in such programs;

(12) formulating long-range plans in accordance with the mission, goals, and objectives of the ASC;

(13) operating the ASC without limitation because of race, creed, sex, or national origin;

(14) assuring that all marketing and advertising concerning the ASC does not imply that it provides care or services which it is not capable of providing; and

(15) developing a system of risk management appropriate to the ASC including, but not limited to:

(A) periodic review of all litigation involving the ASC, its staff, and health care practitioners regarding activities in the ASC;

(B) periodic review of all incidents reported by staff and patients;

(C) review of all deaths, trauma, or adverse reactions occurring on premises; and

(D) evaluation of patient complaints.

(d) The governing body shall provide for full disclosure of ownership to the department.

(e) The governing body shall meet at least annually and keep such minutes or other records as may be necessary for the orderly conduct of the ASC.

(f) If the governing body elects, appoints, or employs officers and administrators to carry out its directives, the authority, responsibility, and functions of all such positions shall be defined.

(g) When a majority of its members are physicians, the governing body, either directly or by delegation, shall make (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges. When a majority of the members of the governing body are not physicians, the ASC's bylaws or similar rules and regulations shall specify a procedure for establishing medical review for the purpose of making (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges.

(h) The governing body shall provide (in a manner consistent with state law and based on evidence of education, training, and current competence) for the initial appointment, reappointment, and assignment or curtailment of privileges and practice for nonphysician health care personnel and practitioners.

(i) The governing body shall encourage personnel to participate in continuing education that is relevant to their responsibilities within the ASC.

(j) The governing body shall adopt, implement and enforce a written policy to ensure accurate billing for services and supplies. The

policy shall include a procedure for addressing complaints related to billed services and supplies.

(k) The governing body shall adopt, implement and enforce written policies to ensure compliance with applicable state laws.

(l) Informed consent for abortion. An ASC that performs abortions shall adopt, implement and enforce a policy to ensure compliance with Health and Safety Code, Chapters 171 and 245, Subchapters A and B (relating to Abortion and Informed Consent).

§135.9. *Medical Records.*

(a) The ASC shall develop and maintain a system for the collection, processing, maintenance, storage, retrieval, and distribution of patient medical records.

(b) An individual medical record shall be established for each person receiving care.

(c) All clinical information relevant to a patient shall be readily available to health care practitioners involved in the care of that patient.

(d) Except when otherwise required by law, any record that contains clinical, social, financial, or other data on a patient shall be strictly confidential and shall be protected from loss, tampering, alteration, destruction, and unauthorized or inadvertent disclosure.

(e) A person shall be designated to be in charge of medical records whose responsibilities include, but are not limited to:

(1) the confidentiality, security, and safe storage of medical records;

(2) the timely retrieval of individual medical records upon request;

(3) the specific identification of each patient's medical record;

(4) the supervision of the collection, processing, maintenance, storage, retrieval, and distribution of medical records; and

(5) the maintenance of a predetermined organized medical record format.

(f) Policies concerning medical records shall follow current statute in regard to retention of active records, retirement of inactive records and the release of information contained in the record.

(g) Except when otherwise required by law, the content and format of medical records, including the sequence of information, shall be uniform.

(h) Reports, histories and physicals, progress notes, and other patient information (such as laboratory reports, x-ray readings, and consultation) shall be incorporated into the medical record in a timely manner.

(i) Medical records shall be available to authorized health care practitioners any time the ASC is open to patients.

(j) The ASC record shall include the following:

(1) patient identification;

(2) allergies and untoward reactions to drugs recorded in a prominent and uniform location;

(3) all pre-operative, post-operative medications administered and drug/dose/route/frequency/quantity of all post-operative drugs dispensed to the patient by the ASC and entered on the patient's record;

(4) significant medical history and results of physical examination;

(5) preop diagnostic studies entered before surgery, if required by policy or ordered by a physician or advanced practice nurse;

(6) findings and techniques of the operation (operative report);

(7) pathology report on all tissues removed during surgery except those exempted by the governing body;

(8) anesthesia administration record that includes either general, local, or regional anesthetic;

(9) documentation of a properly executed informed consent;

(10) evidence of evaluation of the patient by a physician or advanced practice nurse prior to dismissal;

(11) evidence that the patient left the facility in the company of a responsible adult unless a physician or advanced practice nurse writes an order that the patient may leave the facility without the company of a responsible adult; and

(12) for patients with a length of stay greater than eight hours, an evaluation of nutritional needs and evidence of how identified needs were met.

(k) Appropriate medical advice given to a patient by telephone shall be entered in the patient's medical record and appropriately signed or initialed.

(l) Entries in patients' medical records shall be legible to clinical personnel and shall be accurate and completed promptly.

(m) Any notation in a patient's medical record indicating diagnostic or therapeutic intervention as part of clinical research shall be clearly contrasted with entries regarding the provision of nonresearch related care.

(n) When necessary for assuring continuity of care, summaries of records of a patient who was treated elsewhere (such as by another physician, hospital, ambulatory surgical center, nursing home, or consultant) shall be obtained.

(o) When necessary for assuring continuity of care, summaries or photocopies of the patient's record shall be transferred to the health care practitioner to whom the patient was referred and, if appropriate, to the facility where future care will be rendered.

(p) Certain repetitive procedures are suitable for pre-printed operative notes. These operative notes are suitable as long as they are approved by the governing body and signed by the surgeon and transmit to a knowledgeable reader the events of the surgical procedure.

(q) All final tissue and abnormal cytology reports from the Medicare approved reference laboratory shall be signed by a pathologist.

§135.11. *Anesthesia and Surgical Services.*

(a) Anesthesia services.

(1) Anesthesia services provided in the ASC shall be limited to those that are approved by the governing body, which may include the following.

(A) Topical anesthesia--an anesthetic agent applied directly or by spray to the skin or mucous membranes, intended to produce transient and reversible loss of sensation to the circumscribed area.

(B) Local anesthesia--administration of an agent that produces a transient and reversible loss of sensation to a circumscribed portion of the body.

(C) Regional anesthesia--injection of an anesthetic agent to the nerves supplying a region of the body that results in a loss of sensation.

(D) Minimal sedation (anxiolysis)--a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

(E) Moderate sedation/analgesia ("conscious sedation")--a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained (reflex withdrawal from a painful stimulus is NOT considered a purposeful response).

(F) Deep sedation/analgesia--a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is NOT considered a purposeful response.)

(G) General anesthesia--a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

(2) The anesthesia department shall be under the medical direction of a physician approved by the governing body upon the recommendation of the ASC medical staff.

(3) The medical staff shall develop written policies and practice guidelines for the anesthesia service, which shall be approved, implemented and enforced by the governing body. The policies and guidelines must include consideration of the applicable practice standards and guidelines of the American Society of Anesthesiologists, the American Association of Nurse Anesthetists, and the licensing rules and standards applicable to those categories of licensed professionals qualified to administer anesthesia.

(4) Administration of anesthesia or sedation.

(A) The following practitioners may administer all categories of anesthesia and sedation, in accordance with their education and training:

(i) an anesthesiologist;

(ii) a physician, dentist, oral surgeon or podiatrist who is qualified under state law and has education, training and experience in the type of anesthesia being performed; and

(iii) a certified registered nurse anesthetist practicing in accordance with the Nursing Practice Act and the rules and regulations promulgated by the Board of Nurse Examiners.

(B) A qualified registered nurse (RN) who is not a certified registered nurse anesthetist (CRNA), in accordance with the orders of the operating surgeon or an anesthesiologist, may administer topical anesthesia, local anesthesia, minimal sedation and moderate sedation, in accordance with all applicable rules, policies, directives and guidelines issued by the Board of Nurse Examiners for the State of Texas.

When an RN who is not a CRNA administers sedation, as permitted in this paragraph, the facility must:

(i) verify that the registered nurse has the requisite training, education and experience;

(ii) maintain documentation to support that the registered nurse has demonstrated competency in the administration of sedation;

(iii) with input from the facility's qualified anesthesia providers, develop, implement and enforce detailed, written policies and procedures to guide the registered nurse; and

(iv) ensure that, when administering sedation during a procedure, the registered nurse has no other duties except to monitor the patient.

(5) Anesthesia shall not be administered unless the operating surgeon or anesthesiologist has evaluated the patient immediately prior to surgery to assess the risk of the anesthesia relative to the surgical procedure to be performed.

(6) The anesthesiologist or the operating surgeon shall be available until all of his or her patients operated on that day have been discharged from the post-anesthesia care unit.

(7) Patients who have received anesthesia shall be evaluated for proper anesthesia recovery by the operating surgeon or the person administering the anesthesia prior to discharge from the post-anesthesia care unit using criteria approved by the medical staff.

(8) Patients who remain in the facility for extended observation following discharge from the post-anesthesia care unit shall be evaluated immediately prior to leaving the facility by a physician, the person administering the anesthesia or a registered nurse acting in accordance with physician's orders and written policies, procedures and criteria developed by the medical staff.

(9) A physician shall be on call and able to respond physically or by telephone within 30 minutes until all patients have been discharged from the ASC.

(10) Emergency equipment and supplies appropriate for the type of anesthesia services provided shall be maintained and accessible to staff at all times.

(A) Functioning equipment and supplies which are required for all facilities include:

(i) suctioning equipment, including a source of suction and suction catheters in appropriate sizes for the population being served;

(ii) source of compressed oxygen;

(iii) basic airway management equipment, including oral and nasal airways, face masks, and self-inflating breathing bag-valve set;

(iv) blood pressure monitoring equipment; and

(v) emergency medications specified by the medical staff and appropriate to the type of surgical procedures and anesthesia services provided by the facility.

(B) In addition to the equipment and supplies required under subparagraph (A) of this paragraph, facilities which provide moderate sedation/analgesia, deep sedation/analgesia, regional analgesia and/or general anesthesia must provide the following:

(i) intravenous equipment, including catheters, tubing, fluids, dressing supplies, and appropriately sized needles and syringes;

(ii) advanced airway management equipment, including laryngoscopes and an assortment of blades, endotracheal tubes and stylets in appropriate sizes for the population being served;

(iii) a mechanism for monitoring blood oxygenation, such as pulse oximetry;

(iv) electrocardiographic monitoring equipment;

(v) cardioverter-defibrillator; and

(vi) pharmacologic antagonists as specified by the medical staff and appropriate to the type of anesthesia services provided.

(b) Surgical services.

(1) Surgical procedures performed in the ASC shall be limited to those procedures that are approved by the governing body upon the recommendation of qualified medical personnel.

(2) Adequate supervision of surgery conducted in the ASC shall be a responsibility of the governing body, shall be recommended by qualified medical personnel, and shall be provided by appropriate personnel.

(3) Surgical procedures shall be performed only by health care practitioners who are licensed to perform such procedures within Texas and who have been granted privileges to perform those procedures by the governing body of the ASC, upon the recommendation of qualified medical personnel and after medical review of the practitioner's documented education, training, experience, and current competence.

(4) Surgical procedures to be performed in the ASC shall be reviewed periodically as part of the peer review portion of the ASC's quality assurance program.

(5) An appropriate history, physical examination, and pertinent preoperative diagnostic studies shall be incorporated into the patient's medical record prior to surgery.

(6) The necessity or appropriateness of the proposed surgery, as well as any available alternative treatment techniques, shall be discussed with the patient prior to scheduling the patient for surgery.

(7) Licensed nurses and other personnel assisting in the provision of surgical services shall be appropriately trained and supervised and shall be available in sufficient numbers for the surgical care provided.

(8) Each operating room shall be designed and equipped so that the types of surgery conducted can be performed in a manner that protects the lives and assures the physical safety of all persons in the area.

(A) If flammable agents are present in an operating room the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Annex 2, Flammable Anesthetizing Locations, 1999) and with applicable state and local fire codes.

(B) If nonflammable agents are present in an operating room the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Chapters 4 and 8, 1999) and with applicable state and local fire codes.

(9) With the exception of those tissues exempted by the governing body after medical review, tissues removed during surgery shall be examined by a pathologist, whose signed report of the examination shall be made a part of the patient's medical record.

(10) A description of the findings and techniques of an operation shall be accurately and completely written or dictated immediately after the procedure by the health care practitioner who performed the operation. If the description is dictated, an accurate written summary shall be immediately available to the health care practitioners providing patient care and becomes a part of the patient's medical record. Refer to §135.9(p) of this title (relating to Medical Records).

(11) A safe environment for treating surgical patients, including adequate safeguards to protect the patient from cross-infection, shall be assured through the provision of adequate space, equipment, and personnel.

(A) Provisions shall be made for the isolation or immediate transfer of patients with communicable diseases.

(B) All persons entering operating rooms shall be properly attired.

(C) Acceptable aseptic techniques shall be used by all persons in the surgical area.

(D) Only authorized persons shall be allowed in the surgical area.

(E) Suitable equipment for rapid and routine sterilization shall be available to assure that operating room materials are sterile.

(F) Environmental controls shall be implemented to assure a safe and sanitary environment.

(G) Operating rooms shall be appropriately cleaned before each operation.

(12) Written policies and procedures for decontamination, disinfection, sterilization, and storage of sterile supplies shall be developed, implemented and enforced. Policies shall include, but not be limited to, the receiving, cleaning, decontaminating, disinfecting, preparing and sterilization of critical items (reusable items), as well as for the assembly, wrapping, storage, distribution, and the monitoring and control of sterile items and equipment.

(A) Policies and procedures shall be developed following standards, guidelines and recommendations issued by the Association of Operating Room Nurses (AORN), the Association for Professionals in Infection Control and Epidemiology (APIC), the Centers for Disease Control and Prevention (CDC) and, if applicable, the Society of Gastroenterology Nurses and Associates (SGNA). Standards, guidelines, and recommendations of these organizations are available for review at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas. Copies may also be obtained directly from each organization, as follows: AORN, 2170 South Parker Road, Suite 300, Denver CO, 80231, (800) 755-2676; APIC, 1275 K Street, NW, Suite 1000, Washington, DC, 20005, (202) 789-1890; CDC, National Center for Infectious Disease, Mailstop C-14, 1600 Clifton Road, Atlanta, GA, 30333; SGNA, 401 North Michigan Avenue, Chicago, IL, 60611.

(B) Policies and procedures shall also address proper use of external chemical indicators and biological indicators.

(C) Performance records for all sterilizers shall be maintained for a period of 6 months.

(D) Preventive maintenance of all sterilizers shall be completed according to manufacturers recommendations on a scheduled basis. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least one year and shall be available for review to the facility within two hours of request by the department.

(13) Emergency power adequate for the type of surgery performed shall be available in the operative and post operative recovery areas.

(14) Periodic calibration and/or preventive maintenance of all equipment shall be provided in accordance with manufacturer's guidelines.

(15) The informed consent of the patient or, if applicable, of the patient's legal representative, shall be obtained before an operation is performed.

(16) A written procedure shall be established for observation and care of the patient during the preoperative preparation and postoperative recovery period.

(17) Written protocols shall be established for instructing patients in self-care after surgery, including written instructions to be given to patients who receive conscious sedation, regional and general anesthesia.

(18) Patients who have received anesthesia shall only be allowed to leave the facility in the company of a responsible adult unless the operating surgeon, a physician or an advanced practice nurse writes an order that the patient may leave without the company of a responsible adult.

(19) An effective written procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC shall be developed. The ASC must have a written transfer agreement with a hospital or all physicians on staff at the ASC must have admitting privileges at a local hospital.

§135.15. Facility Staffing and Training.

(a) Nursing services.

(1) There shall be an organized nursing service under the direction of a qualified registered nurse (RN). The ASC shall be staffed to assure that the nursing needs of all patients are met.

(2) There shall be a written plan of administrative authority for all nursing services with responsibilities and duties of each category of nursing personnel delineated and a written job description for each category. The scope of nursing service shall include, but is not limited to, nursing care rendered to patients preoperatively, intraoperatively, and postoperatively.

(A) The responsible individual for nursing services shall be a qualified RN whose responsibility and authority for nursing service shall be clearly defined and includes supervision of both personnel performance and patient care.

(B) There shall be a written delineation of functions, qualifications, and patient care responsibilities for all categories of nursing personnel.

(C) Surgical technicians and licensed vocational nurses may be permitted to serve as the scrub nurse under the direct supervision of an RN; they shall not be permitted to function as circulating nurses in the operating rooms, except in ASCs where no general anesthesia is administered and when there is an adequate number of RNs immediately available for an emergency situation. Licensed vocational nurses and surgical technicians may assist in circulatory duties under the direct supervision of a qualified RN during general anesthesia cases.

(D) Nursing services shall be provided in accordance with current recognized standards or recommended practices.

(3) There shall be an adequate number of RNs on duty to meet the following minimum staff requirements: director of the department (or designee), and supervisory and staff personnel for each service area to assure the immediate availability of an RN for emergency care or for any patient when needed.

(A) An RN shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and qualifications of the nursing staff available.

(B) There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of an RN.

(4) An RN qualified, at a minimum, with current certification in basic cardiac life support, shall be on duty and on the premises at all times whenever patients are present in the facility.

(b) Additional staffing requirements. In addition to meeting the requirements for nursing staff under subsection (a) of this section, facilities must comply with the following minimum staffing requirements.

(1) Facilities that provide only topical anesthesia, local anesthesia and/or minimal sedation are required to have a second individual on duty on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility.

(2) Facilities that provide moderate sedation/analgesia are required to have the following additional staff:

(A) a second individual on duty on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility; and

(B) an individual trained and currently certified in advanced cardiac life support and, if surgery is performed on pediatric patients, pediatric advanced life support, must be available until all patients have been discharged from the post anesthesia care unit.

(3) Facilities that provide deep sedation/analgesia, general anesthesia, and/or regional anesthesia must have the following additional staff:

(A) a second individual on duty on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility; and

(B) an individual who is trained and currently certified in advanced cardiac life support and, if surgery is performed on pediatric patients, pediatric advanced life support, must be on duty on the premises and sufficiently free of other duties to enable the individual to respond rapidly to emergency situations until all patients have been discharged from the post anesthesia care unit.

§135.22. Renewal of Annual License.

(a) The department will send written notice of expiration of an annual license to an applicant at least 60 days before the expiration date. If the applicant has not received notice, it is the duty of the applicant to notify the department and request a renewal application.

(b) Renewal license. The department shall issue a renewal license to an ASC that meets the minimum standards for a license set forth in these sections.

(1) The ASC shall submit the following to the department no later than 30 days prior to the expiration date of the license:

(A) a completed renewal application form;

(B) a nonrefundable license fee; and

(C) if the ASC is accredited by JCAHO, AAAHC or AAAASF, documented evidence of current accreditation status.

(2) Renewal licenses issued prior to January 1, 2005, will be valid for 12 months.

(3) Renewal licenses issued January 1, 2005, through December 31, 2005, will be valid for either 12 months or 24 months, to be determined by the department prior to the time of license renewal.

(4) Renewal licenses issued January 1, 2006, or after will be valid for 24 months.

(c) If the applicant fails to timely submit an application and fee in accordance with subsection (b) of this section, the department shall notify the applicant that the ASC must cease providing ambulatory surgical services. If the ASC can provide the department with sufficient evidence that the submission was completed in a timely manner and all dates were adhered to, the cease to perform will be dismissed. If the ASC cannot provide sufficient evidence, the ASC shall immediately thereafter return the license by certified mail. If the applicant wishes to provide ambulatory surgical services after the expiration date of the license, the applicant must reapply for an annual license under §135.20 of this title (relating to Initial Application and Issuance of License).

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 12, 2005.

TRD-200504605
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Effective date: November 1, 2005
Proposal publication date: June 17, 2005
For further information, please call: (512) 458-7111



25 TAC §§135.11, 135.15, 135.26

The repeals are adopted under Health and Safety Code, §243.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §12.0112, which requires the term of each license issued to be two years; 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.

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

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Lisa Hernandez
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SUBCHAPTER B. SAFETY REQUIREMENTS FOR NEW AND EXISTING AMBULATORY SURGICAL CENTERS

25 TAC §135.41, §135.42

The amendments are adopted under Health and Safety Code, §243.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §12.0112, which requires the term of each license issued to be two years; 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.

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SUBCHAPTER C. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS FOR NEW AND EXISTING AMBULATORY SURGICAL CENTERS

25 TAC §135.52

The amendment is adopted under Health and Safety Code, §243.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §12.0112, which requires the term of each license issued to be two years; 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.

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

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Lisa Hernandez

Deputy General Counsel

Department of State Health Services

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER J. RULES TO IMPLEMENT THE AMUSEMENT RIDE SAFETY INSPECTION AND INSURANCE ACT

28 TAC §§5.9002 - 5.9004, 5.9007, 5.9008, 5.9010, 5.9012

The Commissioner of Insurance adopts amendments to §§5.9002 - 5.9004, 5.9007, 5.9008, 5.9010, and 5.9012, concerning rules to implement the Amusement Ride Safety Inspection and Insurance Act (the Act). The sections are adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5284) and to the forms adopted by reference.

This adoption is necessary to implement legislation enacted by the 79th Legislature, Regular Session, in House Bill (HB) 1892, effective June 17, 2005, and HB 2879 and Senate Bill (SB) 1282, both effective September 1, 2005, and to update statutory references and two amusement ride forms. The legislation clarifies insurance requirements for amusement rides to allow policies to be written in either a combined single limit or a split limit amount in accord with the newly specified minimum limits set forth in §2151.101 of the Occupations Code, and further defines and specifies an exception from amusement ride regulation for certain challenge courses that meet particular insurance requirements. The purposes of the amendments are to conform applicable sections of the amusement ride rules to the new legislation, update statutory references in those sections and update two amusement ride forms.

Amended §5.9002 adds to the definition of "amusement ride" the exception for a challenge course or any part of a challenge course as defined in §2151.107 of the Act that meets certain specified insurance requirements as set forth in that section and in §2151.002 of the Act. Amended §5.9004 updates statutory references and clarifies the insurance requirements for operating an amusement ride to allow insurance policies to be written

as a combined single limit or a split limit and to specify the minimum amounts in which such limits can be written. Amended §5.9012 updates statutory references. Two amusement ride forms, TDI Form AR-100 and TDI Form AR-800, are updated to add clarifying, corrective, and explanatory language and delete unnecessary language. Additionally, the sections that reference these forms which are adopted by reference, §§5.9003, 5.9004, 5.9007, 5.9008, and 5.9010, are amended to indicate the revised effective date for these forms.

No comments were received regarding the proposal.

The amended sections are adopted pursuant to Title 13, Occupations Code, §§2151.101(a), 2151.002(1), and 2151.107 and the Insurance Code §36.001. Section 2151.101(a) as amended by the 79th Legislature, Regular Session, in SB 1282 and HB 2879 clarifies insurance requirements for amusement rides to allow policies to be written in either a combined single limit or a split limit amount in accord with the newly specified minimum limits set forth in §2151.101(a)(3)(A) and (B) of the Occupations Code. Section 2151.107 as enacted by the 79th Legislature, Regular Session, in HB 1892 and HB 2879, and §2151.002 as amended by the 79th Legislature, Regular Session, in SB 1282 define and specify an exception from amusement ride regulation for certain challenge courses that meet particular insurance requirements. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on October 14, 2005.

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Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 16. COASTAL PROTECTION

31 TAC §§16.1 - 16.4

The General Land Office (GLO), with the approval of the School Land Board (SLB), adopts the proposed amendments to 31 TAC, Part 1, Chapter 16, relating to Coastal Protection, including §16.1 relating to Definitions and Scope, §16.2 relating to Goals and Administrative Policies, §16.3 relating to Policies for Specific Activities and Coastal Natural Resource Areas, and §16.4 relating to Thresholds For Referral. The amendments are adopted without changes to the proposed text published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5717) and will not be republished. These rule amendments

have been undertaken as a result of the comprehensive review of the GLO's and SLB's rules mandated by Texas Government Code §2001.039.

Sections 16.1 through 16.4 require that certain actions of the GLO and the SLB comply with the requirements of the Texas Coastal Management Program (CMP). The CMP was created pursuant to the Coastal Coordination Act (Act), Texas Natural Resources Code, Chapter 33, Subchapter F. The goals and policies of the CMP are set forth in the regulations of the Coastal Coordination Council (Council), Title 31, Texas Administrative Code, Chapters 501 through 506 (Council's rules). The GLO, with approval of the SLB, adopted §§16.1-16.4, effective December 18, 1995, at 20 TexReg 10271. These rules were adopted during the early development of the Texas CMP. In large part, the Chapter 16 rules duplicate provisions of the Act and of the Council's rules on definitions, goals and administrative policies, and policies for specific activities and coastal natural resource areas. The intent of this rulemaking is to update the rules in Chapter 16 to accurately reflect the Act and Council's rules as amended since the original adoption of the Chapter 16 regulations in 1995. The adopted rule amendments incorporate the Act and the Council's rules by reference and delete parts of §§16.1-16.3 that are essentially duplicative. The intent of the deletions and incorporation by reference is to make the GLO's and SLB's obligations under the Chapter 16 regulations identical to the GLO's and SLB's obligation under existing law as reflected in the Act and the Council's rules.

The adopted amendment of §16.1(a)(2) deletes the substantive part of this definition of "CMP" and replaces it with a reference to the definition of "Coastal Management Program" in Texas Natural Resources Code §33.203(22) to assure that it conforms to the definition in the Act.

The adopted amendments to §16.1(a)(3) set forth a list of the coastal natural resource areas (CNRAs) covered by the regulation. The adopted amendments to §16.1(a)(3)(A) delete the definition and incorporate by reference the current definition of "waters in the open Gulf of Mexico" provided in Texas Natural Resources Code, §33.203(18). The adopted amendments to §16.1(a)(3)(B) delete the definition and incorporate by reference the current definition of "waters under tidal influence" provided in Texas Natural Resources Code, §33.203(19). The adopted amendments to §16.1(a)(3)(C) delete the definition and incorporate by reference the current definition of "state submerged land" provided in Texas Natural Resources Code, §33.203(15). The adopted amendments to §16.1(a)(3)(D) adds a reference to the definitions of "coastal wetlands" as defined in §16.1(a)(5) of this chapter. The adopted amendments to §16.1(a)(3)(E) deletes the definition and incorporates by reference the current definition of "submerged aquatic vegetation" provided in Texas Natural Resources Code, §33.203(16). The adopted amendments to §16.1(a)(3)(F) delete the definition and incorporate by reference the current definition of "tidal salt or mud flat" provided in Texas Natural Resources Code, §33.203(17). The adopted amendments to §16.1(a)(3)(G) delete the definition and incorporate by reference the current definition of "oyster reefs" provided in Texas Natural Resources Code, §33.203(13). The adopted amendments to §16.1(a)(3)(H) delete the definition and incorporate by reference the current definition of "hard substrate reefs" provided in Texas Natural Resources Code, §33.203(12). The adopted amendments to §16.1(a)(3)(I) deletes the definition and incorporates by reference the current definition of "coastal barriers" provided in Texas Natural Resources Code, §33.203(2). The adopted amendments to §16.1(a)(3)(K) delete the definition and

incorporate by reference the current definition of "Gulf beaches" provided in Texas Natural Resources Code, §33.203(11). The adopted amendments to §16.1(a)(3)(L) deletes the definition and incorporates by reference the current definition of "critical dune areas" provided in Texas Natural Resources Code, §33.203(9). The amendments to §16.1(a)(3)(M) delete the definition and incorporate by reference the current definition of "special hazard areas" provided in Texas Natural Resources Code, §33.203(14). The adopted amendments to §16.1(a)(3)(N) delete the definition and incorporate by reference the current definition of "critical erosion areas" provided in Texas Natural Resources Code, §33.203(10). The adopted amendments to §16.1(a)(3)(O) delete the definition and incorporate by reference the current definition of "coastal historic area" provided in Texas Natural Resources Code, §33.203(3). The adopted amendments to §16.1(a)(3)(P) deletes the definition of "coastal parks, wildlife areas, and preserves" and replaces it by incorporating by reference the definition of "coastal preserve" provided in Texas Natural Resources Code, §33.203(4). This adopted amendment reflects the change in the Act and the Council's rules at 31 TAC §501.3(b)(3), replacing the phrase "coastal parks, wildlife areas, and preserves" with the term "coastal preserve."

The adopted amendment of §16.1(a)(5) revises the definition of the term "coastal wetlands" by replacing the reference to Texas Water Code, Chapter 11, Subchapter J, with a reference to Texas Water Code §11.502 and by replacing an explicit description of the Texas coastal zone with a reference to the term "coastal zone" defined in §16.1(a)(4).

The adopted amendment of §16.1(a)(7) deletes the definition and incorporates by reference the current definition of "critical area" provided in Texas Natural Resources Code, §33.203(8).

The adopted amendment of §16.1(a)(14) deletes the definition for "Water dependent use or facility" because the proposed amendments eliminate that phrase from this chapter.

The adopted amendment of §16.1(b) deletes the list of specific actions and instead incorporates by reference the list of actions set forth in 31 TAC §505.11(a)(1) relating to Actions and Rules Subject to the Coastal Management Program. The incorporation by reference includes all nine of the actions listed in the current rule, and adds issuance or approval of a certification of a subdivision beach access or dune protection plan, and of an agency or subdivision wetlands mitigation bank. Although those two actions are not currently listed in §16.1(b), they are actions of the GLO that are subject to the CMP as required by 31 TAC §505.11(a)(1). Therefore, including those actions by reference in §16.1(b) streamlines the GLO's and SLB's rules to more closely reflect their obligations under the CMP.

The adopted amendment of §16.2(a) deletes the list of goals in this section and replaces it with a reference to the list of goals in the Council's rule 31 TAC §501.12, adopted as authorized by Texas Natural Resources Code §33.204(a).

The adopted amendment of §16.2(b) deletes the list of administrative policies in this section and replaces it with a reference to the list of administrative policies in the Council's rule §501.13(a), adopted as authorized by Texas Natural Resources Code §33.204(a).

The adopted amendment to §16.2(c) deletes the procedures for the policy for major actions in this section and replaces it with a reference to the procedures for the policy for major actions in the Council's rules 31 TAC §501.15(b) and 31 TAC §501.15(c), as authorized by Texas Natural Resources Code §33.204(a).

The adopted amendment of §16.2(f) deletes the second and third sentences in this rule because the corresponding language in the Council's rule at 31 TAC §505.30(d) has been previously deleted from that rule, effective August 27, 2000, (25 TexReg 8032).

The adopted amendment of §16.3 incorporates the policies in Council's rules 31 TAC §§501.17, 501.23, 501.24, 501.25, and 501.26 as policies of the CMP that the GLO and SLB shall comply with in taking actions listed in §16.1(b) and in adopting rules relating to those policies that are described in the Council's policies. The phrase "as appropriate" is added because some of the actions covered by this section apply only to the GLO. The amendment clarifies the GLO's and SLB's obligation to comply with the Council's goals and policies applicable to GLO and SLB actions when taking any individual action covered by the CMP, incorporated by reference from 31 TAC §505.11(a)(1), and when adopting any rules explicitly mentioned in 31 TAC §§501.17, 501.23, 501.24, 501.25, and 501.26. The amendment deletes subsections (b)-(e), which are replaced by reference to the Council's rules in this section.

The adopted amendment of §16.4, relating to Thresholds for Referral, changes the term "coastal parks, wildlife management areas, and preserves" to "coastal preserve" in order to reflect the current definition in Texas Natural Resources Code §33.203(4). The actual thresholds for referral to the Council are not amended.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the adopted rulemaking as a "major environmental rule." The adopted rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the GLO.

The adopted rulemaking is subject to the CMP pursuant to 31 TAC §505.11(b)(4) because it governs individual agency actions listed in TNRC §33.2053 and 31 TAC §505.11(a)(1). The adopted rule amendments must be consistent with applicable CMP goals and policies. The applicable CMP goals and policies related to the GLO's rules at 31 TAC §§16.1-16.4 include: 31 TAC §501.12, relating to Goals; 31 TAC §§501.17, relating to Policies for Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities; 501.23, relating to Policies for Development in Critical Areas; 501.24, relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands; 501.25, relating to Policies for Dredging and Dredged Material Disposal and Placement; and 501.26, relating to Policies for Construction in the Beach/Dune System. The adopted amendments are consistent with the applicable goals and policies of the CMP because they are either changes required to reflect amendments to the Act and to the relevant Council's rules or they are administrative and editorial changes that do not change the substantive meaning or effect of the existing rules in Chapter 16, which have been deemed consistent with the goals and policies of the CMP.

The GLO has evaluated the adopted rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation

Act Guidelines and determined that a detailed takings impact assessment is not required. The adopted rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the adopted rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The adopted rulemaking will not result in a taking of private property and there are no adverse impacts on private real property interests.

No comments were received regarding any of the proposed amendments to §§16.1 - 16.4.

The amendments are adopted under authority granted in Texas Natural Resources Code §31.051, which provides the Commissioner of the GLO the authority to make and enforce suitable rules consistent with the law; and §33.064, which provides the School Land Board the authority to adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce Texas Natural Resources Code Chapter 33.

The adopted amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapter F.

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 12, 2005.

TRD-200504609

Trace Finley
Policy Director
General Land Office

Effective date: November 1, 2005

Proposal publication date: September 9, 2005

For further information, please call: (512) 475-1859

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission adopts amendments to Title 40, Part 2, Chapter 109, §§109.1, 109.5, 109.7, 109.33, 109.37, 109.41, 109.43, 109.201, 109.205, 109.209, 109.211, 109.213, 109.217, 109.221, 109.223, 109.229, 109.231, 109.233, 109.301, 109.317, 109.323, 109.327, 109.329, 109.339, 109.341, 109.343, 109.347, 109.349, 109.357, 109.359, 109.363, 109.369, 109.371, 109.373, 109.375, 109.501, 109.505, 109.701, 109.705, 109.707, 109.711, 109.771, 109.773, 109.777, 109.801, 109.803, 109.805, 109.903, 109.905, 109.909, 109.911, 109.913, 109.915, 109.917, 109.919, 109.921, 109.923, 109.925, 109.927, 109.929 and 109.931, of the rules of the Department of Assistive and Rehabilitative Services, concerning

passing grades on court interpreter licensing examinations, and concerning nomenclature and organizational structure of the Department of Assistive and Rehabilitative Services. The amendments are adopted without changes to the proposed text as published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 4951), and will not be republished.

The amendment to §109.911 is being adopted to increase the minimum passing grade for the required examination on legal and court procedure skills and knowledge. The amendments to the remainder of the rules in Chapter 109 are administrative in nature, and are adopted to update nomenclature to reflect the organizational restructuring from consolidation of the former Texas Commission for the Deaf and Hard of Hearing, into the Department of Assistive and Rehabilitative Services, on March 1, 2004.

No comments were received regarding adoption of the proposed amendments.

SUBCHAPTER A. SPECIALIZED TELECOMMUNICATIONS ASSISTANCE PROGRAM

DIVISION 1. DEFINITIONS

40 TAC §§109.1, 109.5, 109.7

The amendments are being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on October 14, 2005.

TRD-200504617
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: November 3, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-4050



DIVISION 2. PROGRAM ELIGIBILITY

40 TAC §§109.33, 109.37, 109.41, 109.43

The amendments are being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on October 14, 2005.

TRD-200504618
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: November 3, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-4050



SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

DIVISION 1. DEFINITIONS AND BOARD OPERATIONS

40 TAC §§109.201, 109.205, 109.209, 109.211, 109.213, 109.217, 109.221, 109.223, 109.229, 109.231, 109.233

The amendments are being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on October 14, 2005.

TRD-200504619
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: November 3, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-4050



DIVISION 2. BOARD CERTIFICATION EVALUATION

40 TAC §§109.301, 109.317, 109.323, 109.327, 109.329, 109.339, 109.341, 109.343, 109.347, 109.349, 109.357, 109.359, 109.363, 109.369, 109.371, 109.373, 109.375

The amendments are being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on October 14, 2005.

TRD-200504620
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: November 3, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-4050



DIVISION 3. STANDARDS OF ETHICAL BEHAVIOR FOR INTERPRETERS

40 TAC §§109.501, §109.505

The amendments are being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on October 14, 2005.

TRD-200504621
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: November 3, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-4050



DIVISION 4. DENIAL, SUSPENSION, OR REVOCATION OF A CERTIFICATE

40 TAC §§109.701, 109.705, 109.707, 109.711

The amendments are being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on October 14, 2005.

TRD-200504622

Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: November 3, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-4050



DIVISION 5. FEES

40 TAC §§109.771, 109.773, 109.777

The amendments are being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on October 14, 2005.

TRD-200504623
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: November 3, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-4050



DIVISION 6. PUBLICATIONS

40 TAC §§109.801, 109.803, 109.805

The amendments are being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on October 14, 2005.

TRD-200504624
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: November 3, 2005
Proposal publication date: August 26, 2005
For further information, please call: (512) 424-4050



**DIVISION 7. CERTIFIED COURT
INTERPRETERS**

**40 TAC §§109.903, 109.905, 109.909, 109.911, 109.913,
109.915, 109.917, 109.919, 109.921, 109.923, 109.925,
109.927, 109.929, 109.931**

The amendments are being adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

Filed with the Office of the Secretary of State on October 14, 2005.

TRD-200504625

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: November 3, 2005

Proposal publication date: August 26, 2005

For further information, please call: (512) 424-4050



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5,
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION COMMISSIONER'S ORDER
NO. 05-0906

PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUB-CHAPTER L, ARTICLE 5.96 ADOPTION OF REVISED WORKERS' COMPENSATION CLASSIFICATION RELATIVITIES; AMENDMENTS TO THE TEXAS BASIC MANUAL OR RULES, CLASSIFICATION AND EXPERIENCE RATING PLAN FOR WORKERS' COMPENSATION AND EMPLOYER' LIABILITY INSURANCE UPDATING EXPECTED LOSS RATES AND DISCOUNT RATIOS

The Commissioner of Insurance (Commissioner) adopts the amendments proposed by the Texas Department of Insurance staff in a petition filed on August 23, 2005. Notice of the proposal (Reference No. W-0805-09-I) was published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5387). The amendments were considered at a public hearing held under Docket No. 2623 on October 18, 2005 at 10:00 a.m. in Room 100 of the William P. Hobby Building, 333 Guadalupe Street in Austin, Texas.

The Commissioner adopts the amendments proposed by staff with no changes to the proposed amendments as published in the *Texas Register*. The adopted amendments include revised Texas Workers' Compensation Classification Relativities (classification relativities) to replace those adopted in Commissioner's Order No. 04-1001 dated October 14, 2004, and revised table amending the Texas Basic Manual of Rules, Classification and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (Basic Manual) concerning the Expected Loss Rates and Discount Ratios used in experience rating.

The Commissioner has jurisdiction of this matter pursuant to Article 5.60 and Article 5.96 of the Texas Insurance Code.

The Commissioner has determined that it is necessary to revise the classification relativities and the table in the Basic Manual as proposed by staff at the October 18, 2005 hearing so that they will be based on the most recent experience data available.

The revised classification relativities and the amendments to the Basic Manual are on file in the Chief Clerk's Office of the Texas Department of Insurance under Reference No. W-0805-09-I and are incorporated into this order.

The agency hereby certifies that the amendments to the classification relativities and the Basic Manual have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the amendments proposed by staff to the classification relativities and the Basic Manual are adopted.

IT IS FURTHER ORDERED that the revised classification relativities are available for immediate use by the insurers as of the date of this order, and that their use is mandatory for all policies with an effective date on or after January 1, 2006.

IT IS FURTHER ORDERED that the amendments to the Basic Manual apply to all policies with an effective date on or after January 1, 2006.

TRD-200504699

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: October 19, 2005



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission (TREC) proposes to review Chapter 543 in accordance with the Texas Government Code, §2001.039.

Review of the rules under this chapter will determine whether the reasons for adoption of the rules continues to exist. During the review process, TREC may also determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations, whether the rules reflect current TREC procedures, that no changes to a rule as currently in effect are necessary, or that a rule is not longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Review of Agency Rules section without publication of the text. Any proposed amendments or repeal of a rule or chapter as a result of the review will be simultaneously published in the Proposed Rules section of the *Texas Register* and will be open for a 30-day public comment period prior to final adoption or repeal.

TREC invites comments during the review process for 30 days following the publication of this notice in the *Texas Register*. Any questions or comments pertaining to this notice of intention to review should be directed to Loretta R. DeHay, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us within 30 days of publication.

TRD-200504704
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Filed: October 19, 2005

Adopted Rule Reviews

General Land Office

Title 31, Part 1

The General Land Office (GLO) files this Notice of Readoption of 31 TAC Chapter 13, relating to Land Resources, §§13.1 - 13.3, 13.11 - 13.20, 13.71 - 13.86, and 13.87 - 13.94. This readoption of Chapter 13 is filed in accordance with the General Land Office's Intention to Review published in the January 14, 2005, issue of the *Texas Register* (30 TexReg 95).

The GLO has assessed whether the reasons for readopting 31 TAC §§13.1 - 13.3, 13.11 - 13.20, 13.71 - 13.86, and 13.87 - 13.94 continue to exist. The GLO finds that the rules in Chapter 13 reflect current procedures of the GLO. The reasons for initially adopting the rules continue to exist. The GLO, therefore, readopts Chapter 13 relating to Land Resources in its entirety.

No comments were received on the proposed notice of intention to review.

Chapter 13 is readopted under authority granted to the commissioner of the GLO in §31.051, Texas Natural Resources Code, to adopt rules consistent with law.

Texas Natural Resources Code, Chapters 31, 32, and 51 are affected by the proposed readoption.

This concludes the review of Chapter 13, Land Resources.

TRD-200504604
Trace Finley
Policy Director
General Land Office
Filed: October 12, 2005

Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission (TREC) adopts the review of Chapter 539 in accordance with the Texas Government Code, §2001.039. The proposed notice of review was published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5389).

In conjunction with this review, the agency adopted amendments to §§539.31, 539.51, 535.81, and 535.121. The amendments change the cites to the relevant statutory provisions in Chapter 1303, Texas Occupations Code and update the rules for consistency and clarity. The agency has determined that with this change, the reasons for adopting the sections in Chapter 539 continue to exist.

No comments were received in response to the notice of the proposed rule review as published in the above-referenced issue of the *Texas Register*.

TRD-200504705
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Filed: October 19, 2005

*T*ABLES & *G*RAPHICS

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.



Texas Department of Housing and Community Affairs

P. O. Box 12489 Austin, Texas 78711
 1-800-500-7074 FAX 1-800-475-3506
 Internet Address: www.tdhca.state.tx.us

**DEPT. USE ONLY
 LICENSE #**

APPLICATION TO OPERATE A MIGRANT LABOR HOUSING FACILITY

*****Be Certain To Complete Both Pages Of This Form*****

Privacy Notification With few exceptions, you have the right to request and be informed about information that the State of Texas collects about you. You are entitled to receive and review the information upon request. You also have the right to ask the state agency to correct any information that is determined to be incorrect. See http://www.tdh.state.tx.us for information on Privacy Notification. (Reference: Government Code, Section 552.021, 552.023, 559.003 and 559.004)					
Block 1: Facility Location Information					
Legal Name of Owner/Applicant		Email:			
Facility Name:		Facility Phone #:			
Facility Location Address:					
City:	State: TX	ZIP:	County:		
Block 2: Facility Description Information					
Please provide the following information and check the appropriate boxes.					
Number of Buildings:		Number of Units:		Total Capacity:	
Water Supply		Sewage Disposal		Cooking Facility	
<input type="checkbox"/>	Municipal	<input type="checkbox"/>	Municipal	<input type="checkbox"/>	General Mess
<input type="checkbox"/>	Private	<input type="checkbox"/>	Septic	<input type="checkbox"/>	Individual
Bathing		Laundry		Hand washing	
<input type="checkbox"/>	Central	<input type="checkbox"/>	Central	<input type="checkbox"/>	Central
<input type="checkbox"/>	Individual	<input type="checkbox"/>	Individual	<input type="checkbox"/>	Individual
Block 3: Additional Contact Information					
(Address where license will be mailed, e.g., address of corporation, company, or home.)					
List all persons authorized to act on behalf of the owner with respect to the facility. Each person so named may be changed at any time by signed notification from the owner/applicant to TDHCA					
Name/Title		Name/Title		Name/Title	
Mailing Address:					
City:		State: TX		ZIP:	
Owner Phone #:			Owner Fax:		
License Fee: \$250.00					
The current fee has been reduced from previous fees based on a good-faith interpretation of current statutory language. Should this reduced fee be challenged, the recipient of this license may be required to pay the higher published fee at a later date.					

Block 4: Reason For Applying (check all that apply)		
<input type="checkbox"/> New Facility	Opening Date:	
<input type="checkbox"/> License Renewal	Opening Date:	Facility #:
<input type="checkbox"/> Change of Location	Previous Location:	Facility #:
<input type="checkbox"/> Change of Name	Previous Name:	Facility #:
<input type="checkbox"/> Change of Ownership	Previous Owner:	Facility #:

Block 5: Certification Statement	
<p>Pursuant to the Texas Migrant Labor Housing Facility Act, Tex. Gov. Code, §§2306.921-2306.933 (the "Act"), I hereby have fully completed the above application, at least 45 days prior to the intended operation date, for a license to establish and maintain a Migrant Labor Housing Facility in accordance with rules promulgated by the Texas Department of Housing and Community Affairs (the "Department"), as they may apply to the administration of the Act by the Department. By signing this document I certify that I am an officer of the owner/applicant or am otherwise authorized to sign this document on behalf of the owner/applicant and that all information in this complete application is true and correct.</p>	
Signature:	Title:
Name (printed):	Date:

<ul style="list-style-type: none"> ➤ An application must be submitted to the Department at least 45 days prior to the intended operation of the facility, but no more than 60 days ➤ A license, unless revoked, shall expire one year from the date of issuance, and it shall be non transferable. ➤ Please note that it is the responsibility of the license holder to renew their license before the expiration date, whether or not they have received a payment notice from the Department. If you did not receive your renewal notice, you may use this form to renew your license. ➤ For assistance in completing this application, please call 806-794-2105 or 877-724-5676. ➤ Make check payable to the: Texas Department of Housing and Community Affairs
<p>Mail application and fees to the: TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS P. O. BOX 12489 AUSTIN, TX 78711-2489</p>

*****Incomplete Applications And Improper Fees Will Delay The Issuance Of License*****

Figure: 22 TAC §781.702(c)

FAILURE TO APPEAR

YOUR FAILURE TO APPEAR, IN PERSON OR BY REPRESENTATIVE, ON THE ABOVE DATE, TIME, AND PLACE, WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS IN THIS NOTICE WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE GRANTED BY DEFAULT.

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of October 7, 2005, through October 13, 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 19, 2005. The public comment period for these projects will close at 5:00 p.m. on November 18, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: BOSS Exploration & Production Corporation; Location: The project is located in State Tract (ST) 390 of Corpus Christi Bay, approximately 6 miles southeast of Ingleside-on-the-Bay or 4.9 miles west-southwest of Port Aransas, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 684574; Northing: 3076291. Project Description: The applicant proposes to drill the ST 384 Well No. 2 from a surface position located in State Tract 390, install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, and a well head protector. CCC Project No.: 06-0005-F1; Type of Application: U.S.A.C.E. permit application #23900 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: BOSS Exploration & Production Corporation; Location: The project is located in State Tract (ST) 348 of Corpus Christi Bay, approximately 4.7 miles southeast of Ingleside-on-the-Bay, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 682713; Northing: 3077703. Project Description: The applicant proposes to drill the ST 345 Well No. 1 from a surface position located in State Tract 348, install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, and a well head protector. CCC Project No.: 06-0006-F1; Type of Application: U.S.A.C.E. permit application #23901 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Davis Petroleum Corporation; Location: The project is located in Galveston Bay, State Tract 85, Chambers County, Texas. The coordinates of the structure are X=3,328,017, Y=662,141 (Latitude 29

degrees 36 minutes 20.42 seconds; Longitude 94 degrees 49 minutes 11.56 seconds). The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Project Description: The applicant proposes to install a drilling rig, well platform, and production platform with an associated rock pad. Approximately 2,667 cubic yards of crushed rock will be discharged for the 0.551-acre pad. The area was surveyed for oyster reefs. No oyster reefs were located within 500 feet of the proposed location. CCC Project No.: 06-0008-F1; Type of Application: U.S.A.C.E. permit application #23928 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located within Galveston Bay, State Tracts 113 and 132, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 318957; Northing: 3273883. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. The proposed gravel pad will be 240 by 100 by 3 feet (0.5 acre) in size. The proposed pipeline will be 4,119 feet long and will terminate at an existing platform, authorized by Department of the Army Permit No. 23683. CCC Project No.: 06-0011-F1; Type of Application: U.S.A.C.E. permit application #23940 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

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-200504670

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: October 18, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 10/24/05 - 10/30/05 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 10/24/05 - 10/30/05 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/05 - 11/30/05 is 6.75% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 11/01/05 - 11/30/05 is 6.75% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200504684

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 19, 2005

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received from Houston Postal Credit Union, Houston, Texas. The credit union is proposing to change its name to Plus4 Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200504687

Harold E. Feeney

Commissioner

Credit Union Department

Filed: October 19, 2005

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Texas Health Resources Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit members of Friends of Consumer Freedom Association located at 4455 LBJ Freeway, Farmers Branch, Texas 75244, to be eligible for membership in the credit union.

An application was received from My Credit Union (#1), Bedford, Texas to expand its field of membership. The proposal would permit persons who live, work, worship and attend school and businesses and

non business entities, organizations and associations located within Van Zandt, Kaufman & Wood Counties, Texas, to be eligible for membership in the credit union.

An application was received from My Credit Union (#2), Bedford, Texas to expand its field of membership. The proposal would permit persons who live, work, worship and attend school and businesses and non business entities, organizations and associations located within Tarrant County, Texas, to be eligible for membership in the credit union.

An application was received from My Credit Union (#3), Bedford, Texas to expand its field of membership. The proposal would permit persons who live, work, worship and attend school and businesses and non business entities, organizations and associations located within Grayson County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcred.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200504686

Harold E. Feeney

Commissioner

Credit Union Department

Filed: October 19, 2005

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership - Approved

Midland Teachers Credit Union, Midland, Texas - See *Texas Register* issue dated May 27, 2005.

Star One Credit Union, Sunnyvale, California - See *Texas Register* issue dated July 29, 2005.

Application(s) to Amend Articles of Incorporation - Approved

Entex Credit Union, Houston, Texas - See *Texas Register* issue dated August 26, 2005.

TRD-200504688

Harold E. Feeney

Commissioner

Credit Union Department

Filed: October 19, 2005

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Education Service Center Region 10

Request for Proposal - Program Management Services Texas Education for Homeless Youth

The Education Service Center Region 10 (Center or ESC) is soliciting proposals for Program Management Services for the Texas Education for Homeless Children and Youth Program using funds authorized by the Stewart B. McKinney Homeless Assistance Act, Public Law 100-77. This project seeks to fund a program management staff that will assist the Center, acting as fiscal agent for the state of Texas, in carrying out the goals of the state's homeless student education plan. Managed activities include coordination of the competitive grant application process for Texas school districts to receive funding assistance for homeless youth, site visits to grantees to ensure compliance with program rules, collaboration with grantees to improve student outcomes, maintenance of a homeless student data base, assistance to school districts in handling complaints concerning the education of homeless youth, and the dissemination of information statewide regarding homeless education assistance.

Vendors wishing to receive a complete copy of the RFP should write or call Sue Hayes, Chief Financial Officer, Education Service Center Region 10, 400 E. Spring Valley Road, Richardson, Texas 75083-1300, (972) 348-1112. Please refer to RFP #2005-11 in your request.

All proposals must be received at the above address by 4:00 P.M. Thursday, December 1, 2005.

The award winning vendor will be selected based on their qualifications and ability to carry out all requirements contained in the RFP. The Region 10 ESC reserves the right to select the vendor that represents the best value to the Center.

TRD-200504662

Jill Shugart

Executive Director

Education Service Center Region 10

Filed: October 18, 2005

Employees Retirement System of Texas

Request for Proposal

The Employees Retirement System of Texas (ERS) is soliciting responses from qualified firms to conduct an evaluation of actuarial assumptions to determine the reasonableness, consistency and accuracy of ERS' current health care actuarial services. ERS administers the Texas Employees Group Benefits Program (GBP). The GBP is a statewide program providing life, health and disability benefits for employees and retirees of state agencies and institutions of higher education other than the University of Texas System and the Texas A&M University System.

Firms wishing to respond to the Request for Proposal (RFP) must be professional actuarial services firms that provide health care consulting and cost projection services. The firm must have been in existence as a business entity performing such services for a minimum of five (5) years. The firm must have all necessary permits, licenses, and professional credentials. Appropriate levels and types of fidelity, directors' and officers' or other applicable liability insurance must be in full force at the time the response is submitted and throughout the term of the contract. The principal actuary performing the review must be a Fellow of the Society of Actuaries. The principal actuary performing the review must have a minimum of ten (10) years of experience as an actuary on health plan consulting services and cost projection assignments for health care plans with memberships of at least 100,000 members. Any supporting actuary shall have five (5) years of experience as an actuary on health care consulting services and cost projection assignments for health care plans with memberships of at least 10,000 members. The

firm must provide its own work facilities, equipment, supplies and support staff to perform the required services.

ERS will base its evaluation and selection of the firm for the review on the factors and criteria outlined in this notice and in the RFP, including, but not limited to the following, which are not necessarily listed in order of priority: compliance with the RFP; qualifications of the proposed actuarial staff; technical experience, including experience with actuarial reviews of other health care plans and experience in providing actuarial services to other health care plans; the quality of the response, including the demonstration of a clear understanding of the scope of work as well as the appropriateness and adequacy of proposed procedures; the cost of the review; and other factors deemed appropriate by ERS.

ERS reserves the right to reject any response submitted which does not meet the criteria specified in this notice and in the RFP. ERS is under no legal requirement to execute a contract on the basis of this notice. ERS will not pay any costs incurred by any firm in responding to this notice or RFP or in connection with the preparation thereof.

A copy of the complete RFP can be obtained from ERS on or after October 24, 2005. To request a copy of the RFP or for additional information, please contact Marci Sundbeck at ERS at (512) 867-7302, or email her at marci.sundbeck@ers.state.tx.us. The deadline for receipt of responses by ERS is 3:00 p.m. CST on November 22, 2005.

TRD-200504695

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Filed: October 19, 2005

Texas Commission on Environmental Quality

Enforcement Orders

An order was entered regarding Sublight Enterprises, Inc., Docket No. 2001-0831-MWD-E on 10/03/2005 assessing \$8,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney at 512/239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RFK Enterprises, Inc. dba Food Stop #5, Docket No. 2002-1121-PST-E on 09/29/2005 assessing \$7,260 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at 713/422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Roma, Docket No. 2003-0291-MLM-E on 09/29/2005 assessing \$49,595 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Adelphi Community Cooperative, Docket No. 2003-1275-MWD-E on 09/29/2005 assessing \$9,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cisco, Docket No. 2003-0381-PWS-E on 09/29/2005 assessing \$7,971 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Merkel, Docket No. 2003-0705-PWS-E on 09/29/2005 assessing \$2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Texas Municipal Water District, Docket No. 2002-0772-MWD-E on 09/29/2005 assessing \$203,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at 512/239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Steve Silva dba Steve's Auto Works & Sales, Docket No. 2003-1529-AIR-E on 10/03/2005 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at 512/239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Awais and Sons, Inc. dba Texaco, Docket No. 2003-0805-PST-E on 09/29/2005 assessing \$3,280 in administrative penalties with \$656 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at 512/239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Environmental Processing Systems, L.C., Docket No. 2003-1272-UIC-E on 09/29/2005 assessing \$28,350 in administrative penalties with \$5,670 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stewart Tank Company & Oilfield Supply, Inc., Docket No. 2004-0228-MLM-E on 09/29/2005 assessing \$14,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at 512/239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Shepherd, Docket No. 2004-0738-MWD-E on 09/29/2005 assessing \$2,620 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at 512/239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oceanic Systems, Inc., Docket No. 2004-0739-AIR-E on 09/29/2005 assessing \$12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at 210/490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Real Estate Property Investments, L.L.C., Docket No. 2004-0859-EAQ-E on 09/29/2005 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2004-0987-AIR-E on 09/29/2005 assessing \$17,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at 713/422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf West Landfill TX, LP, Docket No. 2004-1039-IHW-E on 09/29/2005 assessing \$6,300 in administrative penalties with \$1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.L.C. Water Supply Corporation, Docket No. 2004-1133-PWS-E on 09/29/2005 assessing \$323 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at 512/239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lewisville Landfill TX, LP, Docket No. 2004-1212-MSW-E on 09/29/2005 assessing \$1,750 in administrative penalties with \$350 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at 512/239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nasrolah Kamalie dba Lucky Way Food Store, Docket No. 2004-1244-PST-E on 09/29/2005 assessing \$4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at 713/422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Continental Cabinets Manufacturing, Inc., Docket No. 2004-1361-AIR-E on 09/29/2005 assessing \$1,925 in administrative penalties with \$385 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fruitvale Independent School District, Docket No. 2004-1524-MWD-E on 09/29/2005 assessing \$3,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at 903/535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Goldthwaite, Docket No. 2004-1653-PWS-E on 09/29/2005 assessing \$668 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at 512/239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lufkin Industries, Inc. dba Lufkin Industries Oilfield Division, Docket No. 2004-1688-AIR-E on 09/29/2005 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at 409/899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aarey Colloney, Inc. dba Cheek Grocery Store, Docket No. 2004-1725-PST-E on 09/29/2005 assessing \$12,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Colonial Distribution, Inc. dba WEZ Mart 1, Docket No. 2004-1739-PST-E on 09/29/2005 assessing \$7,200 in administrative penalties with \$1,440 deferred.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at 210/409-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Waller, Docket No. 2004-1798-MWD-E on 09/29/2005 assessing \$5,560 in administrative penalties with \$1,112 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frank Kalsbeek dba Dairy Cow Compost, Docket No. 2004-1850-WQ-E on 09/29/2005 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hanover Compression Limited Partnership, Docket No. 2004-1907-AIR-E on 09/29/2005 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding V&M Star, a Partnership with General and Limited Partners, LP, Docket No. 2004-1919-IWD-E on 09/29/2005 assessing \$5,960 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 210/403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Ridge Properties, Inc. dba Lake Ridge Estates, Docket No. 2004-1928-PWS-E on 09/29/2005 assessing \$4,673 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at 512/239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kenedy, Docket No. 2004-1936-MWD-E on 09/29/2005 assessing \$9,460 in administrative penalties with \$1,892 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Equipment Rentals Gulf, L.P., Docket No. 2004-1946-AIR-E on 09/29/2005 assessing \$820 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at 512/239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kent Jisha dba Dairy Works, Docket No. 2004-1983-AGR-E on 09/29/2005 assessing \$650 in administrative penalties with \$130 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at 817/588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Desert Eagle Distributing of El Paso, Inc., Docket No. 2004-2003-AIR-E on 09/29/2005 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at 512/239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kenneth Young, Docket No. 2004-2081-MSW-E on 09/29/2005 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at 512/239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rental Service Corporation dba Rental Service Store 670, Docket No. 2004-2114-AIR-E on 09/29/2005 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at 512/239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding James Yun dba Times Market 2003, Docket No. 2005-0025-PST-E on 09/29/2005 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Arif dba Super Mart, Docket No. 2005-0027-PST-E on 09/29/2005 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at 361/825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sprint Petroleum, Inc. dba Spring 24 306, Docket No. 2005-0045-PST-E on 09/29/2005 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at 817/588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ann Arundel Farms, Ltd., Docket No. 2005-0055-MWD-E on 09/29/2005 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Carl Williams dba Carl Williams Sand & Gravel, Docket No. 2005-0127-MSW-E on 09/29/2005 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at 512/239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INS Emerald, LLC dba Texas Foods, Docket No. 2005-0151-PST-E on 09/29/2005 assessing \$5,915 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at 512/239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Amoco Chemical Company, Docket No. 2005-0153-AIR-E on 09/29/2005 assessing \$7,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hardin County, Docket No. 2005-0172-PST-E on 09/29/2005 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monroe @ Winkler Investments, Inc. dba Mike Food Store, Docket No. 2005-0181-PST-E on 09/29/2005 assessing \$10,200 in administrative penalties with \$2,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator at 512/239-5839, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Caro Water Supply Corporation, Docket No. 2005-0185-PWS-E on 09/29/2005 assessing \$1,275 in administrative penalties with \$255 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at 409/899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hill-Lake Gas Storage, L.P., Docket No. 2005-0187-AIR-E on 09/29/2005 assessing \$2,375 in administrative penalties with \$475 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at 512/239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Holigan Homes Texas, Ltd., Docket No. 2005-0221-EAQ-E on 10/07/2005 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southfork Development, Ltd., Docket No. 2005-0222-EAQ-E on 09/29/2005 assessing \$3,675 in administrative penalties with \$735 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vinyard Enterprises, Inc. dba Vinyard's Food Mart, Docket No. 2005-0240-PST-E on 09/29/2005 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at 512/239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vining Enterprises Inc. dba Quick Food Mart, Docket No. 2005-0251-PST-E on 09/29/2005 assessing \$1,940 in administrative penalties with \$388 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator at 361/825-3140, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chahal Investment, Inc. dba PPG Foodmart, Docket No. 2005-0344-PST-E on 09/29/2005 assessing \$2,850 in administrative penalties with \$570 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at 409/899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ronnie Jenkins dba Chillerz and Ken Saffel dba Chillerz, Docket No. 2005-0367-PST-E on 09/29/2005 assessing \$970 in administrative penalties with \$194 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coolidge Grain & Produce, Inc., Docket No. 2005-0369-PST-E on 09/29/2005 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at 409/899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J. Cleo Thompson Investment Management, LLC, Docket No. 2005-0391-AIR-E on 09/29/2005 assessing \$7,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Spencer Road PUD, Docket No. 2005-0399-MWD-E on 09/29/2005 assessing \$3,500 in administrative penalties with \$700 deferred.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at 512/239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kirby & Kirby Oil Company, Inc., Docket No. 2005-0404-PST-E on 09/29/2005 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clint Independent School District Public Facility Corporation, Docket No. 2005-0411-MWD-E on 09/29/2005 assessing \$8,200 in administrative penalties with \$1640 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CRC-Evans Pipeline International, Inc., Docket No. 2005-0413-WQ-E on 09/29/2005 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at 713/422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alfred Conhagen, Inc. of Texas, Docket No. 2005-0454-WQ-E on 09/29/2005 assessing \$3,210 in administrative penalties with \$642 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bill L. Dover Company, Inc., Docket No. 2005-0457-PST-E on 09/29/2005 assessing \$50,000 in administrative penalties with \$10,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding U.S. Filter Recovery Services (Mid-Atlantic), Inc., Docket No. 2005-0466-IHW-E on 09/29/2005 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joyce Ann Mauldin dba Allsup's Conv Store, Docket No. 2005-0487-PST-E on 09/29/2005 assessing \$3,200 in administrative penalties with \$640 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at 512/239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Gibson dba Robert's Drive In 6, Docket No. 2005-0514-PST-E on 09/29/2005 assessing \$3,280 in administrative penalties with \$656 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at 512/239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bee County Co-Operative Association, Docket No. 2005-0529-PST-E on 09/29/2005 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cross Roads Independent School District, Docket No. 2005-0534-MWD-E on 09/29/2005 assessing \$5,400 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at 903/535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tejas Petroleum Products, Inc. dba Tyler Marketing Chevron Bulk Plant, Docket No. 2005-0563-PST-E on 09/29/2005 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Grocers Supply Co., Inc. dba Broadway Diamond Shamrock, Docket No. 2005-0591-PST-E on

09/29/2005 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at 817/588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of State Health Services, Docket No. 2005-0659-PST-E on 09/29/2005 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Enforcement Coordinator at 512/239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hidalgo County MUD 1, Docket No. 2005-0719-PWS-E on 09/29/2005 assessing \$675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dreamtech Homes, Ltd., Docket No. 2005-0741-WQ-E on 09/29/2005 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210/403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rhimco Industries, Inc., Docket No. 1997-0036-IHW-E on 09/29/2005 assessing \$26,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at 512/239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200504693

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: October 19, 2005



Notice of District Petition

Notices mailed October 12, 2005

TCEQ Internal Control No. 09072005-D02; Clay/Peek 640, L.P. (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 449 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District, (3) the proposed District will contain approximately 320.9 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance

No. 2005-291, effective April 5, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, and enterprises, and parks and recreation facilities consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$22,600,000.

TCEQ Internal Control No. 09122005-D05; Moody Simmons Baytown, LTD., and Moody Simmons Baytown II, LTD (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 459 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Comerica Bank, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 138.439 acres located in Harris County, Texas; and (4) the proposed District is within the corporate limits of the City of Baytown, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 1705, effective March 24, 2005, the City of Baytown, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$8,780,000.

TCEQ Internal Control No. 09202005-D03; Lake Conroe Hills Municipal Utility District of Montgomery County has applied to the Texas Commission on Environmental Quality (TCEQ) for authority to adopt and impose an annual uniform operations and maintenance standby fee up to \$90 per equivalent single family connection per year and \$228 per acre per year for calendar years 2006-2009, on unimproved property within the District. The application was filed pursuant to Chapter 49 of the Texas Water Code, 30 Texas Administrative Code Chapter 293, and under the procedural rules of the TCEQ. The TCEQ may approve the annual standby fees as requested, or it may approve a lower annual standby fee, but it shall not approve an annual standby fee greater than the amount requested. The standby fee is a personal obligation of the

person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of his pro-rated share of the standby fee obligation on transfer of title to the property. On January 1 of each year, a lien is attached to the undeveloped property to secure payment of any standby fee imposed and the interest or penalty, if any, on the fee. The lien has the same priority as a lien for taxes of the District. The purpose of standby fees is to distribute a fair portion of the cost burden for operations and maintenance costs and debt service of the District facilities to owners of property who have not constructed vertical improvements but have water, wastewater or drainage facilities or services available. Any revenues collected from the operations and maintenance standby fees shall be used to supplement the District's operations and maintenance account. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed within 30 days after the newspaper publication of this notice.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200504692
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 19, 2005

Notice of Opportunity for Comments Concerning a Proposed Amendment to the *List of De Minimis Facilities or Sources*

The Texas Commission on Environmental Quality (TCEQ), under 30 TAC Chapter 116, requests public comment concerning a proposed amendment to the *List of De Minimis Facilities or Sources* authorized by §116.119.

The TCEQ received a request to amend the *List of De Minimis Facilities or Sources* by adding "aerosol can recycling puncturing and/or crushing equipment limited to 40 aerosol cans per day (24 hours) at the

site and only operated with a covered waste storage container." Section 116.119(c)(1) allows for amendments to the *List of De Minimis Facilities or Sources* by the executive director for facilities or sources considered to be *de minimis*. If added to the *List of De Minimis Facilities or Sources*, the specified facilities or sources are no longer required to obtain authorization prior to construction from the TCEQ. Therefore, an aerosol can recycling puncturing and/or crushing equipment limited to 40 aerosol cans per day (24 hours) at the site and only operated with a covered waste storage container is proposed to be a *de minimis* facility or source.

The addition or deletion of a category of facilities, sources, or groups of facilities or sources to the *List of De Minimis Facilities or Sources* is subject to the procedural requirements of §116.119, which include a 30-day public comment period. The *List of De Minimis Facilities and Sources* is located on the TCEQ Web site at: http://www.tceq.state.tx.us/permitting/air/newsourcereview/de_minimis.html. Any interested or affected person has the opportunity to provide written comments pertaining to the addition or deletion of a category of facilities, sources, or groups of facilities or sources to the *List of De Minimis Facilities or Sources*.

Comments may be mailed to Mr. Steven Hagood, Texas Commission on Environmental Quality, Office of Permitting, Remediation and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments must be received by 5:00 p.m., November 28, 2005. To inquire about the technical review of the *de minimis* request, contact Mr. Steven Hagood at (512) 239-1580.

TRD-200504690
Stephanie Bergeron Perdue
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: October 19, 2005

Notice of Water Rights Application

Notices mailed October 14, 2005 through October 18, 2005:

APPLICATION NO. 14-1460A; Charles W. Klein, P.O. Box 256, Stonewall, Texas 78671, Applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.122 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Pursuant to 30 TAC 295.158, notice of the application is being mailed to the one (1) water right holder of record with diversion points between the existing and proposed diversion points on the Pedernales River. Certificate of Adjudication No. 14-1460 authorizes the owner to divert and use not to exceed 10 acre-feet of water per year from two (2) points on the Pedernales River, tributary of the Colorado River, Colorado River Basin, at a maximum rate of 0.67 cfs (300 gpm) for agricultural purposes to irrigate 10 acres of land out of a 458-acre tract in the Maria J. Trevino Survey 9, Abstract 678 and the Justa Flores Survey 10, Abstract No. 216 in Gillespie County. Applicant obtained ownership of Certificate of Adjudication No. 14-1460 but not the land to which it was appurtenant. Applicant seeks to amend the Certificate to add a diversion point on the Pedernales River located S48 W from the southwest corner of the Epapharas W. Bull Survey No. 11, also located at Latitude 30.240 N, Longitude 98.666 W in Gillespie County. Applicant also seeks to change the place of use and increase the amount of acreage to be irrigated to authorize the irrigation of 47 acres of land out of a 505.52-acre tract consisting of 284.97 acres in the Epapharas W. Bull Survey No. 11, and 220.55 acres in the Juana Francisca Flores Survey No. 13 in Gillespie County. Ownership of the land to be irrigated is evidenced by a Warranty Deed with Vendor's

Lien recorded in Volume 106, Pages 611 - 613 and Release of Lien recorded in Volume 72, Page 647 of the Deed Records of Gillespie County. The volume of water to be diverted and the diversion rate will not be changed. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on March 28, 2005, and additional information was received on June 7, July 11, and August 14, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 21, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by November 4, 2005.

APPLICATION NO. 5868; The Umphrey Family Limited Partnership, a Texas Limited Partnership, 490 Park Street, Beaumont, Texas 77704, Applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.121 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to maintain an existing low-water crossing and to construct and maintain a second low-water crossing approximately eight miles northwest of San Marcos and seven miles east of Wimberly on the Blanco River, tributary of the San Marcos River, tributary of the Guadalupe River, Guadalupe River Basin in Hays County. The first crossing impounds 6.32 acre-feet of water with a surface area of 2.23 acres on the Blanco River at a point bearing, N 40.498 E, 318.70 feet from the northeast corner of the John F. Brown Survey, Abstract No. A-72, also being at Latitude 30.002 N and Longitude 97.992 W. The proposed crossing will be constructed on the Blanco River at a point bearing S 1.352 W, 1,267.65 feet from the northeast corner of the David Holderman Survey, Abstract No. A-225, also being at Latitude 29.999 N and Longitude 97.994 W, and will impound 0.08 acre-foot of water with a surface area of 0.21 acre. The water impounded is for in-place recreation with no right of diversion requested. The Blanco River is a navigable stream, the bed of which is owned by the State of Texas and regulated by the General Land Office (GLO). The GLO determined that the low-water dams are inside a survey subject to the Small Bill and therefore the State has no public domain and a permit from the GLO would not be required to construct and maintain the low-water crossings. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on November 8, 2004, and additional information was received on January 6 and February 14, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 17, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200504691
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 19, 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 13, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Mayfield McGraw dba McGraw Materials; SOAH Docket No. 582-05-7506; TCEQ Docket No. 2004-1050-MLM-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Mayfield McGraw dba McGraw Materials 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-200504694
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: October 19, 2005

Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **November 28, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the

Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on November 28, 2005**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: ABG Development, Limited; DOCKET NUMBER: 2005-1021-EAQ-E; IDENTIFIER: Regulated Entity Number (RN) 104415237; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: tract of land; RULE VIOLATED: 30 TAC §213.4(j)(1), by failing to notify the appropriate regional office in writing and obtain commission approval for modification of a previously approved water pollution abatement plan; PENALTY: \$5,400; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: AHS Inc. dba Amigo Mart; DOCKET NUMBER: 2005-1036-PST-E; IDENTIFIER: RN101284024; LOCATION: Santa Fe, Galveston County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §290.109(c)(2)(A) and (f)(3)(A) and §290.122(c)(2)(B), by failing to collect routine bacteriological samples, by failing to collect additional routine samples, and by failing to collect repeat samples and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: \$1,208; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Tang Tran dba A & R Corner Store; DOCKET NUMBER: 2005-1045-PST-E; IDENTIFIER: RN101432946; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied to the top of the fill tube; PENALTY: \$4,896; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(4) COMPANY: Alon USA, L. P.; DOCKET NUMBER: 2005-0449-AIR-E; IDENTIFIER: Air Account Number HT0011Q, RN100250869; LOCATION: Big Spring, Howard County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 36845, and THSC, §382.085(b), by failing to comply with the emission limitation of 13.7 pounds per hour of carbon monoxide; PENALTY: \$10,880; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(5) COMPANY: Azimuth Energy, L.L.C.; DOCKET NUMBER: 2005-1272-AIR-E; IDENTIFIER: RN104618269; LOCATION: Winnie, Chambers County, Texas; TYPE OF FACILITY: natural gas

production; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a new source review permit; PENALTY: \$800; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Baybrook Municipal Utility District 1; DOCKET NUMBER: 2005-1410-PWS-E; IDENTIFIER: RN101441590; LOCATION: Webster, Harris County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM) and by failing to comply with the MCL for haloacetic acid (HAA5); PENALTY: \$625; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Bryan; DOCKET NUMBER: 2005-1065-MWD-E; IDENTIFIER: RN101612851; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: domestic wastewater system; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 01906, and the Code, §26.121(a), by failing to comply with the permitted effluent limit for total suspended solids (TSS), total copper, and free available chlorine; PENALTY: \$7,752; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: City of Cisco; DOCKET NUMBER: 2004-0856-MLM-E; IDENTIFIER: RN101389104; LOCATION: Cisco, Eastland County, Texas; TYPE OF FACILITY: public water supply and surface water treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number 10424-002, and the Code, §26.121, by failing to properly dispose of water treatment sludge; by failing to take reasonable steps to prevent discharge of wastewater; by failing to prevent an authorized discharge of wastewater from an unpermitted outfall; by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained at all times; by failing to test the water treatment sludge; by failing to provide a readily accessible sampling point and an effluent flow measuring device; by failing to collect composite samples for effluent monitoring; by failing to report, in writing, effluent violations which deviated from the permitted effluent limitation by more than 40%; by failing to provide records; and by failing to comply with the permitted effluent discharge limits and 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for HAA5; PENALTY: \$43,625; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(9) COMPANY: Charles Trice dba Daves Corner Grocery; DOCKET NUMBER: 2005-1551-PST-E; IDENTIFIER: RN102273646; LOCATION: Karnack, Harrison County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,920; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: City of Edinburg; DOCKET NUMBER: 2004-0382-MSW-E; IDENTIFIER: Municipal Solid Waste Permit Number 956B, RN102217734; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: Type 1 landfill; RULE VIOLATED: 30 TAC §330.111 and Permit Number 956B, by failing to place six inches of soil or approved alternate daily cover on the top and sides of the working area of the landfill on a daily basis and by failing to provide intermediate cover of at least 12 inches of well compacted earthen material; 30 TAC

§330.111 and Permit Number 956B, by failing to document on a daily log those areas where daily cover, intermediate cover, and final cover have been placed; 30 TAC §330.120 and Permit Number 956B, by failing to operate the site in such a way as to minimize windblown material; and 30 TAC §330.132 and Permit Number 956B, by failing to compact and shape the waste with a compactor to a working-lift thickness of about two feet; PENALTY: \$16,275; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(11) COMPANY: Farmers Cooperative Association of O'Donnell, Texas; DOCKET NUMBER: 2005-0747-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 1465, RN102025947; LOCATION: O'Donnell, Lynn County, Texas; TYPE OF FACILITY: farmers cooperative with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.51(b)(2)(A) and the Code, §26.3475(c)(2), by failing to equip the fill pipe with a tight-fill fitting, adapter, or similar device to provide a liquid-tight seal; 30 TAC §334.8(c)(4)(A)(vii), (5)(A)(i) and (iii), and (B)(ii), and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate, by failing to post the delivery certificate in a location that is clearly visible, and by failing to timely renew a previously issued UST delivery certificate; 30 TAC §334.10(b), by failing to have records immediately available for inspection; and 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the cathodic protection system; PENALTY: \$21,216; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(12) COMPANY: Mohamed Ahmed Al Bataineh dba Harvest Food Store; DOCKET NUMBER: 2005-1241-PST-E; IDENTIFIER: RN100925064; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance and 30 TAC §334.22(2) and the Code, §5.702, by failing to pay outstanding UST registration late fees; PENALTY: \$840; ENFORCEMENT COORDINATOR: David Flores, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Henderson County Justice Center; DOCKET NUMBER: 2005-0835-PST-E; IDENTIFIER: RN102978996; LOCATION: Athens, Henderson County, Texas; TYPE OF FACILITY: adult detention center; RULE VIOLATED: 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and (C), and the Code, §26.346(a) and §26.3467(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and submitted; by failing to make available to a common carrier a valid, current delivery certificate; and by failing to tag, label, or mark the UST fill tubes; and 30 TAC §334.10(b), by failing to maintain all required records pertaining to the UST system; PENALTY: \$2,232; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(14) COMPANY: Huma Corporation dba Dairy Mart 2; DOCKET NUMBER: 2005-1215-PST-E; IDENTIFIER: RN102473907; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control for all USTs; 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs and associated piping for releases, by failing to have the line leak detectors tested, and by failing to monitor the piping; and 30 TAC §334.7(d)(3), by failing to amend the registration within 30 days of any change to reflect the current

status of the UST system; PENALTY: \$4,896; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: City of Lawn; DOCKET NUMBER: 2005-1136-PWS-E; IDENTIFIER: RN101406916; LOCATION: Lawn, Taylor County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and HAA5; PENALTY: \$895; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(16) COMPANY: Liquid Environmental Solutions of Texas, L.P.; DOCKET NUMBER: 2004-1258-MLM-E; IDENTIFIER: RN102546926; LOCATION: Robstown, Nueces County, Texas; TYPE OF FACILITY: liquid waste transfer; RULE VIOLATED: 30 TAC §101.4 and §330.66(d)(8) and (e)(2), by failing to comply with the nuisance prohibitions and by failing to provide a sign at the site that gives the name, owner or operator's name, site registration number, operating hours, telephone number, and site rules; PENALTY: \$2,200; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: City of Marlin; DOCKET NUMBER: 2005-1104-MWD-E; IDENTIFIER: RN102886892; LOCATION: Marlin, Falls County, Texas; TYPE OF FACILITY: treatment and disposal facility for filter backwash water; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 1011003, and the Code, §26.121(a), by failing to comply with the permit effluent limits for TSS and by failing to provide monitoring results; PENALTY: \$8,844; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Newfield Exploration Mid-Continent Inc.; DOCKET NUMBER: 2005-1429-AIR-E; IDENTIFIER: RN100226869; LOCATION: near Pampa, Gray County, Texas; TYPE OF FACILITY: natural gas sweetening; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit an annual compliance certification; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(19) COMPANY: Stytze Van Der Meer dba Riggs Dairy; DOCKET NUMBER: 2005-0948-AGR-E; IDENTIFIER: RN104315262; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: commercial dairy; RULE VIOLATED: 30 TAC §321.38(g)(3), by failing to ensure site-specific documentation was prepared that shows that no significant hydrologic connection exists between the contained wastewater and water in the state; PENALTY: \$760; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Rock Hill Water Supply Corporation; DOCKET NUMBER: 2005-1289-PWS-E; IDENTIFIER: RN101176337; LOCATION: Beckville, Panola County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the MCL for TTHM; PENALTY: \$380; ENFORCEMENT COORDINATOR: Mac Vilas, (512) 239-2557; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(21) COMPANY: Jaime J. Salinas; DOCKET NUMBER: 2005-0801-LII-E; IDENTIFIER: RN104553300; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: landscape irrigation business;

RULE VIOLATED: 30 TAC §30.5(a) and §344.4, the Code, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$500; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(22) COMPANY: Sanderson Farms, Inc. (Processing Division); DOCKET NUMBER: 2005-1385-IWD-E; IDENTIFIER: RN102009107; LOCATION: Bryan, Brazos County, Texas; TYPE OF FACILITY: poultry processing operation; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 03821, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS, five-day biochemical oxygen demand, fecal coliform, and chemical oxygen demand; PENALTY: \$5,040; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: Shell Oil Company; DOCKET NUMBER: 2005-0765-AIR-E; IDENTIFIER: RN100211879; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 116.721(a), Permit Number 21262/PSD-TX-928, and THSC, §382.085(b), by failing to control unauthorized emissions; and 30 TAC §101.201(b)(7) and (8) and (c), and THSC, §382.085(b), by failing to submit a complete final report for a reportable emissions event; PENALTY: \$10,222; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Ricky Vasconsuelos; DOCKET NUMBER: 2005-1032-LII-E; IDENTIFIER: RN104609110; LOCATION: Flower Mound, Denton County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a), the Code, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigation license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$500; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Winkler Water Supply Corporation; DOCKET NUMBER: 2005-0726-PWS-E; IDENTIFIER: RN101212017; LOCATION: near Streetman, Navarro County, Texas; TYPE OF FACILITY: groundwater treatment plant; RULE VIOLATED: 30 TAC §290.113(b)(1) and (f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$323; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: City of Winnsboro; DOCKET NUMBER: 2005-1258-PWS-E; IDENTIFIER: RN101388106; LOCATION: Winnsboro, Wood County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$625; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(27) COMPANY: City of Winters; DOCKET NUMBER: 2005-1017-PWS-E; IDENTIFIER: RN101387850; LOCATION: Winters, Runnels County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and

THSC, §341.0315(c), by exceeding the MCL for TTHM and HAA5; PENALTY: \$1,360; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200504680

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: October 18, 2005

◆ ◆ ◆
Department of State Health Services

Notice of Order for Payment Received of Administrative Penalties for Trace Radiochemical, Inc.

Notice is hereby given that the Department of State Health Services (department) issued an Order for Payment Received of administrative penalties to Trace Radiochemical, Inc. (license-L05435) of Denton. A Preliminary Report was sent proposing to assess a total administrative penalty of \$4,000 to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289. Respondent replied to the department's notice by paying the total administrative penalty of \$4,000.

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-200504664

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Filed: October 18, 2005

◆ ◆ ◆
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Montwood Family Medical Center, P.A.

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Montwood Family Medical Center, P.A. (license-20200-000) of El Paso. A total penalty of \$4,000 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-200504663

Lisa Hernandez

Deputy General Counsel

Department of State Health Services

Filed: October 18, 2005

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Notice of Proposed Administrative Renewal of the Radioactive Material License of Mesteña Uranium, LLC

Notice is hereby given by the Department of State Health Services (department) that it proposes to grant an administrative renewal pursuant to 25 Texas Administrative Code (TAC), §289.260(h) for a two-year period of Radioactive Material License Number L05360 issued to

Mesteña Uranium, LLC for facilities located in Brooks County, Texas, near Rachal, Texas.

The department has determined that the licensee has paid its license renewal fee, has a satisfactory compliance history and otherwise complies with the requirements of 25 TAC, §289.260(h).

This notice affords the opportunity for a public hearing upon written request by a person affected within 30 days of the date of publication of this notice as required by Texas Health and Safety Code, §401.264, and as set out in 25 TAC, §289.205(d). 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 a county, in which the 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 Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Division for Regulatory Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the proposed issuance of the license will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code, Chapter 2001), the formal hearing procedures of the department (25 TAC, §1.21, et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the proposed license and information regarding the license renewal is available for public inspection and copying, by appointment, at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200504665
Lisa Hernandez
Deputy General Counsel
Department of State Health Services
Filed: October 18, 2005

Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Revisions to the State Children's Health Insurance Program (CHIP) Rules

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive comments regarding proposed revisions to Title 1, Part 15, Chapter 370, State Children's Health Insurance Program, of the Texas Administrative Code. Changes are being proposed to rules in existing Subchapters A, Program Administration; B, Application Screening, Referral and Processing; and C, Enrollment, Disenrollment, and Renewal of Membership. HHSC is proposing new Subchapter D, Eligibility for Unborn Children. The proposed amended and new rules were published in the *Texas Register* on October 14, 2005 (30 TexReg 6526).

A public hearing is scheduled for Tuesday, November 1, 2005, from 3:00 p.m. to 4:00 p.m. (central time) in the public hearing room of the

Texas Department of Aging and Disability Services (DADS), 701 West 51st Street, Austin, TX. Persons requiring further information, special assistance, or accommodations should contact Mary Haifley at (512) 206-4542 so that appropriate arrangements may be made.

TRD-200504706
Lee Dickinson
Assistant General Counsel
Texas Health and Human Services Commission
Filed: October 19, 2005

Texas Department of Housing and Community Affairs

Notice of a Board Hearing on the 2006 State of Texas Low Income Housing Plan and Annual Report

The Texas Department of Housing and Community Affairs (TDHCA) announces a Board hearing to gather public comment on the 2006 State of Texas Low Income Housing Plan and Annual Report (SLIHP).

TDHCA is required to submit the SLIHP annually to its Board of Directors in accordance with §2306.0723 of the Texas Government Code. The document serves as a comprehensive reference on statewide housing needs, housing resources, and strategies for funding allocations. It reviews TDHCA's housing programs, current and future policies, resource allocation plan to meet state housing needs, and reports on 2005 performance.

The comment period for the draft SLIHP ran September 19 through October 18, 2005. This hearing provides the Board with an additional opportunity to directly receive public comment prior to its consideration of the document for final approval at the December 2005 Board Meeting. The draft SLIHP is available for review at www.tdhca.state.tx.us.

The hearing will be held at 8:30 a.m., Thursday, November 10, 2005 on the fourth floor of the TDHCA Headquarters building at 507 Sabine in Austin.

For more information on this hearing, contact the TDHCA Division of Policy and Public Affairs at (512) 475-3976.

Individuals who require a language interpreter for the hearing should contact Michael Lyttle at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados. Individuals who require auxiliary aids or services should contact Gina Esteves, ADA-Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days prior to the scheduled hearing so that appropriate arrangements can be made.

TRD-200504698
Edwina Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 19, 2005

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Harris Branch Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Connally High School, 13212 North Lamar, Austin, Texas 78753, at 6:00 p.m.

on November 15, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Loyola Properties, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, equipping and constructing a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development to be located at approximately 12317 Dessau Road, Travis County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200504671
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 18, 2005



Notice of Public Hearing

Multifamily Housing Revenue Bonds (Spring Branch on the Park Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Bane Elementary, 5805 Kaiser, Houston, Texas 77040, at 6:30 p.m. on November 17, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$11,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Spring Branch on the Park, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, equipping and constructing a senior multifamily housing development (the "Development") described as follows: 250-unit multifamily residential rental development to be located at approximately the southeast corner of West Wingfoot and Campbell, at approximately 9501 West Wingfoot, Harris County, Texas. The Development initially will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may

be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200504679
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: October 18, 2005



Texas Department of Insurance

Company Licensing

Application to change the name of COMMERCIAL GUARANTY LLOYDS INSURANCE COMPANY to CGL INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Irving, Texas.

Application to change the name of GULF GROUP LLOYDS INSURANCE COMPANY to GGL INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Irving, Texas.

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-200504707
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: October 19, 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 INTERNATIONAL FUNDING, LTD., a foreign third party administrator. The home office is MADISON, WISCONSIN.

Application for incorporation in Texas of HEALTHPLAN OF TEXAS, INC. (using the assumed name of HOT), a domestic third party administrator. The home office is TYLER, TEXAS

Application to change the name of INTERNATIONAL CORPORATE MARKETING GROUP, L.L.C. to HARTFORD LIFE PRIVATE PLACEMENT, LLC, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application to change the name of WHP HEALTH INITIATIVES, INC. to WALGREENS HEALTH INITIATIVES, INC., a foreign third party administrator. The home office is DEERFIELD, ILLINOIS.

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-200504700

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: October 19, 2005

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 605 "Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 605 is "BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 605 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 605.

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 ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, \$1.00, \$2.00, \$4.00, \$6.00, \$10.00, \$20.00, \$50.00, \$200, \$1,000, \$3,000, \$30,000, and STACK OF BILLS 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. 605 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$200	TWO HUND
\$1,000	ONE THOU
\$3,000	THR THOU
\$30,000	30 THOU
STACK OF BILLS SYMBOL	WIN\$

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 605 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
SIX	\$6.00
EGT	\$8.00
TEN	\$10.00
TWL	\$12.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize - A prize of \$1,000, \$3,000, or \$30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (605), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 605-0000001-001.

L. Pack - A pack of "BREAK THE BANK" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 are on the top page, tickets 003 and 004 are on the next page, and so forth, and tickets 249 and 250 on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BREAK THE BANK" Instant Game No. 605 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 "BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) play symbols. If the player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols, the player will win the prize indicated. If the player reveals a STACK OF BILLS play symbol, the player will win the prize indicated automatically. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 19 (nineteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the

Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No duplicate Lucky Numbers on a ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The auto win symbol will never appear more than once on a ticket.

F. No duplicate non-winning play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Instant Game prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00, \$20.00, \$50.00, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not in some cases, required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Instant Game prize of \$1,000, \$3,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" 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 Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource 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 "BREAK THE BANK" 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 "BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 50,160,000 tickets in the Instant Game No. 605. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 605 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	4,614,720	10.87
\$4	2,959,440	16.95
\$6	852,720	58.82
\$8	200,640	250.00
\$10	451,440	111.11
\$12	501,600	100.00
\$20	351,120	142.86
\$50	186,010	269.66
\$200	41,382	1,212.12
\$1,000	1,045	48,000.00
\$3,000	150	334,400.00
\$30,000	24	2,090,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.94. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

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. 605 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. 605, 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-200504689
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 19, 2005



Instant Game Number 695 "Superball Doubler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 695 is "SUPERBALL DOUBLER". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 695 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 695.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000, \$5,000, and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 695 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELVN
12	TWLV
13	TRTN
14	FRTN
15	FFTN
16	SXTN
17	SVTN
18	EGTN
19	NITN
20	TWTY
21	TWON
22	TWTW
23	TWTR
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	THTY
31	THON
32	THTW
33	THTR
34	THFR
35	THV
36	THSX
37	THSV
38	THET
39	THNI
40	FRTY
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN

\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$5,000	FIV THOU
\$50,000	50 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 695 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$1,000, \$5,000, or \$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 (695), 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: 695-0000001-001.

L. Pack - A pack of "SUPERBALL DOUBLER" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SUPERBALL DOUBLER" Instant Game No. 695 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 "SUPERBALL DOUBLER" Instant Game is determined once the latex on the ticket is scratched off to expose 34 (thirty-four) Play Symbols. If a player matches any of Your Superballs play symbols to any of the Winning Superballs play symbols in large circle, the player wins prize shown below that Winning Superball play symbol. If a player matches any of Your Superballs play symbols to any of the Doubler balls play symbols, the player wins double the prize shown for that Doubler ball play symbol. 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 34 (thirty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified; and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;
 4. Each of the Play Symbols must be printed in black ink except for dual image games;
 5. The ticket shall be intact;
 6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
 7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
 8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
 9. The ticket must not be counterfeit in whole or in part;
 10. The ticket must have been issued by the Texas Lottery in an authorized manner;
 11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
 12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
 13. The ticket must be complete and not miscut, and have exactly 34 (thirty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
 14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
 15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
 16. Each of the 34 (thirty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 34 (thirty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
 18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
 19. The ticket must have been received by the Texas Lottery by applicable deadlines.
- B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.
- C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No four or more like non-winning prize symbols on a ticket.
- C. No prize amount in a non-winning spot will correspond with the YOUR SUPERBALL play symbol (i.e. 5 and \$5).
- D. No duplicate non-winning WINNING SUPERBALL or DOUBLER BALL play symbols on a ticket.
- E. No duplicate YOUR SUPERBALLS on a ticket.
- F. There will be no matching prize symbols and play symbols (YOUR SUPERBALLS, WINNING SUPERBALLS, or DOUBLER BALLS) on non-winning tickets (e.g., \$10 prize symbol with a 10 YOUR SUPERBALL NUMBER or 10 WINNING SUPERBALL symbol or 10 DOUBLER BALL symbol).
- G. Non-winning prize symbols will not match winning prize symbols on a ticket.
- H. On tickets winning four (4) or more times, each YOUR SUPERBALL number will be used to create a winning match.
- I. Although not all prizes can be won in all locations, each may appear in non-winning play spots.

2.3 Procedure for Claiming Prizes.

A. To claim a "SUPERBALL DOUBLER" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SUPERBALL DOUBLER" Instant Game prize of \$1,000, \$5,000, or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SUPERBALL 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 of Public Accounts, 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 "SUPERBALL 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 "SUPERBALL 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. 695. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 695 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	880,000	6.82
\$10	400,000	15.00
\$15	160,000	37.50
\$20	140,000	42.86
\$50	80,000	75.00
\$100	15,000	400.00
\$500	1,200	5,000.00
\$1,000	225	26,666.67
\$5,000	25	240,000.00
\$50,000	7	857,142.86

*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 3.58. 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. 695 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. 695, 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-200504627
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 17, 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 12, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016. A summary of the application follows.

Project Title and Number: Application of Pathway Com-Tel, Incorporated for a State-Issued Certificate of Franchise Authority, Project Number 31883 before the Public Utility Commission of Texas.

Applicant intends to provide cable and video service. The requested CFA service area includes portions of the cities of Joshua and Burleson within the State of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 31883.

TRD-200504667
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: October 18, 2005

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 14, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016. A summary of the application follows.

Project Title and Number: Application of ETS Cablevision, Incorporated, doing business as En-Touch Systems, Incorporated, for a State-Issued Certificate of Franchise Authority, Project Number 31886 before the Public Utility Commission of Texas.

Applicant intends to provide cable and video service. The requested CFA service includes subdivisions in unincorporated Harris County, Fort Bend County and Telfair subdivision within the City of Sugarland (portions within Sugarland city limits).

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 31886.

TRD-200504669
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2005

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**Notice of Application for Amendment to Service Provider
Certificate of Operating Authority**

On October 13, 2005, Global Internetworking, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60710. Applicant intends to reflect a change in ownership/control to 20/20, a Delaware corporation.

The Application: Application of Global Internetworking, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31884.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 2, 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 31884.

TRD-200504668
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2005

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**Notice of Application to Terminate a Retail Electric Provider
Certificate**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 12, 2005, to terminate a retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of ANP Power Direct Company to Terminate its Retail Electric Provider (REP) Certificate, Docket Number 31882 before the Public Utility Commission of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than November 4, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31882.

TRD-200504666

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 18, 2005

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Texas Department of Transportation

**Aviation Division - Request for Proposal for Aviation
Engineering Services**

The City of Bishop, 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 Bishop, Bishop Municipal Airport. TxDOT CSJ No. 0616BSHOP. Scope: Provide engineering/design services to reconstruct and mark Runway 15-33; reconstruct and mark taxiway; reconstruct turnaround Runway 33 end; reconstruct apron; rehabilitate hangar access taxiways and install erosion/sedimentation controls for the Bishop Municipal Airport.

The HUB goal is set at 5%. TxDOT Project Manager is Harry Lorton, 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 "Bishop 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.

Six completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight November 15, 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 November 16, 2005. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. November 16, 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 Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members with one local government observer. 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/avnconsult-info.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 interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Harry Lorton, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504673

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: October 18, 2005



Aviation Division - Request for Proposal for Aviation Engineering Services

The County of San Augustine, 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: San Augustine County, San Augustine County Airport. TxDOT CSJ No. 0611SNAUG. Scope: Provide engineering/design services to rehabilitate Runway 17-35; mark Runway 17-35 with displaced threshold; reconstruct connecting taxiway; reconstruct apron with new tiedowns; replace LIRL with MIRL with vault, regulator and radio controller; replace rotating beacon and tower and install lighted windcone and segmented circle at the San Augustine County Airport.

The HUB goal is set at **9%**. TxDOT Project Manager is John Wepryk, 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 "San Augustine County 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 East 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.**

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Five completed, unfolded copies of Form AVN-550 must be post-marked by U.S. Mail by midnight November 15, 2005. Mailing address: TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on November 16, 2005. Overnight address: TxDOT Aviation Division, 200 East Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. on November 16, 2005. Hand delivery address: 150 East 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 Sheri Quinlan.

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 interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or John Wepryk, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504675

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: October 18, 2005



Aviation Division - Request for Proposal for Aviation Engineering Services

The City of McGregor, 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 McGregor, McGregor Executive Airport. TxDOT CSJ No. 0609MGREG. Scope: Provide engineering/design services to overlay and mark Runway 17-35; overlay taxiway system for Runway 17-35; install edge under drain system along Runway 17-35; construct hangar access taxiway to new hangars; construct apron access taxiway to west apron and mid-field apron; construct auto access pavement to west apron; expand hangar access taxiway at hangar No. 46; relocate fuel farm from mid apron area to road access of the entrance road; replace voltage regulator; install PAPI-4 Runway 35 and update/revise terminal area plan at the McGregor Executive Airport.

The DBE goal is set at **10%**. TxDOT Project Manager is Harry Lorton, 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 "McGregor."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may

be 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.

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Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope with the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members with one local government observer. 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 interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Harry Lorton, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504676
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: October 18, 2005

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Aviation Division - Request for Proposal for Professional Services

The County of Grayson, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Grayson County, Grayson County Airport. TxDOT CSJ No. 0601GRAYS. Scope: Prepare a Business Plan to provide an overview analysis of the airport addressing airport policy, airport building standards, airport rates and charges, market analysis, financial analysis and risk assessment; provide an assessment of business/economic development opportunities; recommend a five-year strategic course of

action to pursue development and to address issues at the Grayson County Airport.

The DBE goal is set at 0%. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning 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/avn551.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-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Seven completed, unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight November 15, 2005. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. November 16, 2005. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. November 16, 2005. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the forms to the attention of Sheri Quinlan. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning 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 for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Michelle Hannah, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200504674
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: October 18, 2005

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Public Notice - Public Transportation Strategic Plan

The Texas Department of Transportation (TxDOT) will hold a series of five statewide video teleconferences to solicit input on the proposed Texas Public Transportation Strategic Plan to facilitate the coordination and integration of transportation resources, assets, and service delivery in the most cost effective manner.

The statewide video teleconferences will be held on the following dates at the locations listed below:

Monday, November 14, 2005, beginning at 1:00 p.m.:

Atlanta - 701 E. Main Street, Atlanta, Texas

Dallas - 4777 E. Highway 80, Mesquite, Texas

Paris - 1365 N. Main St., Training Center, Paris, Texas

Tyler - 2709 W. Front St., Training Center, Tyler, Texas

Waco - 100 South Loop Dr., District Training Facility, Waco, Texas

Friday, November 18, 2005, beginning at 1:00 p.m.:

Austin - 200 E. Riverside Dr., Room D, Austin, Texas

Beaumont - 8350 Eastex Freeway, Beaumont, Texas

Bryan - 1300 North Texas Ave., Bryan, Texas

Houston - 7721 Washington Ave., Houston District Office, VTC Conference Bldg., Houston, Texas

Lufkin - 1805 N. Timberland, Lufkin, Texas

Monday, November 21, 2005, beginning at 1:00 p.m.:

Abilene - 4250 N. Clack, Abilene, Texas

Brownwood - 2495 Highway 183 North, Brownwood, Texas

Childress - 7599 U.S. Highway 287, Childress, Texas

Fort Worth - 2501 S.W. Loop 820, Computer Training Room, Fort Worth, Texas

Wichita Falls - 1601 Southwest Parkway, Wichita Falls, Texas

Monday, November 28, 2005, beginning at 1:00 p.m.:

Corpus Christi - 1701 South Padre Island Dr., Corpus Christi, Texas

Laredo - 1817 Bob Bullock Loop, VTC Meeting Room, Laredo, Texas

Pharr - 600 West Expressway 83, Pharr, Texas

San Antonio - 4615 N.W. Loop 410, San Antonio, Texas

Wednesday, November 30, 2005, beginning at 2:00 p.m. (CST):

Amarillo - 5715 Canyon Drive, Bldg H, Training Conference S. Room, Amarillo, Texas

Lubbock - 135 Slaton Rd., Training Center, Lubbock, Texas

Odessa - 3901 E. Highway 80, Large Conference Room, Odessa, Texas

San Angelo - 4502 Knickerbocker Rd., Building 5-A, San Angelo, Texas

Wednesday, November 30, 2005, beginning at 1:00 p.m. (MST):

El Paso - 1430 Joe Battle Blvd., East Area Office, El Paso, Texas

Public input will assist TxDOT in developing a strategic plan for public transportation in Texas. Citizens of Texas are encouraged to join TxDOT at the public meeting held in their area to express comments on this topic. (The video teleconferences will be recorded.)

Questions concerning the meetings or this notice should be referred to Ginnie Mayle, Public Transportation Division, (512) 416-2867.

SUBMITTAL OF WRITTEN COMMENTS

Written comments may be submitted to Kelly Kirkland, Planning and Support Director, Texas Department of Transportation, Public Transportation Division, 125 East 11th Street, Austin, Texas 78701-2483.

The deadline for receipt of written comments is 5:00 p.m. on December 30, 2005.

TRD-200504677

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: October 18, 2005



Statewide Transportation Enhancement Program - 2006 Program Call

In accordance with 43 TAC §§11.200 - 11.205, the Texas Department of Transportation issues this 2006 Program Call for the proposed projects of the department's Statewide Transportation Enhancement Program.

Title 23, United States Code, §133(d)(2) and §160(e)(2), requires that 10% of certain funds apportioned a state pursuant to Title 23, United States Code §104(b)(3), be used for transportation enhancement activities, as defined. The Texas Transportation Commission may allocate funds to the department for use on the state highway system for transportation enhancement activities that provide a safe, effective and efficient movement of people and goods. The commission will also make funds available in a statewide competitive program that enhances the surface transportation systems and facilities within the state for the benefit of the users of those systems.

Transportation enhancement activities are defined in §101(a) of Title 23, United States Code as:

- (1) provision of facilities for pedestrians and bicycles;
- (2) provision of safety and education activities for pedestrians and bicycles;
- (3) acquisition of scenic easements and scenic or historic sites;
- (4) scenic or historic highway program (including the provision of tourist and welcome center facilities);
- (5) landscaping and other scenic beautification;
- (6) historic preservation;
- (7) rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals);
- (8) preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails);
- (9) control and removal of outdoor advertising;
- (10) archaeological planning and research;
- (11) environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity; and establishment of transportation museums.

To nominate a project, the eligible nominating entity must file its nomination, in the form prescribed by the department, with the district engineer of the district office responsible for the area in which the proposed enhancement project will be implemented. The address and telephone number of the district offices are available on the department's internet web site at www.dot.state.tx.us/te. Completed nominations must be received by the department no later than 5:00 p.m., Friday, April 28, 2006.

Information regarding the program, program guide, nomination forms and workshops are available from the department's internet web site at www.dot.state.tx.us/te or by writing or calling the Design Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 416-3082.

Issued in Austin, Texas on November 1, 2005.

TRD-200504678

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: October 18, 2005

Texas Water Development Board

Request for Statements of Qualifications for Water Research

Pursuant to 31 Texas Administrative Code §355.3, the Texas Water Development Board (TWDB) requests the submission of Statements of Qualifications (SOQ) leading to the possible award of contracts for Groundwater Availability Models for the West Texas Bolsons (Red Light, Green River, and Eagle Flat Bolsons), Nacatoch, Dockum, and Edwards-Trinity (High Plains) aquifers in Texas. Guidelines for Statements of Qualifications, which include an application form and more detailed research topic information, will be supplied by the TWDB upon request.

Description of Research Objectives. Since 1999, the Texas Legislature has approved funding for the Groundwater Availability Modeling (GAM) program. The purpose of GAM is to provide reliable and timely information on groundwater availability to the citizens of Texas to ensure adequate supplies or recognize inadequate supplies over a 50-year planning period. Numerical groundwater flow models of the aquifers in Texas will be used to make this assessment of groundwater availability. The GAM program will: (1) include substantial stakeholder involvement; (2) result in standardized, thoroughly documented, and publicly available numerical groundwater flow models and support data; and (3) be capable of providing predictions of groundwater availability through 2060 based on current projections of groundwater demands during drought-of-record conditions.

In support of GAM, the TWDB is requesting Statements of Qualifications for the development of numerical groundwater flow models of the West Texas Bolsons (Red Light, Green River, and Eagle Flat Bolsons), Nacatoch, Dockum, and Edwards-Trinity (High Plains) aquifers. There will be four modeling projects: (1) a model of the West Texas Bolsons (Red Light, Green River, and Eagle Flat Bolsons); (2) a model of the Nacatoch aquifer; (3) a model of the Dockum aquifer; and (4) work to include the Edwards-Trinity (High Plains) aquifer into the existing GAM of the southern part of the Ogallala aquifer. A separate Statement of Qualifications for each of the four modeling projects are expected.

Details on the modeling projects and project requirements are available from the TWDB. The TWDB website includes (1) guidelines for the SOQ, (2) copies of the attachments, (3) a list of Statement of Qualifications Review Criteria, and (4) some supporting material (http://www.twdb.state.tx.us/assistance/financial/fin_research/research.htm).

The following issues need to be addressed in each Statement of Qualifications:

- *Communication between the contractor and the stakeholder advisory forum for the model, regional water planning groups, and groundwater conservation districts;
- *Conceptual model of recharge and how recharge will be modeled;
- *How surface-water/groundwater interaction will be modeled;
- *How hydraulic properties will be distributed;
- *Hydrostratigraphy for the model;

*Approach for modeling the down-dip boundary of the model (if appropriate);

*Approach for calibrating the model;

*How environmental impacts will be gaged; and

*How the project will benefit statewide water planning and groundwater districts.

In addition, we expect potential contractors to indicate their abilities in:

*General hydrogeology;

*Hydrogeology of the modeled aquifer;

*Numerical groundwater flow modeling;

*Geographical information systems;

*Communicating with the public;

*Technology transfer;

*Producing high-quality reports; and

*Meeting deadlines.

The SOQ shall not be more than 19 pages in length, excluding qualifications and experience of project staff. On November 9, 2005, 10:00 AM, at the High Plains Underground Water Conservation District No. 1, 2930 Avenue Q, Lubbock, Texas, TWDB staff will hold an information session on the Edwards-Trinity (High Plains) GAM. On November 14, 2005, 1:30 PM in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, TWDB staff will hold an information session to address questions about the Requests for Qualifications.

Description of Funding Consideration. Up to \$1,300,000 has been initially authorized for water research assistance from the TWDB's Research and Planning Fund for the research for these four GAM projects. Half of the funds will be available prior to September 1, 2006 and the remainder after September 1, 2006. Following the receipt and evaluation of all Statements of Qualifications, the TWDB may adjust the amount of funding initially authorized for water research. Oral presentations may be required as part of qualification review. However, invitation for oral presentation is not an indication of probable selection. Up to 100 percent funding may be provided to individual applicants; however, applicants are encouraged to contribute matching funds or services, and funding will not include reimbursement for indirect expenses incurred by political subdivisions of the state or other state and federal agencies. In the event that acceptable Statements of Qualifications are not submitted, the TWDB retains the right to not award funds for the contracts.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies of a complete Statement of Qualifications, including the required attachments, must be filed with the TWDB prior to 5:00 PM, December 5, 2005. Statements of Qualifications must be directed either in person to Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; or by mail to Phyllis Thomas, Texas Water Development Board, P.O. Box 13231-Capitol Station, Austin, Texas 78711-3231. Statements of Qualifications will be evaluated according to 31 Texas Administrative Code §355.5 and the Statement of Qualifications Review Criteria rating form included in the TWDB's Guidelines for Water Research Grants. Research shall not duplicate work planned or underway by state agencies. All potential applicants must contact the TWDB to obtain these guidelines.

Requests for information, the TWDB's rules covering the Research and Planning Fund, detailed evaluation criteria, more detailed research

topic information, and the guidelines may be directed to Cindy Ridgeway at the preceding address or by calling (512) 936-2386. Technical questions should be directed to Dr. Robert Mace, (512) 936-0861, or Cindy Ridgeway, (512) 936-2386.

TRD-200504696

Ron Pigott
Attorney
Texas Water Development Board
Filed: October 19, 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).