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# TEXAS REGISTER

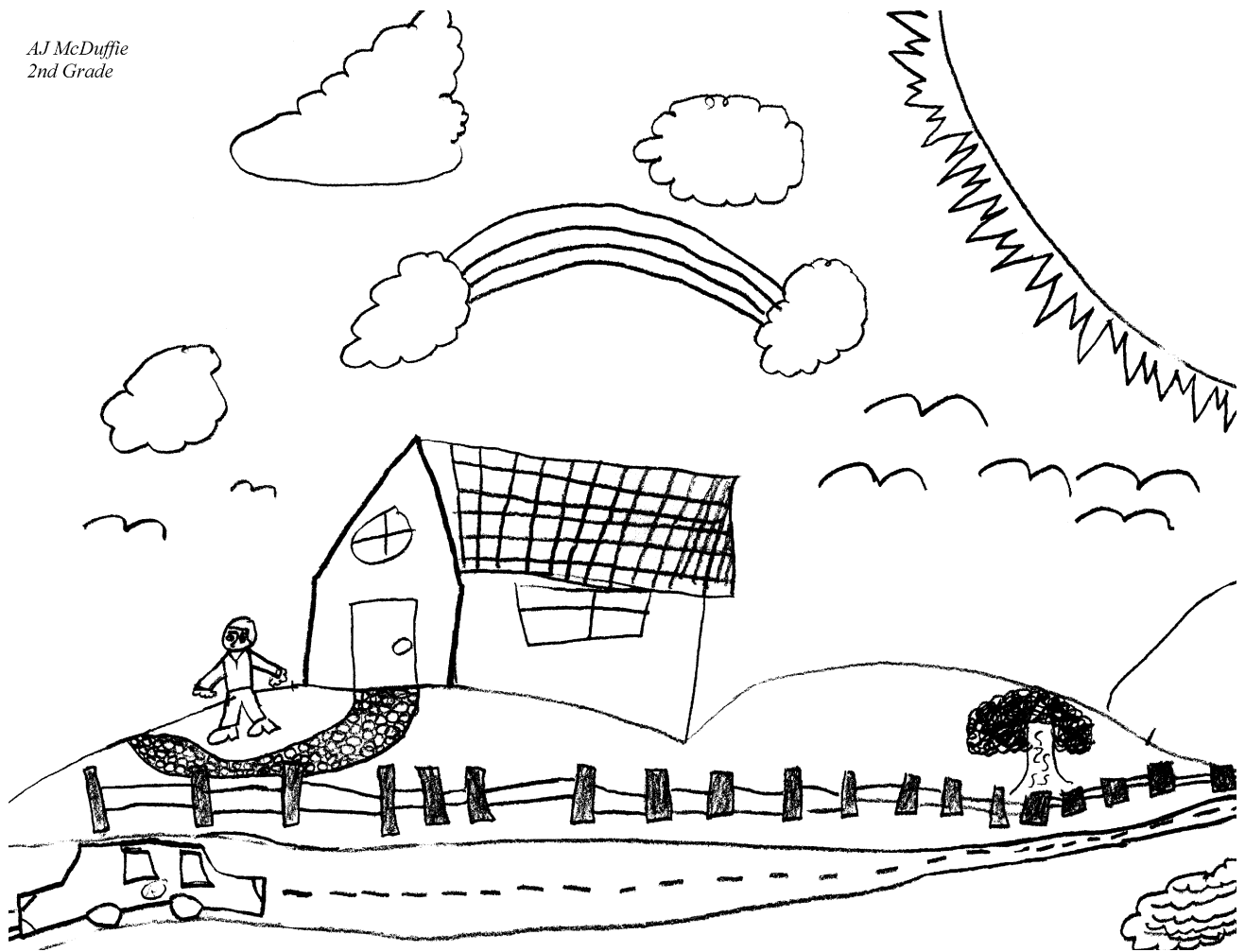
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AJ McDuffie  
2nd Grade



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

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

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# Open Meetings

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

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

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

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

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

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

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

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

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

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

# THE GOVERNOR

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

## Appointments

### Appointment for September 5, 2007

Appointed to the Texas Emerging Technology Committee, pursuant to HB 1188, 80th Legislature, Regular Session, effective September 1, 2007, John Schrock, Sr. of McAllen (replacing Lynda De la Vina of San Antonio whose term expired).

### Appointments for September 6, 2007

Appointed to the Health Professions Council for a term at the pleasure of the Governor, Tony Gilman of Austin.

Appointed to the Texas Historical Commission for a term to expire January 31, 2009, Dr. Steve Tomka of San Antonio (replacing Eileen Johnson of Lubbock whose term expired).

Appointed to the Texas Historical Commission for a term to expire January 31, 2013, David Gravelle of Dallas (Mr. Gravelle is being reappointed).

Appointed to the Texas Historical Commission for a term to expire January 31, 2013, Gilbert E. Peterson of Alpine (replacing Shirley Caldwell of Albany whose term expired).

Appointed to the Texas Historical Commission for a term to expire January 31, 2013, Mario Castillo of San Angelo (replacing Jane Barnhill of Brenham whose term expired).

Appointed to the Texas Historical Commission for a term to expire January 31, 2013, Lisa Hembry of Dallas (replacing Frank Yturria of Brownsville who resigned).

Appointed to the Texas Historical Commission for a term to expire January 31, 2013, Jon Hansen of El Paso (replacing Frank Gorman of El Paso whose term expired).

Appointed to the Texas Historical Commission for a term to expire January 31, 2013, John Crain of Dallas (replacing Lareatha Clay of Dallas whose term expired).

### Appointments for September 11, 2007

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, T. Michael O'Connor of Victoria.

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, Buddy Garcia of Austin.

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, Fred Burton of Austin.

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, Allan Polunsky of San Antonio.

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, Tomas Herrera of Eagle Pass.

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, Becky Dean Walker of Sierra Blanca.

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, Val Beard of Alpine.

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, Scott McLaughlin of El Paso.

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, Bobby Holt of Midland.

Appointed to the Border Security Council, pursuant to SB 11, 80th Legislature, Regular Session for a term to expire at the pleasure of the Governor, Carlos Cascos of Brownsville.

### Appointments for September 12, 2007

Appointed to the Southern Regional Education Board for a term to expire June 30, 2011, The Honorable Geanie W. Morrison of Austin (replacing the Honorable Dianne Delisi whose term expired).

Appointed to the Southern Regional Education Board for a term to expire June 30, 2012, The Honorable Rob Eissler of Austin (replacing the Honorable Kent Grusendorf who no longer qualifies).

Appointed to the Texas Medical Board for a term to expire April 13, 2013, Roberta Kalafut, D.O. of Abilene (Ms. Kalafut is being reappointed).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2011, Catherine Rodewald of Dallas (replacing Paula Mendoza of Houston who resigned).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2013, David King of San Antonio (replacing Marcela Donadio of Houston whose term expired).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2013, Carlos Barrera of Brownsville (replacing Melanie Thompson of Seguin whose term expired).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2013, John Steinberg of Converse (Mr. Steinberg is being reappointed).

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2013, Coalter Baker of Austin (Mr. Baker is being reappointed).

Rick Perry, Governor

TRD-200704241



## Appointments

### **Appointment for September 13, 2007**

Appointed as Judge of the 506th Judicial District Court, Grimes and Waller Counties, pursuant to SB 1951, 80th Legislature, Regular Session, effective September 1, 2007, for a term until the next General Election and until his successor shall be duly elected and qualified, Albert Marvin McCaig, Jr. of Waller.

### **Appointments for September 14, 2007**

Appointed to the Public Utility Commission of Texas for a term to expire September 1, 2013, Barry Thomas Smitherman of Austin. (Mr. Smitherman is being reappointed).

### **Appointments for September 17, 2007**

Appointed as Judge of the 427th Judicial District Court, Travis County, for a term until the next General Election and until his successor shall be duly elected and qualified, Melissa Goodwin of Austin.

Appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2013, Lee Chayes of El Paso (Ms. Chayes is replacing Richard Tankerson of The Woodlands whose term expired).

Appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2013, David Coco, Ph.D. of Austin (Dr. Coco is being reappointed).

Appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2013, Robert K. Peters, Ph.D. of Tyler (Dr. Peters is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2009, Diane Turner Kazlow of Plano (replacing Joyce Elliott of Bedford who resigned).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2009, Beth Engelking of Austin (replacing Henry Darrington of Austin who no longer qualifies).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, Representative Myra Crownover of Denton (replacing Representative Dianne Delisi of Temple whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2011, Dottie Goodman of Austin (replacing Cindy Savage of Austin whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2013, Katherine Ann de la Peña of Edinburg (replacing Sandra Collins of Sugarland whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2013, Lynn Davis Sullivan of Fort Worth (Ms. Sullivan is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2013, Harvey Salinas of Corpus Christi (replacing Julia Alderman-Patty of Fort Worth whose term expired).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2013, Michelle J. Smith of Justin (Ms. Smith is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2013, Peter Ellis of San Antonio (Mr. Ellis is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2013, Alba A. Ortiz, Ph.D. of Austin (Dr. Ortiz is being reappointed).

Appointed to the Early Childhood Intervention Advisory Committee for a term to expire February 1, 2013, Katrina Daniel of Austin (replacing Mabel Carty of Austin whose term expired).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2011, Matthew Phelan of Beaumont (replacing Cheryl Olsen of Beaumont whose term expired).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2011, Jordan Reese, IV of Beaumont (replacing Bill Clark of Beaumont whose term expired).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2011, James Olan Webb of Silsbee (Mr. Webb is being reappointed).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2013, Lonnie Arrington of Beaumont (Mr. Arrington is being reappointed).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2013, Brian Babin of Woodville (Mr. Babin is being reappointed).

Appointed to the Lower Neches Valley Authority Board of Directors for a term to expire July 28, 2013, Steven M. McReynolds of Port Neches (Mr. McReynolds is being reappointed).

Appointed to the Texas State University System Board of Regents for a term to expire February 1, 2011, Ron Blatchley of Bryan (replacing Ken Luce of Dallas who resigned).

Appointed to the Texas State University System Board of Regents for a term to expire February 1, 2013, Michael Truncale of Beaumont (replacing Kent Adams of Beaumont whose term expired).

Appointed to the Texas State University System Board of Regents for a term to expire February 1, 2013, Charlie Amato of San Antonio (replacing Alan Dreeben of San Antonio whose term expired).

Appointed to the Sabine River Compact Administration for a term to expire July 12, 2010, Rick Campbell of Center (replacing Frank Parker of Center who is deceased).

Appointed to the Sabine River Compact Administration for a term to expire July 12, 2013, Gary Gagnon of Mauriceville (Mr. Gagnon is being reappointed).

Appointed to the Soil and Water Conservation Board for a term to expire February 1, 2008, Larry D. Jacobs of Montgomery (Mr. Jacobs is being reappointed).

Appointed to the Soil and Water Conservation Board for a term to expire February 1, 2009, Joe L. Ward of Telephone (Mr. Ward is being reappointed).

Appointed to the State Pension Review Board for a term to expire January 31, 2013, Richard Earl McElreath of Amarillo (Mr. McElreath is being reappointed).

Appointed to the State Pension Review Board for a term to expire January 31, 2013, Norman W. Parrish of The Woodlands (Mr. Parrish is being reappointed).

Appointed to the Texas Fire Protection Commission for a term to expire February 1, 2013, Jody Gonzales of Krugerville (replacing Marvin Dawson of Brownfield whose term expired).

Appointed to the North Texas Tollway Authority Board of Directors for a term to expire August 31, 2009, Robert Kelly Shepard of Weatherford (Mr. Shepard is being reappointed).

Appointed to the Gulf States Marine Fisheries Commission for a term to expire March 17, 2008, Ralph Rayburn of College Station (Mr. Rayburn is being reappointed).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2009, Mary Kate Weems of Waco (replacing Lucinda Flores of Brownsville whose term expired).

Appointed to the Texas State Board of Examiners of Dietitians for a term to expire September 1, 2012, Belinda Bazan-Lara of San Antonio (replacing Ralph McGahagin of Austin whose term expired).

Appointed to the Commission on Jail Standards for a term to expire January 31, 2009, Irene Armendariz of El Paso (replacing Gonzalo Gallegos of San Antonio who is deceased).

Appointed to the Commission on Jail Standards for a term to expire January 31, 2013, Judge Donna S. Klaeger of Horseshoe Bay (replacing Judge William Morrow of Midland whose term expired).

Rick Perry, Governor

TRD-200704306



Proclamation 41-3134

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, the 80th Regular Session of the Texas Legislature, convened in January of 2007 in accordance with Article III, Section 5 of the TEXAS CONSTITUTION and Section 301.001 of the Texas Government Code; and

WHEREAS, during that session, the legislature approved 16 joint resolutions by a vote of two-thirds of all the members of each House pursuant to Article XVII, Section 1 of the TEXAS CONSTITUTION; and

WHEREAS, pursuant to the terms of those resolutions and in accordance with the TEXAS CONSTITUTION, the Legislature has set the date of the election for voting on these 16 propositions to be November 6, 2007; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF THE STATE OF TEXAS, by the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special election to be held throughout the State of Texas on the FIRST TUESDAY AFTER THE FIRST MONDAY IN NOVEMBER, the same being the SIXTH day of NOVEMBER, 2007; and,

NOTICE THEREOF IS HEREBY GIVEN to the COUNTY JUDGE of each county who is directed to cause said election to be held in the county on such date for the purpose of adopting or rejecting the constitutional amendments proposed by 16 joint resolutions, as submitted by the 80th Legislature, Regular Session, of the State of Texas.

Pursuant to Sections 274.001 and 274.002 of the Texas Election Code, the propositions for each joint resolution will appear as follows:

**PROPOSITION 1**

"The constitutional amendment providing for the continuation of the constitutional appropriation for facilities and other capital items at Angelo State University on a change in the governance of the university."

**PROPOSITION 2**

"The constitutional amendment providing for the issuance of \$500 million in general obligation bonds to finance educational loans to students and authorizing bond enhancement agreements with respect to general obligation bonds issued for that purpose."

**PROPOSITION 3**

"The constitutional amendment authorizing the legislature to provide that the maximum appraised value of a residence homestead for ad valorem taxation is limited to the lesser of the most recent market value of the residence homestead as determined by the appraisal entity or 110 percent, or a greater percentage, of the appraised value of the residence homestead for the preceding tax year."

**PROPOSITION 4**

"The constitutional amendment authorizing the issuance of up to \$1 billion in bonds payable from the general revenues of the state for maintenance, improvement, repair, and construction projects and for the purchase of needed equipment."

**PROPOSITION 5**

"The constitutional amendment authorizing the legislature to permit the voters of a municipality having a population of less than 10,000 to authorize the governing body of the municipality to enter into an agreement with an owner of real property in or adjacent to an area in the municipality that has been approved for funding under certain programs administered by the Texas Department of Agriculture under which the parties agree that all ad valorem taxes imposed on the owner's property may not be increased for the first five tax years after the tax year in which the agreement is entered into."

**PROPOSITION 6**

"The constitutional amendment authorizing the legislature to exempt from ad valorem taxation one motor vehicle owned by an individual and used in the course of the owner's occupation or profession and also for personal activities of the owner."

**PROPOSITION 7**

"The constitutional amendment to allow governmental entities to sell property acquired through eminent domain back to the previous owners at the price the entities paid to acquire the property."

**PROPOSITION 8**

"The constitutional amendment to clarify certain provisions relating to the making of a home equity loan and use of home equity loan proceeds."

**PROPOSITION 9**

"The constitutional amendment authorizing the legislature to exempt all or part of the residence homesteads of certain totally disabled veterans from ad valorem taxation and authorizing a change in the manner of determining the amount of the existing exemption from ad valorem taxation to which a disabled veteran is entitled."

**PROPOSITION 10**

"The constitutional amendment to abolish the constitutional authority for the office of inspector of hides and animals."

**PROPOSITION 11**

"The constitutional amendment to require that a record vote be taken by a house of the legislature on final passage of any bill, other than certain local bills, of a resolution proposing or ratifying a constitutional amendment, or of any other nonceremonial resolution, and to provide for public access on the Internet to those record votes."

**PROPOSITION 12**

"The constitutional amendment providing for the issuance of general obligation bonds by the Texas Transportation Commission in an amount not to exceed \$5 billion to provide funding for highway improvement projects."

**PROPOSITION 13**

"The constitutional amendment authorizing the denial of bail to a person who violates certain court orders or conditions of release in a felony or family violence case."

**PROPOSITION 14**

"The constitutional amendment permitting a justice or judge who reaches the mandatory retirement age while in office to serve the remainder of the justice's or judge's current term."

**PROPOSITION 15**

"The constitutional amendment requiring the creation of the Cancer Prevention and Research Institute of Texas and authorizing the issuance of up to \$3 billion in bonds payable from the general revenues of the state for research in Texas to find the causes of and cures for cancer."

**PROPOSITION 16**

"The constitutional amendment providing for the issuance of additional general obligation bonds by the Texas Water Development Board in an amount not to exceed \$250 million to provide assistance to economically distressed areas."

The Secretary of State shall take notice of this proclamation and shall mail a copy of this order immediately to every County Judge of this state and all appropriate writs will be issued and all proper proceedings will be followed to the end that said election may be held and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 4th day of September, 2007.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200704287



Proclamation 41-3135

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that the severe storms and flooding as a result of Tropical Storm Erin that occurred between August 14 and August 20, 2007, have caused a disaster in Bexar, Fisher, Harris, Haskell, Jones, Kendall, Medina, and Taylor Counties, in the State of Texas.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 11th day of September, 2007.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200704255



Proclamation 41-3136

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that as a result of Hurricane Humberto, the severe storms and flooding that began on September 12, 2007, and is continuing, have caused a disaster in Galveston, Jefferson, and Orange Counties in the State of Texas.

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

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

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 13th day of September, 2007.

Rick Perry, Governor

Attested by: Phil Wilson, Secretary of State

TRD-200704256



# THE ATTORNEY GENERAL

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

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

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

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

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Request for Opinions

**RQ-0607-GA**

The Request has been withdrawn.

**RQ-0618-GA**

**Requestor:**

The Honorable Marsha Monroe

Terrell County Attorney

Post Office Box 745

Sanderson, Texas 79848

Re: Authority of a county to borrow funds to pay for the construction of a convention center (RQ-0618-GA)

**Briefs requested by October 15, 2007**

**RQ-0619-GA**

**Requestor:**

The Honorable Tracy O. King

Chair, Committee on Border & International Affairs

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether a non-profit economic development that receives partial funding from quasi-public utilities is subject to the Texas Public Information Act (RQ-0619-GA)

**Briefs requested by October 15, 2007**

**RQ-0620-GA**

**Requestor:**

The Honorable Jesse Gonzales, Jr.

Pecos County Attorney

103 West Callaghan

Fort Stockton, Texas 79735

Re: Whether under the County Purchasing Act, subchapter C, chapter 262, Local Government Code, a project may be financed in distinct phases so as to avoid competitive bidding requirements (RQ-0620-GA)

**Briefs requested by October 17, 2007**

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

TRD-200704330

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: September 19, 2007



# EMERGENCY RULES

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 1. GENERAL LAND OFFICE

#### CHAPTER 15. COASTAL AREA PLANNING

##### SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

###### 31 TAC §15.19, §15.20

The General Land Office adopts, on an emergency basis, new §15.19, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures, and new §15.20, concerning Emergency Measures for Beach and Dune Restoration and Existing Shoreline Protection Projects. The General Land Office recognizes that Galveston County, Chambers County, and Jefferson County, Texas, have areas where residential structures and public infrastructure are in need of emergency stabilization and repair and where emergency hazard mitigation measures are needed to reestablish the protective barrier provided by the beach and natural dunes damaged or destroyed by storm tidal surges in order to prevent imminent peril to the public health, safety, and welfare.

The sections are adopted on an emergency basis due to the imminent peril to public health, safety, and welfare represented by the damage to structures and protective barriers caused by high winds, storm surge, high tides, and erosion resulting from Hurricane Humberto. As a result of Hurricane Humberto, September 12 - 13, 2007, hurricane and tropical storm winds, storm surge, extreme tides, and wave action caused property damage, coastal flooding, and erosion. Hurricane Humberto made landfall at 2:00 a.m. on September 13, 2007, 5 miles east of High Island, Texas; but its destructive force impacted the upper Texas coast. The local jurisdictions listed above experienced loss in elevation of beach sand. The structural integrity of many houses has been adversely impacted as a result of these natural forces. The protective barrier provided by naturally occurring beaches and dunes in these areas as well as existing shoreline protection projects have been severely impacted. Coastal residents, public beaches, public and private coastal property, and coastal natural resources are extremely vulnerable to injury, damage, and destruction from subsequent tropical storms and hurricanes, as Hurricane Humberto struck before the end of hurricane season.

The General Land Office staff recognized the need for emergency rules as Hurricane Humberto approached the upper Texas coast. The General Land Office has determined the necessity for emergency rules that allow emergency stabilization and repair of structures and provide for temporary suspension of the permit and certificate application requirements for these emer-

gency stabilization and repair techniques and methods as well as other hazard mitigation measures.

Emergency new rule §15.19 provides procedures and requirements for issuance of authorization to undertake emergency stabilization and repairs of structures impacted by Hurricane Humberto. The emergency rule is applicable only to Bolivar Peninsula in Galveston County, Chambers County, and Jefferson County, Texas. The emergency new section shall be effective for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare. Section 15.19(c) provides definitions applicable to this new section. Section 15.19(d) allows the local government to issue authorizations for emergency stabilization and repair of residential structures as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.19(e) provides that the normal permit process shall not apply to emergency authorizations and that emergency authorizations are valid for no more than six months from issuance. Section 15.19(f) provides that the local government is required to maintain a written record of the names and addresses of property owners who have been authorized to undertake emergency stabilization and repair actions. They are also required to maintain a written record of the specific activities that have been authorized, including pictures of the structure before and after the repairs are completed. Section 15.19(g) provides requirements and limitations with regard to emergency authorizations by the local government of emergency stabilization and repair. Section 15.19(h) provides additional limitations with regard to structures located on the public beach and requirements related to the placement of beach quality sand. Sections 15.19(i), (j), (k) and (l) provide additional limitations and requirements related to the repair of hard structures and septic and sewage systems, the placement of materials on the public beach, and the removal of beach debris.

Under emergency rule §15.19(g), a local government may permit the repair of a structure that appears to be partially or wholly seaward of the line of vegetation; however, a local government is prohibited from authorizing the following: repairing or constructing a slab of concrete or other impervious material; repairing or constructing an enclosed space, including a space with breakaway walls below the base flood elevation as identified on the pertinent community's flood insurance rate map and seaward of the line of vegetation; increasing the footprint of the structure; repairing a structure without a functioning septic system or sewer connection as determined by the local government or the Texas Commission on Environmental Quality (TCEQ), unless the structure's septic system may be repaired as provided in the emergency new rule; repairing a structure previously built, repaired, or renovated in violation of the Land Office's beach/dune rules or the local government's dune protection and beach access plan



or without an approved certificate or permit; or constructing, repairing, or maintaining an erosion response structure. These limitations on a local government's authority to issue a beachfront construction certificate or dune protection permit for repair of a structure that crosses the line of vegetation are existing law and are necessary to ensure compliance with the provisions of §15.4, relating to Dune Protection Standards; §15.5, relating to Beachfront Construction Standards; and §15.6, relating to Concurrent Dune Protection and Beachfront Construction Standards. A slab or other paving beneath the footprint of a structure may be replaced by wooden decking, brick pavers, or other pervious materials. While the emergency new rule prohibits the repair or construction of a slab or other impervious surface of concrete or other impervious materials, the new rule does not require that an owner remove an existing slab or other impervious surface when no repairs to the slab or other impervious surface is proposed. A local government may authorize the repair of a septic system landward of the line of vegetation if the system complies with the rules of the TCEQ and the local government governing on-site sewage facilities.

Emergency rule §15.20 provides procedures and requirements for issuance of authorization to undertake emergency measures for dune restoration or geotextile shoreline protection project repairs for littoral property impacted by Hurricane Humberto. The emergency rule is applicable to Bolivar Peninsula in Galveston County, Chambers County, and Jefferson County, Texas. The new section shall be effective for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare. Section 15.20(c) provides definitions applicable to this section. Section 15.20(d) allows the local government with beach/dune permitting jurisdiction to issue authorizations for emergency measures for dune restoration or for repairs to existing geotextile shoreline protection projects as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.20(e) provides that the normal permit process shall not apply to authorizations and that emergency authorizations are valid only for six months. Section 15.20(f) provides that the local government is required to maintain a written record of the names and addresses of property owners who have been authorized to undertake emergency dune restoration projects and geotextile shoreline protection project repairs. The local government is also required to maintain a written record of the specific activities that have been authorized, including pictures of the dune area before and after the emergency dune restoration or geotextile shoreline protection project repairs are completed. Section 15.20(g) provides requirements and limitations with regard to the location of emergency dune restoration projects. Section 15.20(h) provides guidelines for authorized methods and materials with regard to emergency dune restoration projects. Section 15.20(i) contains limitations on geotextile shoreline protection project repairs to ensure that such projects are consistent with policies of the Coastal Coordination Council established for structural shoreline protection projects. Section 15.20(j) contains prohibitions with regard to dune restoration projects and shoreline protection project repairs. Section 15.20(k) prohibits a local government from authorizing construction or repair of a bulkhead or new geotextile tube shoreline protection project.

The General Land Office has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this emergency

rule proposal because the rule is adopted in response to a real and substantial threat to public health, safety, and welfare.

The new sections are adopted on an emergency basis under the Texas Natural Resources Code, §§63.121, 61.011, and 61.015(b), which provide the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas's public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The emergency new sections are also adopted pursuant to the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection. Finally, the new sections are adopted on an emergency basis pursuant to Texas Government Code, §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

§15.19. Emergency Provisions for Stabilization and Repair of Damaged Residential Structures.

(a) Purpose. The purpose of this section is to allow a local government to grant to a property owner the ability immediately to undertake emergency stabilization and repair of a residential structure damaged as the result of Hurricane Humberto.

(b) Applicability. This section applies only to structures located on the Bolivar Peninsula in Galveston County, and to Chambers County and Jefferson County, Texas. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare.

(c) Definitions. The following words and terms, as used in this section, shall have the following meanings:

(1) The Code--The Texas Natural Resources Code.

(2) Habitable--The condition of the premises which permits the inhabitants to live free of serious threats to health and safety.

(3) House--A single or multi-family structure that serves as living quarters for one or more persons or families.

(4) Emergency repair--Those immediate response actions that must be undertaken to render a structure habitable or to prevent further damage.

(5) Emergency stabilization--Those immediate response actions that must be undertaken to stabilize a residential structure that is subject to imminent collapse or substantial damage as a result of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels.

(d) Local government authorization. The local governments with jurisdiction to issue dune protection permits and beachfront construction certificates may, in accordance with this section, authorize emergency stabilization and repair of a residential structure damaged by Hurricane Humberto. All authorizations issued under this section must otherwise be in accordance with applicable state and local law. The local government is responsible for assessing damage to such structures, determining whether the structures are eligible for approval of emergency stabilization and repair, and determining appropriate emergency stabilization and repair procedures. Under this section,

the local government may only authorize emergency stabilization and repair as necessary to eliminate the danger and threat to public health, safety, and welfare. Any proposed stabilization and repair method or technique must comply with the standards provided in this section and §15.6(e) and (f) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards) or §15.11 of this title (relating to Repairs to Certain Houses Located Seaward of the Boundary of the Public Beach). If a house appears to be seaward of the line of vegetation solely because of Hurricane Humberto and the local government provides a written statement to that effect with the written record described in §15.19(f), the local government may authorize stabilization and repair methods and techniques in accordance with §15.11 of this title for such house.

(e) Procedure. The permit and certificate application requirements of §15.3(s)(4) of this title (relating to Administration) are not applicable to the emergency stabilization and repair of residential structures under this rule. However, all property owners eligible to undertake emergency stabilization efforts and repair must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency stabilization and repair of residential structures will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid for no more than 6 months from the date of issuance. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing emergency stabilization and repair of residential structures shall compile and maintain a record of the names and addresses of the property owners that receive such authorization. For each authorization, the local government must maintain a written record of the actions that it authorized, including pictures of the structure before and after completion of the authorized activities, and will make such record available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of actions authorized under this section.

(g) Authorized Repairs. The local government may authorize emergency stabilization and repair of a residential structure only if the local government determines that the proposed action:

- (1) is solely to make the house habitable or prevent further damage, including reconnecting the house to utilities;
- (2) does not increase the footprint of the house;
- (3) does not include the use of impervious material, including but not limited to concrete or fibercrete, seaward of the natural line of vegetation;
- (4) does not include the construction of an enclosed space below the base flood elevation and seaward of the natural line of vegetation;
- (5) does not include the repair, construction, or maintenance of an erosion response structure seaward of the natural line of vegetation;
- (6) does not occur seaward of mean high water; and,
- (7) does not include construction underneath, outside or around the house other than for reasonable access to the house.

(h) Repair of existing structures on the public beach.

(1) A local government may grant authorization in accordance with this section for emergency stabilization of a structure that encroaches or may encroach on the public beach, but only to the lim-

ited extent necessary to prevent an immediate threat to public health, safety, and welfare.

(2) A local government may grant authorization in accordance with this section for emergency repair of a residential structure that encroaches or may encroach on the public beach, but only if the structure is:

- (A) a house;
- (B) not in imminent danger of collapse or other imminent threat to public health and safety;

(C) is not subject to a pending enforcement action under this subchapter, the Open Beaches Act (Texas Natural Resources Code, Chapter 61), or the Dune Protection Act (Texas Natural Resources Code, Chapter 63). An enforcement action includes the filing of a suit in district court or the referral of a matter for enforcement to the attorney general or other public prosecutor;

(D) is less than 50% damaged.

(3) Beach-quality sand may be placed on the lot in the area twenty feet seaward of a structure where necessary to prevent further erosion due to wind or water. The beach-quality sand must remain loose and cannot be placed in bags. Such actions are authorized in situations where protection of the land immediately seaward of a structure is required to prevent foreseeable undermining of habitable structures in the event of such erosion.

(i) The local government is not authorized under this rule to allow the use of concrete or the construction or repair of bulkheads or hard protective structures. However, repairs to existing geotextile shoreline protection projects are permitted only as provided in §15.20 of this title (relating to Emergency Measures for Dune Restoration and Existing Shoreline Protection Projects).

(j) Repair of sewage or septic systems. If the Texas Commission on Environmental Quality or its designated local authority, the Texas Department of Health, or a local health department has made a determination that a sewage or septic system located on or adjacent to the public beach poses a threat to the health of the occupants of the property or public health, safety or welfare, and requires removal of the sewage or septic system, the sewage or septic system shall be located in accordance with §15.5(b)(1) of this title (relating to Beachfront Construction Standards) and §15.6(b) and §15.6(e)(1) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(k) Prohibitions. This emergency rule does not authorize the placement of materials on the public beach except in conjunction with authorized emergency stabilization and repair of residential structures.

(l) Removal of beach debris. Beach debris moved by wind or water can threaten Gulf-fronting properties. The local government, therefore, shall coordinate with property owners to remove debris such as pilings, concrete, fibercrete, and garbage from the public beach as soon as possible.

§15.20. Emergency Measures for Dune Restoration and Existing Shoreline Protection Project Repairs.

(a) Purpose. The purpose of this section is to allow a local government to grant property owners the ability to immediately undertake emergency repairs to dunes and existing shoreline protection projects that have been damaged by the effects of Hurricane Humberto and to construct dune restoration projects to minimize further threat or damage to coastal residents and littoral property.

(b) Applicability. This section applies only to the emergency dune restoration projects and existing shoreline protection projects

located on Bolivar Peninsula in Galveston County, and to Chambers County, and Jefferson County, Texas. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare.

(c) Definitions. The following words, terms, and phrases when used in this section, shall have the following meanings:

(1) Emergency dune restoration --those immediate response measures that must be undertaken to construct a dune, repair a damaged dune, or stabilize an existing dune in order to minimize further threat or damage to coastal residents and littoral property.

(2) Shoreline protection project repairs--those immediate response measures that must be undertaken to restore an existing geotextile shoreline protection project to its condition prior to Hurricane Humberto.

(d) Local government authorization. The local government with jurisdiction to issue dune protection permits and/or beachfront construction certificates in Galveston County, Chambers County, and Jefferson County, Texas, may, in accordance with this section, authorize emergency dune restoration projects and shoreline protection project repairs in areas where dunes or existing shoreline protection projects have been damaged by the effects of Hurricane Humberto. All authorizations issued under this section must otherwise be in accordance with applicable state and local laws. Under this section, the local government may only authorize emergency dune restoration projects and shoreline protection project repairs as necessary to minimize the danger and threat to coastal residents and littoral property. Any proposed emergency dune restoration project or shoreline protection project repairs must comply with the standards provided in this section.

(e) Procedures. The permit and certificate application requirements and procedures of §15.3(s)(4) of this title (relating to Administration) are not applicable to emergency dune restoration projects and shoreline protection project repairs. However, any person eligible to undertake a emergency dune restoration project or shoreline protection project repairs must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency dune restoration project or shoreline protection project repairs under this section will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid only for six months, after which it will expire. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing an emergency dune restoration project or shoreline protection project repairs shall compile and maintain a record of the names and addresses of the property owners that receive such authorization. For each authorization, the local government must maintain a written record of the actions that it authorized, including pictures of the emergency dune restoration project or shoreline protection project conditions before and after completion of the authorized activities, and will make such record available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of actions authorized under this section.

(g) Authorized emergency dune restoration. The local government shall require persons to locate restored dunes in the area extending no more than 20 feet seaward of the post-storm line of vegetation, referred to herein as the restoration area. The local government shall ensure that the restoration area follows the natural meander or migra-

tion of the post-storm vegetation line. The local government may issue permits and certificates to allow the restoration of dunes on the public beach only under the following conditions:

(1) Restored dunes may be located farther seaward than the restoration area only to the limited extent necessary to minimize further damage to coastal residents and littoral property, provided such dunes shall not substantially restrict or interfere with the public use of the beach at normal high tide;

(2) The local government shall not allow any person to restore dunes, even within the restoration area, if such dunes would effectively prohibit access to or use of the public beach at normal high tide; and

(3) Under no circumstances may sand or other materials be placed below mean high water.

(h) Authorized methods and materials for emergency dune restoration. The local government may allow persons to use the following methods or materials for emergency dune restoration:

(1) piles of sand having similar grain size and mineralogy as the surrounding beach;

(2) organic brushy material such as used Christmas trees; and

(3) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any effect on the public beach, including, but not limited to, increase erosion of the public beach.

(i) Shoreline protection project repairs. Notwithstanding the general prohibition on maintaining or repairing erosion response structures in §15.6(d) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards), a local government may authorize repairs to an existing geotextile shoreline protection project, subject to the following limitations:

(1) Repairs to existing geotextile shoreline protection projects may be permitted to minimize further damage to coastal residents and littoral property, provided the existing shoreline protection project does not substantially restrict or interfere with the public use of the beach at normal high tide;

(2) The local government shall not authorize any person to repair a geotextile shoreline protection project that is located below mean high water; and

(3) The existing geotextile shoreline protection project must conform with the policies of the Coastal Coordination Council promulgated in §501.26(b) of this title (relating to Policies for Construction in the Beach/Dune System).

(j) Prohibitions. The local government shall not allow any person to undertake dune restoration projects or temporary shoreline protection projects using any of the following methods or materials:

(1) materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non-biodegradable items;

(2) fine, clayey, or silty sediments;

(3) sediments containing the hazardous substances listed in Appendix A to §302.4 in Volume 40 of the Code of Federal Regulations, Part 302 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; or,

(4) sand obtained by scraping or grading dunes or beach.

(k) The local government is not authorized under this rule to allow the use of concrete or the construction or repair of bulkheads or construct new geotextile tube shoreline protection projects. This rule does not prohibit a local government from authorizing the removal of portions of damaged bulkheads that threaten public health safety and welfare.

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

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704246

Trace Finley  
Policy Director  
General Land Office

Effective Date: September 14, 2007

Expiration Date: January 11, 2008

For further information, please call: (512) 475-1859



# PROPOSED RULES

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

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

## TITLE 4. AGRICULTURE

### PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

#### CHAPTER 61. COMMERCIAL FEED RULES SUBCHAPTER C. LABELING

##### 4 TAC §61.22

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes amendments to §61.22(5), concerning Feed Ingredients. The proposed amendment deletes §61.22(5)(E) because it conflicts with §61.22(5)(A) which states that all ingredients shall be listed. Subsequent subparagraphs are renumbered. The change is reflected in new §61.22(5)(E) - (H). This action will affect the wording in §61.22(5)(A) because it currently refers to subparagraph (I) which will now become subparagraph (H).

The proposed amendment deletes §61.22(9)(F)(iii) because the Code of Federal Regulations (CFRs) has changed the indications for use to "increased rate of gain." The current rule is outdated.

In addition, the amendment proposes to add subparagraph (O) concerning Expression of Guarantees because the current rules do not address the guarantees for enzymes.

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, concludes that for the first five-year period there will be no fiscal implication for state or local government as a result of enforcing or administering the rule. There will be no effect to individuals required to comply with the rule as proposed.

Dr. Herrman has also concluded that for each year of the first five years the amendment as proposed is in effect the public benefit as a result of enforcing this rule will be to reduce confusion on how to implement the rules by the regulated community. Addition of language pertaining to enzymes reflects current science and is consistent with the Association of American Feed Control Officials (AAFCO) model bill. There will be no effect on small or micro businesses.

Comments to the proposal may be submitted to Dr. Herrman by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, TX 77841-3160; by fax at (979) 845-1389; or by e-mail at the following: [tjh@otsc.tamu.edu](mailto:tjh@otsc.tamu.edu).

The amendment is proposed under Texas Agriculture Code §141.004 which provides Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist with the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter C, §141.051 and Subchapter A, §141.004 is affected by the proposed amendment.

##### §61.22. Labeling of Commercial Feed.

Commercial feed shall be labeled with the information prescribed in the Texas Commercial Feed Control Act (Act) and this chapter on the principal display panel of the product with the following general format, unless otherwise specifically provided.

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

(5) Feed ingredients.

(A) The feed ingredients statement for a commercial feed shall include the name of each ingredient in the feed or the collective term for each grouping of feed ingredients contained in the feed, unless exempted under subparagraph (H) ~~[(I)]~~ of this paragraph.

(B) - (D) (No change.)

~~[(E) The sources of added vitamins may be stated in the ingredients statement.]~~

(E) ~~[(F)]~~ No reference to quality or grade of an ingredient shall appear in the ingredients statement.

(F) ~~[(G)]~~ The term "dehydrated" may precede the name of any product that has been artificially dried.

(G) ~~[(H)]~~ When the term "iodized" is used in connection with a feed ingredient, the ingredient shall contain not less than 0.007% iodine uniformly distributed.

(H) ~~[(I)]~~ Exemptions:

(i) Carrier ingredients in products used solely as drug and vitamin premixes need not be named in the ingredients statement if:

(I) any changes in the carrier will not affect the purposes of the premix;

(II) the carrier ingredient is recognized by the Service as being safe;

(III) the carrier will not affect the safety, potency, or efficacy of the finished product.

(ii) Single ingredient feeds are not required to have an ingredient statement.

(6) - (8) (No change.)

(9) Expression of Guarantees.

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

(F) The guarantees for antibiotics shall be expressed in terms of percent by weight, except that:

(i) antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton (total) of commercial feed;

(ii) antibiotics present at more than 2,000 grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed; and

~~(iii) labels for commercial feeds containing growth promotion and feed efficiency levels of antibiotics which are to be fed continuously as the sole ration are not required to make quantitative guarantees, except as specifically noted in the Code of Federal Regulations (CFR), Title 21;~~

(iii) [(iv)] the amount of a drug or antibiotic may be expressed in terms of milligrams per pound where the dosage given in the feeding directions is given in milligrams.

(G) - (N) (No change.)

(O) Guarantees for enzymes shall be stated in units of enzymatic activity per unit weight or volume, consistent with label directions. The source organism for each type of enzymatic activity shall be specified, such as: Protease (*Bacillus subtilis*) 5.5 mg amino acids liberated/min/milligram. If two or more sources have the same type of activity, they shall be listed in order of predominance based upon the amount of enzymatic activity provided.

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

Filed with the Office of the Secretary of State on September 11, 2007.

TRD-200704181

Dr. Tim Herrman

State Chemist and Director, OTSC

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Earliest possible date of adoption: October 28, 2007

For further information, please call: (979) 845-1121



## SUBCHAPTER H. ADULTERANTS

### 4 TAC §61.61

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist proposes amendments to §61.61(b), concerning poisonous or deleterious substances. The proposed amendment deletes subsection (b) because it conflicts with §61.22(9)(C)(ii) and also with AAFCO (Association of American Feed Control Officials). This action requires subsequent subsections to be renumbered. The change is reflected in new §61.61(b) and (c).

Dr. Tim Herrman, State Chemist and Director, Office of the Texas State Chemist, concludes that for the first five-year period there will be no fiscal implication for state or local government as a result of enforcing or administering the rule. There will be no effect to individuals required to comply with the rule as proposed.

Dr. Herrman has also concluded that for each year of the first five years the amendment as proposed is in effect that the public benefit as a result of enforcing this rule will be to reduce confusion on how to implement the rules by the regulated community. There will be no effect on small or micro businesses.

Comments to the proposal may be submitted to Dr. Herrman by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, TX 77841-3160; by fax at (979) 845-1389; or by e-mail at the following: tjh@otsc.tamu.edu.

The amendment is proposed under Texas Agriculture Code §141.004 which provides Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist with the authority to promulgate rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter C, §141.051 and Subchapter A, §141.004 is affected by the proposed amendment.

### §61.61. Poisonous or Deleterious Substances.

(a) (No change.)

~~(b) Urea and other non-protein nitrogen products defined by the Association of American Feed Control Officials are acceptable ingredients in proprietary cattle, sheep and goat feeds only, provided that the product's label complies in all respects with the requirements of §61.22(9) of this title (relating to Commercial Feed). These materials shall be considered adulterants in proprietary feeds for other animals and birds at any level.~~

(b) [(e)] All screenings or by-products of grains and seeds containing weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy viability of such weed seeds so that the finished product contains no viable prohibited noxious weed seeds and not more than 50 viable restricted weed seeds per pound, and not more than 100 of other weed seeds per pound.

(c) [(d)] The Service may require evidence satisfactory to the Service of:

(1) the safety of any commercial feed if such feed includes ingredients not approved either by the FDA or AAFCO (the Association of American Feed Control Officials); or

(2) the efficacy of any commercial feed when such feeds do not meet minimum standards of nutrition for the targeted animal as set forth by recognized authorities on animal nutrition.

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

Filed with the Office of the Secretary of State on September 11, 2007.

TRD-200704184

Dr. Tim Herrman

State Chemist and Director, OTSC

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Earliest possible date of adoption: October 28, 2007

For further information, please call: (979) 845-1121



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

## CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes the repeal of §25.53 relating to Emergency Operations Plan and proposes new §25.53 relating to Electric Service Emergency Operations Plans. The commission also proposes to amend Chapter 25, Subchapter C, Quality of Service, by changing the title to Infrastructure and Reliability. New §25.53 will establish the minimum requirements for emergency operations plans maintained by market entities. Project Number 34202 is assigned to this proceeding.

The proposed repeal of §25.53 is needed to accommodate the significant changes in the electric market since the rule was originally adopted in 1999. The deregulation of the electric market has increased the number of market entities serving unique business functions. As a result, this fundamental change in the market structure has created a need for enhanced coordination during emergency events.

New §25.53 recognizes the changes in the electric market and has developed a tiered approach for emergency operations procedures by establishing separate requirements for transmission and distribution utilities (TDUs), power generation companies (PGCs), and retail electric providers (REPs). Further, new §25.53 proposes to include market entities that were previously excluded from the requirements set forth in the current rule such as electric cooperatives ("cooperatives") and the Electric Reliability Council of Texas (ERCOT).

Municipally owned utilities have historically provided information regarding emergency operations to the commission on a voluntary basis, and they are encouraged to continue this practice. Such information may include emergency contacts, status reports during emergency events (either directly or through local emergency operations centers), and summaries or copies of emergency operations plans. A complete copy of the emergency operations plan shall be made available at the main office of each municipally owned utility for inspection by the commission or commission staff upon request.

Ms. Katie Rich, Infrastructure Policy Analyst and Homeland Security Assistant, has determined that for each year of the first five-year period the proposal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. It has been determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this proposal. It has also been determined that there may be economic costs to businesses that are required to comply with the proposal. These costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits of implementing this proposal will outweigh these costs.

Ms. Rich has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the sections will be the assurance that each utility maintains and exercises an emergency operations plan.

Ms. Rich has also determined that for each year of the first five years the proposal is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested by a party or if deemed necessary by staff, pursuant to the Administrative Procedures Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711 on Monday, November 5, 2007, at 10:00 a.m. The request for a public hearing must be received within 30 days after publication.

Comments on the proposal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication and reply comments may be submitted within 45 days after publication. Sixteen copies of comments to the proposed section are required to be filed pursuant to §22.71(c) of this title. Parties are also requested to e-mail an electronic copy of comments to [katie.rich@puc.state.tx.us](mailto:katie.rich@puc.state.tx.us). Comments should be organized in a manner consistent with the organization of the proposed rule(s). All comments should refer to Project Number 34202. In addition to the proposed language, the commission requests that parties submit comments on the following questions:

*Question 1: To what extent are the minimum requirements for emergency operations plans described in proposed §25.53(c) duplicative of ERCOT's filing requirements for market participants?*

*Question 2: Should electric utilities and REPs develop policies for disaster aid offerings for customers displaced by catastrophic events such as hurricanes and flooding (i.e., waiver of transfer fees and/or deposits)? If so, to what extent should those policies and offerings be memorialized in an electric utility's tariff or a REP's terms of service?*

### SUBCHAPTER C. QUALITY OF SERVICE

#### 16 TAC §25.53

*(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Specifically, PURA §38.005 requires the commission to implement service quality and reliability standards relating to the delivery of electricity and to retail customers.

Cross Reference to Statutes: Public Utility Regulatory Act, §§11.003, 14.001, 14.002, 14.003, 14.151, 14.153, 31.001, 31.002, 32.001, 37.001, 37.151, 38.001, 38.002, 38.005, 38.021, 38.022, 38.071, 39.101, 39.151, 41.001, and 41.004.

§25.53. *Emergency Operations Plan.*

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

Filed with the Office of the Secretary of State on September 13, 2007.

TRD-200704226

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Earliest possible date of adoption: October 28, 2007  
For further information, please call: (512) 936-7223

◆ ◆ ◆  
**SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY**

**16 TAC §25.53**

The new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Specifically, PURA §38.005 requires the commission to implement service quality and reliability standards relating to the delivery of electricity and to retail customers.

Cross Reference to Statutes: Public Utility Regulatory Act, §§11.003, 14.001, 14.002, 14.003, 14.151, 14.153, 31.001, 31.002, 32.001, 37.001, 37.151, 38.001, 38.002, 38.005, 38.021, 38.022, 38.071, 39.101, 39.151, 41.001, and 41.004.

§25.53. Electric Service Emergency Operations Plans.

(a) Application. Unless the context clearly indicates otherwise, this section is applicable to electric utilities, transmission and distribution utilities (TDUs), power generation companies (PGCs), retail electric providers (REPs), and the Electric Reliability Council of Texas (ERCOT), collectively referred to as "market entities," and electric cooperatives ("cooperatives") and shall refer to the definitions provided in the Public Utility Regulatory Act §11.003 and §31.002. For the purposes of this section, market entities and cooperatives are those operating within the State of Texas.

(b) Filing requirements. Each market entity shall file with the commission a comprehensive summary of its emergency operations plan, as described in subsection (c)(1) and (2) of this section, or an affidavit affirming the contents of its emergency operations plan, as described in subsection (c)(3) and (4) of this section, by May 1, 2008. The comprehensive summary shall also include an affidavit from the market entity's senior operations officer indicating that all relevant operating personnel within the market entity are familiar with the contents of the emergency operations plan and are committed to following the plans and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters. To the extent significant changes are made to an emergency operations plan, and the comprehensive summary of the affected portion of the plan is no longer adequately addressed under the current comprehensive summary, a revision to the comprehensive summary shall be filed no later than 30 days after such changes take effect.

(c) Information to be included in the emergency operations plan.

(1) TDUs and electric utilities shall include in their emergency operations plans, but are not limited to, the following:

(A) A registry of critical load customers, as defined in §25.497(a) of this title (relating to Critical Care Customers), directly served. This registry shall be updated as necessary but, at a minimum, annually. The description filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the

critical load customers, and a process for training staff with respect to serving critical load customers;

(B) A communications plan that describes the procedures for contacting the media, customers, and critical load customers directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan should also address its telephone system and complaint-handling procedures during an emergency;

(C) Curtailment priorities, procedures for shedding load, rotating black-outs, and planned interruptions;

(D) Priorities for restoration of service;

(E) A plan to ensure continuous and adequate service during a pandemic; and

(F) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone).

(2) Electric utilities that own or operate electric generation facilities and PGCs shall include in their emergency operations plans, but are not limited to, the following:

(A) A summary of power plant weatherization plans and procedures;

(B) A summary of alternative fuel and storage capacity;

(C) Priorities for recovery of generation capacity;

(D) A pandemic preparedness plan; and

(E) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone).

(3) REPs shall include in their filing with the commission, but are not limited to, an affidavit from an officer of the REP affirming the following:

(A) The REP has a plan that addresses business continuity should its normal operations be disrupted by a natural or man-made disaster, a pandemic, or a State Operations Center (SOC) declared event; and

(B) The REP commits to the obligations outlined in §25.485 of this title (relating to Customer Access and Complaint Handling) and §25.497 of this title and to carry out the functions set forth in those sections during the course of a natural or manmade disaster.

(4) ERCOT shall include in its filing with the commission, but is not limited to, an affidavit from a senior operations officer affirming the following:

(A) ERCOT maintains Crisis Communications Procedures that address procedures for contacting media, governmental entities, and market participants during events that affect the bulk electric system and normal market operations and include procedures for recovery of normal grid operations;

(B) ERCOT maintains a business continuity plan that addresses returning to normal operations after disruptions caused by a natural or manmade disaster, or a SOC declared event; and

(C) ERCOT maintains a pandemic preparedness plan.

(d) Exercises. Each market entity shall conduct an annual drill to test its emergency procedures if its emergency procedures have not been implemented in response to an actual event within the last 12 months. If a market entity is in a hurricane evacuation zone, this drill shall also test its hurricane plan/storm recovery plan. The commission should be notified 30 days prior to the date of the drill.



(e) Emergency contact information. Each market entity shall submit emergency contact information in a form prescribed by commission staff by May 1 of each year. Notification to commission staff regarding changes to its emergency contact information shall be made within 30 days. This information will be used to contact market entities prior to and during an emergency event.

(f) Reporting requirements. Upon request by the commission or commission staff during a SOC declared emergency event, affected market entities shall use their best efforts to provide outage and restoration information to the commission staff pursuant to a schedule provided by staff.

(g) Copy available for inspection. A complete copy of the emergency operations plan shall be made available at the main office of each market entity for inspection by the commission or commission staff upon request.

(h) Procedures for filing comprehensive summaries. Each electric utility, TDU, and PGC may file its comprehensive summary confidentially, pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials) and is provided enhanced protection under Texas Government Code Chapter 421 (relating to Homeland Security). Access to the filings will be limited to the commission and commission staff.

(i) Review of filed comprehensive summaries. Each market entity shall comply with the filing requirements set forth in subsection (b) of this section. Each comprehensive summary will be reviewed to ensure that it addresses, at a summary level, the minimum requirements, as described in subsection (c) of this section.

(j) Electric cooperatives.

(1) Application. This subsection is applicable to electric cooperatives, as defined in the Public Utility Regulatory Act §11.003, that operates, maintains or controls in this state a facility to provide retail electric utility service or transmission service.

(2) Reporting Requirements. Each electric cooperative shall file with the commission a comprehensive summary of its emergency operations plan by May 1, 2008. The comprehensive summary shall also include an affidavit from the electric cooperative's senior operations officer indicating that all relevant operating personnel within the electric cooperative are familiar with the contents of the emergency operations plan and are committed to following the plans and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters. To the extent significant changes are made to an emergency operations plan, and the comprehensive summary of the affected portion of the plan is no longer adequately addressed under the current comprehensive summary, a revision to the comprehensive summary shall be filed no later than 30 days after such changes take effect.

(3) Information to be included in the emergency operations plan. Each electric cooperative's emergency operations plan shall include, but is not limited to, the following:

(A) A registry of critical load customers, as defined in §25.497(a) of this title, directly served. This registry shall be updated as necessary but, at a minimum, annually. The description filed with the commission shall include the location of the registry, the process for maintaining an accurate registry, the process for providing assistance to critical load customers in the event of an unplanned outage, the process for communicating with the critical load customers, and a process for training staff with respect to serving critical load customers;

(B) A communications plan that describes the procedures for contacting the media, customers, and critical load customers

directly served as soon as reasonably possible either before or at the onset of an emergency affecting electric service. The communications plan should also address its telephone system and complaint-handling procedures during an emergency;

(C) Curtailment priorities, procedures for shedding load, rotating black-outs, and planned interruptions;

(D) Priorities for restoration of service;

(E) A plan to ensure continuous and adequate service during a pandemic;

(F) A hurricane plan, including evacuation and re-entry procedures (if facilities are located within a hurricane evacuation zone);

(G) A summary of power plant weatherization plans and procedures;

(H) A summary of alternative fuel and storage capacity; and

(I) Priorities for recovery of generation capacity.

(4) Preparedness Review. Each electric cooperative shall conduct an annual review of its emergency procedures with key emergency operations personnel if its emergency procedures have not been implemented in response to an actual event within the last 12 months. If the electric cooperative is in a hurricane evacuation zone, this review shall also address its hurricane plan/storm recovery plan. The commission shall be notified 30 days prior to the date of the review.

(5) Emergency contact information. Each electric cooperative shall submit emergency contact information to the commission by May 1 of each year.

(6) Reporting requirements. Upon request by the commission or commission staff during a SOC declared emergency event, electric cooperatives shall use their best efforts to provide outage and restoration information to the commission staff pursuant to a schedule provided by staff.

(7) Copy available for inspection. A complete copy of the emergency operations plan shall be made available at the main office of each electric cooperative for inspection by the commission or commission staff upon request.

(8) Procedures for filing comprehensive summaries. Each electric cooperative may designate all or portions of its comprehensive summary "Confidential," pursuant to §22.71(d) of this title, and the confidentiality of such information shall be maintained, as set forth in §22.71(d) of this title.

(9) Review of filed comprehensive summaries. Each electric cooperative shall comply with the filing requirements set forth in paragraph (2) of this subsection. Each comprehensive summary will be reviewed to ensure that it addresses, at a summary level, the minimum requirements, as described in paragraph (3) of this subsection.

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

Filed with the Office of the Secretary of State on September 13, 2007.

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Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
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For further information, please call: (512) 936-7223

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**SUBCHAPTER S. WHOLESALE MARKETS**

**16 TAC §25.507**

The Public Utility Commission of Texas (commission) proposes an amendment to §25.507, relating to Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS). ERCOT has the discretion to instruct utilities to interrupt firm service to a limited number of customers, in order to prevent a broader service interruption. The emergency interruptible load service is intended to provide a means of reducing demand by interrupting service to customers who have offered to be interrupted, for a price, rather than interrupting service to customers who expect to have continuous, reliable service. The proposed amendment will make modifications to the service to allow ERCOT to maintain electric service for customers if an emergency arises in which electric generation resources are not adequate to supply customers' demand. This proposed rule is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project Number 34706 is assigned to this proceeding.

Shawnee Claiborn-Pinto, Sr. Retail Market Analyst, Electric Industry Oversight, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Claiborn-Pinto has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the proposed section will be fewer involuntary interruptions of electric retail customers. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There may be economic costs to persons who are required to comply with the proposed section. These costs are ERCOT's costs associated with procuring emergency interruptible load from customers who are willing to provide this service. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs. Customers will incur costs in participating in the program, but their participation will be voluntary, and it is expected that they will participate only if they expect to receive payments from ERCOT that will result in a net benefit to them.

Ms. Claiborn-Pinto has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Monday, October 15, 2007, at 9:30 a.m. The request for a public hearing must be received within 10 days after publication of the proposed section.

Comments on the proposal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 14 days after publication. Reply comments may be submitted within 18 days after publication. Sixteen copies of comments on the proposed section are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 34706.

*The commission will also take comments on the following question:*

*Giving ERCOT some flexibility in setting the duration of the contract periods or in seeking resources in addition to the resources acquired for the periods established in the rule might help ERCOT deal with unexpected events, such as an extended outage of a large generating unit. Should the rule give ERCOT this flexibility?*

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §11.002 (Vernon 2007) (PURA), which states that it is the purpose of this title to grant to the Public Utility Commission of Texas authority to make and enforce rules necessary to protect customers of electric services consistent with the public interest; §14.002 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §39.151 which provides that the commission shall adopt and enforce rules relating to the reliability of the regional electrical network and accounting for the production and delivery of electricity among generators and all other market participants. This amendment also gives the commission complete authority to oversee an independent organization's (such as ERCOT) budget and operations to ensure that it adequately performs its functions.

Cross Reference to Statutes: Public Utility Regulatory Act §§11.002, 14.002 and 39.151.

§25.507. *Electric Reliability Council of Texas (ERCOT) Emergency Interruptible Load Service (EILS).*

(a) EILS procurement. ERCOT shall procure EILS, a special emergency service that is intended to be deployed by ERCOT in an Emergency Electric Curtailment Plan (EECP) event prior to or in conjunction with ERCOT instructing transmission and distribution service providers to interrupt firm load.

(1) (No change.)

~~(2) Notwithstanding the foregoing, the first EILS contract period shall be from the effective date of this section through May of 2007.~~

(2) ~~(3)~~ ERCOT may determine cost limits for each EILS contract period in order to ensure that the EILS cost cap is not exceeded. In order to minimize the cost of EILS, ERCOT may reject any bid that ERCOT determines to be unreasonable or outside of the parameters of an acceptable bid.

~~(4) The maximum amount of EILS for which ERCOT may contract in an EILS contract period is 1,000 megawatts (MW).~~

(3) ~~(5)~~ The minimum amount of EILS for which ERCOT may contract for any number of MW in an EILS contract pe-

riod not to exceed 1,000 MW [is 500 MW. If ERCOT does not receive enough offers to meet the required minimum amount for a period in which it seeks to procure EILS or cannot procure at least 500 MW for a period in which it seeks to procure EILS due to the EILS cap, ERCOT shall not contract for EILS].

~~[(6) This section will no longer be effective provided the following conditions are met:]~~

~~[(A) An alternative long-term solution is approved in the form of a Protocol Revision that meets the requirements of subsection (h) of this section and ERCOT.]~~

~~[(B) The Protocol Revision is implemented so that ERCOT has a solution continuously in place with no interruption of the protection offered by EILS.]~~

~~[(C) If an alternative long-term solution is developed, but cannot be implemented 30 days prior to the beginning of the next contract period EILS will be extended for an additional contract period.]~~

(b) Definitions.

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

(3) EILS cost cap--The maximum amount ERCOT may spend on the EILS program in a year, February-January. The cost cap is set at \$50 [~~\$17~~] Million [~~for 2007 (April 2007 - January 2008) and \$20 Million for 2008 (February 2008 - January 2009)].~~

~~[(4) EILS non-prime hours--Any hours not defined as EILS prime hours.]~~

~~[(5) EILS prime hours--Hours occurring on a business day (as defined by ERCOT Protocols) during the time frame of hour ending 0900 through hour ending 2000.]~~

(4) ~~[(6)]~~ EILS resource--Load that is contracted to provide EILS.

(5) ~~[(7)]~~ EILS time period--Sets of hours designated by ERCOT within an EILS contract period [~~EILS prime hours or EILS non-prime hours~~].

(6) ~~[(8)]~~ ERCOT--The professional staff of the Electric Reliability Council of Texas, Inc.

(c) Participation in EILS. In addition to requirements established by ERCOT, the following requirements shall apply for the provision of EILS:

(1) EILS bids may be submitted to ERCOT by a qualified scheduling entity (QSE) on behalf of an EILS resource.

(A) Bids may be submitted for one or more time periods within a contract period [~~EILS prime hours or EILS non-prime hours~~].

(B) The minimum amount of EILS that may be offered in a bid to ERCOT is one MW. QSEs representing EILS resources may aggregate multiple resources to reach the one MW bid requirement[, provided that each Electric Service Identifier (ESI ID) in an EILS Resource aggregation has a peak demand of 500 kilowatts (kW) or greater]. Such aggregated bids will be considered a single EILS resource.

(2) To qualify to participate in the EILS program, an EILS resource shall meet the technical requirements set out in this paragraph.

(A) Each EILS resource, including each EILS resource participating in an aggregated bid, shall have an ESI ID or unique service identifier, as defined by ERCOT.

(B) Each EILS resource shall have a dedicated installed Interval Data Recorder (IDR) meter or equivalent. If the IDR meter is not used for settlement with ERCOT, then the IDR meter and the method and format used to collect and transfer the meter data are subject to ERCOT approval. This subsection also applies to meters behind a Non-Opt-In Entity (NOIE) meter point to meters [and] behind a private network's settlement meter point and to separately metered loads behind a single ESI ID. This requirement shall not apply to customers participating in aggregations of EILS resources if a statistically valid alternative to universal IDR metering for measurement and verification consistent with industry best practices can be developed and approved by ERCOT.

(C) - (I) (No change.)

(3) (No change.)

(4) EILS shall be deployed by ERCOT by VDIs in a single phone call to all QSEs providing EILS.

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

(C) An EILS resource shall be subject to a maximum of two deployments per EILS contract period, lasting no more than eight hours total, unless an EILS deployment is still in effect when the eighth hour lapses, in which case EILS deployment shall continue until ERCOT releases the EILS resource. EILS resources may return to service only after being released by ERCOT.

(D) (No change.)

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

(f) Reporting. Within 10 days of the EILS awards for a contract period, ERCOT shall report publicly the number of MW procured per time period, the number of resources providing the service, and the projected total cost of the service for that contract period. At the completion of each contract period, ERCOT shall review the effectiveness and benefits of the EILS and report its findings to the commission within 70 days of the completion of the contract period. The report shall contain, at a minimum, the number of MW procured in each period, the total dollar amount spent, the number and level of EECF events, and the number and duration of deployments.

(g) (No change.)

~~[(h) Long-term solution. Any long-term solution must offer ERCOT the ability to avoid shedding firm load by bringing more resources online or curtailing load voluntarily. In this context the commission is interested in:]~~

~~[(1) Better price signals leading up to an EECF event;]~~

~~[(2) Bringing more resources (both interruptible load and generation) online through existing ancillary services; and]~~

~~[(3) Examining the priorities set by TDSPs when shedding firm load. ]~~

~~[(h) [(4)] [Non-Opt In Entity (NOIE)] Self Provision. ERCOT shall maintain [develop] procedures for [NOIE] self provision of EILS by any QSE [as soon as possible. If no procedures for NOIE self-provision are developed by the effective date of this rule, ERCOT shall implement procedures no later than the beginning of the following contract period].~~

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

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704247

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 28, 2007

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



## CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes the repeal of §26.51 relating to Continuity of Service and proposes new §26.51 relating to Reliability of Operations of Telecommunications Providers. The commission also proposes to amend Chapter 26, Subchapter C, Quality of Service, by changing the title to Infrastructure and Reliability. New §26.51 will establish the minimum requirements for emergency operations plans maintained by telecommunications providers. Project Number 34594 is assigned to this proceeding.

The proposed repeal of §26.51 is needed to update the requirements for telecommunications providers during an emergency event. Significant changes have been made to the structure and application of the rule. This rule now applies to all local exchange carriers that are facilities-based providers. New §26.51 expands the minimum requirements for emergency operations plans and includes subsections relating to emergency contact information and reporting requirements.

Ms. Katie Rich, Infrastructure Policy Analyst and Homeland Security Assistant, has determined that for each year of the first five-year period the proposals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposals. She has also determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposals. There may be economic costs to persons or businesses that are required to comply with the proposals. These costs are likely to vary from business to business, and are difficult to ascertain. However, it is believed that the benefits of implementing the proposals will outweigh these costs.

Ms. Rich has determined that for each year of the first five years the proposals are in effect the public benefit anticipated as a result of enforcing the proposals will be the assurance that each utility maintains and exercises an emergency operations plan.

Ms. Rich has also determined that for each year of the first five years the proposals are in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code 2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested by a party or if deemed necessary by staff, pursuant to the Administrative Procedures Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711 on Monday, November 5, 2007 at 10:00 a.m. The

request for a public hearing must be received within 30 days after publication.

Comments on the proposed repeal and new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication and reply comments may be submitted within 45 days after publication. Sixteen copies of comments to the proposed section are required to be filed pursuant to §22.71(c) of this title. Parties are also requested to e-mail an electronic copy of comments to katie.rich@puc.state.tx.us. Comments should be organized in a manner consistent with the organization of the proposed rule(s). All comments should refer to Project Number 34594. In addition to the proposed language, the commission requests that parties submit comments on the following questions:

Question 1: In what ways have recent FCC orders increased state authority over wireless, VoIP, and BPL providers with regards to emergency preparedness? Please include any citations to applicable FCC orders.

Question 2: Should utilities develop policies for disaster aid offerings for customers displaced by catastrophic events such as hurricanes and flooding (i.e., free remote call forwarding, waiver of deposits, etc.)? If so, to what extent should those policies and offerings be memorialized in a utility's tariff?

Question 3: Under what circumstances should utilities notify the commission immediately regarding outages?

### SUBCHAPTER C. QUALITY OF SERVICE

#### 16 TAC §26.51

*(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

This repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §55.001 relating to General Standard in the provision of service by a public utility, and §55.002 relating to Commission Authority Concerning Standards for a public utility.

Cross Reference to Statutes: Public Utility Regulatory Act, §§11.003, 14.001, 14.002, 14.003, 14.151, 14.153, 51.001, 52.001, 52.002, 52.106, 55.001, 55.002, 55.005, and 55.006.

§26.51. *Continuity of Service.*

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

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704244

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 936-7208



## SUBCHAPTER C. INFRASTRUCTURE AND RELIABILITY

### 16 TAC §26.51

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §55.001 relating to General Standard in the provision of service by a public utility, and §55.002 relating to Commission Authority Concerning Standards for a public utility.

Cross Reference to Statutes: Public Utility Regulatory Act, §§11.003, 14.001, 14.002, 14.003, 14.151, 14.153, 51.001, 52.001, 52.002, 52.106, 55.001, 55.002, 55.005, and 55.006.

#### §26.51. Reliability of Operations of Telecommunications Providers.

(a) Application. Unless the context clearly indicates otherwise, in this section the term "utility," insofar as it relates to telecommunications utilities, shall refer to local exchange companies that are facilities-based providers, as defined in §26.5(85) and (119) of this title (relating to Definitions).

(b) Emergency Operations Plan. Each utility shall file with the commission a comprehensive summary of its emergency operations plan by May 1, 2008.

(1) Filing requirements. The filing shall include an affidavit from the utility's senior operations officer indicating that all relevant operating personnel within the utility are familiar with the contents of the emergency operations plan and are committed to following the plans and the provisions contained therein in the event of a system-wide or local emergency that arises from natural or manmade disasters. To the extent the utility makes changes in its emergency operations plan, and the comprehensive summary of the affected portion of the plan is no longer addressed under the utility's current comprehensive summary, the utility shall file a revision to the comprehensive summary no later than 30 days after such changes take effect.

(2) Information to be included in the emergency operations plan. Each emergency operations plan maintained by a utility shall include, but is not limited to, the following:

(A) A communications plan that describes the procedures for contacting the media, customers, and service users (including those users that are responsible for public health, safety, and welfare), as defined in the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System (47 C.F.R. pt. 64, App. A), as soon as reasonably possible either before or at the onset of an emergency. The communications plan should also:

(i) address how the utility's telephone system and complaint-handling procedures will be augmented during an emergency;

(ii) identify key personnel and equipment that will be required to implement the plan when an emergency occurs;

(B) priorities for restoration of service;

(C) a plan for disaster recovery and continuity of operations;

(D) a plan to provide continuous and adequate service during a pandemic; and

(E) a hurricane plan, including evacuation and re-entry procedures (for a utility providing service within a hurricane evacuation zone).

(3) Exercises. Each utility shall conduct an annual drill to test its emergency procedures if emergency procedures have not been implemented in response to an actual event within the last 12 months. If a utility is in a hurricane evacuation zone, this drill shall also test its hurricane plan/storm recovery plan. The commission should be notified 30 days prior to the date of the drill.

(4) Emergency contact information. Each utility shall submit emergency contact information in a form prescribed by commission staff by May 1 of each year. Notification to commission staff regarding changes to the emergency contact list shall be made within 30 days. This information will be used to contact utilities prior to and during an emergency event.

(5) Reporting requirements. During a State Operations Center (SOC) declared emergency event, such as a hurricane or flooding, utilities shall use their best efforts to provide outage and restoration information to the commission staff pursuant to a schedule provided by staff.

(6) Copy available for inspection. A complete copy of the above plans shall be made available at the utility's main office for inspection by the commission or commission staff upon request.

(7) Procedures for filing comprehensive summaries. Each utility may file its comprehensive summary confidentially, pursuant to §22.71(d) of this title (relating to Filing of Pleadings, Documents and Other Materials) and is provided enhanced protection under Texas Government Code Chapter 421 (relating to Homeland Security). Access to the filings will be limited to the commission and commission staff.

(8) Review of filed comprehensive summaries. Each utility shall comply with the filing requirements set forth in paragraph (1) of this subsection. Each comprehensive summary will be reviewed to ensure that it addresses, at a summary level, the minimum requirements, as described in paragraph (2) of this subsection.

(c) Continuity of service.

(1) Every utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall restore service within the shortest reasonable time.

(2) Each utility shall make reasonable provisions to manage emergencies resulting from failure of service, and each utility shall issue instructions to its employees on the procedures to be followed in the event of an emergency to prevent or mitigate interruption or impairment of service.

(3) In the event of a national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, deliberately interrupt service to selected customers to provide necessary service for the civil defense or other emergency service agencies temporarily until normal service to these agencies can be restored.

(d) Record of interruption. Except for momentary interruptions caused by automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(e) Report to commission. The following guidelines are a minimum basis for reporting service interruptions. Any report of service interruption shall state the cause(s) of the interruption. Utilities should report major outages lasting less than four hours in a timely manner or as soon as reasonably possible. Utilities shall notify the commission

in a timely manner in writing of interruptions in service lasting four or more hours affecting:

- (1) 50% of the toll circuits serving an exchange;
  - (2) 50% of the extended area service circuits serving an exchange;
  - (3) 50% of a central office;
  - (4) 20% or more of an exchange's access lines; or
  - (5) 911 service.
- (f) Change in character of service.

(1) If any change is planned or made by the utility in the type of service rendered by the utility that would adversely affect the efficiency or operation of the customer equipment connected to the utility's network, the utility shall notify the affected customer at least 60 days in advance of the change or within a reasonable time as practicable.

(2) This paragraph applies only to local exchange companies that are dominant carriers, as defined in §26.5(66) of this title. Where change in service requires dominant carriers to adjust or replace standard equipment, these changes shall be made to permit use under such changed conditions, adjustment shall be made by the dominant carrier without charge to the customers, or in lieu of such adjustments or replacements, the dominant carrier may make cash or credit allowances based on the duration of the change and the degree of efficiency loss.

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

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704245

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 936-7208



## **TITLE 19. EDUCATION**

### **PART 2. TEXAS EDUCATION AGENCY**

#### **CHAPTER 102. EDUCATIONAL PROGRAMS**

##### **SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING MASTER TEACHER GRANT PROGRAMS**

The Texas Education Agency (TEA) proposes the repeal of and new §§102.1011, 102.1013, and 102.1015, concerning master teacher grant programs. The sections implement provisions relating to the master teacher grant programs for reading, mathematics, and science, respectively. The proposed rule actions would update, revise, and reorganize provisions for the master teacher grant programs.

The Master Reading Teacher Grant Program was created by House Bill (HB) 2307, 76th Texas Legislature, 1999. The Master Mathematics Teacher Grant Program was created by HB 1144,

77th Texas Legislature, 2001. The Master Science Teacher Grant Program was created by HB 411, 78th Texas Legislature, 2003. Through 19 TAC §§102.1011, 102.1013, and 102.1015, the commissioner of education exercised rulemaking authority to adopt rules for implementation of these grant programs. The rules address awarding grants to school districts to pay stipends to selected certified master reading, mathematics, and science teachers who teach at high-need campuses as identified in rule. The commissioner's rules define terms and set forth the procedures for school district applications and administration of grants.

The proposed rule actions would repeal the current rules and present substantively similar, new rules that would update, revise, and reorganize provisions for the master teacher grant programs. Specifically, proposed new 19 TAC §§102.1011, 102.1013, and 102.1015 would include the following.

Subsection (a) would add definitions pertinent to the respective master teacher grant program. Each new rule has an updated definition for "identified high-need campus," which would delete provisions relating to the 2003 - 2004 and 2004 - 2005 school years. Definitions for the respective master teacher and master teacher grant program, also included in this new subsection, would maintain language from current rule.

Subsection (b) would specify the purpose of the respective master teacher grant program.

Subsection (c) would clarify the qualifications of a master reading teacher, master mathematics teacher, and master science teacher, respectively. The proposed qualifications are the same as in current rule but only reorganized.

Subsection (d) would describe the primary duties of a master teacher. The proposed language would update and reorganize current text.

Subsection (e) would reorganize and update current campus eligibility criteria, including reference to the use of applicable statewide student assessment test scores to identify a high-need campus. The new language would change the allocation of stipends to occur in the school year following the year of notification. This would allow school districts sufficient time to hire and schedule master teachers for high-need campuses.

Subsection (f) would reorganize and clarify current text regarding the allocation and use of grant funds.

Subsection (g) would add new language regarding a decision of the commissioner of education concerning the amount of money awarded to a school district. Current text regarding payments would be retained, with a minor update to a cross reference.

Subsection (h) would require districts to provide proof of master teacher certification of stipend recipients. Current text regarding district designations of stipend recipients would be retained, including the timeframe in which state stipends must be paid by local school districts to designated certified master teachers.

Subsection (i) would add new language allowing the commissioner to audit the expenditure of grant funds appropriated for the programs.

Lee Ann Dumas, director for educator excellence, has determined that for the first five-year period the repeals and new sections are in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the repeals and new sections. The proposed rule actions primarily

provide updates and clarification and are substantively the same as current rules.

Ms. Dumas has determined that for each year of the first five years the repeals and new sections are in effect the public benefit anticipated as a result of enforcing the rule actions will be to facilitate continuous implementation of the master teacher grant programs. The programs are intended to encourage teachers to: (1) become certified as master teachers in reading, mathematics, and/or science, and (2) work with other teachers and with students, particularly those in identified high-need campuses, to improve student performance in reading, mathematics, and science. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed repeals and new sections.

The public comment period on the proposal begins September 28, 2007, and ends October 28, 2007. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed repeals and new sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

#### 19 TAC §§102.1011, 102.1013, 102.1015

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

The repeals are proposed under the Texas Education Code, §§21.410, 21.411, and 21.413, which authorize the commissioner to adopt rules as necessary to implement the master reading, mathematics, and science teacher grant programs, respectively.

The repeals implement the Texas Education Code, §§21.410, 21.411, and 21.413.

§102.1011. *Master Reading Teacher Grant Program.*

§102.1013. *Master Mathematics Teacher Grant Program.*

§102.1015. *Master Science Teacher Grant Program.*

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

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

TRD-200704271

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 475-1497



#### 19 TAC §§102.1011, 102.1013, 102.1015

The new sections are proposed under the Texas Education Code, §§21.410, 21.411, and 21.413, which authorize the com-

missioner to adopt rules as necessary to implement the master reading, mathematics, and science teacher grant programs, respectively.

The new sections implement the Texas Education Code, §§21.410, 21.411, and 21.413.

§102.1011. *Master Reading Teacher Grant Program.*

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

(1) Identified high-need campus--An identified high-need campus is a campus where the percentage of students reported passing the statewide assessment in reading averages less than or equal to a percentage designated by the commissioner of education. An identified high-need campus does not include:

(A) a discipline alternative education program operated under the Texas Education Code (TEC), §37.008;

(B) a juvenile justice alternative education program; and

(C) a campus where fewer than 30 students took the statewide assessment in reading over the previous three school years for which data are considered.

(2) Master reading teacher--An educator who is employed by a school district and has satisfactorily completed the requirements for master reading teacher certification. The master reading teacher teaches reading and serves as a reading teacher mentor to other teachers.

(3) Master Reading Teacher Grant Program--An annual grant program established in accordance with the TEC, §21.410, under which a school district may apply to the commissioner of education for a grant to pay stipends to selected certified master reading teachers who teach at high-need campuses, in accordance with the provisions of this section.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter school.

(5) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(b) Purpose. The Master Reading Teacher Grant Program is established to encourage teachers to:

(1) become certified as master reading teachers; and

(2) work with other teachers and with students in order to improve student reading performance.

(c) Qualifications. A certified master reading teacher is:

(1) a person who holds a reading specialist certificate and has satisfactorily completed a course of instruction approved by the State Board for Educator Certification (SBEC) for the purpose of becoming a master reading teacher; or

(2) a person who holds a teaching certificate who:

(A) has at least three years of teaching experience;

(B) has satisfactorily completed a course of instruction approved by the SBEC for the purpose of becoming a master reading teacher; and

(C) has successfully performed on the master reading teacher certification examination prescribed by the SBEC.

(d) Primary duties. The primary duties of a master reading teacher are to teach reading and to serve as a reading teacher mentor to other teachers for the amount of time and in the manner established by the school district.

(1) Teaching reading is performed when a teacher:

(A) applies knowledge of the interrelated components of reading from early childhood through Grade 12 and uses expertise at the primary, intermediate/middle, or high school level to plan, implement, and monitor reading instruction;

(B) selects, constructs, and administers appropriate reading assessments on an ongoing basis and uses the results to design, inform, and adjust reading instruction to promote student achievement;

(C) applies knowledge of primary and secondary language acquisition, reading difficulties, and dyslexia and related reading disorders to facilitate and promote literacy;

(D) designs and implements instruction based on the Texas Essential Knowledge and Skills (TEKS) in reading at the appropriate grade level; and

(E) creates a positive learning environment that promotes positive student attitudes toward reading and provides equitable opportunities for all students to achieve at a high level.

(2) A reading teacher mentor:

(A) provides mentoring and leadership that facilitate appropriate standards-based and research-based reading instruction;

(B) communicates and collaborates with educational professionals, parents, and others;

(C) coaches and consults with colleagues;

(D) provides professional development opportunities for faculty; and

(E) makes instructional decisions based on data and supported by evidence from research.

(e) Campus eligibility. Test score averages for the statewide assessment in reading for the three previous years will be used to identify a high-need campus.

(1) The commissioner shall determine, based upon student enrollment, whether a district may receive a grant to pay stipends to one or two certified master reading teachers per identified high-need campus.

(A) A school district may receive a grant to pay state stipends to two certified master reading teachers per identified high-need campus having a large student population as determined annually by the commissioner.

(B) A school district may receive a grant to pay state stipends to one certified master reading teacher per identified high-need campus having a small student population as determined annually by the commissioner.

(2) Following the initial year of the grant, a district is not required to reapply for a grant for two consecutive years if the district:

(A) continues to pay a stipend as provided by this subsection;

(B) notifies the commissioner, in accordance with the application instructions, that the circumstances on which the grant was based have not changed; and

(C) notifies the commissioner of changes in the circumstances on which the grant was based, including:

(i) number of months of the teacher's service under master reading teacher certification;

(ii) new designated master reading teachers on previously unserved identified high-need campuses, as defined in this subsection;

(iii) changes in designated master reading teachers on already served identified high-need campuses; and

(iv) additional changes affecting the Master Reading Teacher Grant Program, including any information required by the commissioner.

(f) Allocation and use of funds. A school district may apply to the commissioner for grants for each identified high-need campus as defined in subsection (a)(3) of this section to be used to pay a year-end stipend to certified master reading teachers in accordance with this section.

(1) The application must contain a certification by the school superintendent that the grants will be used only for the purpose set forth in the TEC, §21.410.

(2) Applications and reports must be filed with the commissioner during the school year in which a stipend is to be paid in accordance with the application instructions.

(3) Grant funds can only be used for the purpose of paying a year-end stipend to a master reading teacher, as defined in subsections (a)(4) and (c) of this section, whose primary duties are to teach reading and to serve as a reading teacher mentor to others for the amount of time and in the manner established by the school district.

(g) Payments. A decision of the commissioner concerning the amount of money to which a school district is entitled under this section is final and may not be appealed. The commissioner shall reduce payments to a school district proportionately to the extent an eligible teacher does not meet the requirements under subsection (c) of this section for the entire school year. In the event a teacher qualifies as a master reading teacher for a partial month, the district's written policy will determine how the district counts the partial month (e.g., as no month served or as an entire month served). Only whole months shall be entered on the application by the district on the teacher's behalf.

(h) Designations by the district. A district that employs more certified master reading teachers than the number of grants available under this section shall designate which certified master reading teacher(s) to assign the duties required to receive the state stipend(s).

(1) The designation is based on a written policy adopted by the board of trustees of the district.

(2) Each district shall provide to the commissioner proof acceptable to the commissioner of the master reading teacher certification of a teacher to whom the district is paying a stipend under this section.

(3) The district shall pay a state stipend for only one designated master reading teacher per designated slot on an identified high-need campus.

(4) In unforeseen circumstances (e.g., teacher becomes seriously ill and cannot continue), the district may request from the commissioner an exception to the provisions in this subsection to be considered on a case-by-case basis and only under extreme circumstances.

(5) A decision of the district under this subsection is final and may not be appealed.



(6) The district may use local money to pay additional stipends in amounts determined by the district.

(7) State stipends to certified master reading teachers must be paid by local school districts no later than 30 days after receipt of the grant by the school district.

(i) Audit of expenditures. The commissioner may audit the expenditure of grant funds appropriated for purposes of this section.

§102.1013. Master Mathematics Teacher Grant Program.

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

(1) Identified high-need campus--An identified high-need campus is a campus where the percentage of students reported passing the statewide assessment in mathematics averages less than or equal to a percentage designated by the commissioner of education. An identified high-need campus does not include:

(A) a discipline alternative education program operated under the Texas Education Code (TEC), §37.008;

(B) a juvenile justice alternative education program; and

(C) a campus where fewer than 30 students took the statewide assessment in mathematics over the previous three school years for which data are considered.

(2) Master mathematics teacher--An educator who is employed by a school district and has satisfactorily completed the requirements for master mathematics teacher certification. The master mathematics teacher teaches mathematics and serves as a mathematics teacher mentor to other teachers.

(3) Master Mathematics Teacher Grant Program--An annual grant program established in accordance with the TEC, §21.411, under which a school district may apply to the commissioner of education for a grant to pay stipends to selected certified master mathematics teachers who teach at high-need campuses, in accordance with the provisions of this section.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter school.

(5) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(b) Purpose. The Master Mathematics Teacher Grant Program is established to encourage teachers to:

- (1) become certified as master mathematics teachers; and
- (2) work with other teachers and with students in order to improve student mathematics performance.

(c) Qualifications. A certified master mathematics teacher is:

(1) a person who holds a mathematics specialist certificate and has satisfactorily completed a course of instruction approved by the State Board for Educator Certification (SBEC) for the purpose of becoming a master mathematics teacher; or

(2) a person who holds a teaching certificate who:

(A) has at least three years of teaching experience;

(B) has satisfactorily completed a course of instruction approved by the SBEC for the purpose of becoming a master mathematics teacher; and

(C) has successfully performed on the master mathematics teacher certification examination prescribed by the SBEC.

(d) Primary duties. The primary duties of a master mathematics teacher are to teach mathematics and to serve as a mathematics teacher mentor to other teachers for the amount of time and in the manner established by the school district.

(1) Teaching mathematics is performed when a teacher:

(A) applies knowledge of the interrelated components of mathematics, including number concepts, patterns and algebra, geometry and measurement, probability and statistics, and mathematical processes, and uses expertise in mathematics instruction at the primary, intermediate/middle, or high school level to select, design, implement, and monitor appropriate mathematics instruction;

(B) selects, constructs, and administers appropriate mathematics assessments on an ongoing basis and uses the results to design, inform, and adjust mathematics instruction to promote student achievement;

(C) applies knowledge of a range of mathematical achievement (e.g., advanced learners, students demonstrating mathematics difficulties) and effective instructional approaches to facilitate and promote mathematics achievement;

(D) designs and implements instruction based on the Texas Essential Knowledge and Skills (TEKS) in mathematics at the appropriate grade level; and

(E) creates a positive learning environment that promotes positive student attitudes toward mathematics and provides equitable opportunities for all students to achieve at a high level.

(2) A mathematics teacher mentor:

(A) provides mentoring and leadership that facilitate appropriate standards-based and research-based mathematics instruction;

(B) communicates and collaborates with educational professionals, parents, and others;

(C) coaches and consults with colleagues;

(D) provides professional development opportunities for faculty; and

(E) makes instructional decisions based on data and supported by evidence from research.

(e) Campus eligibility. Test score averages for the statewide assessment in mathematics for the three previous years will be used to identify a high-need campus.

(1) The commissioner shall determine, based upon student enrollment, whether a district may receive a grant to pay stipends to one or two certified master mathematics teachers per identified high-need campus.

(A) A school district may receive a grant to pay state stipends to two certified master mathematics teachers per identified high-need campus having a large student population as determined annually by the commissioner.

(B) A school district may receive a grant to pay state stipends to one certified master mathematics teacher per identified high-need campus having a small student population as determined annually by the commissioner.

(2) Following the initial year of the grant, a district is not required to reapply for a grant for two consecutive years if the district:

(A) continues to pay a stipend as provided by this subsection;

(B) notifies the commissioner, in accordance with the application instructions, that the circumstances on which the grant was based have not changed; and

(C) notifies the commissioner of changes in the circumstances on which the grant was based, including:

(i) number of months of the teacher's service under master mathematics teacher certification;

(ii) new designated master mathematics teachers on previously unserved identified high-need campuses, as defined in this subsection;

(iii) changes in designated master mathematics teachers on already served identified high-need campuses; and

(iv) additional changes affecting the Master Mathematics Teacher Grant Program, including any information required by the commissioner.

(f) Allocation and use of funds. A school district may apply to the commissioner for grants for each identified high-need campus as defined in subsection (a)(3) of this section to be used to pay a year-end stipend to certified master mathematics teachers in accordance with this section.

(1) The application must contain a certification by the school superintendent that the grants will be used only for the purpose set forth in the TEC, §21.411.

(2) Applications and reports must be filed with the commissioner during the school year in which a stipend is to be paid in accordance with the application instructions.

(3) Grant funds can only be used for the purpose of paying a year-end stipend to a master mathematics teacher, as defined in subsections (a)(4) and (c) of this section, whose primary duties are to teach mathematics and to serve as a mathematics teacher mentor to others for the amount of time and in the manner established by the school district.

(g) Payments. A decision of the commissioner concerning the amount of money to which a school district is entitled under this section is final and may not be appealed. The commissioner shall reduce payments to a school district proportionately to the extent an eligible teacher does not meet the requirements under subsection (c) of this section for the entire school year. In the event a teacher qualifies as a master mathematics teacher for a partial month, the district's written policy will determine how the district counts the partial month (e.g., as no month served or as an entire month served). Only whole months shall be entered on the application by the district on the teacher's behalf.

(h) Designations by the district. A district that employs more certified master mathematics teachers than the number of grants available under this section shall designate which certified master mathematics teacher(s) to assign the duties required to receive the state stipend(s).

(1) The designation is based on a written policy adopted by the board of trustees of the district.

(2) Each district shall provide to the commissioner proof acceptable to the commissioner of the master mathematics teacher certification of a teacher to whom the district is paying a stipend under this section.

(3) The district shall pay a state stipend for only one designated master mathematics teacher per designated slot on an identified high-need campus.

(4) In unforeseen circumstances (e.g., teacher becomes seriously ill and cannot continue), the district may request from the commissioner an exception to the provisions in this subsection to be considered on a case-by-case basis and only under extreme circumstances.

(5) A decision of the district under this subsection is final and may not be appealed.

(6) The district may use local money to pay additional stipends in amounts determined by the district.

(7) State stipends to certified master mathematics teachers must be paid by local school districts no later than 30 days after receipt of the grant by the school district.

(i) Audit of expenditures. The commissioner may audit the expenditure of grant funds appropriated for purposes of this section.

§102.1015. Master Science Teacher Grant Program.

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

(1) Identified high-need campus--An identified high-need campus is a campus where the percentage of students reported passing the statewide assessment in science averages less than or equal to a percentage designated by the commissioner of education. An identified high-need campus does not include:

(A) a discipline alternative education program operated under the Texas Education Code (TEC), §37.008;

(B) a juvenile justice alternative education program;

and  
(C) a campus where fewer than 30 students took the statewide assessment in science over the previous three school years for which data are considered.

(2) Master science teacher--An educator who is employed by a school district and has satisfactorily completed the requirements for master science teacher certification. The master science teacher teaches science and serves as a science teacher mentor to other teachers.

(3) Master Science Teacher Grant Program--An annual grant program established in accordance with the TEC, §21.413, under which a school district may apply to the commissioner of education for a grant to pay stipends to selected certified master science teachers who teach at high-need campuses, in accordance with the provisions of this section.

(4) School district--For the purposes of this section, the definition of school district includes open-enrollment charter school.

(5) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(b) Purpose. The Master Science Teacher Grant Program is established to encourage teachers to:

(1) become certified as master science teachers; and

(2) work with other teachers and with students in order to improve student science performance.

(c) Qualifications. A certified master science teacher is:

(1) a person who holds a science specialist certificate and has satisfactorily completed a course of instruction approved by the State Board for Educator Certification (SBEC) for the purpose of becoming a master science teacher; or

(2) a person who holds a teaching certificate who:

(A) has at least three years of teaching experience;

(B) has satisfactorily completed a course of instruction approved by the SBEC for the purpose of becoming a master science teacher; and

(C) has successfully performed on the master science teacher certification examination prescribed by the SBEC.

(d) Primary duties. The primary duties of a master science teacher are to teach science and to serve as a science teacher mentor to other teachers for the amount of time and in the manner established by the school district.

(1) Teaching science is performed when a teacher:

(A) applies knowledge of the interrelated components of science, including scientific principles, such as systems and models, properties and patterns, constancy and change; scientific processes, such as inquiry in the laboratory and field, critical thinking and problem-solving; and science concepts, such as relationship between force and motion and interdependence among living systems, and uses expertise in science instruction at the primary, intermediate/middle, or high school level to select, design, implement, and monitor appropriate science instruction. The master science teacher understands ethics in science investigation and laboratory and field safety techniques and employs appropriate pedagogy techniques;

(B) selects, constructs, and administers appropriate science assessments on an ongoing basis and uses the results to design, inform, and adjust science instruction to promote student achievement;

(C) applies knowledge of a range of scientific achievement (e.g., advanced learners, students demonstrating science difficulties) and effective instructional approaches to facilitate and promote science achievement;

(D) designs and implements instruction based on the Texas Essential Knowledge and Skills (TEKS) in science at the appropriate grade level; and

(E) creates a positive learning environment that promotes positive student attitudes toward science and provides equitable opportunities for all students to achieve at a high level.

(2) A science teacher mentor:

(A) provides mentoring and leadership that facilitate appropriate standards-based and research-based science instruction;

(B) communicates and collaborates with educational professionals, parents, and others;

(C) coaches and consults with colleagues;

(D) provides professional development opportunities for faculty; and

(E) makes instructional decisions based on data and supported by evidence from research.

(e) Campus eligibility. Test score averages for the statewide assessment in science for the three previous years will be used to identify a high-need campus.

(1) The commissioner shall determine, based upon student enrollment, whether a district may receive a grant to pay stipends to one or two certified master science teachers per identified high-need campus.

(A) A school district may receive a grant to pay state stipends to two certified master science teachers per identified high-

need campus having a large student population as determined annually by the commissioner.

(B) A school district may receive a grant to pay state stipends to one certified master science teacher per identified high-need campus having a small student population as determined annually by the commissioner.

(2) Following the initial year of the grant, a district is not required to reapply for a grant for two consecutive years if the district:

(A) continues to pay a stipend as provided by this subsection;

(B) notifies the commissioner, in accordance with the application instructions, that the circumstances on which the grant was based have not changed; and

(C) notifies the commissioner of changes in the circumstances on which the grant was based, including:

(i) number of months of the teacher's service under master science teacher certification;

(ii) new designated master science teachers on previously unserved identified high-need campuses, as defined in this subsection;

(iii) changes in designated master science teachers on already served identified high-need campuses; and

(iv) additional changes affecting the Master Science Teacher Grant Program, including any information required by the commissioner.

(f) Allocation and use of funds. A school district may apply to the commissioner for grants for each identified high-need campus as defined in subsection (a)(3) of this section to be used to pay a year-end stipend to certified master science teachers in accordance with this section.

(1) The application must contain a certification by the school superintendent that the grants will be used only for the purpose set forth in the TEC, §21.413.

(2) Applications and reports must be filed with the commissioner during the school year in which a stipend is to be paid in accordance with the application instructions.

(3) Grant funds can only be used for the purpose of paying a year-end stipend to a master science teacher, as defined in subsections (a)(4) and (c) of this section, whose primary duties are to teach reading and to serve as a reading teacher mentor to others for the amount of time and in the manner established by the school district.

(g) Payments. A decision of the commissioner concerning the amount of money to which a school district is entitled under this section is final and may not be appealed. The commissioner shall reduce payments to a school district proportionately to the extent an eligible teacher does not meet the requirements under subsection (c) of this section for the entire school year. In the event a teacher qualifies as a master science teacher for a partial month, the district's written policy will determine how the district counts the partial month (e.g., as no month served or as an entire month served). Only whole months shall be entered on the application by the district on the teacher's behalf.

(h) Designations by the district. A district that employs more certified master science teachers than the number of grants available under this section shall designate which certified master science teacher(s) to assign the duties required to receive the state stipend(s).

(1) The designation is based on a written policy adopted by the board of trustees of the district.

(2) Each district shall provide to the commissioner proof acceptable to the commissioner of the master science teacher certification of a teacher to whom the district is paying a stipend under this section.

(3) The district shall pay a state stipend for only one designated master science teacher per designated slot on an identified high-need campus.

(4) In unforeseen circumstances (e.g., teacher becomes seriously ill and cannot continue), the district may request from the commissioner an exception to the provisions in this subsection to be considered on a case-by-case basis and only under extreme circumstances.

(5) A decision of the district under this subsection is final and may not be appealed.

(6) The district may use local money to pay additional stipends in amounts determined by the district.

(7) State stipends to certified master science teachers must be paid by local school districts no later than 30 days after receipt of the grant by the school district.

(i) Audit of expenditures. The commissioner may audit the expenditure of grant funds appropriated for purposes of this section.

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

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

TRD-200704270

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 475-1497



## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

#### SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

##### 19 TAC §230.436

The State Board for Educator Certification (SBEC) proposes an amendment to §230.436, relating to certificate issuance procedures. The section establishes the schedule of fees for certification services. The proposed amendment would update the national criminal history check fee in response to Senate Bill (SB) 9, 80th Texas Legislature, 2007, and add an exception to the fee for reactivation of an inactive standard certificate for certificates that were placed on inactive status due to failure to submit required criminal history record information.

Prior to the passage of SB 9, only new applicants for educator certification were required to be fingerprinted. SB 9 authorizes

and requires that all certified educators who are or will be employed in public schools must submit fingerprints for the purpose of obtaining their national criminal histories and that those criminal histories must be reviewed by the Texas Education Agency (TEA) staff on behalf of the SBEC. The TEA staff has identified approximately 392,000 certified educators that SB 9 mandates must be fingerprinted by September 1, 2011.

The proposed amendment to 19 TAC §230.436 would update the national criminal history check fee in response to SB 9. The proposed amendment would remove in paragraph (10) the specific fee of \$45 from rule and allow for a more flexible means of establishing the fingerprinting fee. This flexibility is needed due to the variability of fingerprinting fees set by the DPS, the Federal Bureau of Investigation (FBI), and other involved entities. Any or all of these entities may change their fees at any time. The TEA staff has been notified by the FBI that it proposes to change their fee in October 2007, which would require additional rule amendments if a specific fee were to remain in rule. The proposed amendment would also establish this fee as non-refundable and specify that the amount of the fee would be posted on the SBEC website. It should be noted that an additional fee would apply to the fingerprinting fee for the purpose of recovering the cost of the Texas Online Initiative as required by 19 TAC §230.438, E-Pay Supplemental Fee. In addition, the proposed amendment to 19 TAC §230.436 would add in paragraph (19) an exception to the fee for reactivation of an inactive standard certificate, if the certificate was placed on inactive status based on not meeting the national criminal history record information review requirement in proposed new 19 TAC Chapter 232, General Certification Provisions, Subchapter C, National Criminal History Record Information Review of Active Certificate Holders. Proposed new 19 TAC Chapter 232, Subchapter C, can be found in the Proposed Rules section of this issue.

Dr. Raymond Glynn, associate commissioner for educator quality and standards, has determined that for each year of the first five years the proposed amendment is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the proposed amendment, and no anticipated economic cost to persons who are required to comply with the proposed amendment. There will be no effect on small businesses. Any fiscal implications for state and local government and economic cost to persons as a result of the criminal history review requirement imposed by SB 9 will result not from this proposed amendment to 19 TAC §230.436, but from proposed new 19 TAC §232.905(c)(1), which requires payment of a fee for the required national criminal history review. Proposed new 19 TAC Chapter 232, Subchapter C, and its fiscal implications can be found in the Proposed Rules section of this issue.

Dr. Glynn has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the proposed amendment will be obtaining criminal histories on all active certified educators, resulting in a safer school environment for both students and educators.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards,

Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Dr. Raymond Glynn, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under TEC, §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of TEC, Chapter 21, Subchapter B; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

The proposed amendment implements TEC, §21.041(c) and §22.0831(f).

§230.436. *Schedule of Fees for Certification Services.*

An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

- (1) Standard Educational Aide certificate--\$30.
- (2) Standard certificate, additional specialization, teaching field, or endorsement/delivery system, based on recommendation by an approved teacher preparation entity or State Board for Educator Certification authorization; or extension or conversion of certificate--\$75.
- (3) Probationary certificate based on recommendation by an approved teacher preparation entity or Texas public school district--\$50.
- (4) Duplicate of certificate or change of name on certificate--\$45.
- (5) Addition of certification based on completion of appropriate examination--\$75.
- (6) Review of a credential issued by a jurisdiction other than Texas (nonrefundable)--\$175.
- (7) Temporary credential based on a credential issued by a jurisdiction other than Texas--\$50.
- (8) Initial permit, reassignment on permit with a change in assignment or school district, renewal for nonconsecutive years, or renewal of permit on a hardship basis (nonrefundable)--\$55.
- (9) Renewal in the school district of a permit at the same target certificate level and initial activation, or renewal in the same school district of a temporary classroom assignment permit--no fee.
- (10) National criminal history check (nonrefundable) ~~for all first-time applicants for credentials~~--\$45 The fee, posted on the State Board for Educator Certification website, shall vary according to the current cost of fingerprint processing and obtaining national criminal history record information from the Texas Department of Public Safety, its contractors, and the Federal Bureau of Investigation. The same fee will be paid by current certified educators who are subject to a national criminal history check pursuant to the Texas Education Code, §§22.082, 22.0831, and 22.0836.
- (11) Temporary Teacher certificate based on recommendation by an approved Texas public school district--\$50.
- (12) Review of credentials requiring analysis and research of college or university transcript and degrees for issuance of a temporary certificate (nonrefundable)--\$175.
- (13) On-time renewal of Standard Educational Aide certificate--\$10.
- (14) Additional fee for late renewal of Standard Educational Aide certificate--\$5.

(15) Reactivation of an inactive Standard Educational Aide certificate--\$15.

(16) Reinstatement following restitution of child support or student loan repayment for Standard Educational Aide certificate--\$20.

(17) On-time renewal of Standard certificate (to include any paraprofessional certificates if held)--\$20.

(18) Additional fee for late renewal of Standard certificate--\$10.

(19) Reactivation of an inactive Standard certificate--\$40; except for an inactivation pursuant to §232.907 of this title (relating to Inactive Status).

(20) Reinstatement following restitution of child support or student loan repayment--\$50.

(21) Visiting International Teacher certificate--\$50.

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

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

TRD-200704268

Raymond Glynn

Associate Commissioner, Educator Quality and Standards

State Board for Educator Certification

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 475-1497



## CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

### SUBCHAPTER C. NATIONAL CRIMINAL HISTORY RECORD INFORMATION REVIEW OF ACTIVE CERTIFICATE HOLDERS

#### 19 TAC §§232.901, 232.903, 232.905, 232.907, 232.909

The State Board for Educator Certification (SBEC) proposes new §§232.901, 232.903, 232.905, 232.907, and 232.909, concerning national criminal history record information review of active certificate holders. The proposed new sections would implement provisions for the expanded national criminal history record information reviews of active certificate holders.

Prior to the passage of SB 9, 80th Texas Legislature, 2007, only new applicants for educator certification were required to be fingerprinted. SB 9 authorizes and requires that all certified educators who are or will be employed in public schools must submit fingerprints for the purpose of obtaining their national criminal histories and that those criminal histories must be reviewed by the Texas Education Agency (TEA) staff on behalf of the SBEC. The TEA staff has identified approximately 392,000 certified educators that SB 9 mandates must be fingerprinted by September 1, 2011. Proposed new 19 TAC Chapter 232, General Certification Provisions, Subchapter C, National Criminal History Record Information Review of Active Certificate Holders, would establish the requirements and procedures for obtaining the national criminal histories from certified educators who have not been previ-

ously fingerprinted. Specifically, the proposed new subchapter includes the following.

Proposed new 19 TAC §232.901, Purpose, would identify the purpose of the subchapter in subsection (a). Definitions for certified educator, criminal history clearinghouse, national criminal history record information, school entity, and TEA staff would be defined in subsection (b). Subsection (c) would delineate identifying information that must be submitted to the Texas Department of Public Safety (DPS) and entered into the DPS Criminal History Clearinghouse. Subsection (d) would specify that a certified educator may not be employed by a school district unless their criminal history has been submitted to the TEA staff and their information included in the DPS Criminal History Clearinghouse before September 1, 2011.

Proposed new 19 TAC §232.903, Required Assistance, would establish school district obligations to facilitate the fingerprinting procedure, including providing names and other identifying information for all certified educators that are employed by the district upon request by the TEA staff. The proposed new rules would also require a district to cooperate with the SBEC, the TEA staff, and the DPS and its contractors to facilitate the process.

Proposed new 19 TAC §232.905, Submission of Required Information, would specify the procedures and timelines that must be followed by affected individuals and school entities as follows.

Proposed new subsection (a) would establish the timeline by when a school entity would respond to the TEA staff's request for the names and contact information of all certified educators employed by the entity. This new subsection would also provide that the information submitted by the school entity would be used to send notices to the certified educators required to submit their identifying information as part of the DPS Criminal History Clearinghouse. Also, the proposed new subsection would require the school entity to ensure that all certified educators offered employment in the future submit their identifying information to be entered into the Criminal History Clearinghouse before employment.

Proposed new subsection (b) would address the method by which certified educators would be notified of their obligation to comply with the fingerprinting requirement. The certified educator would be notified by e-mail at the e-mail address provided by the school entity. The notice would describe the information to be submitted by the certified educator and the format in which it would be submitted. The notice would also set a date, at least 80 days from the date the notice is sent, by when the TEA staff must receive the certified educator's criminal history record information. The school entity would receive a copy of each notice sent to the certified educators and the deadlines for their submissions. The school entity would ensure that affected certified educators have received the notice by obtaining written acknowledgment or by delivering a copy of the notice to the certified educator. As provided in proposed new subsection (b), the TEA staff would send a reminder notice by e-mail to the certified educator and his or her employing school entity stating that the certified educator's criminal history information must be submitted within 25 calendar days.

Proposed new subsection (c) would establish an authorization form which certified educators would be required to use to submit the necessary information. The proposed new subsection would also specify that the fee to obtain the national criminal history record information would be paid by the certified educator but the fee would be the same as that paid by applicants for cer-

tification. Proposed new subsection (c) would add language that allows another entity to pay the national criminal history information fee on behalf of the educator. Also, proposed new subsection (c) would specify that only fingerprint information properly authorized by the TEA staff would satisfy the requirements of the TEC, §22.0831, and be entered into the DPS Criminal History Clearinghouse.

Proposed new 19 TAC §232.907, Inactive Status, would require in subsection (a) that an educator's certificate be placed on inactive status for failure to comply with this subchapter. Proposed new subsection (b) would allow for an extension not to exceed ten calendar days, for good cause shown, before the educator's certificate would be placed on inactive status. Only a person designated by the SBEC would have the authority to grant the extension. In proposed new subsection (c), a certified educator whose certificate is inactive would be considered ineligible for employment in a Texas public school in a position that requires educator certification. Subsection (d) would provide for an educator's certificate active status to be restored when TEA staff receives the certified educator's national criminal history record information as required by this subchapter.

Proposed new 19 TAC §232.909, State Board for Educator Certification Review of National Criminal History Information, would provide that a certified educator's national criminal history record information obtained through the procedures described in this subchapter would be reviewed by the TEA staff in accordance with 19 TAC Chapter 249, Disciplinary Proceedings, Sanctions, and Contested Cases.

In response to SB 9, an amendment to §230.436, Schedule of Fees for Certification Services, is proposed and can be found in the Proposed Rules section of this issue. The proposed amendment would update the national criminal history report fee.

Dr. Raymond Glynn, associate commissioner for educator quality and standards, has determined that for each year of the first five years the proposed new sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the proposed new sections.

For the TEA, the total estimated cost would be \$2,285,847 for Fiscal Year (FY) 2008 and \$1,550,347 for each year of FY 2009-FY 2012. The total estimated cost for each year of FY 2008-FY 2012 includes \$1,036,247 for personnel costs and \$237,600 to cover rent and travel. The total estimated cost also includes other operating expenses estimated at \$180,000 for FY 2008 and \$67,500 for each year of FY 2009-FY 2012. The total estimated cost for software would be \$832,000 for initial development in FY 2008 and \$209,000 for maintenance for each year of FY 2009-FY 2012.

For the Texas Department of Public Safety (DPS), the total estimated cost for each year of FY 2008-FY 2011 would be approximately \$3.8 million to conduct the background checks. For the Department of Information Resources (DIR), the total estimated cost for each year of FY 2008-FY 2011 would be \$196,000 to cover costs for online services.

For the TEA, the estimated increase in revenue would be \$588,000 for each year of FY 2008-FY 2011. This estimate is based on a portion of the fees that the TEA would be collecting, partially covering the costs to the TEA. For the DIR, the estimated increase in revenue would be \$196,000 for each year of FY 2008-FY 2011. For the DPS, the estimated increase in revenue would be approximately \$3.8 million for each year of FY 2008-FY 2011. Fees to the DIR and to the DPS would

be collected by the TEA and transferred to the appropriate state agency to cover costs for online services by the DIR and background checks by the DPS.

The SB 9 contingency rider provides the TEA the authority to collect fees plus \$1 million in general revenue for costs to implement this legislation. The TEA costs not covered by fees would be paid by general revenue or other available funds.

There is an anticipated economic cost to persons who are required to comply with the proposed new sections. For certified educators who are subject to compliance with SB 9, the total estimated cost would be approximately \$4.6 million for each year of FY 2008-FY 2011. This estimated total is based on approximately 98,000 educators for each year of FY 2008-FY 2011 paying a nonrefundable \$47 fee to complete the national criminal history background check. If other entities such as school districts choose to pay the fees for its certified educators, there will be fiscal implications for local government, at an estimated cost of \$47 for each certified educator. School districts may choose to pay the fees for its certified educators, as provided in proposed new §232.905(c)(1).

Dr. Glynn has determined that for each year of the first five years the proposed new sections are in effect the public benefit anticipated as a result of enforcing the proposed new sections will be obtaining criminal histories on all active certified educators, resulting in a safer school environment for both students and educators. There will be no effect on small businesses.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [sbecrules@tea.state.tx.us](mailto:sbecrules@tea.state.tx.us) or faxed to (512) 463-0028. All requests for a public hearing on the proposed new sections submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and Standards, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Dr. Raymond Glynn, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code (TEC), §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of TEC, Chapter 21, Subchapter B; and §22.0831(f), which authorizes the SBEC to propose rules to implement the national criminal history record information review of certified educators.

The new sections implement the TEC, §21.041(c) and §22.0831(f).

§232.901. Purpose.

(a) This subchapter provides rules for the implementation of the criminal history record information review under the Texas Education Code (TEC), Chapter 22, Subchapter C.

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

(1) Certified educator--An employee or applicant for employment at a school entity who holds a Texas educator certification issued under the TEC, Chapter 21, Subchapter B, as required by the TEC, Chapter 22, Subchapter C, to whom the TEC, §22.0831, and this subchapter apply.

(2) Criminal History Clearinghouse--An electronic clearinghouse and subscription service established by the Texas Department of Public Safety (DPS), as defined by the Texas Government Code, §411.0845.

(3) National criminal history record information--Criminal history record information obtained from both the Texas Department of Public Safety and the Federal Bureau of Investigation, as defined by the TEC, §22.081.

(4) School entity--A school district, open-enrollment charter school, or shared services arrangement.

(5) Texas Education Agency staff--Staff of the Texas Education Agency assigned by the commissioner of education to perform the State Board for Educator Certification's (SBEC's) administrative functions and services.

(c) A certified educator shall submit fingerprint, photograph, and identification information to the DPS in the form the DPS requires for the purpose of entering the person's national criminal history record information into the Criminal History Clearinghouse.

(d) A certified educator may not be employed by a school entity on or after September 1, 2011, unless the certified educator's national criminal history record information has been entered into the Criminal History Clearinghouse and made available to the SBEC and the school entity by whom the certified educator is employed.

§232.903. Required Assistance.

All school entities and regional education service centers shall assist the State Board for Educator Certification (SBEC) and the Texas Education Agency (TEA) in the collection of criminal history record information to facilitate this review, as required by statute. School entities shall promptly submit all requested information in accordance with §232.905 of this title (relating to Submission of Required Information) to the TEA staff. School entities and regional education service centers shall cooperate with the SBEC, the TEA, and the Texas Department of Public Safety and its contractors in providing facilities and opportunities for certified educators to submit their required information.

§232.905. Submission of Required Information.

(a) Notice to school entity.

(1) Upon notice from the Texas Education Agency (TEA) staff, a school entity shall provide, no later than 15 calendar days from the date the school entity receives the notice, the names, e-mail addresses, mailing addresses, and any other requested identifying information for all certified educators employed by the school entity at that time.

(2) All certified educators shall provide the school entity by which they are employed an e-mail address at which the certified educator can receive notices and authorizations required by this subchapter. A school entity e-mail address or an Internet e-mail address is acceptable for this purpose.

(3) The TEA staff shall use the identifying information to send notices to the school entity and its certified educators notifying those educators who must submit fingerprint, photograph, and identification information for the purpose of a national criminal history record information review.

(4) All certified educators hired by a school entity after it submits the names of all its certified educators to the TEA staff shall submit fingerprint, photograph, and identification information required by this subchapter before the certified educator begins employment with the school entity. This requirement will not apply if the certified educator has already submitted such information to the Texas Department of Public Safety (DPS) in the form the DPS requires.

(b) Notice to certified educator to submit required information.

(1) The TEA staff shall notify the certified educator by e-mail, at the address specified by the school entity, that the certified educator must submit fingerprint, photograph, and identification information to the DPS in the form the DPS requires for the purpose of entering the certified educator's national criminal history record information into the Criminal History Clearinghouse.

(2) The notice shall specify the date, which shall be at least 80 calendar days from the date the notice is sent via e-mail, that the certified educator's national criminal history record information must be received by the TEA staff as required by this section and by the Texas Education Code (TEC), §22.083.

(3) The TEA staff shall e-mail the employing school entity a copy of each notice.

(4) Within ten calendar days of the date on which each notice was sent, the school entity shall ensure that all affected certified educators have received the notice by obtaining written acknowledgment from each certified educator, or by delivering a copy of the notice to the certified educator. The school entity shall maintain a record of the proof of delivery of each notice.

(5) Twenty-five calendar days before the date on which an educator's criminal history information must be submitted, the TEA staff shall send a reminder notice, by e-mail only, to any certified educator whose information has not yet been received and to his or her employing school entity.

(c) Authorization to submit required information.

(1) Each certified educator shall pay the required national criminal history review fee, which shall be in the same amount as the national criminal history check fee for applicants for certification in §230.436 of this title (relating to Schedule of Fees for Certification Services), and shall electronically obtain an authorization form from the TEA staff. This provision does not prohibit another entity from paying the national criminal history review fee on behalf of the educator.

(2) The authorization form shall be used to submit fingerprint, photograph, and identification information to the DPS and its contractors in the form that the DPS requires to obtain national criminal history record information required by the TEC, §22.0831, which shall be entered into the Criminal History Clearinghouse, and made available to the TEA staff and the school entity.

(3) Only fingerprint information that has been properly authorized by the TEA staff shall satisfy the requirements of the TEC, §22.0831, and shall be accepted and entered in the Criminal History Clearinghouse.

§232.907. Inactive Status.

(a) If the Texas Education Agency (TEA) staff has not received a certified educator's national criminal history record information as required by this subchapter by the date specified in the notice described in §232.905(b) of this title (relating to Submission of Required Information), the educator's certificate shall be placed on inactive status.

(b) For good cause shown, the date on which a certified educator's certificate becomes inactive may be extended for a period not to exceed ten calendar days. Such an extension may only be granted by a person designated for this purpose by the SBEC, and the decision to grant or deny a request for extension shall be within the designee's sole discretion.

(c) An educator whose certificate is in inactive status is ineligible for employment in a Texas public school in a position that re-

quires educator certification, pursuant to the Texas Education Code, §21.003(a) and §22.0831(d).

(d) An educator's certificate shall be removed from inactive status and reactivated when the TEA staff receives a certified educator's national criminal history record information as required by this subchapter.

§232.909. State Board for Educator Certification Review of National Criminal History Information.

A certified educator's national criminal history record information submitted under the provisions of the Texas Education Code, §22.0831, and this subchapter shall be reviewed by the Texas Education Agency staff in accordance with the disciplinary rules and procedures contained in Chapter 249 of this title (relating to Disciplinary Proceedings, Sanctions, and Contested Cases).

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

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

TRD-200704269

Raymond Glynn

Associate Commissioner, Educator Quality and Standards  
State Board for Educator Certification

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 475-1497



## **TITLE 22. EXAMINING BOARDS**

### **PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS**

#### **CHAPTER 71. APPLICATIONS AND APPLICANTS**

##### **22 TAC §71.13**

The Texas Board of Chiropractic Examiners (Board) proposes a new rule §71.13 of this title, relating to chiropractic specialties. The proposed new rule outlines the requirements for applying to the Board for recognition of a specialty to include documentation required and information reviewed by the Board in determining whether a practice area is a specialty. The Board developed this rule in response to requests from doctors of chiropractic for specialty recognition and pursuant to a provision of the Board's recent Sunset Act which allows the Board to require a licensee to obtain additional training or certification to perform certain procedures or to use certain equipment (Acts 2005, 79th Legislature, Regular Session, Chapter 1020 (H.B. 972), §8, codified at Texas Occupations Code (§201.1525(3)).

In preparing this proposed new rule, the Board looked to the rules relating to recognition of specialties from Alaska, Delaware, Louisiana, and Missouri and an information letter from the U.S. Department of Veterans Affairs relating to credentialing and privileging of doctors of chiropractic (Aug. 23, 2004) (VA Letter). The Alaska and Delaware boards have established criteria for specialty programs (12 ACC 16.047; 24 Del. Reg. 3.0). The Louisiana and Missouri boards have adopted rules that outline the requirements for applying for recognition of a specialty (46



LAC §318; 4 CSR 70-2.032). The VA Letter provides guidance regarding the credentialing, scope of practice, and privileging of doctors of chiropractic. The VA Letter notes that "DCs may obtain optional post-graduate education and training in a variety of specialty areas. These specialty programs are offered at accredited United States chiropractic colleges. *Specialty courses offered by professional organizations and other continuing education providers that may provide documentation of completion (e.g., certificate) should not be equated with these structured post graduate programs at accredited chiropractic colleges.* Accredited United States chiropractic colleges offer two types of specialty programs: part-time post-graduate training and full-time residency training" (emphasis in original). The full-time residency programs identified in the VA Letter are radiology, family practice, orthopedics, and clinical sciences. The part-time post graduate specialty programs identified in the VA letter are family practice, clinical neurology, sports chiropractic, nutrition, chiropractic occupational health and applied ergonomics (industrial consulting), applied chiropractic sciences, orthopedics, pediatrics, rehabilitation, philosophical chiropractic standards, and acupuncture.

The following specialty programs have been recognized by Alaska (AK), Kentucky (KY), and Louisiana (LA): Clinical Nutrition (AK, LA), Diagnosis and Management of Internal Disorders (AK), Diagnostic Imaging (AK), Forensics (AK), Internists (LA), Orthopedics (AK, KY, LA), Pediatrics (LA), Neurology (AK, LA), Rehabilitation (AK), Roentgenology (KY, LA), and Sports Physician (AK, LA).

Under this proposed new rule, any person or entity may submit an application to the Board for recognition of a specialty area. Subsection (a) states the purpose of this rule. Subsection (c) sets forth the application requirements for recognition of a specialty area. Subsection (d) sets forth the Board's procedures for review of an application. Subsection (e) sets forth an applicant's responsibilities. Subsection (f) provides that upon approval of a specialty area, the Board will promulgate a regulation for the minimum initial and continuing education requirements and fees for the certification of the specialty. Subsection (g) provides how a specialty certification may be used in public communications, including advertisements, letterhead, and signage.

Glenn Parker, Executive Director, has determined that for the first five-year period this new rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering this new rule.

Mr. Parker has also determined that for each year of the first five-year period this new rule is in effect the public benefit will be clearer distinctions and standards for chiropractic specialties. Mr. Parker has determined that there will be a cost to each applicant (application fee) of approximately \$500 to \$1,000 for each chiropractic specialty area recognition application received by the Board. There will be no costs or adverse economic effects to small or micro businesses.

Comments on the proposed amendments may be submitted to Ms. Mary Feys, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Ste. 825, Austin, Texas 78701 or via e-mail to mary.feys@tbce.state.tx.us or via facsimile to (512) 305-6705 no later than 30 days from the dated that these proposed amendments are published in the *Texas Register*.

This new rule is proposed under Texas Occupations Code, §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic

and §201.1525, relating to rules clarifying scope of practice of chiropractic, which authorizes the Board to adopt rules requiring a license holder to obtain additional training or certification to perform certain procedures or use certain equipment.

§71.13. Chiropractic Specialties.

(a) This rule outlines the requirements for applying to the board for recognition of a specialty to include documentation required and information reviewed by the board in determining whether a practice area is a specialty.

(b) Any person or entity may submit an application to the board seeking recognition of a specialty area. For the purpose of this regulation a specialty shall consist of advanced education and/or training to be proficient in an area of practice and shall not include a technique of manipulation or treatment.

(c) An application for recognition of a specialty area shall be submitted on a form provided by the board and shall be accompanied by the required, non-refundable fee. Within the application the following information and documentation shall be submitted:

(1) Name and description of the specialty certification area;

(2) Conditions and/or disorders to which the specialty area is directed;

(3) Proof of acceptance of the specialty area by the chiropractic profession to include safety and efficiency of the specialty area, such as articles from refereed journals, scholarly journals, treatises, textbooks used by board approved Council of Chiropractic Education (CCE) colleges of chiropractic, syllabi and/or curriculum materials used in education and training in the specialty area, and scholarly studies or research;

(4) Education and/or training requirements including how and where education may be obtained and whether education and/or training is provided from a post graduate board-approved CCE chiropractic college;

(5) A statement describing why the specialty area complies with the scope of practice as defined in §75.17 of this title, relating to Scope of Practice;

(6) Any examination or residency required; and

(7) Hours of continuing education to maintain the certification.

(d) The board shall review an application for recognition of a specialty area and require documentation to determine compliance with the following factors:

(1) Whether the certification is for a specialty area, or for a technique;

(2) Whether the specialty area is within the scope of practice of chiropractic as defined in §75.17 of this title;

(3) Whether the specialty area is safe for its intended purpose(s);

(4) Whether there are sufficient sources of accredited core and post graduate education at board-approved CCE colleges of chiropractic; and

(5) Whether recognition of a specialty area will create potential public confusion in the event the specialty area is already being commonly used and advertised by licensees.

(e) The applicant shall be responsible for providing all documents required by the board and the applicant shall have the burden

of demonstrating that the specialty area should be recognized by the board.

(f) Upon approval of a specialty area, the board shall promulgate a regulation establishing the minimum initial and continuing education requirements, application fee, and documentation required for verification of compliance with all educational requirements.

(g) Licensees receiving board-approved specialty certification shall be entitled to use the terms, specialty, or specializing in public communications, including advertisements, letterhead, and signage. Any such specialty designate shall be preceded by the licensee's name, and by one of the following:

- (1) D.C.;
- (2) Chiropractor; or
- (3) Doctor of Chiropractic.

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

Filed with the Office of the Secretary of State on September 13, 2007.

TRD-200704230

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 305-6901



## CHAPTER 80. PROFESSIONAL CONDUCT

### 22 TAC §80.1

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §80.1 of this title, relating to delegation of authority, to further clarify the responsibilities of licensed doctors of chiropractic and their assistants. This proposed amendment has been developed in response to public comments requesting further clarification of these responsibilities.

In preparing this proposed rule, the Board looked at other rules regarding the delegation of authority to health care assistants, including the Texas Medical Board's rule §185.10 of this title, relating to physician assistant scope of practice, and Chapter 193 of this title, relating to standing delegation orders; the Texas Board of Physical Therapy Examiners rules, §322.2 of this title, relating to role delineation, and §322.3, relating to supervision; the Florida rule for direct supervision of registered chiropractic assistants, Fla. Admin. Code, 64B2-18.0075; and the Illinois rule for physician delegation of authority (including doctors of chiropractic), Ill. Admin. Code tit. 68, §1285.33.

In addition to the substantive proposed amendments, some of the existing sections have been relettered and renumbered; and additional nonsubstantive editorial changes have been made. All references will be to the lettering for the proposed new subsections. In this rule, "licensee" refers to doctors of chiropractic licensed by the Board.

The proposed amendments would include a new subsection (a) which provides that the purpose of this section is to encourage the more effective use of the skills of licensees by establishing guidelines for the delegation of health care tasks to a qualified

and properly trained person acting under a licensee's supervision consistent with the health and welfare of a patient and with proper diligence and efficient practice of chiropractic. This provision is modeled on the Medical Board's rule, §193.1, relating to purpose. Subsection (a) would also provide that this section provides the standards for credentialing chiropractic assistants in Texas. This is to clarify that licensees who comply with this section will be in compliance with the legal standards for delegating authority to chiropractic assistants in Texas.

Subsection (c) would be amended to provide that chiropractic students that have completed an out-patient clinic may perform chiropractic adjustment or manipulation without the supervising licensee present at the time of adjustment. This new provision would reflect the practice experience of chiropractic students that have completed an out-patient clinic where they were able to perform chiropractic adjustment or manipulation without an instructing doctor present at the time of adjustment. Under the previous rule, chiropractic students who had completed an out-patient clinic were required to regress their practice when under the supervision of a licensee.

Subsection (d) would be amended to clarify that, in delegating the performance of a specific task or procedure, a licensee shall verify that a person is qualified and properly trained. Definitions would also be added for requisite education, requisite training, and requisite skill. It would also be amended to clarify that a licensee may delegate a specific task or procedure to an unlicensed person if the specific task or procedure is within the scope of chiropractic, as described under §75.17 of this title, relating to scope of chiropractic, and if the delegation complies with the other requirements of this section, the Chiropractic Act, and the Board's rules.

Subsection (e) would be amended to provide that the tasks or procedures that may be delegated include performing other prescribed clinical tests and measurements. Subsection (e)(6) would be revised to refer to physical therapy modalities and/or therapeutic procedures, including physical medicine, rehabilitation, or other treatments as described in the American Medical Association's Current Procedural Terminology (2004) (CPT Codebook), the Center for Medicare and Medicaid Services' Health Care Common Procedure Coding System, or other national coding system. For the CPT Codebook, this would include all 97000 codes.

Subsection (f) would be added to provide that a licensee may not allow or direct a person to perform activities that are either outside the licensee's scope of practice, that exceed the education, training, and skill of the person or for which a person is not otherwise qualified or properly trained or to exercise independent clinical judgment unless the person holds a valid Texas license or certification that would allow or authorize the exercise of independent clinical judgment.

Subsection (g) would be amended to clarify that it applies to a license suspension in Texas or any other jurisdiction.

Subsection (h) would be added to clearly provide that a licensee is responsible for each patient's care. Subsection (i) would be added to clarify the standards for supervision of chiropractic assistants and to specify that a licensee must be on-call when treatment is provided under the licensee's direction unless there is another licensee on-call.

Subsection (j) would be added to require that a licensee's patient records differentiate between services performed by a doctor of

chiropractic and the services performed by a person under the licensee's supervision.

Glenn Parker, Executive Director, has determined that, for the first five-year period this proposed rule amendment is in effect, there will be no additional costs to state or local governments as a result of enforcing or administering this amended rule.

Mr. Parker has also determined that, for each year of the first five-year period this proposed rule amendment is in effect, the public benefit will be clearer standards and guidelines for the delegation of responsibilities to chiropractic assistants. Mr. Parker has determined that there will be no costs to licensees or patients as a result of the adoption of the proposed amendments to this rule. There will be no costs to small or micro businesses.

The Board has approximately 5,000 doctor of chiropractic licensees and 3,000 registered chiropractic facilities; and nearly all of these entities are small businesses. The projected economic impact of this proposed rule amendment on these small businesses will be neutral to positive for licensees and clinics in that licensees will be able to more effectively use their practice time by delegating approved tasks to qualified assistants when appropriate. In preparing this proposed rule amendment, the Board considered several alternative methods for achieving the purposes of this amended rule as proposed. The Board considered requiring, under proposed subsection (j), that each person performing treatments sign the patient records; but this was rejected as excessively burdensome recordkeeping. The Board considered not modifying the standards for "qualified and properly trained" in proposed subsection (d), but the Board decided that the public welfare would benefit from clearer standards. The Board considered adopting more specific standards regarding the required education, training, and skills of personnel; but the Board decided instead that it would be easier for licensees to implement the general standards included in the proposed rule amendment under subsection (d).

Comments on the proposed amendments may be submitted to Ms. Mary Feys, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Ste. 825, Austin, Texas 78701 or via e-mail to mary.feys@tbce.state.tx.us or via facsimile to (512) 305-6705 no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

This rule amendment is proposed under Texas Occupations Code, §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic and §201.451, relating to delegation to assistants, which authorizes the Board to adopt rules relating to the tasks and procedures that a doctor of chiropractic may delegate to an assistant.

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

#### §80.1. Delegation of Authority.

(a) The purpose of this section is to encourage the more effective use of the skills of licensees by establishing guidelines for the delegation of health care tasks to a qualified and properly trained person acting under a licensee's supervision consistent with the health and welfare of a patient and with proper diligence and efficient practice of chiropractic. This section provides the standards for credentialing a chiropractic assistant in Texas.

(b) [(a)] Except as provided in this section, a licensee shall not allow or direct a person who is not licensed by the board to perform procedures or tasks that are within the scope of chiropractic, including:

- (1) rendering a diagnosis and prescribing a treatment plan;
- or
- (2) performing a chiropractic adjustment or manipulation.

(c) [(b)] A licensee may allow or direct a student enrolled in an accredited chiropractic college to perform chiropractic adjustments or manipulations. [; provided that:]

(1) For students that have not completed an out-patient clinic at a chiropractic college, the chiropractic adjustment or manipulation must be [is] performed as part of a regular curriculum; and

[(2)] the chiropractic adjustment or manipulation must be [is] performed under the supervision of a licensee who is physically present in the treating room at the time of the adjustment.

(2) For students that have completed an out-patient clinic at a chiropractic college, the chiropractic adjustment or manipulation must be performed under the supervision of a licensee who need not be physically present in the treating room at the time of the adjustment.

(3) The requirement that the supervising licensee must be physically present in the treating room does not apply to chiropractic college clinics.

(d) [(e)] In delegating the performance of a specific task or procedure, a licensee shall verify that a person is qualified and properly trained. "Qualified and properly trained" as used in this section [subsection] means that the person has [; in addition to] the requisite education, training, and skill [; has any license or certification required by law in order] to perform a specific task or procedure.

(1) Requisite education may be determined by a license, degree, coursework, on-the-job training, or relevant general knowledge.

(2) Requisite training may be determined by instruction in a specific task or procedure, relevant experience, or on-the-job training.

(3) Requisite skill may be determined by a person's talent, ability, and fitness to perform a specific task or procedure.

(4) A licensee may delegate a specific task or procedure to an unlicensed person if the specific task or procedure is within the scope of chiropractic and if the delegation complies with the other requirements of this section, the Chiropractic Act, and the board's rules.

(e) A licensee may allow or direct a qualified and properly trained person, who is acting under the licensee's supervision, to perform a task or procedure that assists the doctor of chiropractic [chiropractor] in making a diagnosis, prescribing a treatment plan or treating a patient if the performance of the task or procedure does not require the training of a doctor of chiropractic [chiropractor] in order to protect the health or safety of a patient, such as:

- (1) taking the patient's medical history;
- (2) taking or recording vital signs;
- (3) performing radiologic procedures;
- (4) taking or recording range of motion measurements;
- (5) performing other prescribed clinical tests and measurements;
- (6) [(f)] performing prescribed physical therapy modalities, therapeutic procedures, physical medicine and rehabilitation, or other treatments as described in the American Medical Association's Current Procedural Terminology Codebook, the Centers for Medicare and Medicaid Services' Health Care Common Procedure Coding System, or other national coding system. [procedures and activities];

(7) [(6)] demonstrating prescribed exercises or stretches for a patient; or

(8) [(7)] demonstrating proper uses of dispensed supports and devices.

(f) A licensee may not allow or direct a person:

(1) to perform activities that are outside the licensee's scope of practice;

(2) to perform activities that exceed the education, training, and skill of the person or for which a person is not otherwise qualified and properly trained; or

(3) to exercise independent clinical judgment unless the person holds a valid Texas license or certification that would allow or authorize the person to exercise independent clinical judgment.

(g) [(d)] A licensee shall not allow or direct a person whose chiropractic license has been suspended or revoked, in Texas or any other jurisdiction, to practice chiropractic in connection with the treatment of a patient of the licensee during the effective period of the suspension or upon revocation.

(h) A licensee is responsible for and will participate in each patient's care. A licensee shall conform to the minimal acceptable standards of practice of chiropractic in assessing and evaluating each patient's status.

(i) It is the responsibility of each licensee to determine the number of qualified and properly trained persons that the licensee can safely supervise. A licensee must be on-call when any or all treatment is provided under the licensee's direction unless there is another licensee present on-site or designated as being on-call.

(j) A licensee's patient records shall differentiate between services performed by a doctor of chiropractic and the services performed by a person under the licensee's 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 September 13, 2007.

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Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 305-6901



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 21. TRADE PRACTICES

##### SUBCHAPTER B. INSURANCE

##### ADVERTISING, CERTAIN TRADE PRACTICES, AND SOLICITATION

28 TAC §§21.102 - 21.104, 21.106 - 21.109, 21.113 - 21.116, 21.119 - 21.122

The Texas Department of Insurance proposes amendments to §§21.102 - 21.104, 21.106 - 21.109, 21.113 - 21.116, 21.119, 21.120, and 21.122, and new §21.121 concerning insurance advertising, certain trade practices, and solicitation. The proposed amendments are necessary to implement HB 2251 and HB 2252, as enacted by the 80th Legislature, Regular Session, effective September 1, 2007, and May 17, 2007, respectively. HB 2251 defines institutional advertisements on Internet websites. HB 2251 also provides that an insurer must include all appropriate disclosures and information on an Internet web page when the page describes specific policies or coverage or includes an opportunity to apply for coverage or obtain a quote. HB 2251 also provides that advertisements may be permitted by Commissioner's rule to comply with the applicable rules relating to advertising by including a link to a web page that provides the necessary information to comply with the advertising rules. Additionally, HB 2251 allows insurers to advertise to the general public policies or coverages available only to members of an association; prohibits the use of an advertisement for an insurance product relating to Medicare coverage unless the advertisement includes the prominently displayed language "Not connected with or endorsed by the United States government or the federal Medicare program"; allows the term "PPO plan" to be used in advertisements when referring to a preferred provider benefit plan; requires that an advertisement for a guaranteed renewable accident and health insurance policy must include in a prominent place a statement indicating that the rates may change if the advertisement implies that the rates will not change and that the statement must generally identify the manner in which the rates may change; and provides that an advertisement subject to the Department's filing requirements that is the "same as substantially similar" to an advertisement previously reviewed and accepted by the Department is not required to be filed for review. HB 2252 concerns certain advertising practices that may be used in the marketing of accident and health insurance that are not considered discrimination or inducement.

The proposed amendments and new §21.121 are also necessary to revise existing rules to promote efficient and effective regulation of current advertising practices in the insurance market. The amendments also update statutory references resulting from the nonsubstantive revision of the Insurance Code and internal references.

§21.102 Definitions. The proposed amendments to §21.102(1)(F) change the defined term lead card solicitation to lead solicitation to better reflect the fact that some lead-generating strategies do not rely on reply cards to assemble prospective leads and deletes the word hereby which is superfluous. The proposed amendments also revise the definition of policy in §21.102(3) to include viatical or life settlement contracts, premium finance agreements, and any other product offered by an insurer and regulated by the Department. The proposal also amends the definitions of insurer and agent in §21.102(4) and (5), respectively, to reference viatical and life settlement providers and viatical and life settlement brokers and provider representatives, respectively. Section 3.1710 of this title (relating to Prohibited Practices Relating to Advertising and Solicitation; Applications and Contracts) subject viatical and life settlement contract advertising to the requirements in Chapter 21 Subchapter B of this title (relating to Insurance Advertising, Certain Trade Practices, and Solicitation). Viatical and life settlement providers, brokers and provider representatives are not licensed or registered as insurers or agents, nor is a viatical or a life settlement contract an insurance policy. However,

the proposed amendment to the term agent clarifies how the requirements of Subchapter B are to be applied to parties advertising such contracts.

The proposed amendment to §21.102(6) changes the definition of institutional advertisement to reflect the changes mandated by HB 2251, codified as Insurance Code §541.082(b), (d) and (e). HB 2251, codified as Insurance Code §541.082 (e), mandates that a web page or navigational aid within an insurer's website that provides a link to another webpage that includes content which refers to a specific insurance policy, certificate of coverage, or evidence of coverage or provides an opportunity for an individual to apply for coverage or request a quote is classified as an institutional advertisement, provided that the webpage or navigational aid containing the link does not itself include such content. The proposed amendments incorporate HB 2251's Internet advertising provision into the definition of institutional advertisement, and with the purpose of promoting uniformity in classifying advertisements, apply the standard relating to the absence of the specified content to advertisements appearing in any media. However, advertisements in media other than the Internet that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote or other information, are considered to be institutional advertisements. The proposed amendments also correct the reference to the Texas Department of Insurance to reflect its current name and delete a reference to the Insurance Code Chapter 5, which is no longer accurate as a result of the non-substantive Insurance Code revisions. The deletion of the reference to Chapter 5 clarifies that communications regarding any line of insurance that insurers use only to explain legislatively mandated or Department-mandated changes, amendments, additions or innovations relative to forms, rules or rates subject to the Insurance Code, are institutional advertisements.

The proposed amendments add new paragraph (7) to §21.102 which establishes invitation to inquire as a defined term that would be generally applicable to all advertising. This definition will replace the existing definition of invitation to inquire in §21.113(a) and (b) (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising) which specifically concerns accident and health insurance advertising. The proposed amendments further add new paragraph (8) to §21.102 which establish invitation to contract as a defined term that would be generally applicable to all advertising. This definition will replace the existing definition of invitation to contract in §21.114(1) and (2) (relating to Rules Pertaining Specifically to Life Insurance Advertising) which specifically concerns life insurance advertising. The proposed definitions of invitation to inquire and invitation to contract establish a single new definition for each term and harmonize these new definitions with the definition of institutional advertising derived from HB 2251, and make the definitions applicable to the advertising of all products subject to the Department's regulation.

§21.103. Required Form and Content of Advertisements. The proposed amendment to §21.103(b) corrects the reference to the Texas Department of Insurance to reflect its current name. The proposed amendment to §21.103(c) is necessary to implement the provision of HB 2251, codified as Insurance Code §541.082(c), which allows the Commissioner of Insurance to permit specified disclosures required in Internet advertising to be made through links to web pages containing the required disclosures. The proposed amendment is also necessary to

require that such a link be clearly labeled, and conspicuously placed near the relevant information to which it relates. The proposed amendment also identifies the specific disclosures in new §21.103(c)(1) - (5) which may be satisfied through such links.

§21.104. Requirement of Identification of Policy or Insurer. The proposed amendments to §21.104(a) provide that an advertisement must reflect the identity of the person or entity responsible for it. The amendments also redefine the current requirement to display an insurer's full name to apply only to invitation to inquire and invitation to contract advertisements, and to apply the requirement uniformly to all lines of insurance. The amendments further require that, in institutional advertisements, the requirement may be satisfied by stating an agent's licensed name, registered assumed name, or Texas license number.

The proposed amendments to §21.104(d) are necessary to clarify that the requirements for identification of the products advertised must include viatical and life settlement contracts. The amendments also permit the requirement to identify the product advertised to be satisfied if the advertised product is identified in the manner in which it is classified or addressed by rule or as filed with the Department. The amendments are also necessary to conform the existing §21.104(d) to provisions of HB 2251, codified as Insurance Code §541.085, by specifically permitting preferred provider benefit plans to be identified in advertisements as PPO plans.

The proposed addition of new §21.104(i) is necessary to regulate advertisements that promote multiple insurers' products, a practice sometimes referenced as co-branding. The proposed subsection requires that such advertising clearly identify which insurer issues each product advertised, and that each insurer has sole financial responsibility for the products it issues.

§21.106. Premiums. The proposed amendment to §21.106(c) is necessary to clarify that advertisements referencing optional endorsements, riders, or other benefits that are available at an additional cost, must disclose that such additional cost is required. The proposed amendment to §21.106(c) also deletes the existing rule pertaining to invitation to contract advertisements of endorsements or riders because proposed new §21.106(d) addresses such advertisements. Proposed new §21.106(d) requires that, with respect to an invitation to contract, advertisements that provide premiums and advertise an endorsement, rider or other optional benefit must separately disclose the additional premium required for any optional benefit advertised. Existing §21.106(d), requiring that advertisements dealing with the availability of credit card billing of premiums must disclose that such billing is clearly optional, is proposed to be redesignated as §21.106(e).

The proposed addition of new subsection (f) to §21.106 is necessary to add the requirement that, if an invitation to contract advertisement provides a premium or range of premiums that are subject to change during the term of the coverage offered, the advertisement must disclose the possibility of such rate change. This is necessary because consumers may be harmed by advertising that may state or imply that the premiums provided in the advertising would be in effect through the offered policy's term.

§21.107. Testimonials, Appraisals or Analyses. The proposed amendments to §21.107(a), which add new paragraphs (1) - (4), provide that a person or entity making a testimonial, recommendation, or endorsement is deemed to be a spokesperson for an insurer or agent if the person or entity has certain propri-

etary or other financial relationships with the insurer or agent, or is compensated for making the testimonial, recommendation or endorsement. This is necessary for the purposes of defining possible conflicts of interest among persons making testimonials, recommendations, or endorsements. The proposed amendments also delete existing subsection (a) relating to testimonials, appraisals, and analyses used in advertisements by persons who are not spokespersons because it is addressed in the proposed amendments to §21.107(e). The proposed amendment to §21.107(b) corrects the reference to the Texas Department of Insurance to reflect its current name.

The proposed amendments to §21.107(d) are necessary to conform the advertising rules to HB 2251, codified as Insurance Code §541.083, to permit an insurer or agent to advertise to the general public policies available only to members of associations described by Insurance Code §1251.052. The amendments also require that, if such associations' boards of directors are not elected by the association's members, the advertisement, unless it relates only to long-term care insurance, must disclose this fact, and the fact that the directors may agree to rate increases for those policies. The reason for this proposed amendment is to provide consumers with notice of the degree of control the associations' directors have over rate changes. This subsection is also proposed to be amended to reference the relationships described in the proposed amendments to subsection (a) defining a spokesperson, and to require prominent disclosure in an advertisement when the fact of such a relationship exists. The reason for this proposed amendment is to identify potential conflicts of interest involving spokespersons. The part of subsection (d) relating to the relationships that require disclosure of a person making a testimonial, an endorsement, or an appraisal is proposed to be deleted because the provision is addressed in the proposed amendments to subsection (a).

The proposed amendments to §21.107(e) require that a person making a testimonial or recommendation who is not a spokesperson must represent the current opinion of the author and must reflect the author's opinions or experiences with the insurer or its products. This requirement is necessary to assure truthful representation by such persons. The part of subsection (e) regulating certain advertisements containing testimonials, endorsements, recommendations, or similar announcements is proposed to be deleted because the prohibition is unnecessary for effective regulation of such advertisements by the Department. The language is unnecessary because other provisions in §21.107 will adequately protect consumers regarding testimonials, endorsements, recommendations, and similar announcements.

The proposed amendments to §21.107(f) require that a testimonial, endorsement or recommendation be applicable to the policy advertised or, if no specific policy is advertised, to the insurer. The amendments further require that any such testimonial, endorsement or recommendation be accurately reproduced. The part of existing subsection (f) relating to limitations on certain testimonials, recommendations, or endorsements is proposed to be deleted because the regulation is not necessary for effective regulation of such testimonials, endorsements, or recommendations. The language is unnecessary because other provisions in §21.107 will adequately protect consumers regarding testimonials, endorsements, and recommendations.

Proposed new §21.107(h) prohibits a testimonial, recommendation or endorsement by a party other than the insurer issuing the policy or the insurer's agent from making representations or

promises of future policy outcomes. This is necessary to assure truthful representations by such parties.

§21.108. Use of Statistics and Citations. The proposed amendment that adds "Citations" to the title of §21.108 is necessary to more accurately reflect the range of advertising content addressed within that section. The proposed amendments to §21.108(a) clarify that statistics may not imply that they are derived from the type of product advertised, rather than "from the policy advertised" as provided in the existing rule, unless such is the fact, and that if statistics apply to other types of products, the advertisement must specifically so state. These amendments are necessary because the existing rule can be read as unnecessarily restricting such statistics to a specific policy form.

The proposed amendments to §21.108(b) clarify that sources must be given for citations used in advertisements, in addition to sources for statistics. The amendments also require that the advertisement include the source's publication name and date, and that, absent the advertiser's certification that the source is the most recent available, a source may not be more than five years old. These proposed amendments are necessary because consumers should be able to readily identify and access the original source of statistics and citations. Proposed new §21.108(c) requires that, where an advertisement contains a reference to average costs or savings, the advertisement must indicate whether such costs or savings reflect a national or regional average; if a regional average, the advertisement must identify the region. This new requirement is necessary because the absence of such clarification can produce misunderstandings among consumers regarding savings or costs prevailing in their region.

§21.109. Unlawful Inducement. The proposed amendments to §21.109(a) implement the requirements of HB 2252, codified as Insurance Code §541.058, relating to certain advertising practices that may be used in the marketing of accident and health insurance that are not considered prohibited discrimination or inducement. The amendments permit advertising for health and accident coverages to include the availability of health-related services or health-related information. Such advertising must disclose any separate charge required to access such services or information. The proposed amendments define health-related services and health-related information in accordance with Insurance Code §541.058. That statute defines health-related services as services directed to an individual's health improvement or maintenance. The statute also defines health-related information as information directed to an individual's health improvement or maintenance, or to costs associated with options available to a covered person under the accident and health coverage. The proposed amendments also require that an advertisement referencing noncontractual health-related services or information to disclose that the services or information are not a part of the policy, may be discontinued at any time and, if applicable, may be subject to geographic availability. This new requirement is necessary to prevent consumers from obtaining a false expectation of contractual rights to or the cost or availability of such services or information.

Proposed new §21.109(c) requires that an advertisement may offer an incentive to inquire about a policy if the advertisement clearly and conspicuously discloses that purchase of the policy is not required in order to receive the incentive. This will permit, for example, the offer in an advertisement of an incentive for requesting a quote, so long as the advertisement contains a clear and conspicuous statement such as "no purchase re-

quired." This new requirement is necessary to help prevent consumers from feeling obligated to purchase a policy to obtain the advertised incentives.

§21.113. Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising. The proposed amendments to subsection (a) of §21.113 move the current provision in subsection (a)(2), relating to required notice for certain invitation to inquire advertisements, to subsection (a). The amendments also propose to delete the definition of invitation to inquire in existing §21.113(a) because of the proposed new definition added in §21.102(7).

The proposed amendments to §21.113(b), relating to illustration of rates, essentially restate and renumber the requirements in existing §21.113(a)(3) and (4), and update a statutory reference based on the nonsubstantive revision of Article 21.21 of the Insurance Code. The proposed amendments also delete the definition of invitation to contract in existing §21.113(b) because of the proposed new definition in §21.102(8).

The proposed amendments to §21.113(c)(3) clarify that the prohibition that an advertisement may not use the word plan without identifying the subject as an insurance plan also applies to an HMO plan, as appropriate. The proposed amendments also clarify that the identification of the type of plan is required to be done only once, at or before the first appearance of the word "plan."

The amendment to §21.113(d)(4)(B) proposes to delete the current prohibition on certain advertisements relating to pre-existing conditions because it is not necessary for effective regulation of such advertisements by the Department. Other proposed advertising rule requirements, such as the proposed amendments to §21.113(f), also protect consumers with regard to the potential effects of pre-existing conditions upon coverage under a policy, and, therefore the retention of this prohibition is redundant. The proposed amendment to §21.113(d)(6) restates in clearer and more grammatically correct language the existing requirement that an invitation to contract must clearly and conspicuously disclose the fact that any covered benefits are, by the terms of the policy, limited to a certain age group or are reduced at a certain age.

The proposed deletion of §21.113(d)(9) is necessary to remove a provision relating to certain disclosure requirements intended to disclose the potential effects upon premium costs when the consumer selects different coverage options because this regulation is addressed in proposed §21.106(c) and is therefore, no longer necessary for effective regulation by the Department. Existing §21.113(d)(10) - (20) are renumbered as paragraphs (9) - (19) respectively due to the proposed deletion of paragraph (9) of this subsection.

Additionally, the proposed amendments to existing §21.113(d)(12), renumbered as new paragraph (11), require in Medicare-related advertisements the prominent disclosure of a notice that is the same as or substantially similar to "Not connected with or endorsed by the United States government or the federal Medicare program." The proposed amendments to existing §21.113(d)(12), renumbered as new paragraph (11), also eliminate the requirement that the name of the insurer appear in the disclosure statement in Medicare-related advertisements. The proposed amendments and deletion are necessary to implement the requirements of HB 2251, codified as Insurance Code §541.084.

The proposed amendments to existing §21.113(d)(14), renumbered as paragraph (13), extend the regulation that requires the presumption that advertisements referenced as being "Important Notices" and directed primarily at Medicare recipients or senior citizens are misleading to include these same type of advertisements that use "similar language" to the language "Important Notices."

The proposed amendments to existing §21.113(d)(17), renumbered as paragraph (16), propose to delete the interpretative language pertaining to certain U.S. Internal Revenue Service rules. This deletion is necessary because the Department is not the most appropriate authority to render such interpretations.

The proposed amendments to existing §21.113(d)(18), renumbered as paragraph (17), are necessary to recognize the exception to the prohibition against advertising noncontractual goods and services added in proposed §21.109(a)(1) for consistency with the provisions of HB 2252, codified as Insurance Code §541.058.

The proposed amendments to §21.113(e) delete paragraph (2) because it is no longer necessary for effective regulation by the Department as a result of the new requirements, such as §21.113(f), that are proposed to regulate advertisements of health and accident coverage that contain pre-existing condition exclusions. Existing §21.113(e)(3) is renumbered as paragraph (2) due to the proposed deletion of paragraph (2) of this subsection.

The proposed amendments to §21.113(f) are necessary to delete existing subsection (f) and add new paragraphs (1) and (2) to reorganize the existing requirements and more clearly state that any advertisement indicating or implying that pre-existing conditions may apply must define the applicable pre-existing conditions. The amendments also require invitation to contract advertisements to accurately disclose the extent to which losses may not be covered due to conditions existing prior to the effective date of the advertised policy. This amendment is necessary because the current rule text creates ambiguity as to the proper scope of application.

The proposed amendments to §21.113(g) are necessary to revise the requirements in that subsection to conform to the provisions of HB 2251, codified as Insurance Code §541.086. The new requirements mandate that an accident or health advertisement stating or implying that the advertised policy is "guaranteed renewable" clearly and conspicuously disclose that coverage may terminate at certain ages, if such is a fact. However, under the proposal, the requirement that such an advertisement indicate that rates may change is only imposed if the advertisement suggests or implies that rates will actually not change. In such a case, the advertisement must indicate the manner in which the rates may change, such as by age, health status, or class.

The proposed amendment to §21.113(h)(2) restricts the disclosure requirement that all consideration due for group insurance, such as enrollment fees, dues, administrative fees, membership fees, service fees and similar charges, to apply only to invitation to contract advertisements. The amendments propose to delete §21.113(h)(7) because it is not necessary for effective regulation by the Department due to the fact that an endowment or coupon benefit in an accident or health policy has not been a feature of policies in the insurance market for many years. Existing §21.113(h)(8) and (9) are renumbered as paragraphs (7)

and (8) respectively due to the proposed deletion of paragraph (7) of this subsection.

The proposed amendments to §21.113(k)(3)(A) delete the reference to "on an individual basis" in order to apply the requirements of the subsections to association group members. The amendments apply the current restriction on the enrollment period during which a particular insurance product may be purchased and the requirement that advertisements must indicate the date by which the applicant must mail the application to include advertising soliciting members of association groups that otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise accident or health coverages. This is necessary to reduce the potential for consumers to obtain a false sense of limited opportunity to enroll in association-based group coverages that actually have rolling "back-to-back" enrollment periods. Proposed new §21.113(k)(3)(C) requires that an invitation to contract Medicare supplement advertising must either describe complete information regarding all "open enrollment" opportunities or prominently disclose a means of obtaining complete information regarding such opportunities. This requirement is necessary because the failure to provide access to complete information regarding required open enrollment opportunities could deprive affected consumers of knowledge of their rights to obtain coverage.

The proposed amendments to §21.113(l)(2) are necessary to correct the reference to the Texas Department of Insurance to reflect its current name and update the mailing address for the Department's Market Conduct Division. The proposed amendments are also necessary to correct the references to the Texas Department of Insurance in Figures §21.113(l)(6) and (7) to reflect its current name. The amendments also correct spelling and punctuation errors.

§21.114. Rules Pertaining Specifically to Life Insurance and Annuity Advertising. The proposed amendment adding "and Annuity" to the section's caption is necessary to better reflect the scope of application of the section's requirements. The proposed amendment in the opening paragraph of §21.114 corrects an internal reference for consistency with the proposed changes in the paragraphs following that introduction. The proposed amendments delete existing §21.114(1), which defines the term invitation to inquire, because the definition is proposed to be included in §21.102(7). The proposed amendments also delete existing §21.114(2), which defines the term invitation to contract, because the definition is proposed to be included in §21.102(7). Therefore, it is necessary to renumber existing §21.114(3) - (9) as §21.114(1) - (7).

Additionally, the proposed amendments to existing §21.114(4), renumbered as §21.114(2), are also necessary to add a requirement in §21.114(2)(C)(ii) that an advertisement that uses "non-medical," "no medical examination required," or similar language where the advertised policy's issuance is not guaranteed must provide an equally prominent disclosure, in close conjunction to such language, that issuance of the policy may depend upon the answers to questions set forth in the application. The amendments also propose to delete the existing language in §21.114(2)(C)(ii), requiring disclosures relating to the impact of pre-existing conditions on an applicant's eligibility and statements to the effect that "no medical examination" is necessary to qualify for coverage because the provision is no longer necessary for effective regulation by the Department. The text to be deleted is no longer necessary because the

proposed new text serves a similar effect, but better addresses exceptions to prevailing underwriting practices.

The proposed amendment to §21.114(3)(B) restricts the requirement that all consideration due for group insurance, such as enrollment fees, dues, administrative fees, membership fees, service fees and similar charges paid by the group members be disclosed only in invitation to contract advertisements rather than imposing the requirement in all advertisements as provided in the existing rule. The required disclosure is not needed in institutional or invitation to inquire advertisements to adequately protect consumers.

§21.115. Rules Pertaining Specifically to Property and Casualty Insurance Advertising. The proposed amendment to §21.115(b) corrects the reference to the Texas Department of Insurance to reflect its current name.

§21.116. Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance. The proposed amendments to §21.116(a) and (b) correct references to the Texas Department of Insurance to reflect its current name

§21.119. Savings Clause. The proposed amendments to §21.119 correct the reference to the Texas Department of Insurance to reflect its current name and delete references to outdated citations to Department rules that existed before the creation of the Texas Administrative Code and that are no longer relevant.

§21.120. Filing for Review. The proposed amendments to §21.120(a) correct the reference to the Texas Department of Insurance to reflect its current name and update the mailing address for the Department's Advertising Unit. The amendments also propose more detailed requirements for information that must be contained in transmittal letters that are required to accompany advertising material submitted to the Department for review. The proposed requirements in §21.120(a)(1) clarify that separate identifying form numbers must be provided for each distinct Internet web page and "pop-up," and in §21.120(a)(3) clarify that the transmittal letter identify the form number or numbers of the approved policy and/or rider forms advertised. The amendments also propose a new requirement in §21.120(a)(5) to require that the transmittal letter identify the form numbers of all other advertising material to be used with the advertisements being submitted. This requirement is necessary to facilitate Department staff's ability to confirm that all required disclosures are delivered to recipients of the submitted advertisements. A new requirement is proposed in §21.120(a)(6) to require that any variable content in the advertisement be bracketed, and that an explanation of how this material may vary be explained in an attachment to the transmittal letter. This requirement is necessary to facilitate Department staff's ability to discern how content may vary and to minimize the need for insurers and agents to separately submit substantially similar forms.

The proposed amendments to §21.120(d) delete as unnecessary the requirement that advertisements be filed in final printed form following the Department's acceptance. The Department has the statutory authority under Insurance Code §38.001 to require insurers to provide a copy of any insurance-related advertising material upon request. The amendments also replace the deleted text in subsection (d) with provisions necessary to implement HB 2251, codified as Insurance Code §541.087, which specifies advertisements that are exempt from filing requirements. The proposed amendments specify a procedure under which advertisements that are the same or substantially



similar to advertisements previously reviewed and accepted by the Department may be introduced without the necessity of filing the revised advertisements. The proposed amendments define substantially similar to mean that the revised advertisement does not introduce any substantive content not previously reviewed, nor does it eliminate any content that satisfies required disclosures or that render the advertisement noncompliant with §21.112 (relating to General Prohibition). Under the proposal, to introduce a "substantially similar" advertisement without being required to file it with the Department, the advertiser must file a signed written statement with the Department's Advertising Unit identifying or illustrating the changes to be introduced. Such written statement must list the previously reviewed forms in which the changes appear, including the form numbers and the Department's filing number under which the forms were previously reviewed and accepted. Proposed new §21.120(e) lists the Department's rules that require that advertisements be filed with the Department for review at or prior to use. This new section is needed to assist regulated entities to comply with advertisement filing requirements by providing a single comprehensive listing of all rules pertaining to such filing requirements.

§21.121. Lead Solicitations. Proposed new §21.121 imposes requirements on the use of lead solicitations, as defined in §21.102(1)(F). It is the Department's position that lead solicitations that have the ultimate objective of resulting in the eventual sale or solicitation of a policy are advertisements as defined in §21.102(1), and are therefore subject to applicable advertising rules. However, some individuals and entities that perform lead solicitations are unlicensed, primarily because of the exemption from agent licensing requirements under Insurance Code §4001.051(d) for parties engaging in a "referral" business. Further, it is the Department's experience that many lead-generating strategies fail to disclose to consumers that a purpose of the advertisement is to develop leads for the potential solicitation and sale of insurance. The Department believes that licensees that receive the benefit of leads generated by such unlicensed parties have a responsibility to exercise due diligence to confirm that lead-generating advertisements are compliant with applicable requirements, as stated in proposed §21.121(a). In addition, proposed §21.121(b) requires that lead solicitations prominently disclose that the recipient of the solicitation may be contacted by an insurer or agent, if such is the case. Further, that subsection requires that any insurer or agent contacting a person after acquiring the person's name through a lead solicitation must disclose that fact upon initially contacting such person. Proposed §21.121(c) addresses advertisements for group meetings where information regarding insurance products are disseminated, insurance products will be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products. This subsection prohibits such advertisements from characterizing the meetings with terms such as seminar, class, informational meeting, retirement, estate planning, financial planning or living trust without including the words insurance sales presentation with equal prominence.

§21.122. System of Control and Home Office Approval of Advertising Material Naming an Insurer. The proposed amendment to §21.122(a)(1) revises the definition of advertisement for the purposes of the section to exclude institutional advertisements. This is necessary because the Department does not believe insurers should be required to issue written home-office approval for institutional advertisements developed by its agents. How-

ever, insurers would not be prohibited from requiring agents to file institutional advertisements for such approval.

Section 21.122(b) currently provides that the section applies only to accident and/or health coverages, life insurance and annuities. However, the increase in the number of differing property and casualty forms has resulted in an insurance market where inaccurate descriptions or unfair comparisons of such products in agent-produced advertisements are more likely to occur. The Department believes that both the insurance industry and consumers benefit by insurers exercising oversight of all advertisements promoting their specific products by assuring that accurate descriptions of products appear in advertisements. Therefore, the proposed amendment to §21.122(b) requires all insurers, regardless of the products they offer, to maintain home office oversight of their advertising intended for presentation, distribution, or dissemination in Texas.

#### FISCAL NOTE

Audrey Selden, Senior Associate Commissioner for the Consumer Protection Division, has determined that for each year of the first five years the proposed amendments and new 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 proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

#### PUBLIC BENEFIT/COST NOTE

Ms. Selden has further determined that for each year of the first five years the proposed amendments and new section are in effect, there are several public benefits anticipated as a result of the proposal. The proposed amendment to §21.102(1)(F) changes the defined term lead card solicitation to lead solicitation. There are no costs required for insurers as a result of this amendment because it does not impose any new requirements or duties on insurers or agents. The anticipated public benefit is to clarify that some lead-generating strategies do not rely on reply cards to assemble prospective leads so that the Department is able to conduct a more efficient and thorough review of these trade practices. The proposed amendments to §21.102(4) and (5) add viatical and life settlement providers to the definitions of insurer and agent. There are no costs required for insurers as a result of this amendment because it does not impose any new requirements or duties on viatical or life settlement providers. The anticipated public benefit is to clarify that the requirements of Subchapter B are to be applied to the advertising of such contracts so that the Department is able to conduct a more efficient and thorough review of these trade practices. The proposed amendment to §21.102(6) changes the definition of institutional advertisement to reflect the changes mandated by HB 2251, codified as Insurance Code §541.082(b), (d) and (e). Those changes mandated by HB 2251 and implemented through the proposed amendments to §21.102(6) impose new requirements on insurers when advertising on the Internet. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251 and any cost to comply result directly from the enactment of HB 2251. The anticipated public benefit resulting from the proposed amendment is that it will standardize the requirements insurers must comply with when advertising on the Internet enabling the Department to conduct a more efficient and thorough review of these advertising practices. The proposed amendments to §21.102 add new paragraph (7) which would establish invitation to inquire as a defined term and add new paragraph (8) which would establish invitation to contract

as a defined term, both of which would be generally applicable to all advertising. Additionally, the proposed amendments harmonize these proposed definitions with the new definition of institutional advertisement derived from HB 2251. There is no additional cost to insurers required to comply with these amendments because the amendments are consistent with statutory provisions with which insurers must already comply. The anticipated public benefit resulting from the proposed amendments would be to clarify the general application of invitation to inquire and invitation to contract advertisements which would allow the Department to conduct a more efficient and thorough review of such advertisements. The proposed amendment to §21.103(c) implements the provision of HB 2251, codified as Insurance Code §541.082(c), which allows the Commissioner of Insurance to permit specified disclosures required in Internet advertising to be made through links to web pages containing the required disclosures. Those changes mandated by HB 2251 and implemented through the proposed amendments to §21.103(c) establish new requirements for insurers when advertising on the Internet. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251, and any cost to comply results directly from the enactment of HB 2251. The anticipated public benefit resulting from the proposed amendment is that it will standardize the requirements insurers must comply with when advertising on the Internet enabling the Department to conduct more efficient and thorough regulation of these advertising practices. The proposed amendment to §21.104(a) imposes new requirements on agents and revises the requirements on insurers concerning the content that is required and procedures that must be followed for agents and insurers to properly identify themselves in advertising materials that they disseminate. There is no additional cost to insurers required to comply with this amendment because the amendment is consistent with current statutory provisions with which the insurer must already comply. Any additional cost to agents should be negligible because the additional disclosure, when required, is capable of being presented briefly and should not result in increased production costs for the affected advertisement. The anticipated public benefit resulting from the proposed amendment is that it will increase the efficiency of the enforcement of statutory and rule requirements. The proposed amendments to §21.104(d) clarify that the requirements for identification of the products advertised shall include viatical and life settlement contracts, permit product identification requirements to be satisfied through a filing with the Department, and permit preferred provider benefit plans to be identified as PPO plans in accordance with provisions of HB 2251, codified as Insurance Code §541.085.

There are no costs required as a result of these amendments because no new requirements or duties are imposed on insurers or viatical or life settlement providers. In addition, because the amendment relating to the use of the term PPO plan is the result of the legislative enactment of HB 2251, any cost to comply results directly from the enactment of HB 2251. The anticipated public benefit resulting from the proposed amendments will be the ability of the Department to conduct a more efficient and thorough review of product identification requirements, and it will allow insurers to use the generally understood acronym PPO in their advertisements. The proposed addition of §21.104(i) concerns advertisements that promote multiple insurers' products and the new provision specifies new disclosure requirements regarding the business arrangements and financial responsibility of the multiple insurers represented in the advertisement. There are no costs required as a result of this amendment because

the sale of multiple insurers' products is voluntary; thus insurers may choose whether or not to promote multiple insurers' products in the same advertisement and whether they want to incur any necessary expenses to market these products. If an insurer chooses to promote multiple insurers' products in the same advertisement, any additional cost should be negligible because the required disclosure is brief and can be included in the advertisement with little or no increased production costs. The anticipated public benefit resulting from the proposed amendments will be that consumers will be more fully informed about the products that are under consideration and about the business relationship of the insurers who are advertising and will be able to make informed decisions regarding the purchase of such products. The proposed amendments to §21.106 amends subsection (c) to require that optional benefits which are only available at an additional cost must disclose that such additional cost is required and adds new subsection (d) which requires that invitation to contract advertisements, which provide premiums and advertise an optional benefit, must separately disclose the additional premium required for any optional benefit advertised. There is no additional cost to insurers required to comply with this amendment because the amendment is consistent with current statutory provisions with which the insurer must already comply. The anticipated public benefit resulting from the proposed amendment will be that consumers will be more fully informed about the additional cost of optional benefits that might be under consideration and will be able to make more informed decisions regarding the purchase of optional benefits. Additionally, the proposed amendments to §21.106 adds new subsection (e) which requires that advertisements dealing with the availability of credit card billing must disclose that such billing is optional and new subsection (f) which requires that if invitation to contract advertisements provide a premium or range of premiums which are subject to change, the advertisement must disclose the possibility of such rate change. There are no costs required as a result of this amendment because the additional disclosure, when required, is capable of being stated briefly and should not result in increased production costs for the affected advertisement. The anticipated public benefit resulting from these proposed amendments will be that consumers will be more fully informed about billing options and possible premium changes which will enable them to make more informed decisions regarding the purchase of insurance.

The proposed amendments to §21.107(a) add a definition of spokesperson as a person or entity that has certain proprietary or other financial relationships with an insurer or agent, or is compensated for making a testimonial, recommendation or endorsement. There are no costs to insurers required to comply with these amendments because they do not impose any new requirements or duties on insurers. The anticipated public benefit resulting from the proposed amendments is that it will clarify the definition of a spokesperson, thus enabling the Department to conduct more efficient and thorough regulation of advertising practices involving a spokesperson. The proposed amendments to §21.107(d), in part, conform the advertising rules to requirements of HB 2251, codified as Insurance Code §541.083, and permit an insurer or agent to advertise to the general public the availability of policies available only to members of associations. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251, and any cost to comply result directly from the enactment of HB 2251. The anticipated public benefit will be to remove restrictions on insurers advertising policies to the general public that have previously only been available

to members of an association. The amendments to §21.107(d) also require that, if such associations' boards of directors are not elected by the association's members, an invitation to contract advertisement, unless it relates only to long-term care insurance, must disclose this fact, and that the directors may approve group insurance rate increases for those policies. Section 21.107(d) is also amended to refer to the relationships described in defining a spokesperson, and requires prominent disclosure in an advertisement when the fact of such a relationship exists. The anticipated public benefit resulting from these proposed amendments will be that consumers will be more fully informed about how the association is controlled, will have notice of possible premium rate increases, and will be informed of a spokesperson's relationship to the association. The proposed amendments to §21.107 add a new provision to subsection (e) requiring that a person making a testimonial or recommendation and who is not a spokesperson must represent the current opinion of the author and must reflect the author's opinions or experiences with the insurer or its products. The amendments also propose a new provision in subsection (f) to require that a testimonial, endorsement or recommendation be applicable to the policy advertised or, if no specific policy is advertised, to the insurer and further to require that any such testimonial, endorsement or recommendation be accurately reproduced. Additionally, proposed new §21.107(h) prohibits a testimonial, recommendation or endorsements by a party other than the insurer issuing the policy or the insurer's agent from making representations or promises of future policy outcomes. There are no costs to insurers required to comply with these amendments because they do not impose any new requirements or duties on insurers. The anticipated public benefit resulting from the proposed amendments is that they will clarify the parameters of the use of a testimonial or endorsement in an advertisement made by a person or entity that is not a spokesperson, thus enabling the Department to conduct more efficient and thorough regulation of advertising practices concerning testimonials.

The proposed amendments to §21.108 amend subsection (a) to clarify that statistics may not imply that they are derived from the type of product advertised unless such is the fact, and that if statistics apply to other types of products, the advertisements must specifically so state. The proposed amendments to §21.108 also amend subsection (b) to clarify that sources must be given for citations used in advertisements, in addition to statistics and to require that advertisements include a source's publication name and date, and to provide that, absent the advertiser's certification that the source is the most recent available, that a source may not be more than five years old. Additionally, proposed new §21.108(c) requires that, where an advertisement contains a reference to "average" costs or savings, the advertisement must indicate whether such costs or savings reflect a national or regional "average"; if a regional "average," the advertisement must identify the region. There are no costs to insurers required to comply with these amendments because they do not impose any new requirements or duties on insurers. Additionally, there are no costs required as a result of new §21.108(c) because insurers may choose whether or not to include references to "average" costs or savings in an advertisement, and thus individual insurers will determine whether they want to incur any necessary expenses associated with this marketing practice. If an insurer chooses to advertise "average" costs or savings, any additional cost should be negligible because the required disclosure is brief and can be included in the advertisement with little or no increased production costs. The anticipated public benefit resulting from the proposed amendments is that they will clarify

the parameters of the use of statistics and citations in an advertisement, thus enabling the Department to conduct more efficient and thorough regulation of advertisements that employ statistics and citations.

The proposed amendments to §21.109(a) implement the requirements of HB 2252, codified as Insurance Code §541.058. The proposed amendments to §21.109(a) permit advertising for health and accident coverages to include the availability of health-related services or health-related information. Such advertising must disclose any separate charge required to access such services or information. Additionally, the proposed amendments define health-related services and health-related information in accordance with Insurance Code §541.058. That statute defines health-related services as services directed to an individual's health improvement or maintenance. The statute also defines health-related information as information directed to an individual's health improvement or maintenance, or to costs associated with options available to a covered person under the accident and health coverage. The amendments also require that an advertisement referencing noncontractual health-related services or information disclose that the services or information are not a part of the policy, may be discontinued at any time and, if applicable, may be subject to geographic availability. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2252, and any cost to comply result directly from the enactment of HB 2252. The anticipated public benefit resulting from the proposed amendment is that consumers will be provided information to enable them to discern whether other possible advantages may exist in purchasing the offered policy, in addition to those benefits guaranteed under the policy. Proposed new §21.109(c) provides that an advertisement may offer an incentive to inquire about a policy if the advertisement clearly and conspicuously discloses that purchase of the policy is not required in order to receive the incentive. There are no costs to insurers required to comply with this new subsection because they do not impose any new requirements or duties on insurers. The anticipated public benefit resulting from the proposed new provision is that consumers will be specifically informed that they may take advantage of an offered incentive without being required to purchase a policy.

The proposed amendments to existing §21.113(d)(12), renumbered as paragraph (11), requires in Medicare-related advertisements the prominent disclosure of the same or substantially similar language to "Not connected with or endorsed by the United States government or the federal Medicare program." The proposed amendments also eliminate the requirement for the name of the insurer to appear in the disclosure statement. There is no additional cost to insurers required to comply with these amendments because the amendments implement the requirements of HB 2251, codified as Insurance Code §541.084 and are therefore the result of the legislative enactment of HB 2251, and any cost to comply result directly from the enactment of HB 2251. The anticipated public benefit resulting from these proposed amendments will be that consumers will be less likely to be misled or confused by Medicare-related advertisements which will enable them to make more informed decisions regarding the purchase of such insurance.

The proposed amendments to existing §21.113(d)(14), renumbered as paragraph (13), extend the regulation that requires the presumption that advertisements referenced as being "Important Notices" and directed primarily at Medicare recipients or senior citizens are misleading to include these same type of advertise-

ments that use "similar language" to the language "Important Notices." There is no additional cost to insurers required to comply with this amendment because the new requirement of not including terms similar to "Important Notices" incurs no expenses in the production of an advertisement. The anticipated public benefit resulting from these proposed amendments will be that Medicare recipients or senior citizens will not be receiving such prohibited advertisements, thus they will be less likely to be misled or confused by such advertisements which will enable them to make more informed decisions regarding the purchase of Medicare-related insurance.

The proposed amendment to existing §21.113(d)(17), renumbered as paragraph (16), deletes a provision that interprets certain U.S. Internal Revenue Service rules. There is no additional cost to insurers required to comply with this amendment because it imposes no new requirements. The anticipated public benefit resulting from these proposed amendments is the removal of outdated information that is currently considered to be inappropriate for inclusion in Department rules.

The proposed amendments to §21.113(g) mandate that an accident or health insurance advertisement stating or implying that the advertised policy is "guaranteed renewable" clearly and conspicuously disclose that coverage may terminate at certain ages, if such is a fact. The requirement that such an advertisement indicate that rates may change is only imposed if the advertisement suggests or implies that rates will actually not change. In such a case, the advertisement must indicate the manner in which the rates may change, such as by age, health status, or class. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251, and any cost to comply result directly from the enactment of HB 2251. The anticipated public benefit resulting from these proposed amendments will be to ensure consumers are fully and fairly informed of possible rate increases when purchasing "guaranteed renewable" policies.

The proposed amendment to §21.113(h)(2) restricts the disclosure requirement that all consideration due for group insurance, such as enrollment fees, dues, administrative fees, membership fees, service fees and similar charges paid by group members, to apply only to invitation to contract advertisements. There is no additional cost to insurers required to comply with this amendment because it imposes no new requirements. The anticipated public benefit resulting from this proposed amendment will be to provide a level of required disclosure commensurate with the "invitation to contract" stage of the process of making a purchasing decision.

The proposed amendments to §21.113(k)(3)(A) delete the reference to "on an individual basis" in order to apply the requirements of the subsections to association group members. The amendments apply the current restriction on the enrollment period during which a particular insurance product may be purchased and the requirement that advertisements must indicate the date by which the applicant must mail the application to include advertising soliciting members of association groups that otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise accident or health coverages. This is necessary to reduce the potential for consumers to obtain a false sense of limited opportunity to enroll in association-based group coverages that actually have rolling "back-to-back" enrollment periods. Additionally, proposed §21.113(k)(3)(C) requires that invitation to contract Medicare supplement advertising must either describe all "open

enrollment" opportunities or prominently disclose a means of obtaining complete information regarding such opportunities. Although Texas regulation treats association-based group coverage as "group," the proposed new provision brings association-based group coverages under the same requirements that are applicable in other states that have adopted the NAIC model language regarding open enrollments. There should be no costs to insurers to comply with the new requirement with regard to the advertising content, as the required disclosure is capable of being presented briefly and should not result in increased production costs for the affected advertisement. The anticipated public benefit is more clarity regarding the extent of the enrollment periods and elimination of a false sense of limited opportunity to enroll regarding associations that may have offered rolling "back-to-back" enrollment periods.

The proposed amendments to §21.114(2)(C)(ii) also add language in clause (ii) to require that an advertisement that uses "non-medical," "no medical examination required," or similar language where the advertised policy's issuance is not guaranteed must provide an equally prominent disclosure in close conjunction to such language that issuance of the policy may depend upon the answers to questions set forth in the application. Additionally language that is not necessary for effective regulation is deleted from clause (ii). There is no additional cost to insurers required to comply with this amendment because it imposes no new requirements. The anticipated public benefit resulting from these proposed amendments will be to ensure that consumers are fully and fairly informed by advertisements that use the terms "non-medical," "no medical examination required" so that they are not misled or confused as to the impact of pre-existing conditions or other criteria that may affect their eligibility for coverage.

The proposed amendment to §21.114(3)(B) restricts the requirement that all consideration due for group insurance, such as enrollment fees, dues, administrative fees, membership fees, service fees and similar charges, to apply only to invitation to contract advertisements. There is no additional cost to insurers required to comply with this amendment because it imposes no new requirements. The anticipated public benefit resulting from this proposed amendment will be to provide a level of required disclosure commensurate with the "invitation to contract" stage of the process of making a purchasing decision.

The proposed amendments to §21.120(a) provide more detailed requirements for information that must be contained in transmittal letters that are required to accompany advertising material submitted to the Department for review. The proposed requirements in §21.120(a)(1) clarify that separate identifying form numbers must be provided for each distinct Internet web page and "pop-up," and in §21.120(a)(3) clarify that the transmittal letter must identify the form number or numbers of the approved policy and/or rider forms advertised. The amendments also propose a new requirement in §21.120(a)(5) to require that the transmittal letter identify the form numbers of all other advertising material to be used with the advertisements being submitted. A new requirement is proposed in §21.120(a)(6) to require that any variable content in the advertisement be bracketed, and that an explanation of how this material may vary be explained in an attachment to the transmittal letter. The Department anticipates that any costs to insurers to comply will be limited to the minimal cost of producing the explanation of the variable material in a separate document. The Department's experience with insurers that already file in the proposed manner indicates that such explanations typically are contained in two pages or less. Those

costs would only accrue to those insurers submitting advertising that contained variable content. The advantage of filing advertisements with clearly explained variable content is that insurers may then introduce described variations of the submitted material without the necessity of filing each different version with the Department for review. The anticipated public benefit from the proposed amendments will be uniform and unambiguous advertising filing instructions that will enable the Department to more efficiently and thoroughly review the filed advertisements to verify that they do meet the regulatory standards.

The proposed amendments to §21.120(d) delete as unnecessary the requirement that advertisements be filed in final printed form following the Department's acceptance. Additionally, the amendments replace the deleted text in subsection (d) with provisions necessary to implement HB 2251, codified as Insurance Code §541.087. The proposed amendments specify a procedure under which advertisements which are the same or substantially similar to advertisements previously reviewed and accepted by the Department may be introduced without the necessity of filing the revised advertisements. The amendments define substantially similar and provide that to introduce a "substantially similar" advertisement without filing it with the Department, the advertiser must file a signed written statement with the Department's Advertising Unit identifying or illustrating the changes to be introduced. Such written statement must list the previously reviewed forms in which the changes would appear, including the form numbers and the Department's filing number under which the forms were previously reviewed and accepted. There is no additional cost to insurers required to comply with this amendment because the amendment is the result of the legislative enactment of HB 2251, and any cost to comply results directly from the enactment of HB 2251. The anticipated public benefit resulting from these proposed amendments will be to provide an efficient procedure for insurers to notify the Department when they intend to use substantially similar advertising materials that have previously been reviewed and accepted by the Department. This will enable insurers to save filing costs, which costs will vary dependent upon the volume of such forms an insurer may wish to introduce, that can be passed on to policyholders.

Proposed new §21.121 imposes requirements on the use of lead solicitations including new subsection (a) which requires that licensees who receive the benefit of leads generated by unlicensed parties have a responsibility to exercise due diligence to confirm that the lead-generating advertisements are compliant with applicable requirements. New subsection (b) requires that lead solicitations prominently disclose that the recipient of the solicitation may be contacted by an insurer or agent, if such is the case and further, that any insurer or agent contacting a person after acquiring the person's name through a lead solicitation must disclose that fact upon initially contacting such person. Additionally, new subsection (c) requires that advertisements for group meetings where information regarding insurance products are disseminated, insurance products will be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products would prohibit such advertisements from characterizing the meetings with terms such as seminar, class, informational meeting, retirement, estate planning, financial planning or living trust without including the words insurance sales presentation with equal prominence. There are no costs required as a result of this amendment because insurers and agents may choose whether or not to employ marketing strategies relying on lead solicitations or group meetings as defined in new §21.121(c). Therefore any necessary expenses incurred

to employ these marketing strategies will be solely at the insurer's or agent's option. If an insurer or agent chooses to rely on such lead solicitation or group meetings, the Department anticipates that any additional cost will be negligible because the required disclosure is brief and can be included in the advertisement with little or no increased production costs. The anticipated public benefit resulting from this new requirement will be that consumers will not be receiving such group meeting advertisements that are deceptive or misleading. As a result, consumers will be less likely to be misled or confused by such advertisements which will enable them to make more informed decisions regarding the purchase of insurance products. Additionally, insurers or agents who make use of lead solicitations that are produced through deceptive lead generating strategies can be held accountable through appropriate Department enforcement measures.

The proposed amendment to §21.122(a)(1) revises the definition of advertisement for the purposes of the section by excluding institutional advertisements, and the proposed amendment to subsection (b) extends the requirement that insurers maintain home office oversight of their advertising to all insurers, regardless of the products they offer. Any resultant costs would apply to those insurers and agents advertising coverages other than health, accident, life or annuity products, which are already subject to the requirements of §21.122. The Department anticipates that there will be minimal costs required for such insurers or agents as a result of this amendment because existing §21.116 already requires all insurers to maintain a file including a specimen of each advertisement disseminated in this state, and requires insurers to annually certify to the Department that, to the best of their knowledge, their advertisements comply with applicable requirements. To the extent insurers do not already require their agents or other parties developing advertisements to obtain written home-office approval for an advertisement naming the insurer or advertising its policies, there will be the additional expense of producing a written response to the affected party stating whether or not the advertisement is approved. If the written response is provided via e-mail, the cost would be negligible, involving only the time required by insurer staff to send what could well be designed as a template response. If the written response is sent in hard-copy, in addition to staff time, the costs would also include stationery, estimated to include one or two sheets of paper and a mailing envelope; printing and postage (e.g., first-class or express mail delivery, at the insurer's option). The anticipated public benefit resulting from this amended section will be that the insurance industry and consumers will benefit by insurers exercising oversight of and assuring accurate representations in all advertisements promoting themselves or their products.

There is no anticipated difference in the cost for compliance between a large and small or micro business as a result of the proposed amendments and new section. Although the Department does not believe that the proposed amendments and new section will have an adverse effect on small and micro businesses, the Department has considered the purpose of the Insurance Code §§541.082 - 541.087 and other applicable statutes, which is to maintain effective regulation of insurance advertising, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. Additionally, it is the Department's position that to waive or modify the requirements of the proposed amendments for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the amendments.

## TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

## REQUEST FOR PUBLIC COMMENT

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 29, 2007, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Jack Evins, Director of the Advertising Unit, Consumer Protection Division, Mail Code 111-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

## STATUTORY AUTHORITY

The new section and amendments are proposed pursuant to the Insurance Code §§541.058, 541.082 - 541.087, 541.401, and 36.001. HB 2252 enacted by the 80th Legislature, Regular Session, amended Chapter 541 to add new §541.058 that concerns certain advertising practices that may be used in the marketing of accident and health insurance that are not considered discrimination or inducement. HB 2251 enacted by the 80th Legislature, Regular Session, amended Chapter 541 to add new Subchapter B-1 §§541.082 - 541.087. Section 541.082 concerns insurance advertising on Internet websites and provides that an insurer must, if it advertises on its website, include all appropriate disclosures and information on its website required by applicable advertising rules if a web page meets the criteria of invitation to inquire or invitation to contract advertisements. However, invitation to inquire or invitation to contract advertisements may be permitted by Commissioner's rule to comply with the applicable rules relating to advertising by including a link to a web page that provides the necessary information to comply with the advertising rules. Section 541.083 allows insurers to advertise to the general public policies or coverages available only to members of an association. Section 541.084 prohibits the use of an advertisement for an insurance product relating to Medicare coverage unless the advertisement includes the prominently displayed language "Not connected with or endorsed by the United States government or the federal Medicare program" or similar language. Section 541.085 allows the term "PPO plan" to be used in advertisements when referring to a preferred provider benefit plan. Section 541.086 requires that an advertisement for a guaranteed renewable accident and health insurance policy must include in a prominent place a statement indicating that the rates may change if the advertisement implies that the rates will not change and the statement must generally identify the manner in which the rates may change. Section 541.087 provides that an advertisement subject to the Department's filing requirements that is the "same as or substantially similar" to an advertisement previously reviewed and accepted by the Department is not required to be filed for review. Section 541.401 provides that the Commissioner of Insurance may adopt and enforce reasonable rules the Commissioner determines necessary to accomplish the purposes of Chapter 541. 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.

## CROSS REFERENCE TO STATUTE

The following statutes are affected by this proposal: §§541.053, 541.058, 541.082, 541.083, 541.084, 541.085, 541.086, 541.087, 541.401.

### §21.102. *Scope.*

For the purpose of these sections:

(1) "Advertisement" includes, but is not limited to:

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

(F) lead ~~lead~~ solicitations which are ~~hereby~~ defined as communications distributed to the public which, regardless of form, content, or stated purpose, are intended to result in the compilation or qualification of a list containing names or other personal information regarding persons who have expressed a specific interest in a product or coverage and which are intended to be used to solicit residents of this state for the purchase of a policy, as defined in paragraph (3) [sub-section (e)] of this section; and

(G) (No change.)

(2) (No change.)

(3) "Policy" includes any policy, plan, certificate, contract, evidence of coverage, agreement, statement of coverage, cover note, certificate of policy, rider or endorsement which provides, limits, or controls insurance for any kind of loss or expense or because of the continuation, impairment, or discontinuance of human life or annuity benefits issued by an insurer, viatical or life settlement contracts, premium finance agreements, or any other product offered by an insurer and regulated by the Department.

(4) "Insurer" includes any individual, partnership, corporation, organization, or person issuing evidence of coverage or insurance, or any other entity acting as an insurer to which these sections can be made legally applicable including, as applicable, Health Maintenance Organizations and Nonprofit Legal Services Corporations, and all insurance companies doing the business of insurance in this state such as capital stock companies, mutual companies, title insurance companies, fraternal benefits societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual and farm mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated premium insurance companies, and group hospital service companies and, as can be made appropriate, premium finance companies, and viatical and life settlement providers.

(5) "Agent" includes each agent, solicitor, counselor, and soliciting representative of an insurer and, as can be made appropriate, viatical and life settlement brokers and provider representatives.

(6) "Institutional advertisement" is an advertisement having as its sole purpose the promotion of the reader's or viewer's interest in the concept of insurance, or the promotion of the insurer or agent. Correspondence and materials used by an insurer only for the purpose of explaining Legislative or Texas Department [State Board] of Insurance mandated changes, amendments, additions, or innovations relative to forms, rules, or rates which are subject to the Insurance Code~~, Chapter 5,~~ shall be considered institutional advertising for the purpose of §21.104(b) of this title (relating to Requirement of Identification of Policy or Insurer). Web pages on an Internet website that do not refer to a specific insurance policy, certificate of coverage, or evidence of

coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote are considered to be institutional advertisements. Advertisements in other media that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or to request a quote or other information, are considered to be institutional advertisements. In addition, web pages or navigation aids within an Internet website that provide a link to another web page, the content of which refers to a specific insurance policy, certificate of coverage, or evidence of coverage or provides an opportunity for an individual to apply for coverage or request a quote, but that do not, themselves, otherwise include such content are considered to be institutional advertisements.

(7) "Invitation to inquire" for the purpose of this section is an advertisement that refers to a specific insurance product or provides an opportunity to request a quote or that, except for Internet advertising, provides an opportunity to request other information. An "invitation to inquire" advertisement for accident or health coverage may refer to rates only as permitted under §21.113(b) of this subchapter (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising). An "invitation to inquire" is not an "invitation to contract."

(8) "Invitation to contract" is an advertisement that includes an application or enrollment form for insurance or which is presented with an opportunity to apply for the advertised coverage.

#### §21.103. Required Form and Content of Advertisements.

(a) (No change.)

(b) The format and content of an advertisement of a policy must be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive is determined by the commissioner of insurance, or the Texas Department [State Board] of Insurance on appeal, from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(c) All information required to be disclosed by these sections will be set out conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading. Regarding Internet advertising, the disclosures required by the sections referenced in paragraphs (1) - (5) of this subsection may be provided through a conspicuous and clearly labeled link to a web page, provided that the link must be placed near the relevant information to which it relates, and must connect directly to a web page that prominently displays the information necessary to comply with the applicable requirements:

(1) with respect to "invitation to inquire" advertisements, §21.104(a) of this subchapter (relating to Requirement of Identification of Policy or Insurer);

(2) §21.104(i) of this subchapter if linked to same page satisfying §21.104(a), as permitted in paragraph (1) of this subsection;

(3) §21.108(c) of this subchapter (relating to Use of Statistics and Citations);

(4) §21.113(b)(2) - (4), (c)(1), (d)(1) and (f) of this subchapter (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising); and

(5) §21.114(3)(A) of this subchapter (relating to Rules Pertaining Specifically to Life Insurance and Annuity Advertising).

(d) (No change.)

#### §21.104. Requirement of Identification of Policy or Insurer.

(a) An advertisement must identify the person or entity responsible for the advertisement [The full name of the insurer is required to be stated in each of its advertisements and the portion of the advertisement to be returned to the insurer or agent, if any, provided, that in advertisements of property and casualty insurance it is sufficient to state the name of the agent when such advertisements address coverages in general and do not advertise a specific policy or coverages of a particular insurer. If an application is a part of the advertisement, the name of the insurer is required to be shown on the application and prominently disclosed elsewhere in the advertisement].

(1) The full licensed name of the insurer is required to be stated in each of its invitation to inquire and invitation to contract advertisements, including the portion of the advertisement to be returned to the insurer or agent, unless the portion to be returned is delivered as a form detachable from another form containing the insurer's full licensed name. The full licensed name must appear at or before the first appearance of any shortened or substitute name, which shortened or substitute name may be indicated as representing the insurer thereafter in the advertisement.

(2) It is sufficient to state the full licensed name, assumed name registered with the department pursuant to §19.902 of this title (relating to One Agent, One License) or Texas agent's license number of the agent when advertisements address coverages in general and do not describe a specific policy or coverages of a particular insurer.

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

(d) All advertisements, other than institutional, shall explicitly and conspicuously disclose that the product concerned is [either one or more a] property, [or] life or other insurance, an annuity, [a] HMO coverage, a viatical or life settlement contract, or a prepaid legal services contract, [coverage] on the basis that each of these products are classified or addressed by statute or rule or as the products are filed with the department. It is sufficient for an insurer to use the term "PPO plan" in advertisements when referring to a preferred provider benefit plan offered under Insurance Code Chapter 1301.

(e) - (h) (No change.)

(i) Multiple insurers may be represented in one advertisement, provided that an invitation to inquire or invitation to contract advertisement must clearly identify the issuer of each product advertised and the advertisement discloses that each insurer has sole financial responsibility for its own products.

#### §21.106. Premiums.

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

(c) Advertisements referencing optional endorsements, [Endorsements or] riders or other benefits available at an [the request of the insured, but at] additional cost, shall [be so advertised to] disclose the fact of additional cost. [In an "invitation to contract" advertisements of endorsements or riders which may be added to the policy advertised for which premiums are quoted for such policy must disclose the additional premium for the endorsements or riders.]

(d) Invitation to contract advertisements which provide specific premiums and advertise an endorsement, rider or other optional benefit which may be added to the policy advertised at an additional cost must separately disclose the additional premium required for each such endorsement, rider or other optional benefit.

(e) ~~[(d)]~~ Advertisements dealing with the availability of credit card billing of premiums must disclose that such method of billing is clearly optional to the purchaser.

(f) If an invitation to contract advertisement contains the specific or estimated cost of the coverage and the rate charged may legally be changed by the insurer prior to the renewal of the policy, the advertisement must disclose that fact.

*§21.107. Testimonials, Appraisals, or Analyses.*

(a) A person or entity making a testimonial, recommendation or endorsement shall be deemed a "spokesperson" for an insurer or agent if the person or entity: [Testimonials, appraisals, and analyses used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised, and be accurately reproduced. The insurer or agent, in using a testimonial, makes as its own all of the statements contained therein, and such statements are subject to all of the provisions of these sections.]

(1) has a proprietary or other financial interest in the insurer or agent or a related entity as a stockholder, director, officer, employee or otherwise;

(2) has been formed by the insurer or agent, or is owned or controlled by the insurer or agent, its employees, or the person or persons who own or control the insurer or agent;

(3) has any person in a policy-making position who is affiliated with the insurer or agent in any of the capacities described in paragraphs (1) and (2) of this subsection; or

(4) is in any way directly or indirectly compensated for making a testimonial, recommendation or endorsement.

(b) An advertisement may not state, imply, or create the impression directly or indirectly that the insurer, its financial condition or status, the payment of its claims, or the agent is recommended or endorsed by any division or agency of this state or the United States government. No advertisement may state that a policy form or kinds or plans of insurance are approved by the Texas Department [State Board] of Insurance without disclosing that such approval is extended to all such policies, kinds, or forms of insurance legitimately sold in this state; nor may such statement imply recommendation by any agency of this state or the federal government.

(c) (No change.)

(d) An insurer or agent may advertise to the general public policies available only to members of an association described by the Insurance Code §1251.052. If the association's directors are not elected by its members, the advertisement, unless advertising only long-term care insurance, shall disclose this fact, and also disclose that the directors may approve rate increases. An advertisement may not state or imply that an insurer, agent, or policy has been approved or endorsed by an individual, group of individuals, society, association, or other organization, unless such is a fact and unless any [proprietary] relationship described in subsection (a) of this section that exists between the entity and the insurer or agent is prominently disclosed. [If the entity making the endorsement or testimonial has been formed by the insurer or agent, or is owned or controlled by the insurer or agent, or the person or persons who own or control the insurer, this fact shall be disclosed in the advertisement. If the person making a testimonial, an endorsement, or an appraisal has a financial interest in the insurer or agent or a related entity as a stockholder, director, officer, employee, or otherwise, this fact shall be disclosed in the advertisement.]

(e) A testimonial, recommendation, or endorsement made by a person or entity who is not a spokesperson shall represent the current opinion of the author and shall reflect the author's personal opinions

of or experiences with the insurer or its products. [No advertisement containing either a testimonial, endorsement, or recommendation of the insurer, or an announcement of coverage, by a person other than the insurer or its licensed agent may state or imply that the testimonial, endorsement, recommendation, or announcement of coverage is being made by the insurer, its licensed agent, or the entity making the offer to insure.]

(f) A testimonial, recommendation, or endorsement shall be applicable to the policy advertised or to the insurer if no specific policy is being advertised, and shall be accurately reproduced. [Except for a policyholder testimonial, recommendation, or endorsement for which no consideration is paid, a testimonial, recommendation, or endorsement of an insurer shall be limited to a brief description of benefits, statements regarding the insurer and the availability of coverage, but may not contain premiums or other policy provisions.]

(g) (No change.)

(h) A testimonial, recommendation, or endorsement by any person or entity other than the issuing insurer or the insurer's agent shall not include representations or promises of future policy outcomes for themselves or others.

*§21.108. Use of Statistics and Citations.*

(a) An advertisement in respect of the time within which claims are paid, the dollar amounts of claims paid, the number of claims paid, the number of persons insured under a particular policy or policies, or similar statistical information relating to an insurer or policy may not contain irrelevant facts, and shall accurately reflect the relevant facts. The advertisement may not imply that the statistics are derived from the type of product [policy] advertised unless it is a fact, and when applicable to other types of products [policies or plans] shall specifically so state.

(b) The source of statistics or citations used in an advertisement shall be identified or made apparent in the advertisement. Such source must include the publication name and date. A source shall not be more than five years old unless the advertiser certifies to the department that the source is the most recent available.

(c) Where "average" costs or savings are referenced in an advertisement, the advertisement must indicate whether such statistics are national or regional and, if regional, must identify the region.

*§21.109. Unlawful Inducement.*

(a) An advertisement may not state or imply anything offering or tending to offer a good, service, or other guarantee or contractual right of pecuniary value outside of the express terms of the policy [contract of insurance] offered by the advertisement.

(1) This subsection does not prohibit, in connection with an accident and health insurance policy or health maintenance organization contract, the provision of health-related services or health-related information, or the disclosure in advertising of the availability of such additional services and information, to prospective policy or certificate holders, or prospective enrollees or contract holders. If there is a separate charge required to access such additional services or information, an advertisement referencing the services or information must disclose that fact.

(2) In this subsection:

(A) "Health-related services" are defined in accordance with the Insurance Code §541.058.

(B) "Health-related information" is defined in accordance with the Insurance Code §541.058.



(3) An advertisement referencing noncontractual health-related services or health-related information must disclose that such services or information are not a part of the policy, may be discontinued at any time and, as appropriate, may be subject to geographic availability.

(b) (No change.)

(c) An advertisement may offer an incentive to inquire about a policy provided that it includes a clear and conspicuous disclosure that no purchase is required in order to receive the good or service comprising the incentive.

(d) [(e)] No advertisement may state or imply any advantage, right, or preference which if granted or performed would be a violation of the public policy or any law of this state or of the United States of America.

(e) [(d)] An advertisement may not state or imply any deviation in normal or usual cost that is not in fact legally allowable.

(f) [(e)] An advertisement may not state or imply an advantage by purchase of insurance to be gained by an organization because of past or prospective donation to be made by an insurer, agent, or representative out of proceeds of purchase.

*§21.113. Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising.*

(a) Coverage details. An invitation to inquire that specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable shall contain a provision in effect as follows: "For specific costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your agent or write to the company." ["Invitation to inquire" for the purpose of these sections means an advertisement that has as its objective the creation of a desire to inquire further about the product, and that is limited to a brief description of the loss for which the benefit is payable.]

~~[(1) An invitation to inquire may contain:]~~

~~[(A) the dollar amount of benefit payable; and/or]~~

~~[(B) the period of time during which the benefit is payable, provided the advertisement does not refer to cost, except as permitted by the Insurance Code, Article 21.20-2 and paragraph (3) of this subsection.]~~

~~[(2) An invitation to inquire that specifies either the dollar amount of benefit payable or the period of time during which the benefit is payable shall contain a provision in effect as follows: "For specific costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your agent or write to the company."]~~

(b) [(3)] Illustration of rates. Subject to the Insurance Code[;] Article 21.20-2[;] §1 [See: 4;] and the Insurance Code Chapter 541 Subchapter B [Article 21.21], an invitation to inquire concerning a health benefit plan may include rate information without including information about all benefit exclusions and limitations so long as any rate mentioned in any advertisement disseminated under subsection (b) of this section indicates the age, gender, and geographic location on which that rate is based and so long as the advertisement includes prominent disclaimers clearly indicating that:

(1) [(A)] the rates are illustrative only;

(2) [(B)] a person should not send money to the issuer of the health benefit plan in response to the advertisement;

~~(3) [(C)] a person cannot obtain coverage under the health benefit plan until the person completes an application for coverage; and~~

~~(4) [(D)] benefit exclusions and limitations may apply to the health benefit plan.~~

~~[(4) Any rate mentioned in any advertisement disseminated under paragraph (3) of this subsection shall indicate the age, gender, and geographic location on which that rate is based.]~~

~~[(b) "Invitation to contract" is an advertisement that is neither an invitation to inquire nor an institutional advertisement.]~~

~~(c) Identification of policy.~~

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

~~(3) An advertisement may not use the word "plan" without first identifying the subject as an "insurance plan" or an "HMO plan," as appropriate.~~

~~(d) Description of benefits.~~

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

~~(4) No advertisement may be used that represents or implies:~~

~~(A) (No change.)~~

~~(B) [when a policy does not cover losses resulting from pre-existing conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. Example: This section prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue."] If an insurer requires a medical examination for a specified policy, the advertisement, if it is an invitation to contract, shall disclose that a medical examination is required.~~

~~(5) (No change.)~~

~~(6) If any covered benefits are, by the terms of the policy, limited to a certain age group or are reduced at a certain age, an invitation to contract shall clearly and conspicuously disclose such fact. [If any insurance coverage of benefits that by the terms of the policy are limited to a certain age group, or that are reduced at a certain age, an invitation to contract shall clearly and conspicuously disclose such fact.]~~

~~(7) - (8) (No change.)~~

~~[(9) When a choice of the amount of benefits is referred to in an advertisement, it shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of benefits.]~~

~~(9) [(10)] An advertisement offering assistance or information concerning Medicare may not state or imply that an obligation is imposed by the receipt of such information.~~

~~(10) [(11)] An advertisement of benefits payable in conjunction with Medicare shall disclose the Medicare benefits (Part A or B) they are designed to supplement.~~

~~(11) [(12)] A Medicare-related [When a Medicare related] advertisement [is used primarily as a source for leads in the solicitation of insurance, it shall prominently state this fact. The advertisement] shall state in a prominent place the following or similar words: "Not connected with or endorsed by the United States government or the federal Medicare program." ["This is a commercial message from (insurance company name), a private insurance company which is not~~

an agency of Social Security, Medicare, or any other governmental agency."]

(12) [(13)] References to Medicare may not be used in such a manner in an advertisement so as to be misleading or deceptive.

(13) [(14)] Advertisements referenced as being "Important Notices" or similar language and directed primarily to Medicare recipients or senior citizens are presumed to be misleading or having the capacity or tendency to mislead unless shown otherwise.

(14) [(15)] The words, numerals, and phrases "all," "100%," "full," "complete," "comprehensive," "unlimited," "up to," "as high as," "this policy will pay your hospital and surgical bills," or "this policy will replace your income," or similar words, numerals, and phrases may not be used to exaggerate any benefit beyond the terms of the policy, but may be used only in a manner as fairly and accurately describes the benefit.

(15) [(16)] An advertisement may not contain descriptions of a policy limitation, exclusion, or reduction, worded or stated in a manner to imply that it is a benefit, for example, describing a waiting period as a "benefit builder," or stating "even pre-existing conditions are covered after two years." Words and phrases used in an advertisement to describe policy limitations, exclusions, and reductions shall accurately describe the negative features of such limitations, exclusions, and reductions of the policy offered.

(16) [(17)] No advertisement of a benefit, if payment of the benefit is conditioned upon confinement in a hospital or similar extended care facility, or at home, may use words or phrases such as "tax free," "extra cash," "extra income," "extra pay," or similar words or phrases. In those cases such words and phrases have the capacity, tendency, or effect of misleading the public and cause the belief that the policy advertised enables a profit to be made from being hospitalized. This section prohibits the misleading use of the phrase "tax free," but it does not prohibit the use of complete and accurate terminology explaining the Internal Revenue Service rules applicable to the taxation of accident and sickness benefits. [The IRS rules provide that the premiums paid for and the benefits received from hospital indemnity policies are subject to the same rules as loss of time premiums and benefits and are not afforded the same favorable tax treatment as premiums for expense incurred hospital, medical and surgical benefit coverages. (Rev. Rule 68-451 and Rev. Rule 69-154.)] Prominence either by caption, lead-in, boldface, or large type shall not be given in any manner to any statements relating to the tax status of such benefits.

(17) [(18)] Except as permitted under §21.109(a) of this subchapter (relating to Unlawful Inducement), an [An] advertisement may not list goods and services other than those set out in the policy as possible benefits.

(18) [(19)] A policy covering only one disease or a list of specific diseases or accidents may not be advertised so as to imply coverage beyond the terms of the policy. Synonymous terms may not be used to refer to any disease to imply broader coverage than that provided.

(19) [(20)] An advertisement that is an invitation to contract for a limited benefit policy, a supplemental coverage policy, or a nonconventional coverage policy, as defined in Chapter 3, Subchapter S of this title (relating to Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies), shall clearly and conspicuously, in prominent type, state in language identical to or substantially similar to whichever of the following is applicable "THIS IS A LIMITED BENEFIT POLICY," "THIS IS A CANCER ONLY POLICY," "THIS IS A SUPPLEMENTAL POLICY," or "THIS IS AN

AUTOMOBILE ACCIDENT ONLY POLICY." The insurer or agent shall use the foregoing statement to clearly advise the public of the nature of the policy.

(e) Exceptions, reductions, and limitations.

(1) (No change.)

[(2) If an advertisement contains an application or enrollment form to be completed by the applicant and returned by mail in respect of direct response insurance products, the advertisement shall include within or in close proximity to the application or enrollment form a question or statement substantially as follows: "Do you understand that this policy will not pay benefits for any loss incurred during the first \_\_\_\_\_ (month)(year(s)) after the issue date on account of disease or physical condition which you now have or have had in the past?" Or substantially the following statement: "I understand that the policy applied for will not pay benefits for any loss incurred during the first \_\_\_\_\_ (month)(year(s)) after the issue date on account of disease or physical condition which I now have or have had in the past."]

(2) [(3)] An advertisement may not use the words "only," "just," "merely," "minimum," or similar words or phrases to unfairly describe the applicability or any exclusions, limitations, or reductions, such as "This policy is subject to the following minimum exclusions and reductions."

(f) Pre-existing condition. [An advertisement that is an invitation to contract shall, in accurate terms, disclose the extent to which a loss is not covered if the cause of the loss is traceable to a condition existing prior to the effective date of the policy. The term "pre-existing condition" shall be defined when used in an advertisement.]

(1) An advertisement that states or implies that pre-existing conditions may apply must define the applicable pre-existing conditions.

(2) An advertisement that is an invitation to contract shall, in accurate terms, disclose the extent to which a loss is not covered if the cause of the loss is traceable to a condition existing prior to the effective date of the policy.

(g) Disclosure of policy provisions relating to renewability, cancellability, and termination.

(1) An advertisement that is an invitation to contract [and that refers to renewability, cancellability, or termination of a policy, or that refers to a policy benefit, or that states or illustrates time or age in connection with eligibility of applicants or continuation of the policy,] shall disclose the provisions in respect of renewability, cancellability, and termination, and each modification of benefits, covered losses or premiums either because of age or for other reasons, in a manner that does not minimize or render obscure the qualifying conditions.

(2) An advertisement for a policy stating or implying that the policy is "guaranteed renewable" shall: [have a clear and conspicuous statement that the insurer may change premium rates or benefits at a certain age by class or that coverage may terminate at certain ages.]

(A) have a clear and conspicuous statement that coverage may terminate at certain ages, if such is a fact; and

(B) include, in a prominent place, a statement indicating that rates for the policy may change if the advertisement suggests or implies that rates for the product will not change. Such statement must generally identify the manner in which rates may change, such as by age, by health status, by class, or through application of other general criteria.

(3) - (5) (No change.)

(h) Description of premiums, cost, and interest.

(1) (No change.)

(2) Consideration paid or to be paid for group insurance, including enrollment fees, dues, administrative fees, membership fees, service fees, and other similar charges paid by the employees, shall be disclosed in an invitation to contract advertisement as a part of the cost and consideration.

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

~~{(7) Only the actual interest credited to an endowment or coupon benefit in an accident or health policy shall be characterized as earnings or included with dividends or other earnings in an advertisement.}~~

~~(7) [({8}) An insurer or agent may not make a billing of a premium for increased coverage or include the cost of increased coverage in the premium for which a billing is made without first disclosing the premium and details of the increased coverage and obtaining the consent of the insured to such increase in coverage. This does not apply to policies that contain provisions providing for automatic increases in benefits or increases in coverages required by law.~~

~~(8) [({9}) If the cost of home collection results in a higher premium an advertisement shall state that fact.~~

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

(k) Deception or deceptive method as to introductory, initial, or special offers.

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

(3) An advertisement may not state or imply that a policy or combination of policies is an introductory, initial, special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless it is a fact. An advertisement may not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases if the insurer uses such enrollment periods as the usual method of advertising insurance.

(A) An enrollment period during which "a particular insurance product" may be purchased ~~[on an individual basis]~~ may not be offered within this state unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application which date may not be less than 10 days and not more than 40 days from the date that such enrollment period is advertised for the first time. (It is emphasized that this section is applicable to all advertising media: i.e., mail, newspaper, radio, television, magazine, and periodicals.) This subparagraph is inapplicable to solicitation of employees or members of a particular group, except that this subparagraph shall apply to the solicitation of members of an [or] association group, which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise insurance. This section applies to all affiliated companies under common management or control. The phrase "a particular insurance product" is used here to describe an insurance policy which provides substantially different benefits than those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy are not sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

(B) (No change.)

~~(C) An invitation to contract Medicare supplement advertisement must describe complete information regarding all available "open enrollment" opportunities or prominently disclose a means of obtaining complete information regarding such opportunities.~~

(1) Acknowledgment of nonduplication; notice to consumer.

(1) Acknowledgment of nonduplication; notice to consumer.

(A) Acknowledgment of nonduplication--The document which contains and is limited to the language which is set forth in Item [paragraph] (6) of Figure: 28 TAC §21.113(l)(5) [of this subsection].

(B) (No change.)

(C) Notice to consumer--The document which contains and is limited to the language which is set forth in Item [paragraph] (7) of Figure: 28 TAC §21.113(l)(5) [of this subsection].

(2) All insurers, other than direct response insurers, or their agents or other intermediaries shall obtain an acknowledgment of nonduplication with all applications for health insurance sold to an individual who is 65 years of age or older, other than group health coverage obtained through an employer-sponsored plan, conversion from a group employer-sponsored health plan, short-term travel accident coverage, short-term nonrenewable coverage, Medicare risk contracts, and retired-employee group plans. This acknowledgment shall be obtained at the same time as the application and shall be submitted to the insurer with the application. One copy of the acknowledgment shall be left with the insured and one copy kept on file with the company. The form of such acknowledgment or notice must be printed on a separate piece of paper and must contain the specific language and must be in the format set forth in Item [paragraph] (6) of Figure: 28 TAC §21.113(l)(5) [of this subsection]. This form is published by the Texas Department [State Board] of Insurance, and copies of the form are available from and on file at the Texas Department [State Board] of Insurance, Market Conduct Division, Mail Code 305-2E [046-7] , P.O. Box 149104 [149094], Austin, Texas 78714-9104 [78714-9094].

(3) (No change.)

(4) Direct response insurers who market to the consumer without agents or other intermediaries are exempt from the requirement to deliver the acknowledgment contained in Item [paragraph] (6) of Figure: 28 TAC §21.113(l)(5) [of this subsection], but must deliver the notice to consumers set forth in Item [paragraph] (7) of Figure: 28 TAC §21.113(l)(5) [of this subsection].

(5) Failure to comply with paragraphs (1) - (4) of this subsection shall be an unfair business practice as defined by the Insurance Code Chapter 541 [; Article 21-21]. Figure: 28 TAC §21.113(l)(5)

*§21.114. Rules Pertaining Specifically to Life Insurance and Annuity Advertising.*

As can be made applicable and as necessary the same or similar test or standard as is stated hereafter within paragraph ~~(1)(B) [({3})(B)]~~ of this section is to be used as the standard in the interpretation of the provisions of this section.

~~{(1) "Invitation to inquire" for the purpose of this section is an advertisement having as its objective the creation of a desire to inquire further about the product but it is not an "invitation to contract."}~~

~~{(2) "Invitation to contract" is an invitation to inquire that includes an application or enrollment form for insurance.}~~

(1) [~~3~~] Identification of policy.

(A) The form number or numbers of the policy advertised shall be clearly identified in an "invitation to contract."

(B) An advertisement in respect of a life policy, endowment, or an annuity may not include the term "savings," "investment," or other similar terms if used in referring to the current, projected, or guaranteed rate of interest paid or credited to such contracts to imply that the product advertised is something other than insurance or an annuity using as a standard how it would appear to or be identified by a reasonably prudent person under the circumstances.

(C) No advertisement may use the term "investment," "investment plan," "founder's plan," "charter plan," "expansion plan," "profit," "profits," "profit sharing," "interest plan," "savings," "savings plan," or other similar terms in connection with a policy in a context or under such circumstances or conditions that have the capacity or tendency to mislead purchasers of such policy to believe they will receive or that it is possible that they will receive something other than a policy or some other benefit or advantage that is not available to other persons of the same class and equal expectation of life nor to that class of persons to whom essentially the same hazards are attributable.

(2) [~~4~~] Disclosure requirements.

(A) If an advertisement that is an "invitation to contract" refers to a dollar amount, a period of time for which a benefit is payable, a cost of the policy, a specific policy benefit or the loss for which such benefit is payable, it shall expressly or specifically disclose those exclusions and limitations affecting the payment of benefits under the policy. Without this disclosure it is determined that the advertisement would have the capacity and tendency to mislead or deceive.

(B) No advertisement may refer to a benefit payable under a "family group" policy if the full amount of the benefit is not payable upon the occurrence of the contingency insured against to each member of the family unless a clear and conspicuous disclosure of such fact is made in the advertisement.

(C) No advertisement may be used which represents or implies:

(i) that the condition of the applicant's or insured's health prior to, or at the time of issuance of a policy, or thereafter, will not be considered by the insurer in issuing the policy or in determining its liability or benefits to be furnished or in the settlement of a claim if such is not the fact; or

(ii) that an advertisement that uses "non-medical," "no medical examination required," or similar language where the advertised policy's issuance is not guaranteed must provide an equally prominent disclosure in close conjunction to such language that issuance of the policy may depend upon the answers to questions set forth in the application. ~~[the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder if the policy does not cover losses resulting from pre-existing conditions. This section prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explaining "automatic issue." If an insurer requires a medical examination for a specified policy, the advertisement if it is an "invitation to contract" shall disclose that a medical examination is required.]~~

(D) An "invitation to contract" for a policy that provides coverage for loss due to accident only for a specified period of time from its effective date shall state this fact clearly and conspicuously.

(E) An "invitation to contract" advertisement in respect of insurance coverage or benefits that by the terms of the policy being

advertised are limited to a certain age group or that are reduced at a certain age shall clearly and conspicuously disclose such fact.

(F) An "invitation to contract" advertisement that relates to a life insurance policy under which the death benefit varies with the length of time the policy has been in force shall clearly and conspicuously call attention to this fact. If the death benefit during a specified period following the policy date of issue is limited to a return of premiums paid on the policy, with or without interest at a stated rate, and irrespective of whether the premiums are assumed to have always been paid annually, each advertising of the policy by an insurer or agent shall explain that the policy provides a deferred type of life insurance. The death benefit, as referred to in this subparagraph, is the amount payable if death does not result from accidental causes and if there are no exclusions applicable to the policy on account of suicide, hazardous occupation, or aviation hazard.

(G) If the current or illustrated rate of interest is higher than the guaranteed interest rate, an advertisement may not display the greater rate of interest with such prominence as to render the guaranteed interest rate obscure.

(H) Current interest rates being paid or promised to be paid by an insurer and guaranteed interest rates for specific periods of time, as provided in the policy or annuity advertised, shall be clearly and conspicuously disclosed and sufficiently complete and clear so as not to have the capacity or tendency to mislead or deceive the insured or prospective applicant.

(I) No advertisement may represent a pure endowment benefit as earnings on premiums invested or represent that a pure endowment benefit in a policy is other than a guaranteed benefit for which a specific part or all of the premium is being paid by the policyholder. For the purpose of this provision, coupons or other devices for periodic payment of endowment benefit are included in the phrase "a pure endowment benefit" without limitation on the meaning of such phrase.

(J) An "invitation to contract" advertisement shall clearly and conspicuously disclose any charges or penalties such as administrative fees, surrender charges, and termination fees contained in an annuity or life insurance policy on withdrawals made during early contract or policy years.

(K) Failure of an insurer or agent to disclose the nonforfeiture rights and policy loan rights in an advertisement that compares life insurance policies shall be an omission of a material fact and an incomplete comparison.

(L) Only the actual interest credited to an endowment or coupon benefit in a life or annuity policy shall be characterized as earnings or included with dividends or included with other earnings in an advertisement.

(3) [~~5~~] Description of premiums and cost.

(A) Consideration paid or to be paid for individual insurance and annuities including policy fees, shall be described as premium, consideration, cost, payments, annuity consideration, or purchase payment.

(B) Consideration paid or to be paid for group insurance, including enrollment fees, dues, administrative fees, membership fees, service fees, and other similar charges paid by the employees, shall be disclosed in an invitation to contract advertisement as part of the consideration and cost.

(C) An advertisement may not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the initial reduced premium. If an insurer charges an initial premium that differs in amount from the amount

of the renewal premium payable, the advertisement may not display the amount of the reduced initial premium more prominently than the renewal premium.

(D) A reduced initial or first year premium may not be described by an insurer as constituting free insurance for a period of time.

(E) An advertisement of an insurance product may not imply that it is "a low cost plan" or use other similar words or phrases without a substantial present or past cost record for the policy advertised or for a similar policy that demonstrates or verifies a composite of lower production, administrative, and claim cost resulting in a low premium rate to the public.

(F) The words "deposits," "savings," "investment," or other phrases used to describe premiums may not be so used by an insurer or agent as to hide or unfairly minimize the cost of the hazards insured against.

(G) No part of a premium may be described as a "deposit" if it is not guaranteed to be returned in full on demand of the insured.

(H) An insurer or agent may not make a billing of a premium for increased coverage or include the cost of increased coverage in the premium for which a billing is made without first disclosing the premium and details of the increased coverage and obtaining the consent of the insured to such increase in coverage. This does not apply to policies which contain provisions providing for automatic increases in benefits or increases in coverages which are required by law.

(I) If the cost of home collection results in a higher premium an advertisement shall state that fact.

(4) [(6)] Dividends.

(A) An advertisement may not utilize or describe dividends in a manner that is misleading or has the capacity or tendency to mislead.

(B) An advertisement may not state or imply that the payment or amount of dividends is guaranteed. If dividends are illustrated, the illustration must conform to the requirements of Subchapter N of this chapter (relating to Life Insurance Illustrations).

(C) An advertisement may not state or imply that illustrated dividends under either or both a participating policy or pure endowment will be or can be sufficient at any future time to assure without the future payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains the benefits or coverage provided at such time and the conditions required for that to occur.

(D) An insurer or agent may not, as an inducement to purchase insurance circulate, publish, or otherwise exhibit to any person who is an insured or prospective insured a form of director resolution, stockholders resolution, or form of company action that states or implies the action an insurer will take in the future as respects a declaration of dividend or other such matter if the insurer, its directors, or its stockholders are not bound to take the action stated or implied or if the insurer does not presently have the earnings or the funds or assets to make payments or to consummate the transaction in accordance with the appropriate statutes and rules if any.

(5) [(7)] Unlawful inducement. An insurer may not make or include in any advertisement a statement or reference that implies that the purchaser or prospective purchaser by purchasing a policy of insurance will become a member of a limited group of persons who will or may receive special advantages from the company not provided for

in the policy or not authorized by law or state or imply that the prospective insured will receive favored treatment in the payment of dividends especially if the policy advertised is a participating policy not available to persons holding other types of participating or nonparticipating policies issued by the insurer to individuals of the same class and equal expectation of life nor to that class of persons to whom essentially the same hazards are attributable. This is not intended to prohibit and does not prohibit the lawful payment of differing amounts of dividends on different classes of policies. The term "class" relates to the recognized underwriting classifications such as age, health, occupation, sex, hazardous potential, and similar classifications that determine the nature of the risk assumed, and the term "class" as used in this paragraph is not limited to a particular plan or policy form or the date of issue of a policy.

(6) [(8)] An insurer or agent may not as a "twisting" or other device, inform any policyholder or prospective policyholder that any insurer was required to change a policy or contract form or related material to comply with the provisions of these sections or other rules or statutes. This section is ordered for such reasons as those stated in §21.113(j) of this title (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising).

(7) [(9)] Deception as to introductory, initial, or special offers.

(A) An advertisement of a particular policy may not state or imply that prospective policyholders become group or quasi-group members that, as such, enjoy special rates or underwriting privileges ordinarily associated with group insurance as recognized in the industry unless such is the fact.

(B) If an insured or prospective insured has been provided a policy or coverage of insurance without first having paid a premium or returned an application to the insurer or its agents or representatives, the insurer, its agents, or representative may not make any billing or attempt to collect a premium on such policy until such time as an application or acknowledgment of acceptance by the insured is received. When coverage is issued prior to such acceptance, it shall be accompanied by a written statement describing it as follows:

(i) giving the facts concerning the delivery of the policy and whether or not the policy was requested by the insured; and

(ii) stating that the insured is under no obligation to pay the insurer if he does not want to initiate or continue the coverage; and

(iii) clearly stating when coverage will be effective.

(C) An advertisement by an insurer may not state or imply, that a policy or combination of policies is an introductory, initial, special, or limited offer and that applicants will receive advantages by accepting the offer or that such advantages will not be available at a later date unless such is the fact. An advertisement may not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases if the insurer uses such enrollment periods as the usual method of advertising insurance.

(i) An enrollment period during which "a particular insurance product" may be purchased on an individual basis may not be offered within this state unless there has been a lapse of not less than three months between the close of the immediately preceding enrollment period for the same or substantially the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application which may be not less than 10 days and not more than 40 days from the date that such enrollment period is advertised for the first time. This section

applies to all advertising media: i.e., mail, newspaper, radio, television, magazine, and periodicals. It is inapplicable to solicitation of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket, or franchise insurance. This section applies to all affiliated companies under common management or control. The phrase "a particular insurance product" as used herein is an insurance policy that provides substantially different benefits than those contained in any other policy. Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy are not sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.

(ii) There may not be a statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

*§21.115. Rules Pertaining Specifically to Property and Casualty Insurance Advertising.*

(a) (No change.)

(b) The word "dividends" includes every return of premium and payment to policyholders on a particular policy that is predicated on the financial performance or earnings of the insurer, but does not include the return of premium under a nondiscretionary provision or endorsement in a policy clearly providing for the payment under a rating plan approved or promulgated by the Texas Department [State Board] of Insurance.

*§21.116. Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance.*

(a) Advertising file. Each insurer, domestic and foreign, doing an insurance business in Texas shall maintain at its home office or principal (executive) office, a complete file containing a specimen of every institutional advertisement, invitation to inquire advertisement, or invitation to contract advertisement disseminated in this state, with a notation attached to each such advertisement indicating the manner and extent of distribution and the form number of any policy advertised in Texas. Foreign insurers that have established an office in Texas who transact an insurance business in this state may maintain the advertising file at that location. Each insurer shall notify the Texas Department [State Board] of Insurance where the advertising file is being maintained and that access thereto will be provided, and each insurer shall also notify the Texas Department [State Board] of Insurance in the event the location of such file is planned to be changed and immediately when changed. The advertising file is subject to regular and periodic inspection by the Texas Department [State Board] of Insurance. All advertisements shall be maintained for a period of not less than three years.

(b) Statement of compliance. Each insurer, domestic and foreign, filing an annual statement with the Texas Department [State Board] of Insurance is subject to the provisions of these sections and shall file with its annual statement a certificate or equivalent executed by an authorized officer of the insurer whose duty it is to deal with or oversee the insurer's advertising stating that to the best of the officer's knowledge, information, and belief, the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of these sections and the insurance laws of this state as respects its Texas advertising and as its Texas advertising relates to its insureds in Texas.

*§21.119. Savings Clause.*

Each cause of action, pending litigation, matter in process before the Texas Department [State Board] of Insurance or commissioner of insurance, or matter hereafter arising from an event occurring prior to the time these sections become effective shall be determined in accordance with and governed by the provisions of statutes, rules, orders, or official interpretations in effect at the time of the occurrence of the subject event, ~~[including, but in particular not limited to, those matters arising from existing Rules 059.21-21.001, .009, and .010 herein stated to be repealed upon the date these sections become effective,]~~ and this section operates to save from repeal in that circumstance the application of such law and procedure in respect of any such circumstance from the amendment, change, or repeal contemplated by these sections notwithstanding any provision of these sections to the contrary, if any, or any provision of conflict or ambiguity.

*§21.120. Filing for Review.*

(a) Any advertisement required to be submitted or submitted voluntarily by an insurer licensed to do business in Texas shall be accompanied by a transmittal letter addressed to the Advertising Unit [Section, Policy Approval Division,], Texas Department [State Board] of Insurance, 333 Guadalupe [1110 San Jacinto Street], Mail Code 111-2A, Austin, Texas 78701 [78786], or P.O. Box 149104, Austin Texas 78714-9104. The transmittal letter ~~and~~ shall contain the following information:

(1) the identifying form number of each form submitted including a separate identifying form number for each distinct Internet page and pop-up;

(2) (No change.)

(3) the form number(s) [number] of the approved policy and/or rider form(s) [form or forms] advertised; ~~and~~

(4) the method or media used for dissemination of the advertisement;[-]

(5) the form number(s) for all other advertising material to be used with the advertisement(s) being submitted; and

(6) an attachment explaining all variable material; the variable material shall be identified with brackets on the advertisement(s).

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

(d) An advertisement subject to requirements regarding filing of the advertisement with the department for review under the Insurance Code or Texas Administrative Code, Title 28, and that is the same as or substantially similar to an advertisement previously reviewed and accepted by the department, is not required to be filed for review. For the purposes of this subsection, "substantially similar" means the new advertisement does not introduce any substantive content not previously reviewed, nor does it eliminate any content satisfying required disclosures or that would render the advertisement noncompliant with §21.112 of this subchapter (relating to General Prohibition). A person or entity wishing to introduce a "substantially similar" advertisement must file a signed written statement with the department at the address identified in subsection (a) of this section. Such statement must identify or illustrate the changes to be introduced, and list the previously reviewed and accepted form(s) in which those changes would appear, including the form number(s) and the department's filing number(s) under which those forms were previously reviewed and accepted. [Advertisements shall be filed in final printed form subsequent to acceptance.]

(e) The following rules require that advertisements be filed with the department for review at or prior to use:

(1) §3.1707 of this title (relating to Advertising, Sales and Solicitation Materials; Filing Prior to Use), regarding viatical and life settlement contracts;

(2) §3.3313 of this title (relating to Filing Requirements for Advertising), regarding Medicare supplement insurance;

(3) §3.3838 of this title (relating to Filing Requirements for Advertising), regarding long-term care insurance; and

(4) §11.602 of this title (relating to Filings), regarding certain Medicare HMO contracts.

§21.121. Lead Solicitations.

(a) An insurer or agent who obtains a list of potential customers derived from use of a lead solicitation, as defined in §21.102(1)(F) of this subchapter (relating to Scope), is responsible for the content of the lead solicitation used to generate such list.

(b) A lead solicitation shall prominently disclose that an insurer or agent may contact the recipient of the solicitation, if that is a fact. In addition, an insurer or agent who makes contact with a person as a result of acquiring that person's name from a lead solicitation shall disclose that fact in the initial contact with the person.

(c) In addition to any other prohibition on untrue, deceptive, or misleading advertisements, no advertisement for an event or group meeting where information will be disseminated regarding insurance products, insurance products will be offered for sale, or individuals will be enrolled, educated or assisted with the selection of insurance products, may use the terms "seminar," "class," "informational meeting," "retirement," "estate planning," "financial planning," "living trust," or substantially equivalent terms to characterize the purpose of the public gathering or event unless it adds the words "and insurance sales presentation" immediately following those terms in the same type size and font as those terms.

§21.122. System of Control and Home Office Approval of Advertising Material Naming an Insurer.

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

(1) Advertisement--As defined in §21.102 of this title (relating to Scope), but, however, limited to those advertisements, excluding institutional advertisements, [items or instances only] where an insurer or its policy is advertised.

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

(b) Scope. This section shall apply to any advertisement for [accident and/or health insurance, life insurance, annuities, group hospital services, and HMO] policies that are intended for presentation, distribution, or dissemination in this state.

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

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

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

TRD-200704267

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: October 28, 2007

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



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

### CHAPTER 180. MONITORING AND ENFORCEMENT

#### SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT

##### 28 TAC §180.19

The Texas Department of Insurance, Division of Workers' Compensation proposes new §180.19 regarding performance based oversight incentives.

Proposed §180.19 implements amendments to Section 402.075 of the Texas Labor Code as added by House Bill 7, enacted by the 79th Texas Legislature, Regular Session. There are no other rules anticipated in order to implement the section.

Section 402.075(a) requires the Commissioner, by rule, to adopt requirements that provide incentives for overall compliance in the workers' compensation system and that emphasize performance-based oversight linked to key regulatory outcomes. Section 402.075(b) requires the Commissioner to adopt key regulatory goals to use in assessing the performance of insurance carriers and health care providers. Section 407.075(c) requires that insurance carriers and health care providers be assessed at least biennially in meeting the key regulatory goals. Section 407.075(d) requires the Division to develop regulatory tiers to distinguish among poor performers, average performers, and high performers. Section 402.075(e) requires the commissioner to develop incentives within each tier to promote greater overall compliance and performance. Section 402.075(f) requires high tier performers be recognized and allowed to use that high tier designation as a marketing tool.

Proposed §180.19(a) sets forth the purpose of the rule and the key regulatory goals against which the insurance carriers and health care providers will be assessed. The key regulatory goals of subsection (a) align with the general goals and mission of the workers' compensation system set forth in Labor Code §402.021. Proposed §180.19(b) states that the assessments against the key regulatory goals will be conducted at least once each biennium. The Division may not review all insurance carriers and health care providers. However, those participants selected for review were determined as having an impact on the system either due to their volume of claims handled, forms filed, premium rate or any other relevant criteria the Division deemed appropriate. Proposed §180.19(c) states that insurance carriers and health care providers who are assessed will be placed in one of three regulatory tiers. Subsection (c) establishes three regulatory tiers that distinguish among poor, average, and high performers in the system. Those insurance carriers or health care providers who are not assessed due to low volume or other factors will be placed into a fourth tier titled "tier not assessable". This designation does not differentiate performance as high, average or poor and does not absolve these entities from regulatory duties or regulatory oversight when necessary. Proposed §180.19(d) states that the incentives will be based on the regulatory tier in which the insurance carrier or health care provider is placed after the assessment. Proposed §180.19(e) states that the commissioner, in granting incentives, may consider any other relevant factors that lead to overall compliance

or factors which adversely impact the workers' compensation system. Proposed §180.19(f) sets out the incentive for high tier performers required by section 402.075(f) and proposed subsection (g) sets out incentives that may be utilized by an insurance carrier or health care provider who was assessed and placed in a regulatory tier.

Jaelene Fayhee, Executive Deputy Commissioner for Policy and Research, 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. Fayhee, Executive Deputy Commissioner for Policy and Research, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of the proposed section is to increase compliance by insurance carriers and health care providers by offering incentives to become a high performer in the workers' compensation system and to allow the Division to focus on the low and average performers to assist them to improve their overall compliance and performance. The improved compliance would reduce the enforcement burden on the Division and the improved performance would result in better care for injured employees. There would be no additional economic cost to the insurance carriers and health care providers since the assessments used for tier placement would be based on information that is currently reported to or collected by the Division in the normal course of business. There are no public costs associated with this rule as the general public is not required to comply with the rule. An economic analysis of the impact of the proposed rule on small businesses or micro businesses selected for assessment, whether the business was a carrier or a health care provider, showed no measurable impact and would only continue the current reporting requirements.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on October 22, 2007. Comments may be submitted via the Internet through the Division's Internet website at <http://www.tdi.state.tx.us/wc/rules/proposedrules/toc.html> or by mailing your comments to Victoria Ortega, Legal Services, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744.

If substantial written comments are received, the Division will schedule a public hearing in the Tippy Foster Room, Division of Workers' Compensation, 7551 Metro Center Drive, Austin, Texas to consider the proposal of this rule. Any request for a public hearing must be submitted separately to the Office of General Counsel by 5:00 p.m. on October 22, 2007. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Texas Labor Code §402.075. Section 402.075 calls for the Commissioner of Workers' Compensation to provide incentives within each regulatory tier.

The following sections are affected by this proposal: Labor Code §402.075.

§180.19. Incentives.

(a) The purpose of this section is to develop incentives and emphasize performance-based oversight to regulatory outcomes. Regulatory outcomes are assessed for the following key regulatory goals:

(1) provide timely and accurate income and medical benefits;

(2) increase timely and accurate communications within the system;

(3) encourage safe and timely return of injured employees to productive roles;

(4) promote safe and healthy workplaces;

(5) ensure each injured employee shall have access to prompt, high-quality, cost-effective medical care; and

(6) limit disputes to those appropriate and necessary.

(b) At least once every biennium, the Division shall assess the performance of insurance carriers and health care providers based on the key regulatory goals stated in subsection (a)(1) - (6).

(c) Insurance carriers and health care providers who are assessed will be placed into one of the following regulatory tiers:

(1) high performers;

(2) average performers; or

(3) poor performers.

(d) Incentives will be based on the regulatory tier the insurance carrier or health care provider was placed into after being assessed on the key regulatory goals.

(e) In granting incentives, the Commissioner may also consider any other factors that the Commissioner finds relevant which leads to overall compliance or which may adversely impact the workers' compensation system.

(f) Incentives for insurance carriers and health care providers placed into the high performer regulatory tier are:

(1) public recognition, and

(2) use of that designation as a marketing tool.

(g) Other incentives for insurance carriers and health care providers placed into a regulatory tier may include:

(1) limited audit exemption for insurance carriers and health care providers placed in the average and high performers regulatory tiers, while reserving the Division's discretion to audit an average or high performer if deemed necessary;

(2) penalties which may be lower than normally assessed for insurance carriers and health care providers who have been placed in the high performer regulatory tier;

(3) penalties which may be reduced for insurance carriers and health care providers in any regulatory tier who self-disclose non-compliance;

(4) flexibility for audits and inspections based on performance and placement in any regulatory tier; and

(5) any other incentive the Commissioner may deem appropriate.

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

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704243



Norma Garcia  
General Counsel  
Texas Department of Insurance, Division of Workers' Compensation  
Earliest possible date of adoption: October 28, 2007  
For further information, please call: (512) 804-4715



## PART 6. OFFICE OF INJURED EMPLOYEE COUNSEL

### CHAPTER 276. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS

#### 28 TAC §276.3

The Office of Injured Employee Counsel (OIEC) proposes new §276.3 concerning the procedure for submission, consideration, and disposition of rule petitions to OIEC. Section 276.3 provides for how OIEC considers rule petitions, either by initiating rule-making procedures or by denying the petition in writing. New §276.3 is necessary to implement state agency rulemaking procedures in accordance with the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

Ms. Dorian Ramirez, Deputy Public Counsel, has determined that, for each year of the first five years the proposed new section shall be in effect, there shall be no fiscal impact to state and local governments as a result of the enforcement or administration of this new rule. There shall be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Ramirez has determined that, for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of the proposed section shall be the implementation of House Bill (HB) 7, 79th Texas Legislature, Regular Session, 2005, which provided the Public Counsel rulemaking authority to enact Chapter 404 of the Texas Labor Code in accordance with the requirements provided in Chapter 2001 of the Government Code.

There will be no difference in the cost of compliance between a large and small business as a result of the proposed new section. There is no disproportionate economic impact on small or micro-businesses as a result of the proposed section.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on October 31, 2007 to Brian White, General Counsel, Office of Injured Employee Counsel, Mail Code 50, 7551 Metro Center Drive, Austin, Texas 78744. A request for a public hearing should be submitted separately to the General Counsel.

Section 276.3 is proposed pursuant to Texas Government Code, §2001.021 and Texas Labor Code, §404.006. Section 2001.021(b) of the Government Code requires state agencies by rule to prescribe the form for a petition and the procedure for rule petition's submission, consideration, and disposition. Section 2001.021(c) provides that, not later than the 60th day after the date of submission of a petition, a state agency shall deny the petition in writing or initiate a rulemaking proceeding. Section 404.006 of the Labor Code provides the Public Counsel the authority to adopt rules and requires that such rulemaking is subject to Chapter 2001 of the Government Code.

The following sections are affected by this proposal:

Rule: §276.3

Statutes: Texas Government Code, §2001.021 and Texas Labor Code, §404.006

#### §276.3. Rulemaking Petition.

(a) Changes or amendments to the Office of Injured Employee Counsel's (OIEC) rules may be petitioned by any person. Rulemaking petitions shall be in the form of a letter to the Public Counsel that contains the following:

(1) a brief statement summarizing the proposed section or changes to the section;

(2) the text of the proposed section in the exact form proposed for adoption;

(3) a statement setting forth the statutory reference that authorizes the proposed rule or rule change;

(4) a suggested effective date;

(5) any other matter which may be required by law;

(6) the petitioner's name, mailing address, and telephone number; and

(7) the petitioner's signature.

(b) The petitioner may also include a cost-benefit analysis, which provides:

(1) an estimate of the public benefit expected as a result of the proposed section or rule change; and

(2) the probable economic cost to persons required to comply with the proposed section.

(c) The petition shall be filed with the Public Counsel by personal delivery or certified mail.

(d) Within 60 days after the petition is submitted, OIEC shall either initiate rulemaking procedures or shall deny the petition and provide the petitioner with reasons for the denial in writing.

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

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704242

Brian White

General Counsel

Office of Injured Employee Counsel

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 804-4186



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER A. GENERAL RULES

##### 34 TAC §3.9

The Comptroller of Public Accounts proposes an amendment to §3.9, concerning electronic filing of returns and reports;

electronic transfer of certain payments by certain taxpayers. This section is being amended to implement House Bill 11, 80th Legislature, 2007. Effective September 1, 2007, Tax Code, §§151.433, 154.212, and 155.105 are added to allow the Comptroller of Public Accounts to require wholesalers and distributors of beer, wine, malt liquor, cigarettes, cigars or tobacco products to electronically file with the comptroller a report each month of sales to retailers in this state. This requirement will apply to sales occurring on or after January 1, 2008, with first reports due on February 25, 2008. Subsection (c) is being amended to identify who must file the required reports, the information that must be reflected in the reports, penalties for certain taxpayers who fail to file a report and other information regarding the reports. Subsection (e) is being amended to reflect that the reporting requirement shall be effective without any additional notice to taxpayers. Subsection (f) is being amended to provide taxpayers the ability to request an alternative filing method.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by using technology to increase efficiency and cut costs for both state government and taxpayers. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §§151.433, 154.212, 155.105.

### *§3.9. Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers.*

(a) Electronic filing of returns and reports. The comptroller may authorize a taxpayer to file any report or return required to be filed with the comptroller under Tax Code, Title 2, by means of electronic transmission under the following circumstances:

(1) the taxpayer or its authorized agent has entered into a written agreement with the comptroller that permits the taxpayer to use the electronic method of filing returns and reports. The signature of the taxpayer or its authorized agent on the written agreement into which the parties have entered for this purpose shall be deemed to appear on each report or return that is filed electronically with the comptroller as if actually included on the report or return; and

(2) the method of electronic transmission of each return or report shall be made in a manner compatible with the comptroller's equipment and facilities.

(b) Electronic transfer of certain payments by certain taxpayers.

(1) For payments that are due before January 1, 2002, the comptroller, pursuant to Government Code, §404.095(c), shall require persons who have paid the comptroller a total of \$250,000 or more in

a single category of payments or taxes during the preceding state fiscal year to transfer all payment amounts in that category of payments or taxes to the comptroller by means of electronic funds transfer.

(2) For payments that are due on or after January 1, 2002, the comptroller, pursuant to Tax Code, §111.0625, shall require taxpayers who have paid the comptroller a total of \$100,000 or more in a single category of payments or taxes during the preceding state fiscal year to transfer all payment amounts in that category of payments or taxes to the comptroller by means of electronic funds transfer.

(c) Electronic filing of reports by certain taxpayers.

(1) Reports required by Tax Code, §111.0626. Pursuant to Tax Code, §111.0626, taxpayers who are required by Tax Code, §111.0625, to use electronic funds transfer for tax payments that are made under Tax Code, Chapters 151, 201, 202, and the International Fuel Tax Agreement must also file report data electronically. This requirement applies to report data that is due on or after January 1, 2002.

(2) Reports by wholesalers and distributors of beer, wine, or malt liquor. Pursuant to Tax Code, §151.433, each wholesaler or distributor of beer, wine, or malt liquor shall electronically file on or before the 25th day of each month a report of sales to retailers in this state.

(A) The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(i) the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered beer, wine, or malt liquor, including the city and zip code;

(ii) the comptroller assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(iii) the permit or license number assigned to the retailer by the Texas Alcoholic Beverage Commission;

(iv) the monthly net sales made to the retailer by outlet, including the quantity and units of beer, wine, and malt liquor sold to the retailer and the price charged to the retailer; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(B) If a person fails to file a report required by this subsection or fails to file a complete report, the comptroller may suspend or cancel one or more permits issued to the person under Tax Code, §151.203, and may impose a civil or criminal penalty, or both, under Tax Code, §151.7031 or §151.709.

(C) If a person fails to file a report required by this subsection or fails to file a complete report, the comptroller may notify the Texas Alcoholic Beverage Commission of the failure and the commission may take administrative action against the person for the failure under the Alcoholic Beverage Code.

(D) This requirement applies to sales occurring on or after January 1, 2008.

(E) A report required by paragraph (2) of this subsection, must be filed each month even if the wholesaler or distributor made no sales to retailers during the preceding month.

(3) Reports by wholesalers and distributors of cigarettes. Pursuant to Tax Code, §154.212, each wholesaler or distributor of cigarettes shall electronically file on or before the 25th day of each month a report of sales to retailers in this state.

(A) The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(i) the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered cigarettes, including city and zip code;

(ii) the comptroller assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(iii) the cigarette permit number of the outlet location to which the wholesaler or distributor delivered cigarettes;

(iv) the monthly net sales made to the retailer, including the quantity and units of cigarettes in stamped packages sold to the retailer and the price charged to the retailer; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(B) This requirement applies to sales occurring on or after January 1, 2008.

(C) A report required by paragraph (3) of this subsection, must be filed each month even if the wholesaler or distributor made no sales to retailers during the preceding month.

(4) Reports by wholesalers and distributors of cigars and tobacco products. Pursuant to Tax Code, §155.105, each wholesaler or distributor of cigars or tobacco products shall electronically file on or before the 25th day of each month a report of sales to retailers in this state.

(A) The report must contain the following information for the preceding calendar month's sales in relation to each retailer:

(i) the name of the retailer and the address of the retailer's outlet location to which the wholesaler or distributor delivered cigars or tobacco products, including the city and zip code;

(ii) the comptroller assigned taxpayer number of the retailer, if the wholesaler or distributor is in possession of the number;

(iii) the tobacco permit number of the outlet location to which the wholesaler or distributor delivered cigars or tobacco products;

(iv) the monthly net sales made to the retailer, including the quantity and units of cigars and tobacco products sold to the retailer and the price charged to the retailer; and

(v) any other information deemed necessary by the comptroller for the efficient administration of this subsection.

(B) This requirement applies to sales occurring on or after January 1, 2008.

(C) A report required by paragraph (4) of this subsection, must be filed each month even if the wholesaler or distributor made no sales to retailers during the preceding month.

(5) Except as provided by Tax Code, §111.006, information contained in the reports required by paragraphs (2), (3) and (4) of this subsection is confidential and not subject to disclosure under Government Code, Chapter 552.

(6) The reports required by paragraphs (2), (3) and (4) of this subsection are required in addition to any other reports required by the comptroller.

(d) Applicability of the state treasurer's administrative rules. The administrative rules of the former state treasurer's office on electronic funds transfer, §§15.2, 15.4 - 15.15, 15.17, and 16.1 of this title (relating to Penalties, Protested Tax Payments, State Agency Rules Requirements, Applicability Determination and Notification Procedures, Voluntary Payments by Electronic Funds Transfer, Payor Information,

Means of Electronic Funds Transfer, Transmission of Payment Information, Determination of Settlement Day, Transfer of Funds to the Treasury, Backup Procedures, Late Payments, Proof of Payment, Effective Date, and Adoption by Reference), shall be applicable to all such payments to the comptroller.

(1) Pursuant to §15.11 of this title (relating to Determination of Settlement Day), a person who enters payment information into the electronic fund transfer (EFT) system may choose to either accept the settlement day that the EFT system offers or enter a settlement day up to 30 days in the future. The EFT system will offer the business day following the day on which payment information is entered into the EFT system, provided that the information is entered by 6:00 p.m. central time on any day other than a weekend or banking holiday.

(2) A person who files combined tax returns and makes payments through the electronic data interchange (EDI) system must enter the payment information into the EDI system by 2:30 p.m. central time to meet the 6:00 p.m. central time requirement that is noted in paragraph (1) of this subsection.

(e) Notification of affected persons. With the exception of persons affected by subsection (c)(2), (3) or (4) of this section, the [The] comptroller shall notify taxpayers who are affected by this section no less than 60 days before the first required electronic transmittal of report data or payment.

(f) A taxpayer who is required to electronically file report data under subsection (c)(1) of this section may submit a written request to the comptroller for a waiver of the requirement. A taxpayer who is required to electronically file a report under subsection (c)(2), (3) or (4) of this section may submit a written request to the comptroller for a waiver of the requirement and authorization of an alternative filing method.

(g) Pursuant to Tax Code, §111.063, the comptroller may impose a penalty of 5.0% of the tax due for failure to electronically file a report under Tax Code, §111.0626.

(h) Protest payments by electronic funds transfer. Protested tax payments made under Tax Code, §112.051, must be accompanied by a written statement that fully and in detail sets out each reason for recovery of the payment and are not required to be submitted by electronic funds transfer.

(1) A person who is otherwise required to pay taxes by means of electronic funds transfer may make protested payments by other means, including cash, check, or money order. This exception to the electronic funds transfer requirement is allowed if a written statement of protest accompanies the non-electronic payment.

(2) A person may submit a protested tax payment by means of electronic funds transfer if the written statement is submitted in compliance with the requirements set out in subparagraph (A) of this paragraph.

(A) A person may submit a protest payment by means of electronic funds transfer only if:

(i) a written statement of protest is delivered by facsimile transmission or hand-delivery actually received at one of the comptroller's offices in Austin, Texas;

(ii) the written statement of protest is delivered to the comptroller within 24 hours before or after the electronic transfer of the payment;

(iii) the written statement of protest identifies the date of electronic payment, the taxpayer number under which the

electronic payment was or will be submitted, and the amount paid under protest; and

(iv) the electronic payment is specifically identified as a protest payment by the method, if any (such as a special transaction code or accompanying electronic message), that the comptroller may designate as appropriate to the method by which the person transferred the funds electronically.

(B) The failure of a taxpayer to submit a written statement in compliance with subparagraph (A) of this paragraph means the tax payment that the taxpayer made is not considered to be a protest tax payment as provided by Tax Code, §112.051.

(C) If a person submits multiple written statements of protest that relate to the same electronic payment, then only the first statement that the comptroller actually receives is considered the written protest for purposes of Tax Code, §112.051.

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

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

TRD-200704254

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 475-0387



## SUBCHAPTER C. CRUDE OIL PRODUCTION TAX

### 34 TAC §3.40

The Comptroller of Public Accounts (comptroller) proposes an amendment to §3.40, concerning tax credit for enhanced efficiency equipment. The proposed amendment incorporates legislative changes in House Bill 3314, 80th Legislature, 2007, which amended Tax Code, Chapter 202. Subsection (b)(6) is amended accordingly to extend the end date of the tax credit for enhanced efficiency equipment to include equipment installed prior to September 1, 2013.

John Heleman, Chief Revenue Estimator, has determined that, for the first five-year period the proposed rule amendment will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that, for each year of the first five years the proposed rule amendment is in effect, the public benefit anticipated as a result of enforcing the rule amendment will be in clarifying for taxpayers the extended deadline of this tax credit. This proposed rule amendment is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.102, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The proposed amendment implements Tax Code, §202.062.

### §3.40. Tax Credit for Enhanced Efficiency Equipment.

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

(1) Commission--The Railroad Commission of Texas.

(2) Operator--The person responsible under law or commission rules for the physical operation of a lease.

(3) Institute of Higher Education--A comptroller approved institution of higher education located in this state that has an accredited petroleum engineering program.

(4) Marginal Well--A comptroller approved oil well that produces 10 barrels of crude oil or less per day during the month prior to installation of new efficiency equipment.

(b) For each marginal well qualifying under this section, the comptroller will require the following information from the operator of the lease.

(1) A copy of the monthly production report made to the commission for the lease for the qualifying month.

(2) A copy of the evaluation from an institution of higher education certifying the name of the enhanced efficiency equipment and that the equipment produces the required energy reduction.

(3) A list of the producing wells on the lease and supporting documentation to show the number of days each well was producing during the month prior to installation of the new efficiency equipment.

(4) A completed comptroller exemption application for the marginal well.

(5) A statement as to whether tax has been paid on the crude oil for periods after the effective date of the exemption, and the name of the party paying the tax.

(6) A billing statement showing the cost of the equipment, the cost of installation and proof that the equipment was not purchased or installed earlier than September 1, 2005, or later than September 1, 2013[2009].

(c) The credit will be in effect until the accumulated credit equals 10% of the cost of the equipment or \$1,000 per marginal well, whichever occurs first.

(d) If the tax is paid at the full rate provided by Tax Code, Chapter 202, on hydrocarbons produced on or after the effective date of the tax exemption but before the date the comptroller approves an application for the tax exemption, the operator is entitled to a credit on taxes due under Tax Code, Chapter 202, in an amount equal to the tax paid during that period within the statute of limitations. To receive a credit, the operator or the party remitting the tax must apply to the comptroller by filing amended reports. If a party other than the operator has remitted the tax, the operator must provide the party remitting the tax a copy of the approved comptroller application form that qualifies the marginal well for the tax exemption.

(e) The comptroller is limited to approving, each fiscal year, only the number of applications that will not exceed a number equal to one percent of the producing marginal wells in this state on September 1 of that state fiscal year.

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

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704233

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 475-0387



## SUBCHAPTER G. CIGARETTE TAX

### 34 TAC §3.102

The Comptroller of Public Accounts proposes an amendment to §3.102, concerning applications, definitions, permits and reports. This section is being amended to implement House Bill 11, 80th Legislature, 2007. Effective September 1, 2007, Tax Code, §154.212 was added to allow the Comptroller of Public Accounts to require wholesalers and distributors of cigarettes to electronically file with the comptroller a report each month of sales to retailers in this state. Subsection (f) is amended accordingly to refer affected taxpayers to §3.9 of this title for additional information regarding the reporting requirements. Subsection (f) is also amended to distinguish the filing date of the reports required by Tax Code, §154.212 from the filing date of other reports.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by using technology to increase efficiency and cut costs for both state government and taxpayers. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code §154.212.

§3.102. *Applications, Definitions, Permits, and Reports.*

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

(f) Reports.

(1) With the exception of reports of sales to retailers required by the comptroller under Tax Code, §154.212, all [AH] cigarette distributor and manufacturer reports and payments must be filed on or before the last day of each month following the month in which the transactions take place.

(2) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §154.212, shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

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

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

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Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 475-0387



## SUBCHAPTER H. CIGAR AND TOBACCO TAX

### 34 TAC §3.121

The Comptroller of Public Accounts proposes an amendment to §3.121, concerning definitions, imposition of tax, permits and reports. This section is being amended to implement House Bill 11, 80th Legislature, 2007. Effective September 1, 2007, Tax Code, §155.105 was added to allow the Comptroller of Public Accounts to require wholesalers and distributors of cigars or tobacco products to electronically file with the comptroller a report each month of sales to retailers in this state. Subsection (h) is amended accordingly to refer affected taxpayers to §3.9 of this title for additional information regarding the reporting requirements.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by using technology to increase efficiency and cut costs for both state government and taxpayers. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002 which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §155.105.

§3.121. *Definitions, Imposition of Tax, Permits, and Reports.*

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

(h) Reports.

(1) With the exception of reports of sales to retailers required by the comptroller under Tax Code, §155.105, all [All] tobacco distributor and manufacturer reports and payments must be filed on or before the last day of each month for transactions that occurred during the preceding month.

(2) All wholesaler and distributor reports of sales to retailers required by the comptroller under Tax Code, §155.105, shall be filed in accordance with §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

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

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

TRD-200704252

Martin Cherry

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Comptroller of Public Accounts

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 475-0387



## SUBCHAPTER O. STATE SALES AND USE TAX

### 34 TAC §3.286

The Comptroller of Public Accounts proposes an amendment to §3.286, concerning seller's and purchaser's responsibilities. This section is being amended to implement House Bill 11, 80th Legislature, 2007. Effective September 1, 2007, Tax Code, §151.433 was added to allow the Comptroller of Public Accounts to require wholesalers and distributors of beer, wine and malt liquor to electronically file with the comptroller a report each month of sales to retailers in this state. New subsection (h) is added accordingly to refer affected taxpayers to §3.9 of this title for additional information regarding the reporting requirements. The remaining subsections are being relettered accordingly. Subsection (k)(2) is amended to correct a section name.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the proposed amendment would benefit the public by using technology to increase efficiency and cut costs for both state government and taxpayers. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

### The amendment implements Tax Code, §151.433

#### §3.286. *Seller's and Purchaser's Responsibilities.*

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

(1) Engaged in business--A retailer is engaged in business in Texas if the retailer:

(A) maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room, warehouse or storage place, or other place of business;

(B) has any representative, agent, salesperson, canvasser, or solicitor who operates in this state under the authority of the seller to sell, deliver, or take orders for any taxable items;

(C) promotes a flea market, trade day, or other event that involves sales of taxable items;

(D) uses independent salespersons in direct sales of taxable items;

(E) derives receipts from a rental or lease of tangible personal property that is located in this state;

(F) allows a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect Texas sales or use tax; or

(G) conducts business in this state through employees, agents, or independent contractors.

(2) Place of business of the seller--For tax permit requirement purposes, the term means an established outlet, office, or location that the seller, his agent, or employee operates for the purpose of receipt of orders for taxable items. A warehouse, storage yard, or manufacturing plant is not a "place of business of the seller" for tax permit requirement purposes unless the seller receives three or more orders in a calendar year at the warehouse, storage yard, or manufacturing plant.

(3) Seller--Every retailer, wholesaler, distributor, manufacturer, or any other person who sells, leases, rents, or transfers ownership of taxable items for a consideration. A promoter of a flea market, trade day, or other event that involves the sales of taxable items is a seller and is responsible for the collection and remittance of the sales tax that dealers, salespersons, or individuals collect at such events, unless the participants hold active sales tax permits that the comptroller has issued. A direct sales organization that is engaged in business as defined in paragraph (1)(D) of this subsection is a seller and is responsible for the collection and remittance of the sales tax on all sales of taxable items by the independent salespersons who sell the organization's product. Pawnbrokers, storagemen, mechanics, artisans, or others who sell property to enforce a lien are also sellers. An auctioneer who does not receive payment for the item sold, does not issue a bill of sale or invoice to the purchaser of the item, and who does not issue a check or other remittance to the owner of the item sold by the auctioneer is not considered a seller responsible for the collection of the tax. In this instance, it is the owner's responsibility to collect and remit the tax. Auctioneers should refer to §3.311 of this title (relating to Auctioneers, Brokers, and Factors).

(b) Permits required.

(1) Each seller must apply to the comptroller and obtain a tax permit for each place of business.

(2) Each out-of-state seller who is engaged in business in this state must apply to the comptroller and obtain a tax permit. An

out-of-state seller who has been engaged in business in Texas continues to be responsible for collection of Texas use tax on sales made into Texas for 12 months after the seller ceases to be engaged in business in Texas.

(3) Independent salespersons of direct sales organizations are not required to hold sales tax permits to sell taxable items for direct sales organizations. Direct sales organizations hold responsibility to maintain Texas permits and collect Texas tax on all sales of taxable items by their independent salespersons. See subsection (d)(6) of this section for collection and remittance of tax by direct sales organizations.

(4) A person who engages in business in this state as a seller of tangible personal property or taxable services without a tax permit required by Tax Code, Chapter 151, commits a criminal offense. Each day that a person operates a business without a permit is a separate offense. See §3.305 of this title (relating to Criminal Offenses and Penalties).

(c) To obtain a permit.

(1) A person must complete an application that the comptroller furnishes and must return that application to the comptroller, together with bond or other security that may be required by §3.327 of this title (relating to Taxpayer's Bond or Other Security). A separate permit under the same account is issued to the applicant for each place of business. The permit is issued without charge.

(2) Each legal entity (corporation, partnership, sole proprietor, etc.) must apply for its own permit. An individual or sole proprietor must be at least 18 years of age unless the comptroller allows an exception from the age requirement. The permit cannot be transferred from one owner to another. The permit is valid only for the person to whom it was issued and for the transaction of business only at the address that is shown on the permit. If a person operates two or more types of business at the same location, then only one permit is required.

(3) The permit must be conspicuously displayed at the place of business for which it is issued. A permit holder that has traveling salesmen who operate from one central office needs only one permit, which must be displayed at the central office.

(4) All permits of the seller will have the same taxpayer number; however, each business location will have a different outlet number. The outlet numbers assigned may not necessarily correspond to the number of business locations owned by a taxpayer.

(d) Collection and remittance of the tax.

(1) Each seller must collect the tax on each separate retail sale in accordance with the statutory bracket system in Tax Code, §151.053. Copies of the bracket system should be displayed in each place of business so both the seller and the customers may easily use them. The tax is a debt of the purchaser to the seller until collected. A seller who is a printer should see paragraph (7) of this subsection for an exception to the collection requirement.

(2) The sales tax applies to each total sale, not to each item of each sale. For example, if two items are purchased at the same time and each item is sold for \$.07, then the seller must collect the tax on the total sum of \$.14. Tax must be reported and remitted to the comptroller as provided by Tax Code, §151.410. When tax is collected properly under the bracket system, the seller is not required to remit any amount that is collected in excess of the tax due. Conversely, when the tax collected under the bracket system is less than the tax due on the seller's total receipts, the seller is required to remit tax on the total receipts even though the seller did not collect tax from customers.

(3) The amount of the sales tax must be separately stated on the bill, contract, or invoice to the customer or there must be a written statement to the customer that the stated price includes sales or use taxes. Contracts, bills, or invoices that merely state that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount that is shown on such documents is presumed to be the taxable item's sales price, without tax included. The seller or customer may overcome the presumption by using the seller's records to show that tax was included in the sales price. Out-of-state sellers must identify the tax as Texas sales or use tax.

(4) A seller who advertises or holds out to the public that the seller will assume, absorb, or refund any portion of the tax, or that the seller will not add the tax to the sales price of taxable items commits a criminal offense. See §3.305 of this title.

(5) The practice of rounding off the amount of tax that is due on the sale of a taxable item is prohibited. Tax must be added to the sales price according to the statutory bracket system.

(6) Direct sales organizations must collect and remit tax from independent salespersons as follows.

(A) If an independent salesperson purchases a taxable item from a direct sales organization after the customer's order has been taken, then the direct sales organization must collect and remit sales tax on the actual sales price of the taxable item.

(B) If an independent salesperson purchases a taxable item before the customer's order is taken, then the direct sales organization must collect and remit the tax from the salesperson based on the suggested retail sales price of the taxable item.

(C) Taxable items that are sold to an independent salesperson for the salesperson's use are taxed based on the actual price for which the item was sold to the salesperson at the tax rate that was in effect for the salesperson's location.

(7) A printer is a seller of printed materials and is required to collect tax on sales. However, a printer who is engaged in business in Texas is not required to collect tax if:

(A) the printed materials are produced by a web offset or rotogravure printing process;

(B) the printer delivers those materials to a fulfillment house or to the United States Postal Service for distribution to third parties who are located both in Texas and outside of Texas; and

(C) the purchaser issues an exemption certificate that contains the statement that the printed materials are for multistate use and the purchaser agrees to pay to Texas all taxes that are or may become due to the state on the taxable items that are purchased under the exemption certificate. See subsection (f)(4) of this section for additional reporting requirements.

(e) Payment of the tax.

(1) Each seller, or purchaser who owes tax that was not collected by a seller, must remit tax on all receipts from the sales or purchases of taxable items less any applicable deductions. On or before the 20th day of the month following each reporting period, each person who is subject to the tax shall file a consolidated return together with the tax payment for all businesses that operate under the same taxpayer number. Reports and payments that are due on Saturdays, Sundays, or legal holidays may be submitted on the next business day.

(2) The returns must be signed by the person who is required to file the report or by the person's duly authorized agent, but need not be verified by oath.

(3) The returns must be filed on forms that the comptroller prescribes. The fact that the seller or purchaser does not receive the correct forms from the comptroller does not relieve the seller or purchaser of the responsibility to file a return and to pay the required tax.

(4) A seller or a purchaser who owes tax that was not collected by a seller, who remitted \$100,000 or more in sales and use tax to the comptroller during the preceding state fiscal year (September 1 through August 31) must file returns and transfer payments electronically as provided by Tax Code, §111.0625 and §111.0626. For further information about electronic filing of returns and payment of tax, see §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(5) A non-permitted purchaser who owes sales or use tax that was not collected by a seller must remit the tax to the comptroller on or before the 20th of the month following the month in which the taxable event occurs.

(f) Reporting period.

(1) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than \$1,500 in state tax per quarter to report may file returns quarterly. The quarterly reporting periods end on March 31, June 30, September 30, and December 31. The returns must be filed on or before the 20th day of the month following the period ending date.

(2) Sellers, and purchasers who owe tax that was not collected by sellers, who have less than \$1,000 state tax to report during a calendar year may file yearly returns upon authorization from the comptroller.

(A) Authorization to file returns on a yearly basis is conditioned upon the correct and timely filing of prior returns.

(B) Authorization to file returns on a yearly basis will be denied if a taxpayer's liability exceeded \$1,000 in the prior calendar year.

(C) A taxpayer who files on a yearly basis without authorization is liable for applicable penalty and interest on any previously unreported quarter.

(D) Authority to file on a yearly basis is automatically revoked if a taxpayer's state sales and use tax liability is greater than \$1,000 during a calendar year. The taxpayer must file a return for that month or quarter, depending on the amount, in which the tax remittance or liability is greater than \$1,000. On that report, the taxpayer must report all taxes that are collected and all accrued liability for the year, and must file monthly or quarterly, as appropriate, so long as the yearly tax liability is greater than \$1,000.

(E) Once each year, the comptroller reviews all accounts to confirm yearly filing status and to authorize permit holders who meet the filing requirements to file yearly returns.

(F) Yearly filers must report on a calendar year basis. The return and payment are due on or before January 20 of the next calendar year.

(3) Sellers, and purchasers who owe tax that was not collected by sellers, who have \$1,500 or more in state tax per quarter to report must file monthly returns except for sellers who prepay the tax.

(4) A printer who is not required to collect tax on the sale of printed materials because the transaction meets the requirements of subsection (d)(7) of this section must file a quarterly special use tax report with the comptroller on or before the last day of the month following the quarter. The special use tax report must contain the name and address of each purchaser with the sales price and date of each sale.

The printer is still required to file sales and use tax returns to report and remit taxes that the printer collected from purchasers on transactions that do not meet the requirements of subsection (d)(7) of this section.

(5) Each taxpayer who is required to file a city, county, special purpose district (SPD), or metropolitan transit authority/city transit department (MTA/CTD) sales and use tax return must file the return at the same time that the state sales and use tax return is filed.

(6) State agencies. State agencies that deposit taxes directly with the comptroller's office according to Accounting Policy Statement Number 8 are not required to file a separate tax return. A fully completed deposit request voucher is deemed to be the return filed by these agencies. Paragraphs (1) - (3) of this subsection do not apply to these state agencies. Taxes must be deposited with the comptroller's office within the time period otherwise specified by law for deposit of state funds.

(7) Retailers must report the total amount of sales tax refunded for sale of merchandise exported beyond the territorial limits of the United States and documented by licensed customs broker certifications under Tax Code, §151.307(b)(2). Retailers who refund tax on exports based on customs broker certifications must file the supplemental report on a form prescribed by the comptroller. Retailers file the supplemental reports at the same time and for the same reporting period as the retailer's state sales and use tax return.

(g) Filing the return; prepaying the tax; discounts; penalties.

(1) The comptroller makes forms available to all persons who are required to file returns. The failure of the taxpayer to obtain the forms does not relieve that taxpayer from the requirement to file and remit the tax timely. Each taxpayer may claim a discount for timely filing and payment as reimbursement for the expense of collection of the tax. The discount is equal to 0.5% of the amount of tax due. Certain sellers and purchasers are required to file returns and pay tax electronically, as provided in subsection (e)(4) of this section.

(2) The return for each reporting period must reflect the total sales, taxable sales, and taxable purchases for each outlet. The 0.5% discount for timely filing and payment may be claimed on the return for each reporting period and computed on the amount timely reported and paid with that return.

(3) Prepayments may be made by taxpayers who file monthly or quarterly returns. The amount of the prepayment must be a reasonable estimate of the state and local tax liability for the entire reporting period. "Reasonable estimate" means at least 90% of the total amount due or an amount equal to the actual net tax liability due and paid for the same reporting period of the immediately preceding year.

(A) A taxpayer who makes a timely prepayment based upon a reasonable estimate of tax liability may retain an additional discount of 1.25% of the amount due.

(B) The monthly prepayment is due on or before the 15th day of the month for which the prepayment is made

(C) The quarterly prepayment is due on or before the 15th day of the second month of the quarter for which the tax is due.

(D) On or before the 20th day of the month that follows the quarter or month for which a prepayment was made, the taxpayer must file a return showing the actual liability and remit any amount due in excess of the prepayment. If there is an additional amount due, the taxpayer may retain the 0.5% reimbursement provided that both the return and the additional amount due are timely filed. If the prepayment exceeded the actual liability, the taxpayer will be mailed an overpayment notice or refund warrant.



(4) Remittances that are less than a reasonable estimate as required by paragraph (3) of this subsection are not regarded as prepayments. The 1.25% discount will not be allowed. If the taxpayer owes more than \$1,500 in a calendar quarter, the taxpayer is regarded as a monthly filer. All monthly reports that are not filed because of the invalid prepayment are subject to late filing penalty and interest.

(5) If a taxpayer does not file a return together with payment on or before the due date, the taxpayer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the taxpayer, and after the first 60 days delinquency, interest begins to accrue at the prime rate, as published in the Wall Street Journal on the first business day of each calendar year, plus 1.0%. For taxes that are due on or before December 31, 1999, interest is assessed at the rate of 12% annually.

(6) Permit holders are required to file sales and use tax returns. A permit holder must file a sales and use tax return even if the permit holder has no sales or tax to report for the reporting period. A person who has failed to file timely reports on two or more previous occasions must pay an additional penalty of \$50 for each subsequent report that is not filed timely. The penalty is due regardless of whether the person subsequently files the report or whether no taxes are due for the reporting period.

(h) Reports of sales to retailers by wholesalers and distributors of beer, wine and malt liquor. Pursuant to Tax Code, §151.433, each wholesaler or distributor of beer, wine, or malt liquor shall electronically file on or before the 25th day of each month a report of sales to retailers in this state. See §3.9 of this title (relating to Electronic Filing of Returns and Reports; Electronic Transfer of Certain Payments by Certain Taxpayers).

(i) [(h)] Records required.

(1) Records must be kept for four years, unless the comptroller authorizes in writing a shorter retention period. Exemption and resale certificates must be kept for four years following the completion of the last sale covered by the certificate. See §3.281 of this title (relating to Records Required; Information Required) and §3.282 of this title (relating to Auditing Taxpayer Records).

(2) The comptroller or an authorized representative has the right to examine, copy, and photograph any records or equipment of any person who is liable for the tax in order to verify the accuracy of any return or to determine the tax liability in the event that no return is filed.

(3) A person who intentionally or knowingly conceals, destroys, makes a false entry in, or fails to make an entry in, records that are required to be made or kept under Tax Code, Chapter 151, commits a criminal offense. See §3.305 of this title.

(j) [(h)] Resale and exemption certificates.

(1) Any person who sells taxable items in this state must collect sales and use tax on taxable items that are sold unless a valid and properly completed resale certificate, exemption certificate, direct payment exemption certificate, or maquiladora exemption certificate is received from the purchaser. Simply having permit numbers on file without properly completed certificates does not relieve the seller from the responsibility for collecting tax.

(2) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the taxable items within the geographical limits of the United States of America, its territories and possessions, or in the United Mexican States. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). To be valid, the resale

certificate must show the 11-digit number from the purchaser's Texas tax permit or the out-of-state registration number of the out-of-state purchaser. A Mexican retailer who claims a resale exemption must show the Federal Taxpayers Registry (RFC) identification number for Mexico on the resale certificate and give a copy of the Mexican Registration Form to the Texas seller.

(3) A seller may accept an exemption certificate in lieu of the tax on sales of items that will be used in an exempt manner or on sales to exempt entities. See §3.287 of this title (relating to Exemption Certificates). There is no exemption number. An exemption certificate does not require a number to be valid.

(4) A purchaser who claims an exemption from the tax must issue to the seller a properly completed resale or exemption certificate. The seller must act in good faith when accepting the resale or exemption certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the tax.

(5) A person who intentionally or knowingly makes, presents, uses, or alters a resale or exemption certificate for the purpose of evading sales or use tax is guilty of a criminal offense. See §3.305 of this title.

(6) Direct payment permit holders are entitled to issue exemption certificates when purchasing all taxable items, other than those purchased for resale. The direct payment exemption certificate must show the purchaser's direct payment permit number. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(7) Maquiladora export permit holders are entitled to issue maquiladora exemption certificates when they purchase tangible personal property, other than that purchased for resale. Maquiladora export permit holders should refer to §3.358 of this title (relating to Maquiladoras).

(8) The seller should obtain a properly executed resale or exemption certificate at the time a transaction occurs. All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date on which the seller receives written notice from the comptroller of the seller's duty to deliver certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption of three business days for mail delivery by submitting proof from the United States Postal Service or by providing other competent evidence that shows a later delivery date. Any certificates that are delivered to the comptroller during the 60-day period are subject to verification by the comptroller before any deductions are allowed. Certificates that are delivered to the comptroller after the 60-day period will not be accepted and the deduction will not be granted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), §3.288 of this title (relating to Direct Payment Procedures and Qualifications) and §3.282 of this title (relating to Auditing Taxpayer Records).

(k) [(j)] Suspension of permit.

(1) If a person fails to comply with any provision of Tax Code, Title 2, or with the rules issued by the comptroller under those statutes, the comptroller may suspend the person's permit or permits.

(2) Before a seller's permit is suspended, the seller is entitled to a hearing before the comptroller to show cause why the permit or permits should not be suspended. The comptroller shall give the seller at least 20 days notice, which shall be in accordance with the require-

ments of §1.14 of this title (relating to Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases).

(3) After a permit has been suspended, a new permit will not be issued to the same seller until the seller has posted sufficient security and satisfied the comptroller that the seller will comply with both the provisions of the law and the comptroller's rules and regulations.

(4) A person who operates a business in this state as a seller of tangible personal property or taxable services after the permit has been suspended commits a criminal offense. Each day that a person operates a business with a suspended permit is a separate offense. See §3.305 of this title.

(l) [~~k~~] Refusal to issue permit. The comptroller is required by Tax Code, §111.0046, to refuse to issue any permit to a person who:

(1) is not permitted or licensed as required by law for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax or fee collected by the comptroller.

(m) [~~h~~] Cancellation of sales tax permits with no reported business activity.

(1) Permit cancellation due to abandonment. Any holder of a sales tax permit who reported no business activity in the previous calendar year is deemed to have abandoned the permit, and the comptroller may cancel the permit. "No Business Activity" means zero total sales, zero taxable sales, and zero taxable purchases.

(2) Re-application. If a permit is cancelled, the person may reapply and obtain a new sales tax permit upon request provided the issuance is not prohibited by subsection (k)(1) or (2) of this section, or by Tax Code, §111.0046.

(n) [~~m~~] Direct payment. Yearly and quarterly filing requirements, prepayment procedures and discounts for timely filing do not apply to holders of direct payment permits. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications). Direct payment returns and remittances are due monthly on or before the 20th day of the month following the end of the calendar month for which payment is made.

(o) [~~n~~] Liability related to acquisition of a business or assets of a business. Tax Code, §111.020 and §111.024, provides that the comptroller may impose a tax liability on a person who acquires a business or the assets of a business. See §3.7 of this title (relating to Successor Liability: Liability Incurred by Purchase of a Business).

(p) [~~o~~] Criminal penalties. Tax Code, Chapter 151, imposes criminal penalties for certain prohibited activities or for failure to comply with certain provisions under the law. See §3.305 of this title.

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

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

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



### 34 TAC §3.337

The Comptroller of Public Accounts (comptroller) proposes an amendment to §3.337, concerning gratuities. The proposed amendment to subsection (c)(2) clarifies that mandatory gratuity charges when in excess of 20% are subject to sales tax in total regardless of how they are disbursed. A misspelled word is corrected in subsection (a)(2).

John Heleman, Chief Revenue Estimator, has determined that, for the first five-year period the proposed rule amendment will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that, for each year of the first five years the proposed rule amendment is in effect, the public benefit anticipated as a result of enforcing the rule amendment will be in providing additional information concerning taxpayer responsibilities. This proposed rule amendment is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule amendment.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The proposed amendment implements Tax Code, §151.007(c)(7).

§3.337. *Gratuities.*

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

(1) Mandatory gratuity charge--Any amount required by the seller for the service of meals and food products for immediate consumption including soft drinks and candy.

(2) Qualified employees--Employees who customarily and regularly provide the service upon which a gratuity is based, including, but not limited to, waiters, waitresses, busboys, service bartenders, wine stewards, and maitres d'hotel. [~~hotel maitre d'~~, but excluding] The term does not include janitorial help, chefs, cashiers, or [~~and~~] dishwashers.

(3) Reasonable mandatory gratuity charge--Mandatory gratuity charges that do not exceed 20% of the sales price.

(4) Total direct compensation--Total salaries paid to qualified employees. The term does not include other benefits paid or incurred on an employee's behalf, such as health and life insurance, sick leave, or vacation time.

(5) Voluntary gratuity--A tip added to the bill at the suggestion of the purchaser or money given freely by the purchaser over and above the sales price.

(b) Voluntary gratuities are excluded from the sales price of taxable items.

(c) Mandatory gratuity charges.

(1) Reasonable mandatory gratuity charges are excluded from the sales price of taxable items if they are:

(A) separated from the sales price of the meal or food product served for immediate consumption;

(B) identified as a tip or gratuity by any reasonable means, including such terms as service fee or service charge; and

(C) disbursed to qualified employees. Any portion of a reasonable mandatory gratuity charge that is retained by the employer is subject to sales tax.

(2) Mandatory gratuity charges in excess of 20%. If a mandatory gratuity charge exceeds 20% then the entire mandatory gratuity charge is[are] subject to sales tax regardless of how the gratuity is[they are] disbursed.

(d) Records. The employer must maintain records that demonstrate the amount of mandatory gratuity charges that have been disbursed to qualified employees. In order to comply with this requirement, the records must show:

(1) the amount of mandatory gratuity charges collected from customers and the corresponding disbursements to each qualified employee; or

(2) that the total direct compensation due all qualified employees equals or exceeds the total amount collected as mandatory gratuity charges.

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

Filed with the Office of the Secretary of State on September 14, 2007.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## SUBCHAPTER S. MOTOR FUEL TAX

### 34 TAC §3.432

The Comptroller of Public Accounts proposes an amendment to §3.432, concerning refunds on gasoline and diesel fuel tax. This proposed amendment incorporates legislative changes in House Bill 1332 and House Bill 2982, 80th Legislature, 2007, which amended Tax Code, Chapter 162. House Bill 1332 authorizes the refund of taxes paid on diesel fuel when used as a feed stock in the manufacturing of tangible personal property for resale, other than a motor fuel and when used as a medium to remove drill cuttings from a well bore in the production of oil or gas. House Bill 2982 authorizes the refund of taxes paid on diesel fuel when used in moveable specialized equipment operated exclusively in oil field well servicing. This proposed amendment also provides the records required to support a refund. Subsection (j)(1)(E) is being amended to correct name of section. Subsections (p), (q), and (r) are added accordingly and former subsection (p) is now subsection (s).

John Heleman, Chief Revenue Estimator, has determined that, for the first five-year period the proposed rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information concerning taxpayer responsibilities. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The proposed amendment implements Tax Code, §162.227.

#### §3.432. Refunds on Gasoline and Diesel Fuel Tax.

(a) This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Refunds and credits. A person may file a claim for refund or a license holder may take a credit on a return for taxes paid on gasoline or diesel fuel used off the highway, for certain resale, for export from Texas, for loss caused by fire, theft, or accident, or other use if authorized by law. The claim for refund or credit must be filed in accordance with this section.

(c) Time limitation. A claim for refund or credit must be filed before the expiration of the following time limitations, as provided by Tax Code, §162.128 and §162.230:

(1) one year from the first day of the calendar month that follows:

(A) purchase;

(B) tax exempt sale;

(C) use, if withdrawn from one's own storage for one's own use;

(D) export from Texas; or

(E) loss by fire, theft, or accident; or

(2) for dyed and undyed diesel fuel used in off-highway equipment, stationary engines, or for other nonhighway purpose on or after January 1, 2004, a claim for refund on diesel fuel under subsections (e), (f), and (g) of this section must be postmarked no later than December 31, 2004, or

(3) four years from the due and payable date for a tax return on which an overpayment of tax was made by a licensed supplier, permissive supplier, distributor, importer, exporter, or blender who determines that taxes were erroneously reported or that more taxes were paid than were due because of a mistake of fact or law. The supplier, permissive supplier, distributor, importer, exporter, or blender must establish the credit by filing an amended tax return for the period in which the error occurred and tax payment was made to the comptroller.

(d) Filing forms and documentation. A claim for refund or credit must be on a form prescribed by the comptroller and must be submitted within the applicable limitations period provided by subsection (c) of this section. A person or license holder is required to maintain and have available for inspection the following documentation and information to substantiate a claim for refund or credit:

(1) an original purchase invoice with the name and address of the seller or name of the purchaser, whichever is applicable. For refund or credit purposes, the original invoice may be a copy of the original impression if the copy has been stamped "Customer Original Invoice," "Original for Tax Purposes," or similar wording. If a copy is so stamped, the original and all other copies must then be stamped "Not Good for Tax Purposes" or similar wording. Invoices of original impression submitted in support of refund claims must be without the above wording stamped or imprinted;

(2) evidence as to who paid the tax. A purchaser claiming a refund or credit must have an invoice that either separately states the tax amount paid or a written statement that the price included state tax. A seller claiming a refund or credit must have issued an invoice, signed by the purchaser, that contains a statement that no state tax was collected or that it was a tax-free sale;

(3) if refund or credit is claimed on fuel purchased at retail the purchase invoice must note the identification of each vehicle or type of equipment (e.g., including railway engines, motor boats, refrigeration units, stationary engines, off-highway equipment, or nonhighway farm equipment that has traveled between multiple farms or ranches as allowed in §3.440 of this title (relating to On-Highway Travel of Farm Machinery)) in which the fuel was delivered and used;

(4) if refund or credit is claimed on fuel removed from the claimant's own bulk storage, then a distribution log as provided by Tax Code, §162.127 and §162.229. The distribution log must contain the name and address of the user and, for each individual removal from the bulk storage the following information:

- (A) the date the fuel was removed;
- (B) the number of gallons removed;
- (C) the type of fuel removed;
- (D) signature of the person removing the fuel; and

(E) the type or description of the off-highway equipment into which the fuel [the] was delivered, or the identification of both on-highway and off-highway motor vehicles into which the fuel was delivered, including the state highway license number or vehicle identification number and odometer or hubometer [~~hubmeter~~] reading, or description of other off-highway use.

(e) Refund or credit for gasoline or dyed and undyed diesel fuel used solely for an off-highway purpose. A claim for refund or credit for gasoline or dyed and undyed diesel fuel used solely for off-highway purposes must list each off-highway vehicle or piece of equipment or document other nonhighway use and the total number of gallons used by way of a distribution log as described in subsection (d) of this section. The refund or credit for dyed or undyed diesel fuel used for off-highway purpose expires on January 1, 2005.

(f) Refund or credit for gasoline or dyed and undyed diesel fuel used by a lessor of off-highway equipment. The lessor of off-highway equipment who claims a refund or credit of state fuel tax must maintain documentation that shows that the state tax was assessed and paid, a list of each piece of off-highway equipment, and a distribution log as described in subsection (d) of this section of the number of gallons of gasoline, dyed diesel fuel, and undyed diesel fuel used in both on-highway and off-highway vehicles and equipment. A lessor who claims a refund of state fuel tax may include a separate refueling, fuel reimbursement, or fuel service charge on the invoice, if the invoice contains a statement that the fuel charge does not include state motor fuel taxes. The refund or credit for dyed or undyed diesel fuel used by a lessor of off-highway equipment expires on January 1, 2005.

(g) Refund or credit for gasoline or dyed and undyed diesel fuel used in a motor vehicle operated exclusively off-highway, except for incidental highway use. A claim for refund or credit may be filed by a person who used gasoline or dyed and undyed diesel fuel in motor vehicles incidentally on the highway, when the incidental travel on the public highway is infrequent, unscheduled, and insignificant to the total operation of the motor vehicle, and only for the purpose of transferring the base of operation or to travel to and from required maintenance and repair. A refund or credit for dyed or undyed diesel fuel used in a motor vehicle operated exclusively off-highway, except for incidental highway use, expires on January 1, 2005.

(1) A record that shows the date and miles traveled during each highway trip must be maintained.

(2) 1/4 gallon for each mile of incidental highway travel shall be deducted from the number of gallons claimed.

(h) Refund or credit for gasoline used in gasoline-powered motor vehicles equipped with power take-off or auxiliary power units. A person who files a claim for refund or a license holder who takes a credit on a tax return for gasoline used in the operation of power take-off or auxiliary power units must use one of the following methods in determination of the amount of gasoline used:

(1) direct measurement method. The use of a metering device, as defined by §3.435 of this title (relating to Metering Devices Used to Claim Refund of Tax on Gasoline Used in Power Take-Off and Auxiliary Power Units) is an acceptable method for determination of fuel usage. A person who claims a refund or credit for gasoline used to propel motor vehicles with approved measuring or metering devices that measure or meter the fuel used in stationary operations must maintain records on each vehicle so equipped, and the records must reflect:

(A) the miles driven as shown by any type of odometer or hubometer [~~hubmeter~~];

(B) the gallons delivered to each vehicle; and

(C) the gallons used as recorded by the meter or other measuring device;

(2) gasoline-powered ready mix concrete trucks and solid waste refuse trucks equipped with power take-off or auxiliary power units. Operators of gasoline-powered ready mix concrete trucks and solid waste refuse trucks that are equipped with power take-off or auxiliary power units that are mounted on the motor vehicle and use the fuel supply tank of the motor vehicle may claim refund on 30% of the total gasoline used in this state by each vehicle. A solid waste refuse truck means a motor vehicle equipped with a power take-off or auxiliary power unit that provides power to compact the refuse, open the back of the container before ejection, and eject the compacted refuse;

(3) mileage factor method. The nontaxable use may be determined by computing the taxable use at 1/4 gallon for each mile traveled, as recorded by the odometer or hubmeter and subtracting that amount from the total quantity of gasoline delivered into the motor vehicle fuel supply tanks. The remainder will be considered nontaxable, and a tax refund or tax credit may be claimed on that quantity of fuel;

(4) two tank method. A motor vehicle may be equipped with two fuel tanks and an automatic switching device that a spring-activated air release parking brake operates, and that switches from one tank that is designated for highway use to another tank that is not so designated when the vehicle is stationary. The highway tank and the not-for-highway tank may not be connected by crossover line or equalizer line of any kind. The tax paid on the gasoline delivered to the tank designated not-for-highway use may be claimed as a tax refund or taken as a tax credit. All gasoline delivered into the fuel supply tanks

of a vehicle that is equipped with an automatic switching device must be invoiced as taxable. Separate invoices must be issued for deliveries of fuel into each tank. A notation that indicates that fuel was delivered into the tank designated not-for-highway use must be made on invoices;

(5) fixed percentage method. In lieu of the use of one of the previously mentioned methods, the owner or operator of a gasoline-powered motor vehicle that is equipped with a power take-off or auxiliary power unit that is mounted on the vehicle may claim a credit or refund of the tax paid on 5.0% of the total taxable gasoline used in this state by each vehicle so equipped;

(6) proposed alternate methods. Proposals for the use of methods that this section does not specifically cover to determine the amount of gasoline used in power take-off operations or auxiliary power units may be submitted to the comptroller for approval;

(7) accurate mileage records must be kept regardless of the method used;

(8) beginning September 1, 2003, motor vehicle air conditioning and heating systems are no longer considered power take-off systems. A person may file a claim for refund of state taxes paid on gasoline used in the operation of an air conditioning or heating system prior to September 1, 2003.

(i) Refund or credit for gasoline or diesel fuel sold to or used by an exempt entity.

(1) A license holder, other than an aviation fuel dealer, may take a credit on a return for taxes paid on the purchase of gasoline or diesel fuel that is resold tax-free if the purchaser was one of the following entities:

(A) the United States or federal government and the purchase is for its exclusive use. The federal government means any department, board, bureau, agency, corporation, or commission that the United States government has created or wholly owns. Exclusive use by the federal government means use of fuel only in motor vehicles or other equipment that the federal government operates. A person operating under a contract with the federal government is not an exempt entity. Evidence that sales were made to the federal government must be maintained and consist of:

(i) a United States tax exemption certificate--Standard Form 1094 or similar certificate that includes the same information as the Standard Form 1094; or

(ii) copies of the invoice(s) when a United States National credit card--Standard Form 149, was used for the purchase, which invoice must include the license plate number or official vehicle designation, if fuel is delivered into the fuel supply tank of a motor vehicle; or

(iii) a copy of a contract between the seller and the federal government supporting the sales invoices or purchase vouchers;

(B) a Texas public school district and the purchase is for its exclusive use. Exclusive use by a public school district means use of fuel only in motor vehicles or other equipment that the public school district operates;

(C) a commercial transportation company with a contract to provide public school transportation services to a Texas public school district under Education Code, §34.008, and the gasoline or diesel is used exclusive to provide those services;

(D) a Texas non-profit electric cooperative organized under Utilities Code, Chapter 161, and telephone cooperative organized under Utilities Code, Chapter 162, and the purchase is for its exclusive use. Exclusive use by an electric or telephone cooperative

means use of fuel only in motor vehicles or other equipment that the electric or telephone cooperative operates.

(2) An exempt entity enumerated in paragraph (1)(A) - (D) of this subsection, may claim a refund of taxes paid on gasoline or diesel fuel purchased for its exclusive use.

(j) Refund or credit for gasoline or diesel fuel exported from Texas or sold for export.

(1) A person may claim a refund or a licensed supplier, permissive supplier, distributor, importer, exporter, or blender may take a credit on a return for taxes paid on gasoline or diesel fuel that the person or the license holder exports from this state in quantities of 100 or more gallons. Proof of export must be one of the following:

(A) proof of export that United States Customs officials have certified, if the fuel was exported to a foreign country;

(B) proof of export that a port of entry official of the state of importation has certified, if the state of importation maintains ports of entry;

(C) proof from the taxing officials of the state into which the fuel was imported that shows that the exporter has accounted for the fuel on that state's tax returns;

(D) other proof that the fuel has been reported to the state into which the gasoline or diesel fuel was imported; or

(E) a common or contract carrier's transporting documents (see §3.439 of this title (relating to Motor Fuel Transportation [~~Transporting~~] Documents)) that list the consignor and consignee, the points of origin and destination, the number of gallons shipped or transported, the date of export, and the kind of fuel exported;

(2) A licensed supplier, permissive supplier or distributor may take a credit on a return for taxes paid on gasoline or diesel fuel resold tax-free to a licensed supplier, permissive supplier, distributor, importer, or exporter for immediate export from this state under the following circumstances:

(A) a shipping document or bill of lading issued by the seller that shows the destination state;

(B) the purchaser (exporter) is licensed in Texas as a supplier, permissive supplier, distributor, importer, or exporter; and

(C) the purchaser is licensed in the destination state to pay that state's tax; or

(D) if the destination is a foreign country, a shipping document or bill of lading issued by the seller that shows the foreign destination.

(3) Effective January 1, 2006, a licensed supplier or permissive supplier must collect either the destination state's tax or Texas tax from the purchaser on gasoline or diesel fuel exported to another state.

(k) Refund or credit for gasoline or diesel fuel loss by fire, theft, or accident. A person may claim a refund or a license holder may take a credit on a return for taxes paid on 100 or more gallons of gasoline or diesel fuel loss by fire, theft, or accident. The claimant must maintain records of the incident that establishes that the exact quantity of fuel that has been claimed as lost was actually lost, and that the loss resulted from that incident. The time limitation prescribed in subsection (c)(1) of this section is determined by the date of the first incident of a multiple incident loss that totals 100 gallons or more. A claim for refund for loss by fire, theft, or accident shall be accompanied by fire department, police department, or regulatory agency reports as appropriate.

(1) If the incident is a drive-away theft at a retail outlet (i.e., theft occurs when a person delivers gasoline or diesel fuel into the fuel supply tank(s) of a motor vehicle at a retail outlet without payment for the fuel), the following documentation shall be maintained:

(A) a police department report or evidence that the incident of drive-away theft has been or will be taken as a deduction on the federal income tax return during the same or the subsequent reporting period; and

(B) separate report for each incident that the employee(s) who witnessed the event prepared and signed. The report must include the date and time of occurrence, type of fuel, number of gallons, outlet location, and, if the theft is reported to a police department, the police case number.

(2) If the accidental loss was incurred through a leak in a line or storage tank, the minimum proof required is:

(A) a statement by the person who actually dug up or otherwise examined the hole or leak. Such statement should articulate the extent of the leak, the date of the examination, and the person's name and title; and

(B) a statement of the actual loss as determined by computing the measured inventory next preceding the discovery of the accidental leak, plus motor fuel salvaged from the leaky tank or line, if any, less intervening withdrawals for sale or use.

(3) A person claiming a refund or credit under this subsection must take inventory on the first of each month and promptly correct the inventory for any loss that has occurred in the preceding month. If inventories have not been accurately or timely measured, or if complete records have not been kept of all withdrawals for sale or use as required by law, a claim for refund or credit cannot be honored for payment.

(l) Refund or credit for gasoline or diesel moved between terminals. A licensed supplier or permissive supplier may take a credit on a return for tax paid on gasoline or diesel fuel removed from an IRS registered terminal that is transferred by truck or railcar to another IRS registered.

(m) Refund or credit for gasoline or diesel fuel sold to or purchased by a licensed aviation fuel dealer.

(1) A licensed supplier, permissive supplier, or distributor may take a credit on a return for tax paid on gasoline or diesel fuel sold to a licensed aviation fuel dealer for delivery solely into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of a licensed aviation fuel dealer.

(2) A licensed aviation fuel dealer may claim refund for tax paid on gasoline or diesel fuel delivered into the fuel supply tanks of aircraft, aircraft servicing equipment, or into a bulk storage tank of another licensed aviation fuel dealer.

(n) Refund or credit for gasoline or diesel fuel used outside of Texas by a licensed interstate trucker. A licensed interstate truck may take a credit on a tax return for tax paid on gasoline or diesel fuel purchased in Texas and used outside of Texas in commercial vehicles operated under an interstate trucker license. The credit may be taken on the return for the period in which the purchase occurred. If the credit exceeds the amount of tax reported due on that return, the licensed interstate trucker:

(1) may carry forward the excess credit on any of the three successive quarterly returns until exhausted, or until the due date of the third successive quarterly return, whichever occurs first; or

(2) may seek refund of the excess credit by filing a claim for refund on or before the due date of the third successive quarterly return; or

(3) if returns are filed on an annual basis an interstate trucker may seek refund or credit no later than the due date of the annual return; and

(4) any remaining credit not taken on return or claimed as a refund before the prescribed deadline expires.

(o) Refund for gasoline or diesel fuel sold on Indian reservations. A retailer located on an Indian reservation recognized by the United States government may claim refund of tax paid on gasoline or diesel fuel resold tax-free to exempt tribal entities and tribal members. The retail dealer must maintain records that include the original purchase invoices that show that the state tax was paid and sales invoices that include:

(1) the name of the purchaser;

(2) the date of the sale;

(3) the number of gallons sold;

(4) the type of fuel sold; and

(5) a written statement that no state tax was collected or that it was a tax-free sale.

(p) Refund or credit for tax paid on diesel fuel used in moveable specialized equipment operated exclusively in oil field well servicing. A person may claim a refund or a license holder may take a credit on a return for taxes paid on diesel fuel consumed by moveable specialized equipment used exclusively in oil field well servicing equipment if:

(1) the person or license holder has received or is eligible to receive a federal diesel fuel tax refund under Internal Revenue Code, Title 26, and the moveable specialized equipment meet the following specific design-base and use-base tests.

(A) Design-base test.

(i) The chassis has permanently mounted to it (by welding, bolting, riveting, or other means) machinery or equipment to perform oil well servicing operations if the operation of the machinery or equipment is unrelated to transportation on or off the public highways;

(ii) the chassis has been specially designed to serve only as a mobile carriage and mount (and power source, if applicable) for the machinery or equipment, whether or not the machinery or equipment is in operation; and

(iii) the chassis could not, because of its special design, be used as part of a vehicle designed to carry any other load without substantial structural modification. A chassis that can be used for a variety of uses and body types (such as, a dump truck, flat bed, or box truck) is a highway chassis and would not qualify as a specially designed chassis.

(B) Use-base test. The use-based test is satisfied if the vehicle travels less than 7,500 miles on public highways during a calendar year.

(2) In addition to documentation requirements in Tax Code, §162.229, the person or license holder must maintain:

(A) a mileage or trip log for each moveable specialized equipment on an individual-vehicle basis consisting of:

(i) total miles traveled, evidenced by odometer or hubometer readings;

(ii) date of each trip on the public highways of this state and out of this state (starting and ending);

(iii) beginning and ending odometer or hubometer readings of each trip on the public highway;

(iv) odometer or hubometer readings entering Texas, and odometer or hubometer readings leaving Texas;

(v) power unit number or vehicle identification number or license plate number;

(B) Internal Revenue Service form 4136, if refund of federal excise tax claimed;

(C) verification that limited sales tax was paid on the movable specialized equipment, if purchased in Texas; and

(D) verification that an oversize/overweight permit is used to travel on the public highways of this state.

(3) Moveable specialized equipment licensed under the International Fuel Tax Agreement (IFTA). An IFTA licensee may only request a refund for tax paid on diesel fuel used in moveable specialized equipment licensed under the IFTA directly from the comptroller and separately from the IFTA tax return. A refund claim must be supported with purchase invoice(s) and trip or mileage logs described in paragraph (2) of this subsection.

(4) Recovery of refund. If a refund has been issued for movable specialized equipment for a partial calendar year, and it is determined that the movable specialized equipment traveled 7,500 miles or more on the public highways in that calendar year then the taxes previously refunded for that vehicle must be repaid to the comptroller.

(q) Refund of diesel fuel used in a medium to remove drill cuttings from a well bore in the production of oil or gas. A refund must be supported with purchase invoice(s) and distribution log described in Tax Code, §162.229.

(r) Refund of diesel fuel used as a feedstock in manufacturing. A person may claim a refund or a license holder may take a credit on a return for taxes paid on diesel fuel used as a feedstock in the manufacturing of tangible personal property for resale, but not as a motor fuel. A refund claim must be supported with purchase invoice(s), records showing the amount of diesel fuel used as feedstock and a description of the tangible personal property manufactured.

(s) [(p)] The right to receive a refund or take a credit under this section is not assignable.

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

Filed with the Office of the Secretary of State on September 12, 2007.

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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



**34 TAC §3.448**

The Comptroller of Public Accounts proposes an amendment to §3.448, concerning transportation services for Texas public school districts. This proposed amendment incorporates legislative changes in House Bill 3314, 80th Legislature, 2007, which amended Tax Code, Chapter 162 to authorize refunds of taxes paid on gasoline, diesel fuel and liquefied gas used by a metropolitan rapid transit authority to provide transportation services to a Texas public school district under a contract governed by Education Code, §34.008. This proposed amendment also prescribes the records required to be kept and the information required to be submitted by a metropolitan rapid transit authority to support a refund and examples on calculating refund. Subsection (h) is amended accordingly.

John Heleman, Chief Revenue Estimator, has determined that, for the first five-year period the proposed rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the rule will be in providing additional information concerning taxpayer responsibilities. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of Tax Code, Title 2.

The amendment implements Tax Code, §§162.104, 162.125, 162.1275, 162.204, 162.227, 162.2275, 162.3021, and 162.3022.

*§3.448. Transportation Services for Texas Public School Districts [(Tax Code, §§162.104, 162.125, 162.204, 162.227, and 162.3041)].*

(a) Effective date. This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.

(b) Application. To purchase gasoline or diesel fuel less the state tax and not prepay the liquefied gas tax for vehicles equipped to use liquefied gas, a commercial transportation company that provides transportation services to a public school district in Texas must submit to the comptroller an affidavit stating:

(1) that the company has contracted with a specific public school district to provide transportation services (other than charter trips) for the school district;

(2) that motor fuel purchased tax free will be used exclusively by the company to provide the transportation services for the school district; and

(3) the vehicle identification number and vehicle license plate number for each vehicle equipped to use liquefied gas to furnish transportation services exclusively to public school districts in Texas.

(c) Exception letter. After review and approval of the affidavit, the comptroller shall issue to the company a letter of exception specifying that the company may purchase tax free gasoline and/or diesel

fuel used to provide transportation services to a public school district in Texas. The letter of exception may be reproduced for licensed suppliers and licensed distributors. An exception letter shall be issued to the company for specific vehicles operated using liquefied gas. The letter may be furnished to inspectors when a liquefied gas-powered bus is undergoing a safety inspection and to liquefied gas dealers when the company purchases liquefied gas tax free to be placed into the fuel supply tank of the bus.

(d) Records required. A commercial transportation company providing transportation services to a Texas public school district shall keep separate records for tax-free and tax-paid fuels. Both sets of records must show:

(1) the number of gallons of gasoline, diesel fuel, and liquefied gas on hand on the first day of each month;

(2) the number of gallons of gasoline, diesel fuel, and liquefied gas purchased or received, showing the name of the seller and the date of each purchase;

(3) the date and number of gallons of gasoline, diesel fuel, and liquefied gas delivered into the fuel supply tanks of vehicles used to furnish transportation services to public school districts;

(4) the date and number of gallons of gasoline, diesel fuel, and liquefied gas delivered into the fuel supply tanks of vehicles used to furnish transportation services other than to public school districts;

(5) the date and number of miles traveled to provide transportation services for the public school district, including starting point, destination, purpose of trip, beginning and ending odometer readings, vehicle identification number, and the vehicle license plate number;

(6) the date and number of miles traveled to provide transportation services for customers other than public school district(s), including the beginning and ending odometer readings, vehicle identification number, and vehicle license plate number of the vehicle so used.

(e) Taxable use. A commercial transportation company forfeits its right to purchase fuel tax free if:

(1) the fuel is sold, other than to a Texas public school district for which the commercial transportation company provides transportation services; or

(2) the fuel is used in a vehicle for any purpose other than providing transportation services for a Texas public school district.

(f) Cancellation or completion of contract. A commercial transportation company shall report the following to the comptroller within five days of the cancellation or completion of a contract with a Texas public school district:

(1) the total number of gallons of tax-free gasoline and/or diesel fuel on hand in storage tanks and in the fuel supply tanks of motor vehicles, and remit the tax due on the ending tax-free inventory; and/or

(2) in the case of a liquefied gas vehicle, obtain a liquefied gas tax decal for previously excepted vehicles used to provide transportation services under the canceled/completed contract.

(g) Charter trips. A commercial transportation company that charters round-trip transportation to special events for a Texas public school district may claim a refund for the fuel used in the charter vehicle.

(1) The refund shall be computed by starting the trip with a full fuel supply tank or tanks, maintaining records of the fuel delivered into the fuel supply tank or tanks of the vehicle during the trip, and

filling the fuel supply tank or tanks upon arrival back at the origination point. The number of gallons delivered into the fuel supply tank or tanks after the start of the trip will be the number of gallons upon which the charter company may claim a tax refund.

(2) The records required by subsection (d)(5) of this section shall also be maintained for each charter trip.

(3) The commercial transportation company shall keep a copy of the billing to the school district for the trip.

(h) Refunds.

(1) A commercial transportation company providing transportation services to a Texas public school district may file a claim for refund of state taxes paid on gasoline and diesel fuel used exclusively for such transportation purposes.

(2) A metropolitan rapid transit authority operating under Transportation Code, Chapter 451, that is party to a contract governed by Education Code, §34.008, and that is providing transportation services to a Texas public school district may file a claim for refund of state taxes paid on gasoline, diesel fuel and liquefied gas used for such transportation services.

(A) A claim for refund must contain the following information by month for each vehicle used to provide public student transportation:

(i) total miles traveled, evidenced by odometer or hubometer readings and total miles traveled on public school transportation routes;

(ii) hours of service;

(iii) total fuel consumed;

(iv) total number of student passengers per route;

(v) total number of non-student passengers per route; and

(vi) records required by Tax Code, §162.127 and §162.229.

(B) A claim for refund cannot be made for a single route in any month of a school year in which the number of non-student passengers for that single route is greater than 5.0% of the total passengers for that single route.

(C) The gallons of gasoline or diesel fuel eligible for refund in a qualifying month for each vehicle is determined by multiplying the vehicle's average miles-per-gallon for that month by the miles traveled for public school transportation during that month.

Figure: 34 TAC §3.448(h)(2)(C)

(3) The amount of refund for liquefied gas is determined by dividing the amount paid for an annual liquefied gas tax decal by 12 and then for each qualifying month multiply by the percentage of miles traveled providing public school transportation services.

Figure: 34 TAC §3.448(h)(3)

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

Filed with the Office of the Secretary of State on September 12, 2007.

TRD-200704218



Martin Cherry  
General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387



## SUBCHAPTER GG. INSURANCE TAX

### 34 TAC §3.811

The Comptroller of Public Accounts proposes an amendment to §3.811, concerning election by reciprocal or interinsurance exchange pursuant to Insurance Code, Chapter 224. The rule is being amended to incorporate revised statute references throughout due to the recodification of the Insurance Code. The amendment will also delete subsection (g) to eliminate the language adopting the applicable agency form by reference.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the amendment would benefit the public by conforming the language to the statutory language and current practice. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Tax Code, §111.002 and §111.0022 which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Texas Insurance Code, Chapter 224.

*§3.811. Election by Reciprocal or Interinsurance Exchange Pursuant to [the] Insurance Code, Chapter 224 [Article 4.11C].*

(a) Reciprocal or interinsurance exchanges are subject to premium taxes as are all other licensed insurance carriers. A reciprocal or interinsurance exchange must either affirmatively elect to be subject to the tax imposed under [the] Insurance Code, Chapter 221 [Article 4.10], or it will be subject to the tax imposed under [the] Insurance Code, Chapter 224 [Article 4.11B].

(b) Election. Under [the] Insurance Code, Chapter 224 [Article 4.11C], a reciprocal or interinsurance exchange may elect to be taxed under Chapter 221 [Article 4.10].

(1) To make the election, a reciprocal or interinsurance exchange must submit a statement in writing on a form prescribed by the comptroller making such an election. The comptroller has developed form 25-208 for this purpose. This form must be filed no later than the 31st day before the beginning of the tax year the election is to be effective.

(2) A reciprocal or interinsurance exchange that elects to be taxed under [the] Insurance Code, Chapter 221 [Article 4.10], will continue to be taxed under that article for each tax year until written

notice is given to the comptroller that the election is withdrawn. The notice of withdrawal must be filed with the comptroller not later than the 31st day before the beginning of the tax year for which the withdrawal is to be effective.

(c) If a reciprocal or interinsurance exchange does not file an election as provided by this section or has withdrawn the election, the reciprocal or interinsurance exchange is subject to the tax imposed under [the] Insurance Code, Chapter 224 [Article 4.11B].

(d) [The] Insurance Code, Chapter 221 [Article 4.10, §10], imposes a tax equal to 1.6% of the gross premium receipts of insurance carriers transacting business under the authority of this article.

(e) [The] Insurance Code, Chapter 224 [Article 4.11B], imposes on each reciprocal or interinsurance exchange transacting business in this state an annual tax equal to 1.7% of its gross premium receipts.

(f) Failure to file and pay taxes as provided under [the] Insurance Code, Chapter 221, Chapter 224, §224.002 [Article 4.10, §10, Article 4.11B], or Chapter 224, §224.003 [Article 4.11C], will subject the taxpayer to penalty and interest under [the] Tax Code, Title 2, Subtitles A and B.

~~[(g) The Comptroller of Public Accounts adopts by reference form 25-208, Reciprocal or Interinsurance Exchange Election. Copies of the form are available for public inspection at the Office of the Secretary of State, Texas Register Division, or may be obtained from the Comptroller of Public Accounts, Account Maintenance Insurance, 111 East 17th Street, Austin, Texas 78774-0100. Copies may also be requested by calling toll free at 1-800-252-1387. In Austin, call 463-4600.]~~

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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Martin Cherry  
General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387



### 34 TAC §3.832

The Comptroller of Public Accounts proposes an amendment to §3.832, concerning assessment for the Office of the Public Insurance Counsel (OPIC) pursuant to Insurance Code, Chapter 501. Subsection (f) is being amended to incorporate revised statute references due to the recodification of the Insurance Code.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the amendment would benefit the public by conforming the language to the statutory language and current practice. This rule is adopted under Tax Code, Title 2, and does not require a statement of fiscal implications for small

businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under Tax Code, §111.002 and §111.0022 which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Texas Insurance Code, Chapter 501.

§3.832. *Assessment for the Office of Public Insurance Counsel (OPIC).*

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

(f) Penalty and interest. Failure to file and pay the assessment as provided under [the] Insurance Code, Chapter 501[Article 1.35B], will subject the taxpayer to penalty and interest under [the] Tax Code, Title 2, Subtitles A and B.

(g) Interest on refunds. Under [the] Tax Code, Title 2, a refund granted for a report period due on or after January 1, 2000, for an amount found to be erroneously paid, will include interest at the same variable interest rate charged on delinquent taxes. Interest accrues beginning the later of 60 days after the date of payment or the due date of the tax report and ending on either the date of allowance of the credit on account or a date not more than 10 days before the date of the refund warrant. A refund for a report period due before January 1, 2000, does not accrue interest. Interest does not accrue on a credit taken on a taxpayer's return.

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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Martin Cherry

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

#### CHAPTER 151. GENERAL PROVISIONS

##### 37 TAC §151.71

The Texas Board of Criminal Justice proposes amendments to Title 37, Part 6, Chapter 151, General Provisions, §151.71, Marking of State Vehicles of the Department of Criminal Justice. The proposed revisions are necessary to correct outdated statutory cites, conform to existing organizational structure,

and add an exemption for vehicles operated by field officers to conduct home visits of offenders under supervision.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that, for the first five (5) years the proposed rule amendment will be in effect, enforcing or administering the rule proposal will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule proposal. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the rule proposal, will be to ensure the safety of employees as they fulfill their responsibilities.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule in the *Texas Register*.

The amendments are proposed under Texas Government Code, §721.003.

Cross Reference to Statutes: Texas Government Code, §721.002.

§151.71. *Marking of State Vehicles of the Department of Criminal Justice.*

(a) Except as provided in subsections (b) and (c) of this section, all Texas Department of Criminal Justice (TDCJ) [~~TDCJ~~] vehicles shall be inscribed in accordance with Texas Transportation Code §721.002 and §721.003. [~~Civil Statutes, Article 6701m-1.~~]

(b) The purposes for not inscribing TDCJ vehicles are to legitimately maintain anonymity for law enforcement purposes, to avoid damage to a vehicle or danger to staff that could occur if the vehicle [it] were identified as a TDCJ vehicle and [~~vehicle, or~~] to avoid hindrance of TDCJ efforts in an emergency, such as an escape, attempted escape, or riot. Accordingly, the following vehicles are exempt from inscription:

(1) vehicles used for surveillance, undercover work, or investigation of law or TDCJ policy violations by the Office of the Inspector General [Internal Affairs Division] or any other investigatory unit within the TDCJ; [~~and~~]

(2) vehicles assigned to officials holding administrative positions whose jobs require response to emergency situations involving offenders; and [~~offenders.~~]

(3) vehicles used to conduct home visits of offenders under supervision of the Agency.

(c) The TDCJ [~~department~~] shall establish a procedure for determining whether a vehicle is subject to an exemption in subsection (b) of this section. If the Executive Director [executive director] determines that a vehicle should be exempt but does not fit into an exemption under subsection (b) of this section, the Executive Director [executive director] may authorize the non-inscription of the vehicle subject to ratification at the next regularly scheduled [~~board meeting.~~] meeting of the Texas Board of Criminal Justice (Board). Ratification may be by inclusion under [on the] consent items on the Board's meeting agenda at such meeting as described above. [~~of the board.~~]

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

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

TRD-200704249

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422



## CHAPTER 155. REPORTS AND INFORMATION GATHERING

### SUBCHAPTER B. SITE SELECTION AND FACILITY NAMES

#### 37 TAC §155.23

The Texas Board of Criminal Justice proposes amendments to §155.23, Site Selection Process for the Location of Additional Facilities. The proposed amendments are necessary to conform to state law and add clarity.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that, for the first five (5) years the proposed rule amendment will be in effect, enforcing or administering the rule amendment will not have foreseeable implications related to costs or revenues for state or local government.

Mr. Marsh has also determined that, for the first five (5) year period, there will not be an economic impact on persons required to comply with the rule proposal. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the rule proposal, will be to give the public notice of the process for selecting sites for new facilities.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule proposal in the *Texas Register*.

The amendments are proposed under Texas Government Code, §492.013 and §496.007.

Cross Reference to Statutes: Texas Government Code, §§493.009, 509.001, 508.118, 508.119, and 508.320; Chapter 495, Subchapter A; Chapter 499, Subchapters B, E, and G; Chapter 507.

§155.23. *Site Selection Process for the Location of Additional Facilities.*

(a) Purpose. This rule establishes [Agency] policy for determining the location of new TDCJ facilities in a manner that is fair and open, and that results in facility [facilities] sites that are cost-effective for construction and operations, and sensitive to the ultimate mission of the facilities sited. Determining the location of a new facility [~~stand alone facility or expansion of an existing facility~~] designed to house and support offenders is a process requiring the review and analysis of a number of factors, including cost-effectiveness, logistical support requirements, operational concerns, and legal mandates. Generally, funding priorities shall [will] dictate that such facilities be located on State-owned property, or on land acquired at no cost to the State. Additions to existing facilities subject to Board decision under this subsec-

tion are not governed by the procedures in this rule for new facilities. For additions to existing facilities, see Chapter 152, Subchapter B, of this title.

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

(1) Agency or TDCJ--The Texas Department of Criminal Justice.

(2) Board or TBCJ--The Texas Board of Criminal Justice.

(3) Facility--A substantially self-contained, permanently constructed correctional facility for housing offenders. This includes prison units, state [State] jails, transfer facilities and Substance Abuse Felony Punishment (SAFP) facilities, but does not include [~~intermediate sanction facilities,~~] community corrections facilities, as defined by Texas Government Code, [in] §509.001, or parole facilities defined in §§508.118, 508.119[,] or 508.320, of the Texas Government Code.

(4) Prison Unit [unit ]--Includes a private prison under Texas Government Code, Chapter 495, Subchapter A, a psychiatric unit and a unit whose capacity is determined under, and regulated by Texas Government Code, Chapter 499, Subchapters B (Population Management), and E (Unit and System Capacity). [unit, or a facility the capacity of which will be determined under, and regulated by Texas Government Code, Chapter 499, Subchapters E (Unit and System Capacity), and B (Population Management).]

(5) SAFP Facility--A Substance Abuse Felony Punishment [~~facility - substance abuse felony punishment~~] facility authorized by Texas Government Code, §493.009.

(6) State Jail [jail]--A state [State] jail felony facility authorized by Texas Government Code, Chapter 507.

[~~(7) TDCJ - The Texas Department of Criminal Justice.~~]

(7) [~~(8)~~] Transfer Facility [~~Transfer facility~~]--A facility authorized by Texas Government Code, Chapter 499, Subchapter G.

(c) Procedures. [~~It is the policy of the Board that the location of any additional facility operated by the TDCJ be carefully considered in accordance with this policy.~~]

(1) The Legislative Budget Board is [~~Texas Criminal Justice Policy Council is the State agency~~] responsible for projecting the demand for prison unit, state [State] jail, SAFP facility and transfer facility beds. Based on these projections, a plan shall be developed by the TDCJ staff and adopted by the Board that details how any additional bed needs shall [will] be met. This plan shall [will] be presented to the legislature with a request for appropriations. With respect to new facilities requiring the selection of a site, [siting,] the plan adopted by the Board shall [will] include:

(A) Recommendations [~~recommendations~~] for specific types of facilities needed by the TDCJ, the approximate size of each facility [~~facility,~~] and regional distribution by facility type that is needed;

(B) A [a] description of the mission of the recommended facilities;

(C) A [a] description of the type of offenders to be housed in each facility and the programming requirements for that population; and

(D) Any [~~any~~] recommendations for redesignation and renovation of existing facilities.

(2) Site selections shall be made in accordance with and through a Request for Proposals (RFP) process, unless the Board deter-

mines that land currently owned by the State shall be used as the site for the location of additional facilities, in which case a RFP process shall not be required. The RFP shall be based on the array of facilities authorized and appropriated for by the legislature. For each round of site selections, the RFP shall specify: [Site selections will be made in accordance with and through a Request for Proposals (RFP) process, published in the Texas Register. The RFP shall be formulated and issued under the direction of the Board beginning immediately after the legislature has completed the appropriations bill. The RFP will be based on the array of facilities authorized and appropriated for by the legislature. For each round of site selections, an RFP will be developed that specifies:]

- (A) Types [~~types~~] of facilities needed;
- (B) Minimum [~~minimum~~] acreage and site characteristics required [~~requirements~~] for each facility type;
- (C) Requirements [~~requirements~~] for geotechnical information based on drilling matrix and site preparation requirements;
- (D) Requirements [~~requirements~~] for verified documentation of the absence of any environmental problems and historical preservation conditions;
- (E) Requirements [~~requirements~~] for supporting information such as easement, utility and topographical maps;
- (F) Requirements [~~requirements~~] for description of land values, transferability of mineral rights, surface leases, easements, title report, warranty deed, aerial photographs and other issues affecting the timely transferability of a site;
- (G) Transportation [~~transportation~~] and utility requirements; and
- (H) Requirements [~~the requirements~~] for soliciting [~~solicited~~] citizen input and state [~~State~~] and local elected official input regarding a specific site.

(3) Under [~~Staff review will be conducted under~~] the direction of the TDCJ Executive Director, [~~Director. Planning and Programming within~~] the Facilities Division shall [~~will~~] have the responsibility to coordinate the site selection process. [~~process for the Executive Director.~~] In accordance with the Board approved criteria and process, the TDCJ staff shall [~~staff will~~] be responsible for the development of the RFP, devising and completing scoring instruments as well as [~~and~~] cost analysis for Board review and action. Information presented to the Board shall:

- (A) Be [~~be~~] structured in a uniform format as illustrated in the Facilities Division policies and procedures;
- (B) Include data from a weighted scoring evaluation system that objectively assesses each site based on the proposal, the site visit and the supporting information that was developed before any review, and was based on the Facilities Division policies and procedures and on the requirements outlined in the RFP; [~~include data from a weighted scoring evaluation system that was developed before any review, and based on the Facilities Division policies and procedures as well as on the requirements as outlined in an RFP; that objectively assesses each site based on the proposal; site visit and support information;~~]
- (C) Include [~~include~~] life-cycle cost calculations for a specific time period for each responsive proposal; [~~and~~]
- (D) Include information relating to the workforce available in the area surrounding each proposed site from which the Agency would recruit correctional staff; and

(E) [~~Identify~~] Identify [~~identify~~] and explain any deviations from the approved process.

(4) Any selection process shall take into consideration the intent of the legislature to locate each facility:

- (A) In [~~in~~] close proximity to a county with 100,000 or more inhabitants to provide services and other resources provided in such a county;
- (B) Cost-effectively [~~cost-effectively~~] with respect to its proximity to other facilities in the TDCJ;
- (C) In [~~in~~] close proximity to an area that would facilitate release of offenders or persons to their area of residence;
- (D) In [~~in~~] close proximity to an area that provides adequate educational opportunities and medical care;
- (E) In [~~in~~] close proximity to an area that would be capable of providing hospital and specialty clinic medical services, as well as a sufficient pool of medical personnel from which to recruit and contract; [~~and~~]
- (F) On [~~on~~] State-owned or donated land; and [~~land.~~]
- (G) In close proximity to an area that provides adequate utility infrastructure and services at competitive prices to include electricity, natural gas, water, sewer and solid waste for full requirements and expansion possibilities.

(5) The Board shall be [~~is~~] responsible for site selection, but may request that the TDCJ staff provide a short list of recommended sites or a preference ranking of sites with an explanation for the recommendation or ranking. Staff recommendations shall be determined through the [~~based on~~] scoring of [~~the~~] information contained in each submitted proposal based on RFP requirements, actual site assessment, and information obtained from external and internal sources for each site. Staff recommendations may include, and the Board may select, a site other than one contained in the submitted proposals if the site is on State-owned land.

[(6) Additions to existing facilities subject to Board decision under this subsection are not governed by the procedures in this rule for new facilities. Staff shall make recommendations, and the Board shall make the site selection decision, for additions to existing facilities if the Board would not otherwise be responsible for the decision under this rule or §152.12 of this title (relating to Methodology for Changing Maximum Unit and System Population); and:]

- [(A) the addition will increase the monthly gross payroll of the facility it is added to by \$500,000 or more; or]
- [(B) staff has reason to know that the Board should make the site selection decision.]

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

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

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Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
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## TITLE 43. TRANSPORTATION

### PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

#### CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §§57.1 - 57.4, 57.6 - 57.11, 57.13 - 57.15, 57.18 - 57.20, 57.22 - 57.30, 57.32 - 57.36, 57.40 - 57.42, 57.44, 57.46, 57.48 - 57.57

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes amendments to Chapter 57, §§57.1 - 57.4, 57.6 - 57.11, 57.13 - 57.15, 57.18 - 57.20, 57.22 - 57.30, 57.32 - 57.36, 57.40 - 57.42, 57.44, 57.46, 57.48 - 57.57, in conjunction with its review of this chapter pursuant to Texas Government Code, §2001.039. See ABTPA's proposed plan of review, published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2377). The ABTPA has reviewed this chapter and determined that the reasons for this chapter continue to exist.

Additionally, it is proposing amendments to certain sections for clarity and consistency as well as to update the rules to conform to current policy and practice. The 80th Legislature passed House Bill (H.B.) 1887, which added the prevention and investigation of burglary of motor vehicles to the ABTPA's mission and amendments are proposed to reflect this expanded mission. H.B. 1887 also changes the names of the ATPA to become the "Automobile Burglary and Theft Prevention Authority," or ABTPA, and Chapter 57 is being amended to reflect this change in name.

Other amendments are proposed to update Chapter 57 as a result of changes from the passage of H.B. 3225, also enacted this past legislative session. H.B. 3225 changes the ABTPA statute to replace the word "automobile" with a broader term "motor vehicle" throughout the statute. These legislative changes were made so that reporting of grant activities would be consistent with the Uniform Crime Report and to provide more flexibility to law enforcement agents in preventing motor vehicle and burglary theft in Texas.

Susan Sampson, Director, has determined that, for each of the first five years the proposed amendments will be in effect, there will be no additional fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Ms. Sampson has also determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated will be more clearly stated and organized rules governing ABTPA programs. There are no anticipated economic costs to persons required to comply with the amendments as proposed and there will be no effect on a local economy. There is no anticipated adverse economic effect on small or micro businesses as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to Susan Sampson Director, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731 for a period of 30 days from the date that the proposed actions are published in the *Texas Register*.

These amendments are proposed under Texas Civil Statutes, Article 4413(37), §6(a). The ATPA interprets §6(a) as authorizing it to adopt rules implementing its statutory powers and duties.

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

#### §57.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. ABTPA--The Automobile Burglary and Theft Prevention Authority [~~ATPA--The Automobile Theft Prevention Authority~~].

#### §57.2. Applicability.

(a) These rules shall apply only to applications and grants awarded to local general purpose units of government, state agencies, independent school districts, nonprofit, and for profit organizations under the [ATPA] Grant Program.

(b) The ABTPA [ATPA] Grant Program is divided into five program categories which reflect the statutory purposes of the ABTPA [ATPA] as follows:

- (1) Law Enforcement, Detection and Apprehension;
- (2) Prosecution, Adjudication and Conviction;
- (3) Prevention, Anti-Theft Devices and Automobile Registration;
- (4) Reduction of the Sale of Stolen Vehicles or Parts; and
- (5) Public Awareness, Crime Prevention, and Education.

#### §57.3. Compliance Adoption by Reference.

Grantee/applicants shall comply with all applicable state and federal statutes, rules, regulations, and guidelines. The ABTPA [ATPA] adopts by reference the following statutes, documents, and forms. Information regarding these adoptions by reference may be obtained from the Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue Austin, Texas 78731, (512) 374-5101:

- (1) federal guidelines:
  - (A) Office of Justice Assistance, Research, and Statistics, OJARS Guideline Manual, OJARS M7100.1D, Financial and Administrative Guide for Grants;
  - (B) United States General Accounting Office, Standards for Audit for Governmental Organizations, Programs, Activities and Functions;
  - (C) United States General Accounting Office, Guidelines for Financial and Compliance Audits of Federally Assisted Programs;
  - (D) Office of Management and Budget, Circular Number A-128, Audits of State and Local Government;
  - (E) Office of Management and Budget, Circular Number A-133, Audits of Institutions of Higher Education and Other Non-profit Organizations;
- (2) Uniform Grant and Contract Management Standards, developed under directive of the Uniform Grant and Contract Management Act of 1981, Texas Civil Statutes, Article 4413(32g);
- (3) The annual Criminal Justice Plan for Texas developed by the Office of the Governor, Criminal Justice Division;
- (4) Automobile Burglary and Theft Prevention Authority Grant Program: application kit;
- (5) Automobile Burglary and Theft Prevention Authority Grant Program: Grant Administrative Guide; [~~Grant Administration Guidelines~~];
- (6) ATPA Forms:

- (A) statement of grant award;
- (B) grantee acceptance notice;
- (C) grantee's request for funds;
- (D) grant adjustment notice;
- (E) grantee's progress report;
- (F) report of expenditure and status of funds;
- (G) property inventory.

§57.4. *Eligible Applicants.*

State agencies, local general purpose units of government, independent school districts, nonprofit, and for profit organizations are eligible to apply for grants for motor vehicle [automobile] theft prevention assistance projects. Nonprofit and profit organizations shall be required to provide with their grant applications sufficient documentation to evaluate the credibility and the community support of the organization and the viability of the organization's existing activities in the context of providing motor vehicle [automobile] theft prevention assistance; the documentation shall be in compliance with §57.3 of this title (relating to Compliance[;] Adoption by Reference).

§57.6. *Grant Applications.*

(a) Grant applications for the motor vehicle and burglary [automobile] theft prevention grant programs must be prepared in accordance with all applicable documents, forms, and guidelines adopted by reference under §57.3 of this title (relating to Compliance[;]Adoption by Reference).

(b) Grant applications [submitted to the ATPA] must include the names, titles, addresses, and telephone numbers of the authorized official, project director, and financial officer of each grant submitted for consideration.

§57.7. *Review of Grant Applications.*

(a) The ABTPA [ATPA] will review only those grant applications that are submitted in compliance with the applicable documents and forms adopted by reference under §57.3 of this title (relating to Compliance[;] Adoption by Reference).

(b) The ABTPA [ATPA] staff will review grant applications for compliance with the ABTPA [ATPA] guidelines.

(c) The ABTPA [ATPA] staff may recommend award of a grant, award of a grant with modification, or rejection of a grant application.

(d) The ABTPA [ATPA] staff recommendations shall be based on applicable statutory requirements, rules, guidelines, fiscal constraints, and administrative policies.

§57.8. *Revision of Grant Application.*

The ABTPA [ATPA] may require revision of a grant application to comply with all applicable state and federal laws, guidelines, rules, regulations, and applicable administrative and financial requirements for motor vehicle [automobile] theft prevention assistance projects.

§57.9. *Nonsupplanting Requirement.*

(a) Texas Civil Statutes, Article 4413(32a), §6(a)(7), requires that state funds provided by this Act shall not be used to supplant state or local funds. Public Law 98-473 requires that federal funds provided by that Act shall not be used to supplant state or local funds.

(b) Each grantee shall certify that ABTPA [ATPA] funds have not been used to replace state or local funds that would have been available in the absence of ABTPA [ATPA] funds. The certification shall be

incorporated in each grantee's report of expenditure and status of funds referred to under §57.3(6) of this title (relating to Compliance Adoption by Reference).

§57.10. *Nonlobbying Certification.*

(a) Each grantee shall certify that none of the grant funds, regardless of their source or character, including local cash contribution, shall be used in any manner to influence the outcome of any election or the passage or defeat of any legislative measure.

(b) A finding that a grantee has violated this certification shall result in the immediate termination of funding of the project and the grantee shall not be eligible for future funding from the ABTPA [ATPA].

§57.11. *Bonding and Insurance.*

Each private nonprofit organization directly receiving grant funds from the ABTPA [ATPA] must secure and maintain a commercial bond against the loss or theft of ABTPA [ATPA] grant funds.

§57.13. *Award and Acceptance of Grant Award*

(a) The ABTPA [ATPA] shall notify a grant applicant of final action on its grant application.

(b) Each grantee shall accept or reject a grant award in the form and manner prescribed by the ABTPA [ATPA] within 30 days of the grant award date. In any event, failure by the grantee to execute the grantee acceptance notice within 30 days of the award date shall be construed as a rejection of the grant award.

§57.14. *Approval of Grant Projects.*

(a) The ABTPA [ATPA] will approve funding for projects on an annual basis, subject to continuation of funding through state appropriations and availability of funds.

(b) To be eligible for consideration for funding, a project must be designed to support one of the following ABTPA [ATPA] program categories:

- (1) Law Enforcement, Detection and Apprehension;
- (2) Prosecution, Adjudication and Conviction;
- (3) Prevention, Anti-Theft Devices and Automobile Registration;
- (4) Reduction of the Sale of Stolen Vehicles or Parts; and
- (5) Public Awareness, Crime Prevention, and Education.

(c) In evaluating a project for funding, the ABTPA [ATPA] will consider:

(1) components of auto burglary and theft, including the auto theft rate (ratio of automobile burglaries or thefts in this state to the number of automobiles in this state [registered vehicles]), of the grantee's program area and its impact on the statewide auto theft rate;

(2) performance measures and the likelihood of success of the project. An application for a continuation grant will be evaluated on past performance as reflected in the project's success to date in meeting its goals, objectives, and performance measures;

(3) the performance of an applicant on other projects funded by the ABTPA [ATPA];

(4) recommendations by ABTPA [ATPA] staff on funding allocations for the grant year and on individual grant applications. Staff recommendations on individual grant applications will be based on staff's review and ranking of each grant application as reflected in the ABTPA [ATPA] Application Review Instrument for each application; and

(5) the total number of grant applications submitted for the grant year and by program category, in relation to the total grant money available and its allocation among the five program categories, as determined by the ABTPA [ATPA].

(d) Grant award decisions by the ABTPA [ATPA] are final and not subject to judicial review.

#### §57.15. *Implementation of Grant.*

Each grantee shall implement the grant within 45 days of the designated start date indicated on the grant award statement. Failure by the grantee to implement a grant within 45 days will be construed by the ABTPA [ATPA] as the grantee's relinquishment of the grant award. Any exception to this rule will require the review and written approval of the ABTPA [ATPA] director.

#### §57.18. *Grant Adjustments.*

The grantee must secure prior written approval from the ABTPA [ATPA] director for any of the following:

- (1) changes in the need, objectives, approach, or geographical location of the grant;
- (2) transfers of funds among direct cost categories exceeding 5.0% of the total grant budget;
- (3) changes in the number or job descriptions of personnel specified in the grant agreement;
- (4) changes in equipment amounts, types, or methods of acquisition;
- (5) changes in the grant or liquidation periods; or
- (6) other changes for which the grant agreement or uniform grant and contract management standards require prior approval. The grantee must provide written notification to the ABTPA [ATPA] director within five days from the date of any change in the project director, financial officer, or authorized official.

#### §57.19. *Grant Extensions.*

A grantee may submit a written request for a grant extension prior to the end of the project grant period; however, only in extraordinary circumstances will an application for an extension of the project grant period be granted by the director of the ABTPA [ATPA].

#### §57.20. *Requests for Funds.*

All grantee requests for funds shall be submitted to the ABTPA [ATPA] in accordance with the instructions provided by the ABTPA [ATPA] and shall be in the form required by the ABTPA [ATPA]. Requests for funds will not be honored until any special condition which is a part of the statement of grant award, and which requires a specified action by the grantee before grant funds may be released, has been satisfied.

#### §57.22. *Third Party Participation.*

(a) The grantee will retain ultimate control of and responsibility for the grant project and any contractor shall be bound by grant agreements, grant conditions, and any other requirements applicable to the grantee.

(b) Contracts, including any amendments, must be reviewed and approved as to form by the ABTPA [ATPA] director, prior to the release of any funds under the contract when the amount is \$15,000 or more.

#### §57.23. *Financial, Progress, and Inventory Reports.*

Each grantee shall submit financial, progress, and inventory reports in accordance with the instructions provided by the ABTPA [ATPA]. All reports shall be submitted in accordance with the prescribed ABTPA [ATPA] forms for such reports. Financial and inventory reports must be

signed by the financial officer. Progress reports must be signed by the project director. Inventory reports are to accompany the final financial report.

#### §57.24. *Deobligation of Grant Funds.*

Any unobligated funds remaining with the grantee shall be returned immediately to the ABTPA [ATPA] with the final financial report.

#### §57.25. *Cancellation of Project.*

The grantee shall notify the ABTPA [ATPA], in writing, of the cancellation of any approved project immediately upon the determination to cancel the project.

#### §57.26. *Misappropriation of Funds.*

The grantee must, immediately upon discovery, report to the ABTPA [ATPA] any evidence of misappropriation of funds.

#### §57.27. *Withholding Funds from Grantees.*

The ABTPA [ATPA] may withhold funds from a grantee when determination is made that the grantee has failed to comply with established rules, guidelines, standard grant conditions, special grant conditions, or contractual agreements on which the award of such grant is predicated or when ABTPA [ATPA] funds are depleted or insufficient to fund allocations.

#### §57.28. *Conditions for Withholding Funds from Grantees.*

(a) Withholding funds from specific projects. Funds may be withheld from a specific project for reasons which include, but are not limited to, the following:

- (1) failure to comply with any applicable federal or state laws, rules, regulations, policies, or guidelines, or with the terms, condition standards, or stipulations of any grant agreements;
- (2) failure to submit reports of expenditures and status of funds, grantee's progress reports, or special required reports at the times and in the form established for such reporting;
- (3) significant deficiencies or irregularities in records maintained by the grantee or its agent for operation and/or administration for the grant project;
- (4) failure to conduct the grant project according to the terms of the application for grant, the statement of grant award, the grantee acceptance notice, or a grant adjustment notice;
- (5) failure to comply with any standard or special condition which has been made a part of the statement of grant award by reference or inclusion therein, or through the issuance of a grant adjustment notice; or
- (6) failure to commence project operations within 45 days of the project start date.

(b) Withholding funds from all projects. Funds may be withheld from all projects operated by a grantee for reasons which include, but are not limited to, the following:

- (1) failure to respond to any deficiency listed in this section;
- (2) failure to return to the ABTPA [ATPA] within the required time any unused grant funds remaining on the expired grant; or
- (3) refusal or an unwillingness to return to the ABTPA [ATPA] any grant funds which have been shown by an audit report and the audit review board to have been improperly accounted for or expended for ineligible purposes under a grant that has expired.

(c) Notification of withholding of funds. The ABTPA [ATPA] shall notify grantees of all deficient conditions constituting grounds for withholding funds and may give advance notification that funds will

be withheld unless the deficient conditions are corrected by a specified date.

(d) Appeals to the ABTPA [ATPA]. Grantees may, within 10 days of receiving notification, request in writing a reconsideration of the determination to withhold funds. The request shall be directed to the director of the ABTPA [ATPA], together with any documentation in support of the reconsideration. The director will review the determination to withhold funds based on the documentation submitted. The director will make a final determination, which will be transmitted in writing to the grantee.

(e) Release of funds. Funds shall be released when the ABTPA [ATPA] has been provided with satisfactory evidence that the deficient conditions have been corrected.

§57.29. *Termination for Cause.*

(a) The ABTPA [ATPA] may terminate any grant for failure to comply with any of the following:

(1) applicable federal or state laws, rules, regulations, policies, or guidelines;

(2) terms, conditions, standards, or stipulations of grant agreements; or

(3) terms, conditions, standards, or stipulations of any other grant awarded to the grantee.

(b) Termination of grants for cause shall be based on finding that:

(1) deficient conditions make it unlikely that the objectives of the grant will be accomplished;

(2) deficient conditions cannot be corrected within a period of time adjudged acceptable by the ABTPA [ATPA];

(3) a grantee has acted in bad faith.

(c) The ABTPA [ATPA] shall notify grantees of the conditions and findings constituting grounds for termination.

(d) Unexpended or unobligated funds awarded to a grantee shall, upon termination of a grant, revert to the ABTPA [ATPA].

(e) A grantee may be adjudged ineligible for future grant award if a grant awarded to the grantee is terminated for cause.

§57.30. *Appeal of Termination of Grant.*

(a) A grantee may appeal the termination of a grant by writing to the director of the ABTPA [ATPA] within 10 days from the date of the suspension or termination notification.

(b) The grantee may submit written documentation in support of the appeal.

(c) The director of the ABTPA [ATPA] shall consider any documentation submitted by a grantee in support of an appeal and make a recommendation to the ABTPA [ATPA] on a grantee's appeal.

(d) The decision of the ABTPA [ATPA] is final and not subject to judicial review.

§57.32. *Funding of Vehicle.*

Funding for the lease/purchase of vehicles may be provided for undercover, unmarked, or other vehicles normally associated with enforcement or undercover units. Funding for lease/purchase of vehicles is limited to ABTPA Grant Programs [automobile theft prevention programs].

§57.33. *Uniform Crime Reporting.*

Each criminal and juvenile justice agency receiving funds from the ABTPA [ATPA] or that benefits from funds awarded by the ABTPA

[ATPA] to another agency must, as a condition precedent to any grant award, comply fully with reporting requirements of the Texas Uniform Crime Reporting Program, Department of Public Safety.

§57.34. *Funding for Project Promotion.*

Funds may be used by the ABTPA [ATPA] and Grantees for promotional items to enhance auto theft crime prevention efforts. Items such as pens, magnets, tee shirts, bags, or hats may be purchased with ABTPA [ATPA] funds to distribute at Public Awareness/Education events. Funds may be provided for project promotion through paid advertisement, such as billboards, television, newspaper, or radio announcement. Production costs for public service announcements are an allowable expense. It is the intent of the ABTPA [ATPA] to promote the grant program and prevention efforts with administrative funds.

§57.35. *Requirements for Funding.*

Continuation funding for local projects will be considered for staff recommendations to the ABTPA [ATPA] only if the following requirements have been satisfied:

(1) the project is eligible for funding in accordance with the requirements set forth in this chapter, the ABTPA's [ATPA's] application kit, and the ABTPA's [ATPA's] grant administration guidelines;

(2) all administrative, program, and financial requirements are complete; and

(3) the project's detailed budget provides for the respective share of cash contribution required for that year of funding if additional funding is requested under §57.36(d) of this title (relating to Level of Funding for Grant Projects).

§57.36. *Level of Funding for Grant Projects.*

(a) Except as provided in subsection (f) of this section, the level of ABTPA [ATPA] funding for a project may not exceed the following annual rates:

(1) Years 1 and 2--100% of the grant request for each year.

(2) Year 3 and thereafter--80% of the second year award.

(b) Projects that have been funded previously from federal or other private sources may apply for ABTPA [ATPA] funding as continuation grants. The ABTPA [ATPA] will assume funding of the project at a ratio level commensurate with the project's funding history.

(c) Equipment costs funded by the ABTPA [ATPA] during a project's first year shall be deducted before the calculation of subsequent year funding.

(d) A grantee must contribute a cash match of 20% of the total ABTPA [ATPA] award, for each year of funding, in order to be eligible for ABTPA [ATPA] funds.

(e) A grantee awarded ABTPA [ATPA] funds must expend its 20% cash contribution prior to the expenditure of any ABTPA [ATPA] funds.

(f) A grantee, in an 80% funding year, may apply for additional funding above 80% of the second year award, including for the consolidation of existing grant programs or the inclusion of new agencies in a current grant program.

§57.40. *Audit Requirements for Nonprofit Organizations.*

(a) Audit responsibilities. Grantees have the responsibility to provide for an independent audit of their activities annually. The required audits are to be on an organization-wide basis as opposed to a grant-by-grant basis.



(b) Audit objectives. The audit objective is to review the recipient's administration of grant funds and required nonfederal contributions for the purpose of determining whether the recipient has:

(1) established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

(2) prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

(3) prepared financial reports (including financial status reports, cash reports, and claims for advances and reimbursements) which contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements; and

(4) expended state funds in accordance with the terms of applicable agreements and those provisions of state law or regulations that could have a material effect on the financial statements, or on the awards tested.

(c) Audit standards. Audits are to be conducted in accordance with the financial and compliance audit provisions of the United States General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities, and Functions, adopted by reference under §57.3 of this title (relating to Compliance[;] Adoption by Reference).

(d) Audit Reports. Grantees are required to forward a copy of each completed audit report to the ABTPA [ATPA] immediately upon receipt of that report.

*§57.41. Known or Suspected Violations of Laws.*

Knowledge or suspicion of any legal violations that are encountered during audits--including fraud, theft, embezzlement, forgery, or serious irregularities--must be communicated in writing to the local prosecutor's office and the ABTPA [ATPA] immediately upon discovery.

*§57.42. Grantee's Response to Audit Exceptions.*

(a) A grantee may, within a reasonable time not to exceed 10 working days, give notice of intent to submit documentation to respond to exceptions contained in an audit report by the ABTPA [ATPA] or that has been forwarded to the ABTPA [ATPA] by an independent auditor.

(b) A grantee may submit documentation, either in person or by mail, to the ABTPA [Automobile Theft Prevention Authority], 4000 Jackson Avenue Austin, Texas 78731, Attention: Director.

*§57.44. Audit Review Board.*

(a) The Audit Review Board will consist of three members appointed by the ABTPA [ATPA] director, who will review the documentation for legal, financial, and program acceptability under state rules, regulations, and guidelines.

(b) The Audit Review Board will make recommendations to the director for approval, disapproval, or approval as modified of audit exceptions. The determination by the director will be in writing to the grantee within 30 days.

*§57.46. Refunds to the ABTPA [ATPA] on Audit Review Board Determinations.*

Grantees shall, within 30 days, refund all funds due after a final determination by the Audit Review Board and approval by the director of the ABTPA [ATPA]. Failure to comply with this provision shall subject participants to the provisions of §57.28 of this title (relating to Conditions for Withholding Funds from Grantees).

*§57.48. Motor Vehicle Years of Insurance Calculations.*

(a) Each insurer, in calculating the fees established by Texas Civil Statutes, Article 4413(37), §10, shall comply with the following guidelines:

(1) The single statutory fee of \$1.00 is payable on each motor vehicle for which the insurer provides insurance coverage during the calendar year regardless of the number of policy renewals; and

(2) When more than one insurer provides coverage for a motor vehicle during the calendar year, each insurer shall pay the statutory fee for that vehicle.

(3) "Motor vehicle" as referred to in Texas Civil Statutes, Article 4413(37), §10(2), means motor vehicle as defined by the Insurance Code, Article 5.01(e). This definition shall be used when calculating the fees under this section.

(4) All motor vehicle or automobile insurance policies as defined by Insurance Code, Article 5.01(e), covering a motor vehicle shall be assessed the \$1.00 fee except mechanical breakdown policies, garage liability policies, nonresident policies and policies providing only non-ownership or hired auto coverages.

(b) The Texas Automobile Burglary and Theft Prevention Authority Assessment Report form and Instructions for the Computation of the Automobile Burglary and Theft Prevention Authority Assessment of the Comptroller of Public Accounts are adopted by reference. The form and instructions are available from the Comptroller of Public Accounts, Tax Administration, 111 East Seventeenth Street, Austin, Texas 78774. Each insurer shall use this form and follow these instructions when reporting assessment information to the Comptroller.

*§57.49. Audit.*

(a) The ABTPA [ATPA] may employ or retain the services of auditors for the purpose of assisting the ABTPA [ATPA] to determine an insurer's compliance with the requirements of Texas Civil Statutes, Article 4413(37), §10.

(b) All insurers subject to Texas Civil Statutes, Article 4413(37), §10, shall make their books and records reflecting motor vehicle years of insurance available to the auditors upon request during normal business hours.

(c) The ABTPA [ATPA] may assess to insurance companies charges for audit in cases where the companies' assertion of Refund Due was determined to be unfounded.

*§57.50. Report to Department of Insurance.*

If the ABTPA [ATPA] determines that an insurer failed to pay or intentionally underpaid the fee required by Texas Civil Statutes, Article 4413(37), §10, the ABTPA [ATPA] shall notify the Department of Insurance with the request that the Department revoke the insurer's certificate of authority.

*§57.51. Refund Determinations.*

(a) An insurer that seeks a determination of the sufficiency or a refund of a semi-annual payment must file a written claim for a determination or a refund not later than six months after the date the semi-annual payment was made to the state comptroller.

(b) The director or the ABTPA [ATPA] designee shall review the claim and obtain from the insurer any additional information, if any, that may be necessary or helpful to assist in the ABTPA [ATPA] determination. If an insurer refuses to provide the requested information, the refund may be denied in whole or in part.

(c) The director or the ABTPA [ATPA] designee is authorized to employ or retain the services of financial advisors to assist in the determination. The director or the designee shall prepare a written report to the ABTPA [ATPA] based on the director's or the designee's review and shall contain findings, conclusions, and a recommendation.

(d) The ABTPA [ATPA] shall base its determination on the documentary evidence considered by the director or the designee. The

two insurance company representatives on the ABTPA [ATPA] shall not participate in the determination. The ABTPA [ATPA] decision shall be based on a majority vote of the five remaining members. The ABTPA [ATPA] decision is final and is not subject to judicial review.

(e) Upon determining that an insurer is entitled to a refund, the ABTPA [ATPA] shall notify the comptroller and request the comptroller to draw warrants on the funds available to the ABTPA [ATPA] for the purpose of refunding monies overpaid.

§57.52. *Charges for Copies for Public Records.*

(a) The charges for copies of public records of the ABTPA [ATPA] will be the charges established by the Office of the Attorney General [General Services Commission, codified] at 1 TAC §§70.1 - 70.12 (cost of copies of public information) [§§111.61 - 111.70 (cost of copies of open records)].

(b) The ABTPA [ATPA] may waive or reduce a charge if it determines that waiver or reduction is in the public interest.

§57.53. *Border Solutions Advisory Committee.*

(a) The border solutions advisory committee is established.

(b) Purpose and duties. The purpose of the border solutions advisory committee is to provide the ABTPA [ATPA] the benefit of the members' collective expertise and experience to assist the ABTPA [ATPA] in promoting the reduction of vehicle theft in Texas and the bordering States of Mexico and in establishing more effective cooperation, communication and understanding between the two countries' participating agencies. The committee is to advise the ABTPA [ATPA] on issues affecting the auto theft rate along the Texas-Mexico Border, including ways to facilitate the location, recovery and return of vehicles from both sides of the Texas-Mexico Border, and to recommend to the ABTPA [ATPA], for possible funding, mutually beneficial projects for the aggressive prosecution of vehicle theft and related crime along the Border.

(c) Composition and appointment of members. The border solutions committee shall consist of representatives from the governmental and private sectors in Texas and Mexico, including grantee and other law enforcement agencies, the insurance industry, and the National Insurance Crime Bureau. Each entity desiring to participate in the committee is limited to one representative member, and the committee may not exceed 24 members. The restriction on the number of members shall not limit the number of individuals who may attend and participate in committee meetings. Each participating entity shall designate its representative member for purposes of this subsection. If the number of participating entities exceeds 24, the ABTPA [ATPA] shall determine the composition of the committee. Committee members may serve for the duration of the committee. If a committee member resigns or otherwise vacates his or her position, another individual representing the same organization may replace the outgoing member.

§57.54. *Grantee Advisory Committee.*

(a) The grantee advisory committee is established.

(b) Purpose. The purpose of the grantee advisory committee is to give the ABTPA [ATPA] the benefit of the members' collective expertise and experience to assist the ABTPA [ATPA] in promoting the reduction of motor vehicle theft in Texas and in developing grant projects for that purpose. The committee will serve as liaison between the ABTPA [ATPA] and grantees on grant project matters. The committee will convey program information to grantees and solicit input from grantees on issues and concerns affecting the ABTPA [ATPA] grant program. The committee will consider issues as they arise and convey these issues and related recommendations to the ABTPA [ATPA] for its consideration.

(c) Composition and appointment of members. The grantee advisory committee shall consist of eight persons, seven of whom will be nominated by the members of the ABTPA [ATPA]. Each ABTPA [ATPA] member may nominate one person to serve on the committee. A member must represent an entity, which is a current grantee of the ABTPA [ATPA]. The chair of the ABTPA [ATPA] shall appoint the eighth member whose work with a current grantee includes public awareness relating to motor vehicle theft. Committee members serve a one-year term, beginning January 1 of each year. The ABTPA [ATPA] shall appoint new members for the next year, no later than the December meeting of each year. If a committee member resigns or otherwise vacates his or her position prior to the end of a term, the ABTPA [ATPA] shall appoint a replacement, as recommended by the appropriate ABTPA [ATPA] member, to serve the remainder of the unexpired term.

§57.55. *Insurance Fraud Advisory Committee.*

(a) The insurance fraud advisory committee is established.

(b) Purpose. The purpose of the insurance fraud advisory committee is to give the ABTPA [ATPA] the benefit of the members' collective expertise and experience to assist the ABTPA [ATPA] in promoting the reduction of motor vehicle theft in Texas and in promoting communication and cooperation between Mexico and Texas on mutual opportunities to protect against motor vehicle theft and insurance fraud. The committee will consider issues relating to insurance fraud and its connection to the theft of motor vehicles in Texas, recommend solutions to the ABTPA [ATPA], and encourage grantees to seek funding for anti-fraud projects. The committee will further consider and recommend ways in which the insurance industry might assist the ABTPA [ATPA] in raising public awareness of insurance fraud and its economic impact.

(c) Composition and appointment of members. The insurance fraud advisory committee shall consist of no more than 19 persons appointed by the committee chair. The committee chair may appoint, by December of each calendar year, a co-chair. Such co-chair shall be a member of law enforcement from a current law enforcement grantee. At least one member of the committee shall be a current grantee. Other committee members shall be representatives from insurance companies in Texas, selected proportionately from different geographical sections of the state. Other members of the ABTPA [ATPA] may nominate persons for appointment to the committee. Committee members may serve for the duration of the committee. If a committee member resigns or otherwise vacates his or her position, another individual representing the same organization may replace the outgoing member.

§57.56. *General Requirements for Advisory Committees.*

The border solutions advisory committee, the grantee advisory committee and the insurance fraud advisory committees are subject to the following provisions:

(1) Committee chair. The chair of each committee shall be appointed by the chair of the ABTPA [ATPA] and shall be a current member of the ABTPA [ATPA].

(2) Meetings. A committee shall meet at the call of the committee chair or the ABTPA [ATPA]. Except for the grantee advisory committee which shall meet no more than six times each calendar year, a committee shall meet no more than two times each calendar year. Committee meetings are open to the public.

(3) Manner of reporting. The chair of a committee shall report, as needed, on committee activities to the ABTPA [ATPA] during its regular meetings.

(4) Reimbursement of committee member expenses. The ABTPA [ATPA] shall not reimburse committee members for travel,

lodging, meals or other expenses related to service on a committee. Nor may committee members or committee participants' pay for such expenses from ABTPA [ATPA] grant funds unless approved by the legislature and the ABTPA [ATPA].

(5) Evaluation of committee costs and benefits. By October 1 of each year, ABTPA [ATPA] staff, in consultation with each committee chair, shall evaluate for the previous fiscal year and report to the ABTPA [ATPA] for each committee, on:

(A) the committee's work;

(B) the committee's usefulness; and

(C) the costs related to the committee's existence, including the cost of ABTPA [ATPA] staff time spent in support of the committee's activities.

(6) Committee's term. Each committee is abolished on August 31, 2010, unless the ABTPA [ATPA] amends this paragraph to establish a different date.

(7) Report to legislative budget board. As required by state law, the ABTPA [ATPA] shall biennially report to the legislative budget board the information developed under paragraph (5) of this section in evaluating each committee's costs and benefits.

§57.57. *Historically Underutilized Business (HUB) Program.*

The ABTPA [ATPA] adopts the rules of the Comptroller of Public Accounts [General Services Commission] relating to the Historically Underutilized Business (HUB) Program at 34 TAC §§20.11 - 20.28 [~~and codified at 1 Texas Administrative Code, Part V, Subchapter B, Chapter 111, §§111.11-111.16~~].

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

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704240

Susan Sampson

Director

Automobile Burglary and Theft Prevention Authority

Earliest possible date of adoption: October 28, 2007

For further information, please call: (512) 374-5101

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# 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 22. EXAMINING BOARDS

### PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

#### CHAPTER 133. LICENSING

#### SUBCHAPTER G. EXAMINATIONS

#### 22 TAC §133.67

Proposed amended §133.67, published in the March 2, 2007, issue of the *Texas Register* (32 TexReg 1018), is withdrawn. The

agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704248



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 4. AGRICULTURE

### PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

#### CHAPTER 63. PET FOOD

##### 4 TAC §63.6

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts an amendment to §63.6, concerning Directions for Use, without changes to the proposed text as published in the August 10, 2007, issue of the *Texas Register* (32 TexReg 4852) and will not be republished.

The amendment to the rule brings the Texas Administrative Code in alignment with the national guidelines contained in the Association of American Feed Control Officials' Model Regulations for Pet and Specialty Pet Food Regulations.

No comments on the proposed amendment were received.

The amendment is adopted under the Texas Agriculture Code, Chapter 141, §141.004 which provides Texas Feed and Fertilizer Control Service with the authority to promulgate rules relating to the distribution of commercial feeds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 10, 2007.

TRD-200704179

Dr. Tim Herrman

State Chemist and Director

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: September 30, 2007

Proposal publication date: August 10, 2007

For further information, please call: (979) 845-1121



## TITLE 13. CULTURAL RESOURCES

### PART 5. TEXAS STATE CEMETERY COMMITTEE

#### CHAPTER 71. TEXAS STATE CEMETERY

##### 13 TAC §71.11

The Texas State Cemetery Committee (the "Committee") adopts an amendment to §71.11, concerning regulation of monuments in the Texas State Cemetery. The amendment is adopted without changes to the proposed text as published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4169).

The amendment is adopted to clarify acceptable designs for monuments proposed for placement on the grounds of the Texas State Cemetery. The amendment further emphasizes the Committee's intent to preserve the prominence of the Medal of Honor monument.

Amended §71.11 expands guidance to the public on design criteria considered by the Committee when evaluating requests for monuments by expressly stating that the Committee may also consider whether the proposed design will detract or otherwise affect the prominence of the existing Medal of Honor monument located on the Texas State Cemetery grounds.

No comments were received regarding the adoption of the amendment. The comment period ended August 5, 2007.

The amendment is adopted under the Texas Government Code, §2165.256(i), which requires the Committee to adopt rules regulating the monuments erected on the grounds of the Texas State Cemetery.

The amendment affects §2165.256 of the Texas Government 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.

Filed with the Office of the Secretary of State on September 13, 2007.

TRD-200704225

Susan Maldonado

Legal Counsel

Texas State Cemetery Committee

Effective date: October 3, 2007

Proposal publication date: July 6, 2007

For further information, please call: (512) 463-4257



## TITLE 19. EDUCATION

### PART 8. WINDHAM SCHOOL DISTRICT

#### CHAPTER 300. GENERAL PROVISIONS

##### 19 TAC §300.1

The Windham School District (WSD) Board of Trustees (Board) adopts the amendments to Title 19, Part 8, Chapter 300, General Provisions, §300.1, Public Testimony and Comments to the Windham School District Board of Trustees, without changes to the text as proposed in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3458) and will not be republished.

The adopted amendments are necessary to clarify procedures for public presentations and comments on topics under the jurisdiction of the WSD Board.

No comments were received.

The amendments are adopted under Texas Government Code, Chapter 551.

Cross Reference to Statutes: Texas Government Code, Chapter 551.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200704273

Melinda Hoyle Bozarth

General Counsel, Texas Department of Criminal Justice

Windham School District

Effective date: October 7, 2007

Proposal publication date: June 15, 2007

For further information, please call: (512) 463-0422

### 19 TAC §300.2

The Windham School District (WSD) Board of Trustees (Board) adopts the amendments to Title 19, Part 8, Chapter 300, General Provisions, §300.2, Windham School District Board of Trustees Operating Procedures, without changes to the text as proposed in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4618) and will not be republished.

The adopted amendments are necessary to clarify the WSD Board's operating procedures.

No comments were received.

The amendments are adopted under Texas Education Code, §19.004.

Cross Reference to Statutes: Texas Education Code, §19.004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200704272

Melinda Hoyle Bozarth

General Counsel, Texas Department of Criminal Justice

Windham School District

Effective date: October 7, 2007

Proposal publication date: July 27, 2007

For further information, please call: (512) 463-0422

## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATION

##### 22 TAC §77.2

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to rule §77.2 of this title, relating to publicity, to provide clearer standards, particularly with regards to telemarketing, testimonials, and multidisciplinary clinics without changes to the proposed text as published in the July 6, 2007 edition of the *Texas Register* (32 TexReg 4170). The amended rule was adopted by the Board at its regularly scheduled board meeting on May 24, 2007.

In preparing this rule, the Board looked at the Florida Board of Chiropractic Medicine's rule on solicitation, Fla. Admin. Code 64B2-15.002, and the New Mexico Board of Chiropractic Examiners' rule for advertising, N.M. Code R. §16.4.1.12.

Under the amended rule, the previously existing rule is labeled as subsection (a) and amended to clarify that the rule applies both to registered facilities as well as licensees. The new subsection (b) stipulates that public communications must not describe services inconsistent with the scope of chiropractic as described under §75.17 of this title, relating to scope of practice.

The new subsection (c) addresses telemarketing and is modeled after the New Mexico rule. Telemarketing is the practice of placing telephone calls to offer services to a list of prospective patients. A licensee or registered facility engaging in telemarketing directly, or through an agent, is prohibited from misrepresenting themselves as being associated with an insurance company or another doctor of chiropractic or another chiropractic group or facility. Telemarketing can not include a promise of successful chiropractic treatment. At the start of each call, a person making a telemarketing call is required to identify themselves and state who they represent. A licensee or registered facility is required to keep for a minimum of two years each script used for a telemarketing call and a log of all calls made that must include the date, telephone number, and the name of each person called.

Under subsection (d), licensees or registered facilities are required to keep for two years a signed statement that was used to support any statements used in any public communication.

Under subsection (e), licensees or registered facilities are required to clearly differentiate a chiropractic office, clinic, or facility from another business or enterprise in any form of public communication. This is a restatement of Texas Occupation Code §201.502(a)(19), relating to grounds for refusal, revocation, or suspension of license. Under subsection (f), licensees are required to identify themselves as either a "doctor of chiropractic," "DC," or "chiropractor." This is based on Texas Occupations Code §201.002(b)(4), relating to practice of chiropractic, and §75.1(a)(2) of this title, relating to grossly unprofessional conduct. Subsection (f) also stipulates that if each licensee at a registered facility has identified themselves as required, then the facility name need not include "chiropractic" or similar language.

One written comment was received on the proposed rule amendment. The North Texas International Association of Special Investigation Units, a local chapter of the International Association of Special Investigation Units (LASIU), which is composed of more than 4,600 individuals employed by more than 600 insurance and self-insured companies around the world wrote to express their "strongest support" for the proposed rule amendment.

The amendment is adopted under the Texas Occupations Code, §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 13, 2007.

TRD-200704231  
Glenn Parker  
Executive Director  
Texas Board of Chiropractic Examiners  
Effective date: October 3, 2007  
Proposal publication date: July 6, 2007  
For further information, please call: (512) 305-6901



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

#### **CHAPTER 151. GENERAL PROVISIONS**

##### **37 TAC §151.3**

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to Title 37, Part 6, Chapter 151, General Provisions, §151.3, Texas Board of Criminal Justice Operating Procedures, without changes to the text as proposed in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4624) and will not be republished.

The amendments are necessary to clarify the TBCJ's operating procedures.

No comments were received.

The amendments are adopted under Texas Government Code, §492.013.

Cross Reference to Statutes: Texas Government Code, §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200704257

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: October 7, 2007  
Proposal publication date: July 27, 2007  
For further information, please call: (512) 463-0422



##### **37 TAC §151.4**

The Texas Board of Criminal Justice (TBCJ) adopts the amendments to §151.4, Public Testimony and Comments to the Texas Board of Criminal Justice, without changes to the text as proposed in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3533).

The amendments are necessary to clarify procedures for public presentations and comments on topics under the jurisdiction of the TBCJ.

No comments were received.

The amendments are adopted under Texas Government Code, §492.007, §492.013 and Chapter 551.

Cross Reference to Statutes: Texas Government Code, §492.007, §492.013 and Chapter 551.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200704258  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: October 7, 2007  
Proposal publication date: June 15, 2007  
For further information, please call: (512) 463-0422



##### **37 TAC §151.25**

The Texas Board of Criminal Justice adopts the amendments to Title 37, Part 6, Chapter 151, General Provisions, §151.25, Texas Department of Criminal Justice Tobacco Policy, without changes to the text as proposed in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4625) and will not be republished.

The amendments are necessary to clarify existing procedures.

No comments were received.

The amendments are adopted under Texas Government Code, §494.010.

Cross Reference to Statutes: Texas Government Code, §492.013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200704259  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: October 7, 2007  
Proposal publication date: July 27, 2007  
For further information, please call: (512) 463-0422



CHAPTER 152. CORRECTIONAL  
INSTITUTIONS DIVISION  
SUBCHAPTER B. CORRECTIONAL  
CAPACITY

**37 TAC §152.33**

The Texas Board of Criminal Justice (TBCJ) adopts new rule, Title 37, Part 6, Chapter 152, Correctional Institutions Division, Subchapter B, Correctional Capacity, §152.33, Addition to the Estes Unit Capacity, without changes as proposed in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3536).

The purpose of the adopted rule is to increase the capacity of the Estes Unit.

One comment was received on June 20, 2007, from an offender at the Estes Unit. No comments were received from the public.

Comment: The offender expressed concern about the capacity increase at the Sanders Estes Unit. He expressed concerns related to staffing, specifically staff levels, overtime, training, and morale. He also noted concerns about the impact the population will have on housing flexibility.

Response: The Texas Department of Criminal Justice (TDCJ) Private Facilities Contract Monitoring and Oversight Division closely monitors staffing levels. Over the past six months, the Estes Unit vacancy rate averaged 25.5%. However, through the use of overtime, required positions are being staffed each day. Over \$450,000 was spent on overtime pay from July 2006 through June 2007.

As with any business, an acceptable amount of attrition and turnover will occur; however, the attrition rate is only 4.17% which is significantly lower than TDCJ's attrition rate of 19.8%. Sufficiently trained staff is present to provide a safe and secure correctional facility.

The Estes Unit complies with the TDCJ's officer training program, offering over 300 total hours of training to new correctional officers. An independent Human Resources firm was recently contracted to survey employees, and the overall facility morale was found to be positive.

Housing flexibility will be decreased to some degree, but empty beds will still be available for this purpose. As this unit is a single custody facility, there is not a great need for intra-unit flexibility. Six transient, two medical, and 12 pre-hearing detention cells should assist the unit in ensuring that offenders are appropriately housed.

No changes to the adopted rule are warranted.

The rule is adopted under Texas Government Code, §§499.102, 499.104, and 499.105.

Cross Reference to Statutes: Texas Government Code, §§499.103, 499.106, and 499.107.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704235  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: October 4, 2007  
Proposal publication date: June 15, 2007  
For further information, please call: (512) 463-9693



**37 TAC §152.35**

The Texas Board of Criminal Justice (TBCJ) adopts new rule, Title 37, Part 6, Chapter 152, Correctional Institutions Division, Subchapter B, Correctional Capacity, §152.35, Addition to the Bartlett State Jail Capacity without changes as proposed in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3536).

The purpose of the rule is to increase the capacity of the Bartlett State Jail.

Comments were received on May 30, 2007, from 18 offenders at the Bartlett State Jail. No comments were received from the public.

Comment: One offender expressed concern about whether the current number of shower heads, toilets and urinals would be able to accommodate the additional population.

Response: The Bartlett State Jail meets the standards for shower capacity, commodes and urinals. This is reviewed for compliance by the American Correctional Association and the Texas Department of Criminal Justice through division-level reviews.

The additional capacity will be created by using empty bunks already in place in 22 housing areas. The floor space will not be further diminished.

No changes to the rule are warranted.

Comment: Seventeen offenders signed one letter and expressed concerns about the number of shower heads, toilets and urinals in each dorm and the ratio of each per offender, as well as the impact of a population increase on the quality of medical, laundry and recreational services.

Response: The Bartlett State Jail meets standards for shower capacity, commodes and urinals. This is reviewed for compliance by the American Correctional Association and the Texas Department of Criminal Justice through division-level reviews.

In addition, unit laundry and medical staff has indicated the increase of 48 offenders would have little or no impact on their functions. The most recent division-level operational review in February 2007, found no deficiencies in the unit laundry and noted that it was neat, clean and well organized.

Outcome measures for the medical department were also reviewed. All unit medical staff positions are filled according to



Jim Saxon, Senior Practice Manager, University of Texas Medical Branch, Gatesville Cluster. In addition, the first quarter Quality Improvement Quality Monitoring report found that over 89% of offenders were seen by a health care provider within seven to fourteen days of submitting a sick call request.

Revisions to the recreation schedule were recently approved that should ensure all offenders ample recreational opportunities. The previous schedule was changed as a result of findings from a division-level operational review.

The additional capacity will be created by using empty bunks already in place in 22 housing areas. The floor space will not be further diminished.

No changes to the rule are warranted.

The rule is adopted under Texas Government Code, §§499.102, 499.104 and 499.105.

Cross Reference to Statutes: Texas Government Code, §§499.103, 499.106 and 499.107.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 14, 2007.

TRD-200704237

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Effective date: October 4, 2007

Proposal publication date: June 15, 2007

For further information, please call: (512) 463-9693



## CHAPTER 155. REPORTS AND INFORMATION GATHERING

### SUBCHAPTER C. PROCEDURES FOR RESOLVING CONTRACT CLAIMS AND DISPUTES

#### 37 TAC §155.31

The Texas Board of Criminal Justice adopts the amendments to Title 37, Part 6, Chapter 155, Reports and Information Gathering, Subchapter C, Procedures for Resolving Contract Claims and Disputes, §155.31, Establishing Procedures for Resolving Contract Claims and Disputes, with changes to the proposed text as published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4627).

The amendments are necessary to make minor non-substantive changes and incorporate recent revisions to state law.

Comments were received from the Texas Department of Criminal Justice (TDCJ) Office of the General Counsel. When preparing the rule for publication in the *Texas Register*, it was noted that in three places the rule referenced a paragraph that had been proposed for deletion because of changes in the law. Those references to the deleted paragraph have been deleted, and the amended rule is being adopted with changes to correct those references.

The amendments are adopted under Texas Government Code, §495.008(e) and Chapter 2260.

Cross Reference to Statutes: Texas Government Code, Chapters 552, 2001 and 2009; Texas Government Code, §2166.001; Texas Transportation Code, §201.112; Civil Practice & Remedies Code, Chapters 107, 152 and 154.

§155.31. *Establishing Procedures for Resolving Contract Claims and Disputes.*

(a) Purpose. This rule is intended to serve as a guideline for the negotiation and mediation of a breach of contract claim asserted by a contractor against the Texas Department of Criminal Justice (TDCJ or Agency) under the Texas Government Code, Chapter 2260. This rule is binding upon the TDCJ and is not intended to replace the TDCJ procedures relating to a breach of contract claim that is mandated by state or federal law, but is intended to provide procedures when none are so mandated.

(b) Policy. It is the policy of the Texas Board of Criminal Justice (TBCJ or Board) and the TDCJ to resolve a breach of contract claim as efficiently and as expeditiously as possible, consistent with prudent stewardship of the State of Texas assets.

(c) Applicability. This rule does not apply to an action of a unit of state government for which a contractor is entitled to a specific remedy pursuant to state or federal constitution or statute.

(1) This rule does not apply to a contract action proposed or taken by a unit of state government for which a contractor receiving Medicaid funds under that contract is entitled by state statute or rule to a hearing conducted in accordance with Texas Government Code, Chapter 2001.

(2) This rule does not apply to contracts:

(A) between a unit of state government and the federal government or its agencies, another state or another nation;

(B) between two (2) or more units of state government;

(C) between a unit of state government and a local governmental body, or a political subdivision of another state;

(D) between a subcontractor and a contractor;

(E) subject to §201.112 of the Texas Transportation Code;

(F) within the exclusive jurisdiction of state or local regulatory bodies;

(G) within the exclusive jurisdiction of federal courts or regulatory bodies; or

(H) that are solely and entirely funded by federal grant monies other than for a project defined in subsection (d)(9) of this rule.

(d) Definitions. The following words and terms, when used in this rule, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Claim--A demand for damages by the contractor based upon the TDCJ's alleged breach of the contract.

(2) Contract--A written contract between the TDCJ and a contractor by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for the TDCJ; or

(B) to perform a project as defined by Texas Government Code, §2166.001.

(3) Contractor--Independent contractor who has entered into a contract directly with the TDCJ. The term does not include:

- (A) the contractor's subcontractor, officer, employee, agent or other person who furnishes goods or services to a contractor;
- (B) an employee of a unit of state government; or
- (C) a student at an institution of higher education.

(4) Counterclaim--A demand by the TDCJ arising out of the contract.

(5) Day--A calendar day. If an act is required to occur on a date that falls on a Saturday, Sunday or holiday, the first working day that is not one of those days shall be counted as the required day for purpose of that act.

(6) Event--An act or omission or a series of acts or omissions giving rise to a claim. The following list contains illustrative examples of events, subject to the specific terms of the contract.

(A) Examples of events in the context of a contract for goods or services:

- (i) the failure of the TDCJ to timely pay for goods and services;
- (ii) the failure of the TDCJ to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the TDCJ for work not performed under the contract or in substantial compliance with the contract terms;
- (iii) the suspension, cancellation or termination of the contract;
- (iv) the final rejection of the goods or services tendered by the contractor, in whole or in part;
- (v) the repudiation of the entire contract prior to or at the outset of performance by the contractor; or
- (vi) the withholding liquidated damages from final payment to the contractor.

(B) Examples of events in the context of a project:

- (i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;
- (ii) the failure to make timely progress payments required by the contract;
- (iii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting work not performed under the contract;
- (iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;
- (v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;
- (vi) the suspension, cancellation or termination of the contract;
- (vii) the rejection by the TDCJ, in whole or in part, of the "work," as defined by the contract, tendered by the contractor;
- (viii) the repudiation of the entire contract prior to or at the outset of performance by the contractor;
- (ix) the withholding liquidated damages from final payment to the contractor; or

(x) the refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time or the scope of work.

(7) Executive Director (ED)--The chief administrative officer responsible for the day-to-day operations of the TDCJ.

(8) Parties--The TDCJ and the contractor who have entered into a contract in connection with which a breach of contract claim has been filed under this rule.

(9) Project--As defined in Texas Government Code, §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:

- (A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and
- (B) an addition to, or alteration, modification, rehabilitation or repair of an existing building, structure or appurtenant facility or utility.

(10) Services--The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of a unit of state government.

(e) Prerequisites to Suit. The procedures contained in this rule are exclusive and required prerequisites to suit under the Texas Civil Practice & Remedies Code, Chapter 107 and the Texas Government Code, Chapter 2260.

(f) Notice of Breach of Contract Claim.

(1) A contractor, asserting a breach of contract claim under the Texas Government Code, Chapter 2260 shall file notice of the claim as provided by this subsection.

(2) The notice of claim shall:

- (A) be in writing and signed by the contractor or the contractor's authorized representative;
- (B) be delivered by hand, certified mail return receipt requested or other verifiable delivery service, to the TDCJ Director of Contracts and Procurement, Two Financial Plaza, Suite 300A, Huntsville, Texas 77340; and
- (C) state in detail:

- (i) the nature of the alleged breach of contract, including the date of the event the contractor asserts as the basis of the claim and each contractual provision allegedly breached;
- (ii) a description of damages that resulted from the alleged breach, including the amount and method used to calculate those damages; and
- (iii) the legal theory of recovery (i.e., breach of contract) including the causal relationship between the alleged breach and the damages claimed.

(3) In addition to the mandatory contents of the notice of claim as required by paragraph (2) of this subsection, the contractor may submit supporting documentation or other tangible evidence to facilitate the TDCJ's evaluation of the contractor's claim.

(4) The notice of claim shall be delivered no later than 180 days after the date of the event that the contractor asserts as the basis of the claim.

(g) Agency Counterclaim.

(1) The TDCJ, asserting a counterclaim under the Texas Government Code, Chapter 2260, shall file notice of the counterclaim as provided by this subsection.

(2) The notice of counterclaim shall:

(A) be in writing;

(B) be delivered by hand, certified mail return receipt requested or other verifiable delivery service to the contractor or representative of the contractor who signed the notice of breach of contract claim; and

(C) state in detail:

(i) the nature of the counterclaim;

(ii) a description of damages or offsets sought, including the amount and method used to calculate those damages or offsets; and

(iii) the legal theory supporting the counterclaim.

(3) In addition to the mandatory contents of the notice of counterclaim required by paragraph (2) of this subsection, the TDCJ may submit supporting documentation or other tangible evidence to facilitate the contractor's evaluation of the TDCJ's counterclaim.

(4) The notice of counterclaim shall be delivered to the contractor no later than 60 days after the TDCJ's receipt of the contractor's notice of claim.

(5) Nothing herein precludes the TDCJ from initiating a lawsuit for damages against the contractor in a court of competent jurisdiction.

(h) Contract Disputes.

(1) To every extent possible, a dispute with a contractor should be resolved during the course of the contract. However, after completion of a contract, or when required for orderly performance prior to completion, if a resolution of a contractor's dispute has not been resolved by the appropriate TDCJ division, the contractor should file a Notice of Breach of Contract Claim with the Director of Contracts and Procurement per the requirements in subsection (f) of this rule.

(2) The ED shall name the members and chairman of a Contract Dispute Committee (the Committee), which will serve at the ED's pleasure. It shall be the responsibility of the Committee to gather information, study relevant facts and documentation and meet with contractors and, if requested, to resolve any disputes between a TDCJ division and the contractor, as set forth by the claim.

(3) The Committee shall secure detailed reports and recommendations from the appropriate TDCJ division and may confer with TDCJ personnel, other persons and outside entities that it deems appropriate.

(4) The Committee shall then afford the contractor an opportunity for a meeting or hearing to discuss the claim and to provide the contractor an opportunity to present additional relevant information and respond to information the Committee has received from the appropriate TDCJ division.

(5) The Committee chairperson shall give written notice of the Committee's proposed disposition of the claim to the contractor and the appropriate TDCJ division. If that disposition is acceptable, the contractor shall advise the Committee chairperson in writing within 20 days of the date such notice is received, and the chairperson shall forward the agreed disposition to the ED for a final and binding order on the claim. If the contractor or TDCJ division is dissatisfied with the proposal of the Committee, either party may appeal to the ED.

(i) Appeal to the Executive Director.

(1) An aggrieved contractor or TDCJ division may file a written appeal of the Committee's decision to the ED within 20 days of the receipt of the Committee's decision. The contractor's appeal shall be submitted in writing and signed by the contractor or the contractor's authorized representative and delivered by hand, certified mail return receipt requested or other verifiable delivery service to the TDCJ Executive Director, P.O. Box 99, Huntsville, Texas 77342. The TDCJ division's appeal shall be in writing and signed by the appropriate Division Director. The ED or designee may uphold, reverse, or modify the decision of the Committee.

(2) The ED or designee shall give written notice of the disposition of the claim to the contractor and the appropriate TDCJ division. If that disposition is acceptable to the contractor, the contractor shall advise the ED, in writing, within 20 days of the date such notice is received. The TDCJ division shall have no right to object to the disposition of the claim or dispute made by the ED or designee.

(j) Appeal to the TBCJ with Respect to Certain Contracts. A contractor who operates or manages a secure correctional facility of the TDCJ may appeal to the TBCJ for final determination, within 20 days of the ED's decision, any imposed sanction under the contract. The appeal shall be submitted in writing and signed by the contractor or the contractor's authorized representative and delivered by hand, certified mail return receipt requested or other verifiable delivery service to the TBCJ office, P.O. Box 13084, Austin, Texas 78711.

(k) Request for Voluntary Disclosure of Additional Information.

(1) Upon the filing of a claim or counterclaim, each party may request to review and copy information in the possession, custody or control of the other party that pertains to the contract claimed to have been breached, including, without limitation:

(A) accounting records;

(B) correspondence between the TDCJ and outside consultants it used when preparing its bid solicitation or any part thereof or in administering the contract, and correspondence between the contractor and its subcontractors, materialmen and vendors;

(C) schedules;

(D) the parties' internal memoranda; and

(E) documents created by the contractor in preparing its offer to the TDCJ and documents created by the TDCJ in analyzing the offers it received in response to a solicitation.

(2) This subsection applies to all information in the parties' possession regardless of the manner in which it is recorded, including, without limitation, paper and electronic media.

(3) The contractor and the TDCJ may seek additional information directly from third-parties, including, without limitation, the TDCJ's third-party consultants and the contractor's subcontractors.

(4) Nothing in this subsection requires any party to disclose any information or any matter that is privileged under Texas law.

(5) Requests submitted pursuant to this subsection for material claimed to be confidential by the contractor shall be handled pursuant to the requirements of the *Public Information Act*.

(l) Duty to Negotiate. The parties shall negotiate in accordance with the timetable set forth in subsection (m) of this rule to resolve all claims and counterclaims. No party is obligated to settle with the other party as a result of the negotiation.

(m) Negotiation Timetable.

(1) Following receipt of a contractor's notice of claim, the Committee shall review the contractor's claim(s) and the TDCJ's counterclaim(s), if any, and shall initiate negotiations with the contractor to resolve the claim(s) and counterclaim(s).

(2) The parties shall begin negotiations within a reasonable period of time, not to exceed 120 days following the date the TDCJ receives the contractor's notice of claim.

(3) The parties may conduct negotiations according to an agreed schedule provided negotiations begin no later than the deadline set forth in paragraph (2) of this subsection.

(4) Subject to paragraph (5) of this subsection, the parties shall complete the negotiations required by this subsection as a prerequisite to a contractor's request for contested case hearing no later than 270 days after the TDCJ receives the contractor's notice of claim.

(5) The parties may agree in writing to extend the time for negotiations on or before the 270th day after the TDCJ receives the contractor's notice of claim. The agreement shall be signed by representatives of the parties with authority to bind each respective party and shall provide for the extension of the statutory negotiation period until a certain date. The parties may enter into a series of written extension agreements that comply with the requirements of this rule.

(6) The contractor may request, in writing, a contested case hearing before the State Office of Administrative Hearings (SOAH) pursuant to subsection (q) of this rule after the 270th day after the TDCJ receives the contractor's notice of claim or the expiration of any extension agreed to under paragraph (5) of this subsection.

(7) The parties may agree to mediate the dispute at any time before the 120th day after the TDCJ receives the contractor's notice of claim or before the expiration of any extension agreed to by the parties pursuant to paragraph (5) of this subsection. The mediation shall be governed by subsections (r), (s), (t), (u), (v) and (w) of this rule.

(8) Nothing in this subsection is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in paragraph (2) of this subsection, or from continuing or resuming negotiations after the contractor requests a contested case hearing before the SOAH.

(n) Conduct of Negotiation.

(1) A negotiation under this subchapter may be conducted by any method, technique or procedure authorized under the contract or agreed upon by the parties, including, without limitation, negotiation in person, by telephone, by correspondence, by video conference or by any other method which permits the parties to identify respective positions, discuss respective differences, confer with respective advisers, exchange offers of settlement and settle.

(2) The parties may conduct negotiations with the assistance of one (1) or more neutral third-parties. If the parties choose to mediate the dispute, the mediation shall be conducted in accordance with subsections (r), (s), (t), (u), (v) and (w) of this rule. Parties may choose an assisted negotiation process other than mediation, including, without limitation, processes such as those described in subsections (x), (y) and (z) of this rule.

(3) To facilitate the meaningful evaluation and negotiation of the claim(s) and any counterclaim(s), the parties may exchange relevant documents that support the respective claims, defenses, counterclaims or positions.

(4) Material submitted pursuant to this subsection and claimed to be confidential by the contractor shall be handled pursuant to the requirements of the *Public Information Act*.

(o) Settlement Agreement.

(1) A settlement agreement may resolve an entire claim or any designated and severable portion of a claim.

(2) To be enforceable, a settlement agreement shall be in writing and signed by representatives of the contractor and the TDCJ who have authority to bind each respective party.

(3) A partial settlement does not waive a party's rights under the Texas Government Code, Chapter 2260 as to the parts of the claims or counterclaims that are not resolved.

(p) Costs of Negotiation. Unless the parties agree otherwise in writing, each party shall be responsible for its own costs incurred in connection with a negotiation, including, without limitation, attorney fees, consultant fees and expert fees.

(q) Request for Contested Case Hearing.

(1) If a breach of contract claim is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this rule on or before the 270th day after the TDCJ receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to subsection (m)(5) of this rule, the contractor may file a request with the TDCJ for a contested case hearing before the SOAH.

(2) A request for a contested case hearing shall state the legal and factual basis for the claim and shall be delivered to the ED or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to subsection (m)(5) of this rule.

(3) The TDCJ shall forward the contractor's request for contested case hearing to the SOAH within a reasonable period of time, not to exceed 30 days, after receipt of the request.

(4) The parties may agree to submit the case to the SOAH before the 270th day after the notice of claim is received by the TDCJ if they have achieved a partial resolution of the claim or if an impasse has been reached in the negotiations and proceeding to a contested case hearing would serve the interests of justice.

(r) Mediation Timetable.

(1) The contractor and the TDCJ may agree to mediate the dispute at any time before the 120th day after the TDCJ receives a notice of a breach of contract claim, or before the expiration of any extension agreed to by the parties in writing.

(2) A contractor and the TDCJ may mediate the dispute even after the case has been referred to the SOAH for a contested case. The SOAH may also refer a contested case for mediation pursuant to its own rules and guidelines, whether or not the parties have previously attempted mediation.

(s) Conduct of Mediation.

(1) The mediation is subject to the provisions of the *Governmental Dispute Resolution Act*, Texas Government Code, Chapter 2009. For purposes of this subchapter, "mediation" is assigned the meaning set forth in the Texas Civil Practice and Remedies Code, §154.023.

(2) Parties may agree to use mediation as an option to resolve a breach of contract claim at the time the parties enter into the contract and include a contractual provision to do so. The parties may

mediate a breach of contract claim even absent a contractual provision to do so if both parties agree.

(3) In selecting a mediator, the parties should use the qualifications set forth in subsection (t) of this rule. The mediator shall be acceptable to both parties.

(t) Qualification and Immunity of the Mediator.

(1) The mediator shall possess the qualifications required under the Texas Civil Practice and Remedies Code, §154.052, be subject to the standards and duties prescribed by the Texas Civil Practice and Remedies Code, §154.053 and have the qualified immunity prescribed by the Texas Civil Practice and Remedies Code, §154.055, if applicable.

(2) The parties should decide whether, and to what extent, knowledge of the subject matter and experience in mediation would be advisable for the mediator.

(3) The parties should obtain from the prospective mediator the ethical standards that shall govern the mediation.

(u) Confidentiality of Mediation and Final Mediated Settlement Agreement.

(1) A mediation conducted under this rule is confidential in accordance with the Texas Government Code, §2009.054.

(2) The confidentiality of a final settlement agreement to which the TDCJ is a signatory that is reached as a result of the mediation is governed by the Texas Government Code, Chapter 552.

(v) Costs of Mediation. Unless the contractor and the TDCJ agree otherwise in writing, each party shall be responsible for its own costs incurred in connection with the mediation, including costs of document reproduction for documents requested by such party, attorney fees, consultant fees or expert fees. The costs of the mediation process itself shall be divided equally between the parties.

(w) Mediated Settlement Agreement. Any settlement agreement reached during the mediation shall be signed by the representatives of the contractor and the TDCJ and describe any procedures required to be followed by the parties in connection with final approval of the agreement.

(x) Final Settlement Agreement.

(1) A final settlement agreement reached through mediation that resolves an entire claim or any designated and severable portion of a claim, shall be in writing and signed by representatives of the contractor and the TDCJ who have authority to bind each respective party.

(2) If the settlement agreement does not resolve all issues raised by the claim and counterclaim, the agreement shall identify the issues that are not resolved.

(3) A partial settlement does not waive a party's rights under the Texas Government Code, Chapter 2260 as to the parts of the claim that are not resolved.

(y) Assisted Negotiation Processes. Parties to a contract dispute under the Texas Government Code, Chapter 2260 may agree, either contractually or when a dispute arises, to use assisted negotiation processes (alternative dispute resolution) in addition to negotiation and mediation to resolve the dispute.

(z) Factors Supporting the Use of Assisted Negotiation Processes. The following factors may help the parties decide whether one (1) or more assisted negotiation processes could help resolve the dispute:

(1) the parties recognize the benefits of an agreed resolution of the dispute;

(2) the expense of proceeding to contested case hearing at the SOAH is substantial and might outweigh any potential recovery;

(3) the parties want an expedited resolution;

(4) the ultimate outcome is uncertain;

(5) there exists factual or technical complexity or uncertainty that would benefit from the expertise of a thirty-party expert for technical assistance or fact-finding;

(6) the parties are having substantial difficulty communicating effectively;

(7) a mediator third-party could facilitate the parties' realistic evaluation of the respective cases;

(8) there is an on-going relationship that exists between the parties;

(9) the parties want to retain control over the outcome;

(10) there is a need to develop creative alternatives to resolve the dispute;

(11) there is a need for flexibility in shaping relief;

(12) a party has an unrealistic view of the merits of its case;

or  
(13) the parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

(aa) Use of Assisted Negotiation Processes. Any of the following methods, or a combination of these methods, or any assisted negotiation process agreed to by the parties, may be used in seeking resolution of disputes or other controversy arising under the Texas Government Code, Chapter 2260. If the parties agree to use an assisted negotiation procedure, the parties should agree in writing to a detailed description of the process prior to engaging in the process.

(1) Mediation.

(2) Early evaluation by a neutral third-party.

(A) This is a confidential conference wherein the parties and counsel present the factual and legal bases of their claims and receive a non-binding assessment by an experienced neutral third-party with subject-matter expertise or with significant experience in the substantive area of law involved in the dispute.

(B) After summary presentation, the neutral third-party identifies areas of agreement for possible stipulations, assesses the strengths and weaknesses of each party's position and estimates, if possible, the likelihood of liability and the dollar range of damages that appear reasonable to the neutral third-party.

(C) This less complicated procedure may be appropriate only for some issues in dispute where there are clear-cut differences over the appropriate amount of damages. This process may be particularly helpful when:

(i) the parties agree that the dispute can be settled;

(ii) the dispute involves specific legal issues;

(iii) the parties disagree on the amount of damages;

(iv) the opposition has an unrealistic view of the dispute; or

(v) the neutral third-party is a recognized expert in the subject area or area of law involved.

(3) Neutral fact-finding by an expert.

(A) In this process, a neutral third-party expert studies a particular issue and reports findings on that issue. The process usually occurs after most discovery concerning the dispute has been completed and the significance of particular technical or scientific issues is apparent.

(B) The parties may agree in writing that the fact-finding shall be binding in later proceedings (and entered into as a stipulation in the dispute if the matter proceeds to contested case hearing), or that it shall be advisory in nature, to be used only in further settlement discussions between representatives of the parties. This process may be particularly helpful when:

(i) factual issues requiring expert testimony may be dispositive of liability or damage issues;

(ii) the use of a neutral third-party is cost effective;

(iii) the neutral third-party's findings could narrow factual issues for contested case hearing.

(4) Mini-trial.

(A) A mini-trial a summary proceeding before a representative of upper management from each party who has authority to settle and a neutral third-party selected by agreement of the parties. A mini-trial is usually divided into a limited information-exchange phase, the hearing and post-hearing settlement discussions. No written or oral statement made in the proceeding may be used as evidence or an admission in any other proceeding.

(B) The information-exchange stage should be brief, but it shall be sufficient for each party to understand and appreciate the key issues. At a minimum, the parties should exchange key exhibits, introductory statements, and a summary of witnesses' testimony.

(C) At the hearing, representatives of the parties present a summary of the anticipated evidence and any legal issues that shall be decided before the case can be resolved. The neutral third-party presides over the presentation and may question witnesses and counsel, as well as comment on the arguments and evidence. Each party may agree to put on abbreviated direct and cross-examination testimony. The hearing generally takes no longer than one (1) to two (2) days.

(D) Settlement discussions, facilitated by the neutral third-party, take place after the hearing. The parties may ask the neutral third-party to formally evaluate the evidence and arguments and provide an advisory opinion as to the issues in the case. If the parties cannot reach an agreed resolution to the dispute, either side may declare the mini-trial terminated and proceed to a resolution of the dispute by other means.

(E) Mini-trials may be appropriate when:

(i) the dispute is at a stage where substantial costs can be saved by a resolution based on limited information gathered;

(ii) the matter justifies the senior executive's time required to complete the process;

(iii) the issues include highly technical mixed questions of law and fact;

(iv) the matter involves trade secrets or other confidential or proprietary information; or

(v) the parties seek to narrow the large number of issues in dispute.

(bb) Approval. Any settlement reached pursuant to this rule may require the approval of the TBCJ, the Attorney General of Texas, the Governor of Texas, or the Texas Legislature, as required by TBCJ policy, statutes and rules of the State of Texas, and the *General Appropriations Act*.

(cc) Intent. It is the intent of the TDCJ to comply with the provisions of the Texas Government Code, Chapter 2260. To the extent that any term or provision of this rule is in conflict with Chapter 2260, the terms and provisions of Chapter 2260 shall prevail.

(dd) Disclaimer. The TDCJ and the TBCJ do not waive sovereign immunity from suit or liability due to the establishment of this rule. The TDCJ and the TBCJ consider the procedure described in Chapter 2260 and this rule to be the exclusive means of resolving breach of contract claims against state agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200704260  
Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: October 7, 2007  
Proposal publication date: July 27, 2007  
For further information, please call: (512) 463-0422



## CHAPTER 163. COMMUNITY JUSTICE ASSISTANCE DIVISION STANDARDS

### 37 TAC §163.35

Texas Board of Criminal Justice adopts the amendments to Title 37, Part 6, Chapter 163, Community Justice Assistance Division Standards, §163.35, Supervision, without changes to the text as proposed in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3536) and will not be republished.

The amendments are necessary to add clarity.

No comments were received.

The amendments are adopted under Texas Government Code, §509.003.

Cross Reference to Statutes: Texas Government Code, §509.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

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Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Effective date: October 7, 2007  
Proposal publication date: June 15, 2007  
For further information, please call: (512) 463-0422



**37 TAC §163.42**

The Texas Board of Criminal Justice adopts the amendments to Title 37, Part 6, Chapter 163, Community Justice Assistance Division Standards, §163.42, Substantial Noncompliance, without changes to the text as proposed in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3538) and will not be republished.

The amendments are necessary to clarify and revise the definition of substantial noncompliance as it applies to the Texas Department of Criminal Justice-Community Justice Assistance Division standards (TDCJ-CJAD).

No comments were received.

The amendments are adopted under Texas Government Code, §509.012.

Cross Reference to Statutes: Texas Government Code, §509.003 through 509.006; Texas Government Code, Chapter 551 and Texas Local Government Code §140.004.

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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Melinda Hoyle Bozarth  
General Counsel  
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# TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this

section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

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## Texas Health and Human Services Commission

### Rule Transfer

House Bill 4062, 80th Legislative Session, 2007, effective June 15, 2007, transferred the administration of the Special Nutrition Programs (Programs), currently administered by the Health and Human Services (HHSC) to the Texas Department of Agriculture (the Department). The effective date of the transfer of the programs will be October 1, 2007, as approved by the United States Department of Agriculture, Food and Nutrition Service. Under the bill, rules of the HHSC pertaining to the Special Nutrition Programs transfer to the Department on the effective date of the Program transfer and continue in effect as the rules of the Department until superseded by an act of the Department.

The HHSC Special Nutrition Program rules currently found in *Texas Administrative Code*, Title 1, Part 15, Chapters 377 and 378 will be transferred and reorganized under *Texas Administrative Code*, Title 4, Part 1, Chapters 24 and 25

The transfer will take effect on October 1, 2007.

Please refer to Figure: 1 TAC Part 15, to see the complete conversion chart.

Figure: 1 TAC Part 15

In addition, in order to accommodate the transfer of the rules for the Special Nutrition Programs, the Department also reorganized some chapters in *Texas Administrative Code*, Title 4, Part 1, by consolidating rules relating to the Texas Agricultural Finance Authority found in Chapters 24 - 27 into Chapter 28. The transfer of those rules will also take effect on October 1, 2007.

Please refer to Figure: 4 TAC Part 1, to see the complete conversion chart.

Figure: 4 TAC Part 1

TRD-200704195



## Texas Department of Agriculture

### Rule Transfer

House Bill 4062, 80th Legislative Session, 2007, effective June 15, 2007, transferred the administration of the Special Nutrition Programs (Programs), currently administered by the Health and Human Services (HHSC) to the Texas Department of Agriculture (the Department). The effective date of the transfer of the programs will be October 1, 2007, as approved by the United States Department of Agriculture, Food and Nutrition Service. Under the bill, rules of the HHSC pertaining to the Special Nutrition Programs transfer to the Department on the effective date of the Program transfer and continue in effect as the rules of the Department until superseded by an act of the Department.

The HHSC Special Nutrition Program rules currently found in *Texas Administrative Code*, Title 1, Part 15, Chapters 377 and 378 will be transferred and reorganized under *Texas Administrative Code*, Title 4, Part 1, Chapters 24 and 25.

The transfer will take effect on October 1, 2007.

Please refer to Figure: 1 TAC Part 15, to see the complete conversion chart.

Figure: 1 TAC Part 15

In addition, in order to accommodate the transfer of the rules for the Special Nutrition Programs, the Department also reorganized some chapters in *Texas Administrative Code*, Title 4, Part 1, by consolidating rules relating to the Texas Agricultural Finance Authority found in Chapters 24 - 27 into Chapter 28. The transfer of those rules will also take effect on October 1, 2007.

Please refer to Figure: 4 TAC Part 1, to see the complete conversion chart.

Figure: 4 TAC Part 1

TRD-200704194





Figure: 1 TAC Part 15

Current Rules from Title 1, Part 15 Texas Health and Human Services Commission			Transferred to Title 4, Part 1 Texas Department of Agriculture		
Chapter and Subchapter	Section	Heading	Chapter and Subchapter	Section	Heading
377		<b>Food Distribution and Processing</b>	24		<b>Food Distribution and Processing</b>
	<b>A</b>	<b>Food Distribution Program</b>		<b>A</b>	<b>Food Distribution Program</b>
	§377.101	Definitions of Program Terms		§24.101	Definitions of Program Terms
	§377.102	Eligible Distributing and Subdistributing Agencies		§24.102	Eligible Distributing and Subdistributing Agencies
	§377.103	Eligibility Determination for Recipient Agencies and Recipients		§24.103	Eligibility Determination for Recipient Agencies and Recipients
	§377.104	Agreements and Contracts		§24.104	Agreements and Contracts
	§377.105	Contractor Sanctions, Termination, and Appeal Rights		§24.105	Contractor Sanctions, Termination, and Appeal Rights
	§377.106	Distribution and Control of Donated Foods		§24.106	Distribution and Control of Donated Foods
	§377.107	Warehousing and Distribution of Donated Foods		§24.107	Warehousing and Distribution of Donated Foods
	§377.108	Financial Management		§24.108	Financial Management
	§377.109	Recordkeeping		§24.109	Recordkeeping
	§377.110	Audits		§24.110	Audits
	§377.111	Reviews		§24.111	Reviews
	§377.112	Civil Rights		§24.112	Civil Rights
	§377.113	Requirement To Buy American Products		§24.113	Requirement To Buy American Products
	§377.114	State Processing of Donated Foods		§24.114	State Processing of Donated Foods
	§377.115	Nonprofit Summer Camps for Children		§24.115	Nonprofit Summer Camps for Children
	§377.116	Charitable Institutions		§24.116	Charitable Institutions
	§377.117	Nutrition Programs for the Elderly		§24.117	Nutrition Programs for the Elderly
	§377.118	Disaster Organizations		§24.118	Disaster Organizations
	§377.119	Special Food Assistance Programs		§24.119	Special Food Assistance Programs
	§377.120	School Food Authorities and Commodity Schools		§24.120	School Food Authorities and Commodity Schools
	§377.121	Nonresidential Child and Adult Care Institutions		§24.121	Nonresidential Child and Adult Care Institutions
	§377.122	Services Institutions		§24.122	Services Institutions
	<b>B</b>	<b>The Texas Commodity Assistance Program (TEXCAP)</b>		<b>B</b>	<b>The Texas Commodity Assistance Program (TEXCAP)</b>
	§377.6001	Purpose		§24.601	Purpose
	§377.6002	Eligibility Requirements		§24.602	Eligibility Requirements
	§377.6003	Applicant Responsibilities		§24.603	Applicant Responsibilities

		§377.6004	Applicant Rights			§24.604	Applicant Rights
		§377.6005	Eligibility Guidelines			§24.605	Eligibility Guidelines
		§377.6006	Commodity Distribution			§24.606	Commodity Distribution
		§377.6007	Responsibilities of Contracted Agencies			§24.607	Responsibilities of Contracted Agencies
		§377.6008	Corrective Action			§24.608	Corrective Action
		§377.6009	Reimbursement			§24.609	Reimbursement
		§377.6010	Selection of Contractors			§24.610	Selection of Contractors
		§377.6011	Adverse Action, Appeal, and Complaint Procedures			§24.611	Adverse Action, Appeal, and Complaint Procedures
	<b>C</b>		<b>Commodity Supplemental Food Program</b>		<b>C</b>		<b>Commodity Supplemental Food Program</b>
		§377.7001	Purpose			§24.701	Purpose
		§377.7002	Definitions and Terms			§24.702	Definitions and Terms
		§377.7003	Selection of Local Agencies			§24.703	Selection of Local Agencies
		§377.7004	Certification			§24.704	Certification
		§377.7005	Nutrition Education			§24.705	Nutrition Education
		§377.7006	Financial Management			§24.706	Financial Management
		§377.7007	Administrative Costs			§24.707	Administrative Costs
		§377.7008	Program Income			§24.708	Program Income
		§377.7009	Responsibilities of Local Agencies			§24.709	Responsibilities of Local Agencies
		§377.7010	Records and Reports			§24.710	Records and Reports
		§377.7011	Procurement and Property Management			§24.711	Procurement and Property Management
		§377.7012	Management Evaluations and Reviews			§24.712	Management Evaluations and Reviews
		§377.7013	Audits			§24.713	Audits
		§377.7014	Adverse Action, Appeal, and Fair Hearings			§24.714	Adverse Action, Appeal, and Fair Hearings
		§377.7015	Nondiscrimination			§24.715	Nondiscrimination
<b>378</b>			<b>Special Nutrition Programs</b>	<b>25</b>			<b>Special Nutrition Programs</b>
	<b>A</b>		<b>Child and Adult Care Food Program (CACFP)</b>		<b>A</b>		<b>Child and Adult Care Food Program (CACFP)</b>
<b>Division 1</b>			<b>Overview and Purpose</b>	<b>Division 1</b>			<b>Overview and Purpose</b>
		§378.1	What is the purpose of the Child and Adult Care Food Program (CACFP)?			§25.1	What is the purpose of the Child and Adult Care Food Program (CACFP)?
		§378.2	What do certain words and terms in this subchapter mean?			§25.2	What do certain words and terms in this subchapter mean?
		§378.3	How is the CACFP authorized?			§25.3	How is the CACFP authorized?
		§378.4	How may DHS use the CACFP federal assistance?			§25.4	How may DHS use the CACFP federal assistance?
<b>Division 2</b>			<b>Eligibility of Contractors and Facilities</b>	<b>Division 2</b>			<b>Eligibility of Contractors and Facilities</b>
		§378.11	What requirements must contractors and facilities meet in order to be eligible to participate in the CACFP?			§25.11	What requirements must contractors and facilities meet in order to be eligible to participate in the CACFP?

	§378.12	Must contractors and facilities be licensed or approved in order to participate in the CACFP?		§25.12	Must contractors and facilities be licensed or approved in order to participate in the CACFP?
	§378.13	Who is the licensing authority in Texas?		§25.13	Who is the licensing authority in Texas?
	§378.14	Are there any exceptions to the licensing requirements?		§25.14	Are there any exceptions to the licensing requirements?
	§378.15	When must a contractor submit copies of its license or registration?		§25.15	When must a contractor submit copies of its license or registration?
	§378.16	Must a contractor comply with training requirements in order to be eligible to participate in the CACFP?		§25.16	Must a contractor comply with training requirements in order to be eligible to participate in the CACFP?
	§378.17	Must a nonprofit contractor have tax-exempt status in order to be eligible to participate in the CACFP?		§25.17	Must a nonprofit contractor have tax-exempt status in order to be eligible to participate in the CACFP?
	§378.18	Must a proprietary for-profit organization or a sponsored for-profit facility meet specific eligibility requirements in order to be eligible to participate in the CACFP?		§25.18	Must a proprietary for-profit organization or a sponsored for-profit facility meet specific eligibility requirements in order to be eligible to participate in the CACFP?
	§378.19	Are there any exceptions to the eligibility requirements stated in 7 CFR §226.15 for a proprietary for-profit child care center or a for-profit sponsored child care facility?		§25.19	Are there any exceptions to the eligibility requirements stated in 7 CFR §226.15 for a proprietary for-profit child care center or a for-profit sponsored child care facility?
	§378.20	What is the Free/Reduced-Price Expanded Eligibility Pilot criterion?		§25.20	What is the Free/Reduced-Price Expanded Eligibility Pilot criterion?
	§378.21	Must a renewing contractor show compliance with the single audit requirements in 7 CFR Part 3052 in order to participate in the CACFP?		§25.21	Must a renewing contractor show compliance with the single audit requirements in 7 CFR Part 3052 in order to participate in the CACFP?
	§378.22	How does a contractor demonstrate compliance with the single audit requirements when applying to participate in the CACFP?		§25.22	How does a contractor demonstrate compliance with the single audit requirements when applying to participate in the CACFP?
	§378.23	Must child care facilities distribute information about other programs?		§25.23	Must child care facilities distribute information about other programs?
	§378.24	Are there any exceptions to the requirement regarding distribution of materials?		§25.24	Are there any exceptions to the requirement regarding distribution of materials?

	§378.25	Must an organization satisfy specific requirements in order to be eligible to participate in the CACFP as a day care home sponsor?		§25.25	Must an organization satisfy specific requirements in order to be eligible to participate in the CACFP as a day care home sponsor?
	§378.26	Where must a contractor obtain a performance bond?		§25.26	Where must a contractor obtain a performance bond?
	§378.27	How often must an organization submit a performance bond?		§25.27	How often must an organization submit a performance bond?
	§378.28	Must the dollar amount of the performance bond be adjusted?		§25.28	Must the dollar amount of the performance bond be adjusted?
	§378.29	What happens if an organization has fewer than three years of administrative and financial history?		§25.29	What happens if an organization has fewer than three years of administrative and financial history?
	§378.30	When must a representative of the organization make records available at the primary physical location?		§25.30	When must a representative of the organization make records available at the primary physical location?
	§378.31	When must a representative of the organization be available at the primary physical location?		§25.31	When must a representative of the organization be available at the primary physical location?
	§378.32	How must a contractor make itself available to DHS and providers?		§25.32	How must a contractor make itself available to DHS and providers?
	§378.33	What must happen if a contractor's primary physical location changes?		§25.33	What must happen if a contractor's primary physical location changes?
	§378.34	How do contractors and facilities qualify to participate in the CACFP At Risk Afterschool Snack program?		§25.34	How do contractors and facilities qualify to participate in the CACFP At Risk Afterschool Snack program?
	§378.35	Are supervised athletic activities ever allowed in the CACFP At Risk Afterschool Snack program?		§25.35	Are supervised athletic activities ever allowed in the CACFP At Risk Afterschool Snack program?
	§378.36	What information must contractors that operate or sponsor the participation of one or more emergency shelters provide to demonstrate that they qualify to participate in the CACFP as an emergency shelter?		§25.36	What information must contractors that operate or sponsor the participation of one or more emergency shelters provide to demonstrate that they qualify to participate in the CACFP as an emergency shelter?
	§378.37	Are there any conditions that would make a contractor ineligible to participate in the CACFP?		§25.37	Are there any conditions that would make a contractor ineligible to participate in the CACFP?
<b>Division 3</b>		<b>Contractor Application Process</b>	<b>Division 3</b>		<b>Contractor Application Process</b>

		§378.61	Must a contractor submit an application to participate in the CACFP?			§25.61	Must a contractor submit an application to participate in the CACFP?
		§378.62	What must a contractor do if the information on its application changes from what was originally submitted?			§25.62	What must a contractor do if the information on its application changes from what was originally submitted?
		§378.63	What criteria does DHS use to approve or deny applications for participation?			§25.63	What criteria does DHS use to approve or deny applications for participation?
		§378.64	Because of its status as a nonprofit, is there any information a sponsor is required to include in its application to meet Internal Revenue Service requirements?			§25.64	Because of its status as a nonprofit, is there any information a sponsor is required to include in its application to meet Internal Revenue Service requirements?
		§378.65	What information must a contractor submit in its program application?			§25.65	What information must a contractor submit in its program application?
		§378.66	Does DHS conduct pre-approval visits to child care contractors applying to participate in the CACFP?			§25.66	Does DHS conduct pre-approval visits to child care contractors applying to participate in the CACFP?
		§378.67	What happens if a contractor's application is incomplete?			§25.67	What happens if a contractor's application is incomplete?
		§378.68	Can a contractor reapply if its application is denied?			§25.68	Can a contractor reapply if its application is denied?
<b>Division 4</b>			<b>Agreements</b>	<b>Division 4</b>			<b>Agreements</b>
		§378.81	Is a contractor required to enter into an agreement with DHS in order to participate in the CACFP?			§25.81	Is a contractor required to enter into an agreement with DHS in order to participate in the CACFP?
		§378.82	What is the nature of this agreement?			§25.82	What is the nature of this agreement?
		§378.83	Is a facility required to enter into an agreement with a sponsoring organization to participate in the CACFP?			§25.83	Is a facility required to enter into an agreement with a sponsoring organization to participate in the CACFP?
		§378.84	Is this also a legally binding document that specifies the rights and responsibilities of both the sponsor and facility?			§25.84	Is this also a legally binding document that specifies the rights and responsibilities of both the sponsor and facility?
		§378.85	Must a contractor that purchases meals from a food service management company (FSMC) or school food authority (SFA) enter into a contract with that entity?			§25.85	Must a contractor that purchases meals from a food service management company (FSMC) or school food authority (SFA) enter into a contract with that entity?

	§378.86	What is the term of this agreement?		§25.86	What is the term of this agreement?
	§378.87	How may this agreement be extended?		§25.87	How may this agreement be extended?
	§378.88	Can an extension last more than 12 months?		§25.88	Can an extension last more than 12 months?
	§378.89	What information must a contractor include in its agreement?		§25.89	What information must a contractor include in its agreement?
	§378.90	What happens if an FSMC does not provide a contractor with monthly billing records by the specified date?		§25.90	What happens if an FSMC does not provide a contractor with monthly billing records by the specified date?
	§378.91	Can an organization have more than one agreement with DHS to participate as a CACFP day care home contractor, child care center contractor, or adult day care center contractor?		§25.91	Can an organization have more than one agreement with DHS to participate as a CACFP day care home contractor, child care center contractor, or adult day care center contractor?
	§378.92	What if the organization is legally distinct from a current CACFP contractor?		§25.92	What if the organization is legally distinct from a current CACFP contractor?
<b>Division 5</b>		<b>Contractor Standards and Responsibilities</b>	<b>Division 5</b>		<b>Contractor Standards and Responsibilities</b>
	§378.111	Must a contractor follow specific procurement guidelines to obtain food, supplies, and other goods and services for the CACFP?		§25.111	Must a contractor follow specific procurement guidelines to obtain food, supplies, and other goods and services for the CACFP?
	§378.112	How must a contractor obtain the title to, use, and dispose of equipment used in the operation of the CACFP?		§25.112	How must a contractor obtain the title to, use, and dispose of equipment used in the operation of the CACFP?
	§378.113	Under what standards must a child care or adult day care center contractor determine a participant's eligibility for free and reduced-price meals?		§25.113	Under what standards must a child care or adult day care center contractor determine a participant's eligibility for free and reduced-price meals?
	§378.114	How must DHS and child care or adult day care center contractors verify the eligibility of program participants for free and reduced-price meals?		§25.114	How must DHS and child care or adult day care center contractors verify the eligibility of program participants for free and reduced-price meals?
	§378.115	Are there any restrictions on the type of meals that an adult day care center contractor can claim for reimbursement?		§25.115	Are there any restrictions on the type of meals that an adult day care center contractor can claim for reimbursement?

	§378.116	Can a contractor consider individuals who live in residential institutions and attend the adult day care center during the day as "enrolled" on the center's claim forms?		§25.116	Can a contractor consider individuals who live in residential institutions and attend the adult day care center during the day as "enrolled" on the center's claim forms?
	§378.117	Is a contractor who is approved to operate the CACFP At Risk Afterschool Snack program required to provide snacks free of charge to its participants?		§25.117	Is a contractor who is approved to operate the CACFP At Risk Afterschool Snack program required to provide snacks free of charge to its participants?
	§378.118	Will contractors be discriminated against in the CACFP?		§25.118	Will contractors be discriminated against in the CACFP?
	§378.119	Is a contractor required to prevent discrimination against participants in its CACFP operations?		§25.119	Is a contractor required to prevent discrimination against participants in its CACFP operations?
	§378.120	Are contractors and facilities required to ensure that health, safety, and sanitation standards are enforced?		§25.120	Are contractors and facilities required to ensure that health, safety, and sanitation standards are enforced?
	§378.121	Must a contractor provide training and technical assistance to its center or sponsored facility staff?		§25.121	Must a contractor provide training and technical assistance to its center or sponsored facility staff?
	§378.122	Can a contractor implement a change to its approved management plan before DHS approves the change?		§25.122	Can a contractor implement a change to its approved management plan before DHS approves the change?
<b>Division 6</b>		<b>Budgets</b>	<b>Division 6</b>		<b>Budgets</b>
	§378.141	How must a contractor submit an administrative budget for DHS approval?		§25.141	How must a contractor submit an administrative budget for DHS approval?
	§378.142	What information must a day care home sponsor include when submitting its budget?		§25.142	What information must a day care home sponsor include when submitting its budget?
	§378.143	What are the program functions that should be included in a budget?		§25.143	What are the program functions that should be included in a budget?
	§378.144	What should the contractor do if the required program functions are provided at no cost to the program?		§25.144	What should the contractor do if the required program functions are provided at no cost to the program?
	§378.145	How must a contractor manage payment of costs that are not allowable uses of program funds?		§25.145	How must a contractor manage payment of costs that are not allowable uses of program funds?
	§378.146	How does DHS handle adjustments to the budget?		§25.146	How does DHS handle adjustments to the budget?
	§378.147	When must a contractor submit its budget to DHS?		§25.147	When must a contractor submit its budget to DHS?

	§378.148	Will DHS approve a budget adjustment retroactively?			§25.148	Will DHS approve a budget adjustment retroactively?
	§378.149	What happens if a day care home sponsor operates at a deficit?			§25.149	What happens if a day care home sponsor operates at a deficit?
	§378.150	What happens if a day care home sponsor exceeds the allowable amounts calculated under 7 CFR §226.12?			§25.150	What happens if a day care home sponsor exceeds the allowable amounts calculated under 7 CFR §226.12?
	§378.151	How must a contractor report donations on its budget?			§25.151	How must a contractor report donations on its budget?
	§378.152	How does DHS determine the limits of a day care home sponsor's budget?			§25.152	How does DHS determine the limits of a day care home sponsor's budget?
	§378.153	What part of the budget can DHS limit?			§25.153	What part of the budget can DHS limit?
	§378.154	What budget information must a contractor provide when it applies for start-up or expansion funds?			§25.154	What budget information must a contractor provide when it applies for start-up or expansion funds?
<b>Division 7</b>		<b>Financial Management</b>	<b>Division 7</b>		<b>Financial Management</b>	
	§378.161	Is a contractor required to implement a particular financial management system?			§25.161	Is a contractor required to implement a particular financial management system?
	§378.162	Must a contractor maintain financial management system records related to its participation in the CACFP?			§25.162	Must a contractor maintain financial management system records related to its participation in the CACFP?
	§378.163	Is a Day Activity and Health Services (DAHS) center that participates in the CACFP required to report any reimbursement it receives while taking part in the CACFP?			§25.163	Is a Day Activity and Health Services (DAHS) center that participates in the CACFP required to report any reimbursement it receives while taking part in the CACFP?
	§378.164	Can a contractor use CACFP funds to assist eligible unlicensed or unregistered potential day care homes to become licensed or registered?			§25.164	Can a contractor use CACFP funds to assist eligible unlicensed or unregistered potential day care homes to become licensed or registered?
	§378.165	Can a contractor use CACFP funds to assist potential day care homes to become licensed or registered if those providers have previously received CACFP funds?			§25.165	Can a contractor use CACFP funds to assist potential day care homes to become licensed or registered if those providers have previously received CACFP funds?
<b>Division 8</b>		<b>Reporting and Record Retention</b>	<b>Division 8</b>		<b>Reporting and Record Retention</b>	
	§378.171	How must a contractor submit reports to DHS?			§25.171	How must a contractor submit reports to DHS?



	§378.172	What information must a contractor keep to support reports submitted to DHS?		§25.172	What information must a contractor keep to support reports submitted to DHS?
	§378.173	How long must a contractor maintain records and documents pertaining to the CACFP?		§25.173	How long must a contractor maintain records and documents pertaining to the CACFP?
	§378.174	How long must a contractor maintain program-related documentation if litigation, claims, audits, or investigations involving these records occur before the end of three years and 90 days?		§25.174	How long must a contractor maintain program-related documentation if litigation, claims, audits, or investigations involving these records occur before the end of three years and 90 days?
	§378.175	When is litigation, a claim, an audit, or an investigation finding resolved?		§25.175	When is litigation, a claim, an audit, or an investigation finding resolved?
	§378.176	Must a contractor provide access to its facilities and records?		§25.176	Must a contractor provide access to its facilities and records?
	§378.177	How must a sponsoring organization with more than one approved facility maintain records?		§25.177	How must a sponsoring organization with more than one approved facility maintain records?
	§378.178	Can a sponsoring organization maintain CACFP records with other program records?		§25.178	Can a sponsoring organization maintain CACFP records with other program records?
	§378.179	Must a sponsoring organization ensure that facilities maintain certain records daily?		§25.179	Must a sponsoring organization ensure that facilities maintain certain records daily?
	§378.180	What forms must a contractor use to administer the CACFP?		§25.180	What forms must a contractor use to administer the CACFP?
	§378.181	What is the authority for maintaining and submitting records?		§25.181	What is the authority for maintaining and submitting records?
	§378.182	What management information must a day care home sponsor submit each month?		§25.182	What management information must a day care home sponsor submit each month?
	§378.183	In what form must this information be submitted?		§25.183	In what form must this information be submitted?
<b>Division 9</b>		<b>Meal Requirements</b>	<b>Division 9</b>		<b>Meal Requirements</b>
	§378.191	Must a contractor ensure that all meals served and claimed for reimbursement satisfy the CACFP program requirements?		§25.191	Must a contractor ensure that all meals served and claimed for reimbursement satisfy the CACFP program requirements?
	§378.192	How much time can elapse between meals?		§25.192	How much time can elapse between meals?
	§378.193	How long can individual meal times last?		§25.193	How long can individual meal times last?

	§378.194	Are there any exceptions?			§25.194	Are there any exceptions?
	§378.195	Can a day care home sponsor require the use of pre-planned pre-printed menus?			§25.195	Can a day care home sponsor require the use of pre-planned pre-printed menus?
	§378.196	Can a day care home sponsor provide pre-planned pre-printed menus as a training tool only?			§25.196	Can a day care home sponsor provide pre-planned pre-printed menus as a training tool only?
	§378.197	Can a day care home use pre-planned menus?			§25.197	Can a day care home use pre-planned menus?
	§378.198	Can a contractor claim reimbursement for meals served to eligible program participants during field trips?			§25.198	Can a contractor claim reimbursement for meals served to eligible program participants during field trips?
<b>Division 10</b>		<b>Day Care Homes</b>	<b>Division 10</b>		<b>Day Care Homes</b>	
	§378.211	What materials must a day home sponsor submit in order for a day care home to be approved to participate in the CACFP?			§25.211	What materials must a day home sponsor submit in order for a day care home to be approved to participate in the CACFP?
	§378.212	Is there a time frame by which a day home sponsor must submit application materials in order for a day care home to be approved to participate in the CACFP in a given month?			§25.212	Is there a time frame by which a day home sponsor must submit application materials in order for a day care home to be approved to participate in the CACFP in a given month?
	§378.213	What constitutes a complete and correct Day Care Home Application?			§25.213	What constitutes a complete and correct Day Care Home Application?
	§378.214	Is there any information on the Day Care Home Application that DHS can complete or correct on behalf of the provider?			§25.214	Is there any information on the Day Care Home Application that DHS can complete or correct on behalf of the provider?
	§378.215	What constitutes a complete and correct Agreement Between Sponsor and Day Care Home Provider?			§25.215	What constitutes a complete and correct Agreement Between Sponsor and Day Care Home Provider?
	§378.216	Is there any information on the Agreement Between Sponsor and Day Care Home Provider that DHS can complete or correct on behalf of the provider?			§25.216	Is there any information on the Agreement Between Sponsor and Day Care Home Provider that DHS can complete or correct on behalf of the provider?
	§378.217	How does DHS determine the date a day care home can participate in the CACFP?			§25.217	How does DHS determine the date a day care home can participate in the CACFP?

	§378.218	Which days of the week does DHS approve as meal service days for day care homes?		§25.218	Which days of the week does DHS approve as meal service days for day care homes?
	§378.219	Can a day care home that is currently participating in the CACFP under one sponsor sign an agreement to participate with a different sponsor?		§25.219	Can a day care home that is currently participating in the CACFP under one sponsor sign an agreement to participate with a different sponsor?
	§378.220	Can a day care home change sponsors more than once during the program year?		§25.220	Can a day care home change sponsors more than once during the program year?
	§378.221	What is good cause for transferring?		§25.221	What is good cause for transferring?
	§378.222	Can a day care home participate with more than one sponsor in the same month?		§25.222	Can a day care home participate with more than one sponsor in the same month?
	§378.223	Can a day care home provider that participates in the CACFP actively take part in any sponsor's day-to-day operations, either full- or part-time?		§25.223	Can a day care home provider that participates in the CACFP actively take part in any sponsor's day-to-day operations, either full- or part-time?
	§378.224	Can a day care home provider be a board member of a sponsoring organization?		§25.224	Can a day care home provider be a board member of a sponsoring organization?
	§378.225	Can a day care home provider that has been found guilty of committing fraud in the CACFP still participate in the CACFP?		§25.225	Can a day care home provider that has been found guilty of committing fraud in the CACFP still participate in the CACFP?
	§378.226	Is a day care home required to attend program-related training to qualify to participate in the CACFP?		§25.226	Is a day care home required to attend program-related training to qualify to participate in the CACFP?
	§378.227	Does DHS limit the number of day care homes that a new contractor may sponsor?		§25.227	Does DHS limit the number of day care homes that a new contractor may sponsor?
	§378.228	If DHS limits the number of day care homes that a newly approved contractor can sponsor, how can the contractor gain additional homes?		§25.228	If DHS limits the number of day care homes that a newly approved contractor can sponsor, how can the contractor gain additional homes?
	§378.229	Does DHS limit the number of day care homes that a contractor currently participating in the CACFP may sponsor?		§25.229	Does DHS limit the number of day care homes that a contractor currently participating in the CACFP may sponsor?

	§378.230	Does DHS approve additional day care homes for contractors already participating in the CACFP?		§25.230	Does DHS approve additional day care homes for contractors already participating in the CACFP?
	§378.231	How does DHS notify a contractor that its total number of day care homes has been limited?		§25.231	How does DHS notify a contractor that its total number of day care homes has been limited?
	§378.232	On what does DHS base its adjustment?		§25.232	On what does DHS base its adjustment?
	§378.233	In addition to the provisions of 7 CFR §226.13 and §226.18, what other guidelines must a contractor that sponsors day care homes follow?		§25.233	In addition to the provisions of 7 CFR §226.13 and §226.18, what other guidelines must a contractor that sponsors day care homes follow?
<b>Division 11</b>		<b>Start-Up and Expansion Payments</b>	<b>Division 11</b>		<b>Start-Up and Expansion Payments</b>
	§378.261	What are start-up and expansion payments?		§25.261	What are start-up and expansion payments?
	§378.262	Which contractors are eligible to request start-up and expansion payments?		§25.262	Which contractors are eligible to request start-up and expansion payments?
	§378.263	How does a contractor apply to receive start-up and expansion payments?		§25.263	How does a contractor apply to receive start-up and expansion payments?
	§378.264	How does DHS issue start-up payments to contractors that sponsor or want to sponsor day care homes?		§25.264	How does DHS issue start-up payments to contractors that sponsor or want to sponsor day care homes?
	§378.265	How does DHS issue expansion payments to day care home sponsors?		§25.265	How does DHS issue expansion payments to day care home sponsors?
	§378.266	How does DHS determine the amount of expansion payments issued to a day care home sponsor?		§25.266	How does DHS determine the amount of expansion payments issued to a day care home sponsor?
	§378.267	How must a day care home sponsor use expansion payments?		§25.267	How must a day care home sponsor use expansion payments?
	§378.268	How must a day care home sponsor use start-up payments?		§25.268	How must a day care home sponsor use start-up payments?
	§378.269	Can start-up or expansion payments awarded to day care home sponsors be used to recruit day care homes that are already participating with another DHS-approved sponsoring organization?		§25.269	Can start-up or expansion payments awarded to day care home sponsors be used to recruit day care homes that are already participating with another DHS-approved sponsoring organization?
<b>Division 13</b>		<b>Commodities and Cash In-Lieu Assistance</b>	<b>Division 13</b>		<b>Commodities and Cash In-Lieu Assistance</b>

	§378.311	Does DHS provide commodity assistance to contractors?		§25.311	Does DHS provide commodity assistance to contractors?
	§378.312	How does DHS determine whether to issue commodities or cash-in-lieu of commodities?		§25.312	How does DHS determine whether to issue commodities or cash-in-lieu of commodities?
	§378.313	If a day care home sponsor chooses to distribute bonus commodities to its day care homes, how does it determine the number of commodities to distribute to each day care home?		§25.313	If a day care home sponsor chooses to distribute bonus commodities to its day care homes, how does it determine the number of commodities to distribute to each day care home?
	§378.314	Who covers the costs of distributing bonus commodities?		§25.314	Who covers the costs of distributing bonus commodities?
	§378.315	Can a sponsoring organization include administrative costs associated with the distribution of bonus commodities in its CACFP costs?		§25.315	Can a sponsoring organization include administrative costs associated with the distribution of bonus commodities in its CACFP costs?
	§378.316	What does DHS require of a day care home sponsoring organization before that organization can submit charges to its day care homes?		§25.316	What does DHS require of a day care home sponsoring organization before that organization can submit charges to its day care homes?
	§378.317	Are facilities or centers required to receive bonus commodities?		§25.317	Are facilities or centers required to receive bonus commodities?
<b>Division 14</b>		<b>Reimbursement</b>	<b>Division 14</b>		<b>Reimbursement</b>
	§378.331	Under what authority does DHS reimburse a contractor for its participation in the CACFP?		§25.331	Under what authority does DHS reimburse a contractor for its participation in the CACFP?
	§378.332	Under what authority must contractors reimburse facilities?		§25.332	Under what authority must contractors reimburse facilities?
	§378.333	How does DHS assign reimbursement rates for contractors?		§25.333	How does DHS assign reimbursement rates for contractors?
	§378.334	What options does DHS use to reimburse contractors?		§25.334	What options does DHS use to reimburse contractors?
	§378.335	How does DHS compute reimbursement for approved child care centers, outside-school-hours care centers, adult day care centers, and day care homes?		§25.335	How does DHS compute reimbursement for approved child care centers, outside-school-hours care centers, adult day care centers, and day care homes?
	§378.336	What are Title III benefits?		§25.336	What are Title III benefits?

	§378.337	Can independent adult day care centers and contractors that sponsor adult day care centers claim reimbursement for meals supported by Title III of the Older Americans Act?		§25.337	Can independent adult day care centers and contractors that sponsor adult day care centers claim reimbursement for meals supported by Title III of the Older Americans Act?
	§378.338	If a contractor uses a food service management company to prepare the meals served at the adult day care center, who is responsible for ensuring that neither Title III funds nor commodities were used in the meals?		§25.338	If a contractor uses a food service management company to prepare the meals served at the adult day care center, who is responsible for ensuring that neither Title III funds nor commodities were used in the meals?
	§378.339	How many snacks can a CACFP At Risk Afterschool Snack program contractor claim for reimbursement?		§25.339	How many snacks can a CACFP At Risk Afterschool Snack program contractor claim for reimbursement?
	§378.340	What are the requirements for submitting a claim for reimbursement for a snack?		§25.340	What are the requirements for submitting a claim for reimbursement for a snack?
	§378.341	What rate does DHS use to reimburse contractors who operate the CACFP At Risk Afterschool Snack program?		§25.341	What rate does DHS use to reimburse contractors who operate the CACFP At Risk Afterschool Snack program?
	§378.342	Can a contractor be reimbursed for after school snacks served to participants in an approved At Risk Afterschool program in addition to the meals provided in traditional child care?		§25.342	Can a contractor be reimbursed for after school snacks served to participants in an approved At Risk Afterschool program in addition to the meals provided in traditional child care?
	§378.343	What is the maximum number of reimbursable meals under the CACFP?		§25.343	What is the maximum number of reimbursable meals under the CACFP?
	§378.344	Are there any exceptions?		§25.344	Are there any exceptions?
	§378.345	How many meals can a contractor that sponsors or operates emergency shelters for homeless children include in a claim for reimbursement?		§25.345	How many meals can a contractor that sponsors or operates emergency shelters for homeless children include in a claim for reimbursement?
	§378.346	Are there any meals for which emergency shelters for homeless children contractors cannot claim reimbursement?		§25.346	Are there any meals for which emergency shelters for homeless children contractors cannot claim reimbursement?
	§378.347	Must a contractor claim reimbursement within a specific time period?		§25.347	Must a contractor claim reimbursement within a specific time period?

	§378.348	Who is responsible for the accuracy of the information submitted on the contractor's claim for reimbursement?		§25.348	Who is responsible for the accuracy of the information submitted on the contractor's claim for reimbursement?
	§378.349	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?		§25.349	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
	§378.350	How does DHS process a claim received later than 60 days after the end of the claim month(s)?		§25.350	How does DHS process a claim received later than 60 days after the end of the claim month(s)?
	§378.351	What happens if DHS finds that good cause did not exist?		§25.351	What happens if DHS finds that good cause did not exist?
	§378.352	What happens if DHS finds that good cause beyond the contractor's control existed?		§25.352	What happens if DHS finds that good cause beyond the contractor's control existed?
	§378.353	What happens if USDA finds that good cause existed?		§25.353	What happens if USDA finds that good cause existed?
	§378.354	What happens if USDA finds that good cause did not exist?		§25.354	What happens if USDA finds that good cause did not exist?
	§378.355	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?		§25.355	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?
	§378.356	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?		§25.356	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?
	§378.357	What guidelines must a contractor use when serving second meals?		§25.357	What guidelines must a contractor use when serving second meals?
	§378.358	How must a contractor claim reimbursement for second meals?		§25.358	How must a contractor claim reimbursement for second meals?
	§378.359	Can a contractor that serves meals family style claim reimbursement for second meals?		§25.359	Can a contractor that serves meals family style claim reimbursement for second meals?
	§378.360	Can a day care home claim CACFP reimbursement for meals served to another day care home provider's own children when both providers participate in the CACFP?		§25.360	Can a day care home claim CACFP reimbursement for meals served to another day care home provider's own children when both providers participate in the CACFP?

		§378.361	Can the day care home provider's own child be considered a nonresidential child for the purpose of claiming reimbursement for a meal service at the day care home of another provider?			§25.361	Can the day care home provider's own child be considered a nonresidential child for the purpose of claiming reimbursement for a meal service at the day care home of another provider?
		§378.362	What age group of children must an emergency shelter or homeless site serve in order to be eligible to participate as a contractor in the CACFP?			§25.362	What age group of children must an emergency shelter or homeless site serve in order to be eligible to participate as a contractor in the CACFP?
		§378.363	Are there any exceptions?			§25.363	Are there any exceptions?
<b>Division 15</b>			<b>Overpayments</b>	<b>Division 15</b>			<b>Overpayments</b>
		§378.382	What happens to program funds that a day care home sponsor recovers from a day care home?			§25.382	What happens to program funds that a day care home sponsor recovers from a day care home?
		§378.383	Can a day care home sponsor use CACFP funds to recruit day care homes?			§25.383	Can a day care home sponsor use CACFP funds to recruit day care homes?
<b>Division 16</b>			<b>Program Reviews, Monitoring, and Management Evaluations</b>	<b>Division 16</b>			<b>Program Reviews, Monitoring, and Management Evaluations</b>
		§378.391	Is a contractor required to monitor its own program operations?			§25.391	Is a contractor required to monitor its own program operations?
		§378.392	Does DHS conduct periodic visits to CACFP contractors?			§25.392	Does DHS conduct periodic visits to CACFP contractors?
		§378.393	How does DHS determine which contractors to visit?			§25.393	How does DHS determine which contractors to visit?
		§378.394	Does DHS require sponsors of day care homes to verify participation of the children in their day care homes?			§25.394	Does DHS require sponsors of day care homes to verify participation of the children in their day care homes?
		§378.395	How must a day care home sponsor verify the participation of the children claimed?			§25.395	How must a day care home sponsor verify the participation of the children claimed?
		§378.396	How must a day care home sponsor verify a child's enrollment in a day care home?			§25.396	How must a day care home sponsor verify a child's enrollment in a day care home?
		§378.397	Can a contractor verify the participation of children in day care homes even if the day care home is neither randomly selected for verification by DHS nor requires additional verification of participation after being randomly selected by DHS?			§25.397	Can a contractor verify the participation of children in day care homes even if the day care home is neither randomly selected for verification by DHS nor requires additional verification of participation after being randomly selected by DHS?



	§378.398	How does a day care home sponsor conduct reviews of day care homes?		§25.398	How does a day care home sponsor conduct reviews of day care homes?
	§378.399	How does a center sponsor conduct reviews of its sponsored facilities?		§25.399	How does a center sponsor conduct reviews of its sponsored facilities?
	§378.400	What type of monitoring reviews must a day care home sponsor conduct?		§25.400	What type of monitoring reviews must a day care home sponsor conduct?
	§378.401	Must the day care home sponsor observe a meal service during each monitoring review?		§25.401	Must the day care home sponsor observe a meal service during each monitoring review?
	§378.402	What happens if the day care home sponsor cannot confirm program participation?		§25.402	What happens if the day care home sponsor cannot confirm program participation?
	§378.403	When must a day care home sponsor conduct monitoring reviews of day care homes that participate on weekends?		§25.403	When must a day care home sponsor conduct monitoring reviews of day care homes that participate on weekends?
	§378.404	How does a contractor that sponsors the participation of child and adult care centers conduct monitoring reviews of its sponsored facilities?		§25.404	How does a contractor that sponsors the participation of child and adult care centers conduct monitoring reviews of its sponsored facilities?
	§378.405	Is a contractor that uses a food service management company (FSMC) contract required to monitor contracts with the FSMC?		§25.405	Is a contractor that uses a food service management company (FSMC) contract required to monitor contracts with the FSMC?
	§378.406	What happens if the health and well being of a program participant is at risk because of program deficiencies identified during an FSMC review?		§25.406	What happens if the health and well being of a program participant is at risk because of program deficiencies identified during an FSMC review?
<b>Division 17</b>		<b>Audits</b>	<b>Division 17</b>		<b>Audits</b>
	§378.421	Are contractors and sponsored facilities that participate in the CACFP subject to audit?		§25.421	Are contractors and sponsored facilities that participate in the CACFP subject to audit?
	§378.422	Are certain contractors exempt from the single audit requirements?		§25.422	Are certain contractors exempt from the single audit requirements?
	§378.423	When is an audit considered acceptable?		§25.423	When is an audit considered acceptable?
	§378.424	How is a contractor informed of its obligation to comply with the single audit requirements?		§25.424	How is a contractor informed of its obligation to comply with the single audit requirements?

		§378.425	Does DHS reimburse a contractor for the cost of obtaining a single audit?			§25.425	Does DHS reimburse a contractor for the cost of obtaining a single audit?
<b>Division 18</b>			<b>Sanctions, Penalties, and Fiscal Action</b>	<b>Division 18</b>			<b>Sanctions, Penalties, and Fiscal Action</b>
		§378.441	Does DHS investigate and resolve program deficiencies, program irregularities, and evidence of violations of criminal law or civil fraud statutes?			§25.441	Does DHS investigate and resolve program deficiencies, program irregularities, and evidence of violations of criminal law or civil fraud statutes?
		§378.442	What does DHS do if a contractor fails to comply with the CACFP requirements in 7 CFR Part 226 and this subchapter?			§25.442	What does DHS do if a contractor fails to comply with the CACFP requirements in 7 CFR Part 226 and this subchapter?
		§378.443	What does DHS do if DHS learns that a contractor has submitted false information on its program application?			§25.443	What does DHS do if DHS learns that a contractor has submitted false information on its program application?
		§378.444	What happens to eligible day care home providers or centers when their sponsoring organization is disqualified?			§25.444	What happens to eligible day care home providers or centers when their sponsoring organization is disqualified?
		§378.445	What happens if a contractor fails to attend mandatory DHS training?			§25.445	What happens if a contractor fails to attend mandatory DHS training?
		§378.446	What happens if a day care home sponsor fails to properly monitor or train providers when program violations related to monitoring or training of providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?			§25.446	What happens if a day care home sponsor fails to properly monitor or train providers when program violations related to monitoring or training of providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?
		§378.448	What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?			§25.448	What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?
		§378.449	What happens if a day care home sponsor fails to ensure that a claim is submitted only for eligible meals served to eligible children?			§25.449	What happens if a day care home sponsor fails to ensure that a claim is submitted only for eligible meals served to eligible children?

	§378.450	What happens if DHS determines during the test month of the initial review that 10% or more of the meals sampled and claimed for reimbursement fail to meet program requirements?		§25.450	What happens if DHS determines during the test month of the initial review that 10% or more of the meals sampled and claimed for reimbursement fail to meet program requirements?
	§378.452	What happens even if less than 10% of all meals claimed for the test month of the follow-up are ineligible?		§25.452	What happens even if less than 10% of all meals claimed for the test month of the follow-up are ineligible?
	§378.453	What happens during the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?		§25.453	What happens during the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?
	§378.454	What happens if a day care home sponsor fails to disburse program funds to providers according to program requirements when program violations related to the disbursement of program funds to providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?		§25.454	What happens if a day care home sponsor fails to disburse program funds to providers according to program requirements when program violations related to the disbursement of program funds to providers identified during an administrative review exceed a tolerance level of one provider or 10% of the providers sampled, whichever amount is greater?
	§378.456	What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?		§25.456	What happens after the second follow-up review if the day care home sponsor fails to demonstrate that all serious deficiencies identified by DHS have been or will be corrected?
	§378.457	What happens if, during a review or an audit, DHS cites a day care home sponsor for deficiencies in administrative or financial capabilities because the sponsor has too many day care homes?		§25.457	What happens if, during a review or an audit, DHS cites a day care home sponsor for deficiencies in administrative or financial capabilities because the sponsor has too many day care homes?
	§378.458	Can a day care home sponsor that is deficient in program operations add day care homes?		§25.458	Can a day care home sponsor that is deficient in program operations add day care homes?
	§378.459	What does DHS do if a contractor that is subject to the single audit requirements fails to submit an audit as required?		§25.459	What does DHS do if a contractor that is subject to the single audit requirements fails to submit an audit as required?

		§378.460	What does DHS do if a contractor fails to accomplish the required corrective action and permanently correct the serious deficiency regarding its single audit?			§25.460	What does DHS do if a contractor fails to accomplish the required corrective action and permanently correct the serious deficiency regarding its single audit?
		§378.461	Can a contractor appeal this action?			§25.461	Can a contractor appeal this action?
		§378.462	If a contractor subject to the single audit requirements fails to obtain and submit an acceptable audit by the specified due date and DHS either conducts the audit or arranges for an audit to be conducted by a third party, who must pay for the audit?			§25.462	If a contractor subject to the single audit requirements fails to obtain and submit an acceptable audit by the specified due date and DHS either conducts the audit or arranges for an audit to be conducted by a third party, who must pay for the audit?
		§378.463	Can DHS extend the deadline by which a contractor must submit an audit?			§25.463	Can DHS extend the deadline by which a contractor must submit an audit?
		§378.464	How must a contractor request an extension of its audit deadline?			§25.464	How must a contractor request an extension of its audit deadline?
		§378.465	Is DHS required to grant a contractor an extension of its audit deadline?			§25.465	Is DHS required to grant a contractor an extension of its audit deadline?
		§378.466	How is a new audit due date determined?			§25.466	How is a new audit due date determined?
		§378.467	How is the contractor informed of the decision regarding the extension of its audit due date?			§25.467	How is the contractor informed of the decision regarding the extension of its audit due date?
		§378.468	Can a contractor request more than one extension?			§25.468	Can a contractor request more than one extension?
		§378.469	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§25.469	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?
		§378.470	Must a contractor repay any overpayments identified through an audit finding?			§25.470	Must a contractor repay any overpayments identified through an audit finding?
		§378.471	What happens if a day care home sponsor determines during a monitoring review or by other means that a provider has been seriously deficient in its operation of the CACFP?			§25.471	What happens if a day care home sponsor determines during a monitoring review or by other means that a provider has been seriously deficient in its operation of the CACFP?

		§378.472	What happens if a day care home sponsor conducts two or more unannounced monitoring reviews in a 12-month period and cannot confirm that children are enrolled for child care and participating in the program?			§25.472	What happens if a day care home sponsor conducts two or more unannounced monitoring reviews in a 12-month period and cannot confirm that children are enrolled for child care and participating in the program?
<b>Division 19</b>			<b>Denials and Termination</b>	<b>Division 19</b>			<b>Denials and Termination</b>
		§378.491	What criteria does DHS use to deny applications and to terminate agreements for participation in the CACFP when a contractor fails to meet eligibility requirements?			§25.491	What criteria does DHS use to deny applications and to terminate agreements for participation in the CACFP when a contractor fails to meet eligibility requirements?
		§378.492	How does DHS notify a contractor of its denial of an application or proposal to terminate an agreement?			§25.492	How does DHS notify a contractor of its denial of an application or proposal to terminate an agreement?
		§378.493	Does DHS deny an application for participation or terminate an agreement when a contractor subject to the bonding requirement identified in 7 CFR §226.6 and Division 2 of this subchapter (relating to Eligibility of Contractors and Facilities) fails to comply with that requirement?			§25.493	Does DHS deny an application for participation or terminate an agreement when a contractor subject to the bonding requirement identified in 7 CFR §226.6 and Division 2 of this subchapter (relating to Eligibility of Contractors and Facilities) fails to comply with that requirement?
		§378.494	Can a contractor request relief from the bonding requirement?			§25.494	Can a contractor request relief from the bonding requirement?
		§378.495	What criteria must a day care home sponsor use to deny or terminate agreements with a day care home?			§25.495	What criteria must a day care home sponsor use to deny or terminate agreements with a day care home?
		§378.496	How does a day care home sponsor notify a day care home participating in the CACFP of its proposal to terminate the day care home's participation in the program?			§25.496	How does a day care home sponsor notify a day care home participating in the CACFP of its proposal to terminate the day care home's participation in the program?
		§378.497	Does DHS terminate an agreement with a contractor or deny the application of a contractor that has failed to permanently correct a serious deficiency in the administration of the CACFP?			§25.497	Does DHS terminate an agreement with a contractor or deny the application of a contractor that has failed to permanently correct a serious deficiency in the administration of the CACFP?
<b>Division 20</b>			<b>Appeals</b>	<b>Division 20</b>			<b>Appeals</b>

		§378.511	How does DHS conduct contractor and day care home appeals?			§25.511	How does DHS conduct contractor and day care home appeals?
		§378.512	How does DHS conduct food service management company appeals?			§25.512	How does DHS conduct food service management company appeals?
		§378.513	Who conducts appeals based on federal audits?			§25.513	Who conducts appeals based on federal audits?
		§378.514	How must participants appeal a contractor's denial of their eligibility for free and reduced-price meal benefits?			§25.514	How must participants appeal a contractor's denial of their eligibility for free and reduced-price meal benefits?
		§378.515	Can a contractor appeal a DHS decision not to request a USDA determination of good cause for submission of a late claim?			§25.515	Can a contractor appeal a DHS decision not to request a USDA determination of good cause for submission of a late claim?
		§378.516	How does a contractor request an appeal?			§25.516	How does a contractor request an appeal?
		§378.517	Can a contractor appeal if USDA decides that a late claim is ineligible for payment?			§25.517	Can a contractor appeal if USDA decides that a late claim is ineligible for payment?
		§378.518	Who is responsible for creating appeal procedures for sponsored day care homes?			§25.518	Who is responsible for creating appeal procedures for sponsored day care homes?
		§378.519	When is a contractor required to provide a day care home with appeal procedures?			§25.519	When is a contractor required to provide a day care home with appeal procedures?
		§378.520	What is an adverse action?			§25.520	What is an adverse action?
	<b>B</b>		<b>Summer Food Service Program (SFSP)</b>		<b>B</b>		<b>Summer Food Service Program (SFSP)</b>
<b>Division 1</b>			<b>Overview and Purpose</b>	<b>Division 1</b>			<b>Overview and Purpose</b>
		§378.601	What is the purpose of the Summer Food Service Program (SFSP)?			§25.601	What is the purpose of the Summer Food Service Program (SFSP)?
		§378.602	What do certain words and terms in this subchapter mean?			§25.602	What do certain words and terms in this subchapter mean?
		§378.603	How is the SFSP authorized?			§25.603	How is the SFSP authorized?
<b>Division 2</b>				<b>Division 2</b>			
		§378.611	How do sponsors qualify to participate in the SFSP?			§25.611	How do sponsors qualify to participate in the SFSP?
		§378.612	Are public school districts required to participate in the SFSP?			§25.612	Are public school districts required to participate in the SFSP?
		§378.613	If public schools are approved to participate in the National School Lunch Program, are they eligible to participate in the SFSP?			§25.613	If public schools are approved to participate in the National School Lunch Program, are they eligible to participate in the SFSP?

	§378.614	Are any sponsors required to submit proof of tax-exempt status?		§25.614	Are any sponsors required to submit proof of tax-exempt status?
	§378.615	Can a college or university participate as an SFSP sponsor on a year-round basis?		§25.615	Can a college or university participate as an SFSP sponsor on a year-round basis?
	§378.616	Does DHS approve applications from potential sponsors that do not provide year-round service to the communities they propose to serve?		§25.616	Does DHS approve applications from potential sponsors that do not provide year-round service to the communities they propose to serve?
	§378.617	Does DHS use a priority system when approving applicants that propose to serve the same area or the same enrolled children?		§25.617	Does DHS use a priority system when approving applicants that propose to serve the same area or the same enrolled children?
	§378.618	What documentation is a sponsor required to submit to show compliance with the Single Audit Act?		§25.618	What documentation is a sponsor required to submit to show compliance with the Single Audit Act?
<b>Division 3</b>		<b>Application Process</b>	<b>Division 3</b>		<b>Application Process</b>
	§378.641	How does a sponsor apply to participate in the SFSP?		§25.641	How does a sponsor apply to participate in the SFSP?
	§378.642	What must a sponsor do if the information in its application changes?		§25.642	What must a sponsor do if the information in its application changes?
	§378.643	What criteria does DHS use to approve or deny applications?		§25.643	What criteria does DHS use to approve or deny applications?
<b>Division 4</b>		<b>Sponsor Standards and Responsibilities</b>	<b>Division 4</b>		<b>Sponsor Standards and Responsibilities</b>
	§378.651	What are the rights and responsibilities of a sponsor that participates in the SFSP?		§25.651	What are the rights and responsibilities of a sponsor that participates in the SFSP?
	§378.652	Must a sponsor implement a particular financial management system?		§25.652	Must a sponsor implement a particular financial management system?
	§378.653	Must a sponsor maintain records and documents related to its participation in the SFSP?		§25.653	Must a sponsor maintain records and documents related to its participation in the SFSP?
	§378.654	How long must a sponsor maintain records and documents pertaining to the program?		§25.654	How long must a sponsor maintain records and documents pertaining to the program?
	§378.655	When is litigation, a claim, an audit, or an investigation finding considered resolved?		§25.655	When is litigation, a claim, an audit, or an investigation finding considered resolved?
	§378.656	Must a sponsor permit DHS to access its facilities and records?		§25.656	Must a sponsor permit DHS to access its facilities and records?

	§378.657	How must a sponsor procure foods, supplies, equipment, and other goods and services for the SFSP?		§25.657	How must a sponsor procure foods, supplies, equipment, and other goods and services for the SFSP?
	§378.658	Must a sponsor manage its meal service according to any specific guidelines?		§25.658	Must a sponsor manage its meal service according to any specific guidelines?
	§378.659	How does a sponsor determine a participant's eligibility for free or reduced-price school meals?		§25.659	How does a sponsor determine a participant's eligibility for free or reduced-price school meals?
	§378.660	Must a sponsor comply with specific health standards when operating its food service?		§25.660	Must a sponsor comply with specific health standards when operating its food service?
	§378.661	Must a sponsor prevent discrimination against participants in its SFSP operations?		§25.661	Must a sponsor prevent discrimination against participants in its SFSP operations?
	§378.662	Will a sponsor be discriminated against in the SFSP?		§25.662	Will a sponsor be discriminated against in the SFSP?
<b>Division 5</b>		<b>Budgets</b>	<b>Division 5</b>		<b>Budgets</b>
	§378.681	How must a sponsor submit an administrative budget for DHS approval?		§25.681	How must a sponsor submit an administrative budget for DHS approval?
	§378.682	Can a sponsor adjust its approved budget?		§25.682	Can a sponsor adjust its approved budget?
	§378.683	When must a sponsor submit budget information to DHS?		§25.683	When must a sponsor submit budget information to DHS?
	§378.684	Will DHS approve a budget adjustment retroactively?		§25.684	Will DHS approve a budget adjustment retroactively?
<b>Division 6</b>		<b>Food Service Management Companies</b>	<b>Division 6</b>		<b>Food Service Management Companies</b>
	§378.691	Can a sponsor contract with a food service management company or school food authority to obtain meals?		§25.691	Can a sponsor contract with a food service management company or school food authority to obtain meals?
	§378.692	How does a sponsor contract for the services of a food service management company (FSMC) or school food authority (SFA)?		§25.692	How does a sponsor contract for the services of a food service management company (FSMC) or school food authority (SFA)?
	§378.693	If a sponsor purchases meals from a food service management company, must it establish a special account for operating costs?		§25.693	If a sponsor purchases meals from a food service management company, must it establish a special account for operating costs?
<b>Division 7</b>		<b>Start-Up and Advance Payments</b>	<b>Division 7</b>		<b>Start-Up and Advance Payments</b>
	§378.701	Does DHS provide start-up payments to sponsors?		§25.701	Does DHS provide start-up payments to sponsors?



		§378.702	Does DHS provide advance payment to sponsors before the end of the month in which the costs will be incurred?			§25.702	Does DHS provide advance payment to sponsors before the end of the month in which the costs will be incurred?
		§378.703	Is there a limit to the amount of an advance payment?			§25.703	Is there a limit to the amount of an advance payment?
<b>Division 8</b>			<b>Commodities</b>	<b>Division 8</b>			<b>Commodities</b>
		§378.711	Does DHS provide commodity assistance to sponsors?			§25.711	Does DHS provide commodity assistance to sponsors?
		§378.712	How must a sponsor use these commodities?			§25.712	How must a sponsor use these commodities?
<b>Division 9</b>			<b>Reimbursement</b>	<b>Division 9</b>			<b>Reimbursement</b>
		§378.721	Must a sponsor follow specific guidelines when claiming reimbursement?			§25.721	Must a sponsor follow specific guidelines when claiming reimbursement?
		§378.722	Under what authority does DHS reimburse sponsors in the SFSP?			§25.722	Under what authority does DHS reimburse sponsors in the SFSP?
		§378.723	Does DHS reimburse the cost of meals served to adults performing labor necessary for the operation of the SFSP?			§25.723	Does DHS reimburse the cost of meals served to adults performing labor necessary for the operation of the SFSP?
		§378.724	Does DHS provide supplemental reimbursement for meals served to children?			§25.724	Does DHS provide supplemental reimbursement for meals served to children?
		§378.725	Is there a specific deadline by which a sponsor must submit a claim for reimbursement?			§25.725	Is there a specific deadline by which a sponsor must submit a claim for reimbursement?
		§378.726	When must a sponsor combine two consecutive months of service on a single claim for reimbursement?			§25.726	When must a sponsor combine two consecutive months of service on a single claim for reimbursement?
		§378.727	Is there a specific deadline by which a sponsor must submit a claim for reimbursement of two consecutive months of service?			§25.727	Is there a specific deadline by which a sponsor must submit a claim for reimbursement of two consecutive months of service?
		§378.728	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?			§25.728	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
		§378.729	How does DHS handle a claim received later than 60 days after the end of the claim month(s)?			§25.729	How does DHS handle a claim received later than 60 days after the end of the claim month(s)?
		§378.730	What happens if DHS finds that good cause did not exist?			§25.730	What happens if DHS finds that good cause did not exist?

		§378.731	What happens if DHS finds that good cause beyond the sponsor's control existed?			§25.731	What happens if DHS finds that good cause beyond the sponsor's control existed?
		§378.732	What happens if USDA finds that good cause existed?			§25.732	What happens if USDA finds that good cause existed?
		§378.733	What happens if USDA finds that good cause did not exist?			§25.733	What happens if USDA finds that good cause did not exist?
		§378.734	Does a sponsor have the option not to submit a request for payment of a late claim based on good cause?			§25.734	Does a sponsor have the option not to submit a request for payment of a late claim based on good cause?
		§378.735	If a sponsor chooses not to submit a request for payment of a late claim based on good cause, can a sponsor still be reimbursed for that claim?			§25.735	If a sponsor chooses not to submit a request for payment of a late claim based on good cause, can a sponsor still be reimbursed for that claim?
<b>Division 10</b>			<b>Program Reviews and Technical Assistance</b>	<b>Division 10</b>			<b>Program Reviews and Technical Assistance</b>
		§378.751	Does DHS monitor a sponsor's activities?			§25.751	Does DHS monitor a sponsor's activities?
		§378.752	Is a sponsor required to administer and monitor its program operations?			§25.752	Is a sponsor required to administer and monitor its program operations?
		§378.753	Is a sponsor required to conduct reviews of its facilities?			§25.753	Is a sponsor required to conduct reviews of its facilities?
<b>Division 11</b>			<b>Audits</b>	<b>Division 11</b>			<b>Audits</b>
		§378.761	Is a sponsor that participates in the SFSP subject to audit?			§25.761	Is a sponsor that participates in the SFSP subject to audit?
		§378.762	Are certain sponsors exempt from the single audit requirements?			§25.762	Are certain sponsors exempt from the single audit requirements?
		§378.763	When is an audit considered acceptable?			§25.763	When is an audit considered acceptable?
		§378.764	How is a sponsor informed of its obligation to comply with the single audit requirements?			§25.764	How is a sponsor informed of its obligation to comply with the single audit requirements?
<b>Division 12</b>			<b>Sanctions and Penalties</b>	<b>Division 12</b>			<b>Sanctions and Penalties</b>
		§378.771	Does DHS investigate irregularities in or complaints about a sponsor's operation of the SFSP?			§25.771	Does DHS investigate irregularities in or complaints about a sponsor's operation of the SFSP?
		§378.772	What does DHS do if a sponsor that is subject to single audit requirements fails to submit an audit as required?			§25.772	What does DHS do if a sponsor that is subject to single audit requirements fails to submit an audit as required?
		§378.773	Can a sponsor appeal this action?			§25.773	Can a sponsor appeal this action?

		§378.774	What does DHS do if extenuating circumstances prevent a sponsor from conducting an audit as required?			§25.774	What does DHS do if extenuating circumstances prevent a sponsor from conducting an audit as required?
		§378.775	Who must pay for this audit?			§25.775	Who must pay for this audit?
		§378.776	What does DHS do if a sponsor submits an audit that does not meet the single audit requirements as specified in 7 CFR Part 3052?			§25.776	What does DHS do if a sponsor submits an audit that does not meet the single audit requirements as specified in 7 CFR Part 3052?
		§378.777	Can DHS extend the deadline by which a sponsor must submit an audit?			§25.777	Can DHS extend the deadline by which a sponsor must submit an audit?
		§378.778	How must a sponsor request an extension of its audit deadline?			§25.778	How must a sponsor request an extension of its audit deadline?
		§378.779	Is DHS required to grant a sponsor an extension of its audit deadline?			§25.779	Is DHS required to grant a sponsor an extension of its audit deadline?
		§378.780	How is a new audit due date determined?			§25.780	How is a new audit due date determined?
		§378.781	How is the sponsor informed of the decision regarding the extension of its audit due date?			§25.781	How is the sponsor informed of the decision regarding the extension of its audit due date?
		§378.782	Can a sponsor request more than one extension?			§25.782	Can a sponsor request more than one extension?
		§378.783	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§25.783	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?
		§378.784	Can a sponsor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SFSP for failing to comply with the single audit requirements as stated in 7 CFR Part 3052?			§25.784	Can a sponsor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SFSP for failing to comply with the single audit requirements as stated in 7 CFR Part 3052?
<b>Division 13</b>			<b>Suspension and Termination</b>	<b>Division 13</b>			<b>Suspension and Termination</b>
		§378.801	What regulations does DHS use to deny an application for participation in the SFSP and to terminate an agreement between DHS and a sponsor?			§25.801	What regulations does DHS use to deny an application for participation in the SFSP and to terminate an agreement between DHS and a sponsor?
<b>Division 14</b>			<b>Appeals</b>	<b>Division 14</b>			<b>Appeals</b>
		§378.811	How does a sponsor or food service management company (FSMC) appeal an adverse action by DHS?			§25.811	How does a sponsor or food service management company (FSMC) appeal an adverse action by DHS?

		§378.812	When must a sponsor or food service management company (FSMC) submit an appeal?			§25.812	When must a sponsor or food service management company (FSMC) submit an appeal?
		§378.813	If DHS declines to forward a late claim to USDA for a determination of good cause, can a sponsor appeal this decision?			§25.813	If DHS declines to forward a late claim to USDA for a determination of good cause, can a sponsor appeal this decision?
		§378.814	Can a sponsor appeal a USDA decision that a late claim is ineligible for payment?			§25.814	Can a sponsor appeal a USDA decision that a late claim is ineligible for payment?
	<b>C</b>		<b>Special Milk Program (SMP)</b>		<b>C</b>		<b>Special Milk Program (SMP)</b>
<b>Division 1</b>			<b>Overview and Purpose</b>	<b>Division 1</b>			<b>Overview and Purpose</b>
		§378.871	What is the purpose of the Special Milk Program (SMP)?			§25.871	What is the purpose of the Special Milk Program (SMP)?
		§378.872	What do certain words and terms in the subchapter mean?			§25.872	What do certain words and terms in the subchapter mean?
		§378.873	How is the SMP administered in Texas?			§25.873	How is the SMP administered in Texas?
<b>Division 2</b>			<b>Contractor Eligibility</b>	<b>Division 2</b>			<b>Contractor Eligibility</b>
		§378.881	How does a contractor qualify to participate in the SMP?			§25.881	How does a contractor qualify to participate in the SMP?
		§378.882	What information must a contractor submit when applying to participate in the SMP?			§25.882	What information must a contractor submit when applying to participate in the SMP?
<b>Division 3</b>			<b>Contractor Participation Requirements and Responsibilities</b>	<b>Division 3</b>			<b>Contractor Participation Requirements and Responsibilities</b>
		§378.901	What are the rights and responsibilities of a contractor that participates in the SMP?			§25.901	What are the rights and responsibilities of a contractor that participates in the SMP?
		§378.902	Is a contractor that participates in the SMP subject to federal and state procurement guidelines?			§25.902	Is a contractor that participates in the SMP subject to federal and state procurement guidelines?
		§378.903	How does a contractor determine if an individual is eligible to participate and receive benefits in the SMP?			§25.903	How does a contractor determine if an individual is eligible to participate and receive benefits in the SMP?
<b>Division 4</b>			<b>Reimbursement and Financial Management</b>	<b>Division 4</b>			<b>Reimbursement and Financial Management</b>
		§378.921	How does DHS reimburse a contractor for its participation in the SMP?			§25.921	How does DHS reimburse a contractor for its participation in the SMP?

	§378.922	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?		§25.922	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
	§378.923	How does DHS process a claim received later than 60 days after the end of the claim month(s)?		§25.923	How does DHS process a claim received later than 60 days after the end of the claim month(s)?
	§378.924	What happens if DHS finds that good cause did not exist?		§25.924	What happens if DHS finds that good cause did not exist?
	§378.925	What happens if DHS finds that good cause beyond the contractor's control existed?		§25.925	What happens if DHS finds that good cause beyond the contractor's control existed?
	§378.926	What happens if USDA finds that good cause existed?		§25.926	What happens if USDA finds that good cause existed?
	§378.927	What happens if USDA finds that good cause did not exist?		§25.927	What happens if USDA finds that good cause did not exist?
	§378.928	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?		§25.928	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?
	§378.929	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?		§25.929	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?
<b>Division 5</b>		<b>Program Reviews, Monitoring, and Management Evaluations</b>	<b>Division 5</b>		<b>Program Reviews, Monitoring, and Management Evaluations</b>
	§378.941	How does DHS ensure that a contractor complies with SMP requirements?		§25.941	How does DHS ensure that a contractor complies with SMP requirements?
	§378.942	Does the USDA conduct management evaluations of contractors operating the SMP?		§25.942	Does the USDA conduct management evaluations of contractors operating the SMP?
<b>Division 6</b>		<b>Audits</b>	<b>Division 6</b>		<b>Audits</b>
	§378.951	Must a contractor that participates in the SMP conduct audits?		§25.951	Must a contractor that participates in the SMP conduct audits?
	§378.952	Must a contractor that participates in the SMP comply with the requirements of the Single Audit Act?		§25.952	Must a contractor that participates in the SMP comply with the requirements of the Single Audit Act?
	§378.953	Are certain contractors not subject to the requirements of the Single Audit Act?		§25.953	Are certain contractors not subject to the requirements of the Single Audit Act?
	§378.954	When is an audit considered acceptable?		§25.954	When is an audit considered acceptable?

		§378.955	How is a contractor informed of its obligation to comply with the single audit requirements?			§25.955	How is a contractor informed of its obligation to comply with the single audit requirements?
<b>Division 7</b>			<b>Sanctions, Penalties, and Fiscal Action</b>	<b>Division 7</b>			<b>Sanctions, Penalties, and Fiscal Action</b>
		§378.971	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?			§25.971	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?
		§378.972	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 215 and 245?			§25.972	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 215 and 245?
		§378.973	Does DHS investigate irregularities in or complaints about a contractor's operation of the SMP?			§25.973	Does DHS investigate irregularities in or complaints about a contractor's operation of the SMP?
		§378.974	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?			§25.974	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?
		§378.975	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?			§25.975	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?
		§378.976	Who must pay for this audit?			§25.976	Who must pay for this audit?
		§378.977	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?			§25.977	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?
		§378.978	Can DHS extend the deadline by which a contractor must submit an audit?			§25.978	Can DHS extend the deadline by which a contractor must submit an audit?
		§378.979	How must a contractor request an extension of its audit deadline?			§25.979	How must a contractor request an extension of its audit deadline?
		§378.980	Is DHS required to grant a contractor an extension of its audit deadline?			§25.980	Is DHS required to grant a contractor an extension of its audit deadline?
		§378.981	How is a new audit due date determined?			§25.981	How is a new audit due date determined?

		§378.982	How is the contractor informed of the decision regarding the extension of its audit due date?			§25.982	How is the contractor informed of the decision regarding the extension of its audit due date?
		§378.983	Can a contractor request more than one extension?			§25.983	Can a contractor request more than one extension?
		§378.984	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§25.984	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?
		§378.985	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SMP for failing to comply with the single audit requirements?			§25.985	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SMP for failing to comply with the single audit requirements?
<b>Division 8</b>			<b>Suspension and Termination</b>	<b>Division 8</b>			<b>Suspension and Termination</b>
		§378.991	How does DHS terminate or suspend a contract?			§25.991	How does DHS terminate or suspend a contract?
<b>Division 9</b>			<b>Appeals</b>	<b>Division 9</b>			<b>Appeals</b>
		§378.1001	Does a contractor applying to participate in the SMP have the right to appeal the denial of its contract application?			§25.1001	Does a contractor applying to participate in the SMP have the right to appeal the denial of its contract application?
		§378.1002	Does a contractor participating in the SMP have the right to appeal any action that affects its continued participation in the SMP or affects its claim for reimbursement?			§25.1002	Does a contractor participating in the SMP have the right to appeal any action that affects its continued participation in the SMP or affects its claim for reimbursement?
	<b>D</b>		<b>School Breakfast Program (SBP)</b>		<b>D</b>		<b>School Breakfast Program (SBP)</b>
<b>Division 1</b>			<b>Overview and Purpose</b>	<b>Division 1</b>			<b>Overview and Purpose</b>
		§378.1051	What is the purpose of the School Breakfast Program (SBP)?			§25.1051	What is the purpose of the School Breakfast Program (SBP)?
		§378.1052	What do certain words and terms in this subchapter mean?			§25.1052	What do certain words and terms in this subchapter mean?
		§378.1053	How is the SBP administered in Texas?			§25.1053	How is the SBP administered in Texas?
<b>Division 2</b>			<b>Contractor Eligibility</b>	<b>Division 2</b>			<b>Contractor Eligibility</b>
		§378.1071	How does a contractor qualify to participate in the SBP?			§25.1071	How does a contractor qualify to participate in the SBP?
		§378.1072	What information must a contractor submit when applying to participate in the SBP?			§25.1072	What information must a contractor submit when applying to participate in the SBP?

Division 3		Contractor Participation Requirements and Responsibilities		Division 3		Contractor Participation Requirements and Responsibilities	
		§378.1091	What are the rights and responsibilities of a contractor that participates in the SBP?			§25.1091	What are the rights and responsibilities of a contractor that participates in the SBP?
		§378.1092	Does DHS impose any special curriculum or educational conditions or restrictions as a requirement for participation in the SBP?			§25.1092	Does DHS impose any special curriculum or educational conditions or restrictions as a requirement for participation in the SBP?
		§378.1093	Is a contractor that participates in the SBP subject to federal and state procurement guidelines?			§25.1093	Is a contractor that participates in the SBP subject to federal and state procurement guidelines?
		§378.1094	How does a contractor determine if an individual is eligible to participate and receive benefits in the SBP?			§25.1094	How does a contractor determine if an individual is eligible to participate and receive benefits in the SBP?
Division 4		Reimbursement and Financial Management		Division 4		Reimbursement and Financial Management	
		§378.1101	How does DHS reimburse a contractor for its participation in the SBP?			§25.1101	How does DHS reimburse a contractor for its participation in the SBP?
		§378.1102	Does DHS make advance payments?			§25.1102	Does DHS make advance payments?
		§378.1103	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?			§25.1103	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
		§378.1104	How does DHS process a claim received later than 60 days after the end of the claim month(s)?			§25.1104	How does DHS process a claim received later than 60 days after the end of the claim month(s)?
		§378.1105	What happens if DHS finds that good cause did not exist?			§25.1105	What happens if DHS finds that good cause did not exist?
		§378.1106	What happens if DHS finds that good cause beyond the contractor's control existed?			§25.1106	What happens if DHS finds that good cause beyond the contractor's control existed?
		§378.1107	What happens if USDA finds that good cause existed?			§25.1107	What happens if USDA finds that good cause existed?
		§378.1108	What happens if USDA finds that good cause did not exist?			§25.1108	What happens if USDA finds that good cause did not exist?
		§378.1109	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?			§25.1109	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?



		§378.1110	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?			§25.1110	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?
<b>Division 5</b>			<b>Program Reviews, Monitoring, and Management Evaluations</b>	<b>Division 5</b>			<b>Program Reviews, Monitoring, and Management Evaluations</b>
		§378.1121	How does DHS ensure that a contractor complies with SBP requirements?			§25.1121	How does DHS ensure that a contractor complies with SBP requirements?
		§378.1122	Does the USDA conduct management evaluations of contractors operating the SBP?			§25.1122	Does the USDA conduct management evaluations of contractors operating the SBP?
<b>Division 6</b>			<b>Audits</b>	<b>Division 6</b>			<b>Audits</b>
		§378.1131	Must a contractor that participates in the SBP conduct audits?			§25.1131	Must a contractor that participates in the SBP conduct audits?
		§378.1132	Must a contractor that participates in the SBP comply with the requirements of the Single Audit Act?			§25.1132	Must a contractor that participates in the SBP comply with the requirements of the Single Audit Act?
		§378.1133	Are certain contractors not subject to the requirements of the Single Audit Act?			§25.1133	Are certain contractors not subject to the requirements of the Single Audit Act?
		§378.1134	When is an audit considered acceptable?			§25.1134	When is an audit considered acceptable?
		§378.1135	How is a contractor informed of its obligation to comply with the single audit requirements?			§25.1135	How is a contractor informed of its obligation to comply with the single audit requirements?
<b>Division 7</b>			<b>Sanctions, Penalties, and Fiscal Action</b>	<b>Division 7</b>			<b>Sanctions, Penalties, and Fiscal Action</b>
		§378.1151	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?			§25.1151	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?
		§378.1152	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 220 and 245?			§25.1152	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 220 and 245?
		§378.1153	Does DHS investigate irregularities in or complaints about a contractor's operation of the SBP?			§25.1153	Does DHS investigate irregularities in or complaints about a contractor's operation of the SBP?

		§378.1154	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?			§25.1154	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?
		§378.1155	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?			§25.1155	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?
		§378.1156	Who must pay for this audit?			§25.1156	Who must pay for this audit?
		§378.1157	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?			§25.1157	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?
		§378.1158	Can DHS extend the deadline by which a contractor must submit an audit?			§25.1158	Can DHS extend the deadline by which a contractor must submit an audit?
		§378.1159	How must a contractor request an extension of its audit deadline?			§25.1159	How must a contractor request an extension of its audit deadline?
		§378.1160	Is DHS required to grant a contractor an extension of its audit deadline?			§25.1160	Is DHS required to grant a contractor an extension of its audit deadline?
		§378.1161	How is a new audit due date determined?			§25.1161	How is a new audit due date determined?
		§378.1162	How is the contractor informed of the decision regarding the extension of its audit due date?			§25.1162	How is the contractor informed of the decision regarding the extension of its audit due date?
		§378.1163	Can a contractor request more than one extension?			§25.1163	Can a contractor request more than one extension?
		§378.1164	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§25.1164	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?
		§378.1165	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SBP for failing to comply with the single audit requirements?			§25.1165	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the SBP for failing to comply with the single audit requirements?
<b>Division 8</b>			<b>Suspension and Termination</b>	<b>Division 8</b>			<b>Suspension and Termination</b>
		§378.1191	How does DHS terminate or suspend a contract?			§25.1191	How does DHS terminate or suspend a contract?
<b>Division 9</b>			<b>Appeals</b>	<b>Division 9</b>			<b>Appeals</b>

		§378.1201	Does a contractor applying to participate in the SBP have the right to appeal the denial of its contract application?			§25.1201	Does a contractor applying to participate in the SBP have the right to appeal the denial of its contract application?
		§378.1202	Does a contractor participating in the SBP have the right to appeal any action that affects its continued participation in the SBP or affects its claim for reimbursement?			§25.1202	Does a contractor participating in the SBP have the right to appeal any action that affects its continued participation in the SBP or affects its claim for reimbursement?
	<b>E</b>		<b>National School Lunch Program (NSLP)</b>		<b>E</b>		<b>National School Lunch Program (NSLP)</b>
<b>Division 1</b>			<b>Overview and Purpose</b>	<b>Division 1</b>			<b>Overview and Purpose</b>
		§378.1251	What is the purpose of the National School Lunch Program (NSLP)?			§25.1251	What is the purpose of the National School Lunch Program (NSLP)?
		§378.1252	What do certain words and terms in this subchapter mean?			§25.1252	What do certain words and terms in this subchapter mean?
		§378.1253	How is the NSLP administered in Texas?			§25.1253	How is the NSLP administered in Texas?
<b>Division 2</b>			<b>Contractor Eligibility</b>	<b>Division 2</b>			<b>Contractor Eligibility</b>
		§378.1261	How does a contractor qualify to participate in the NSLP?			§25.1261	How does a contractor qualify to participate in the NSLP?
		§378.1262	What information must a contractor submit when applying to participate in the NSLP?			§25.1262	What information must a contractor submit when applying to participate in the NSLP?
		§378.1263	Must a school food authority (SFA) meet any specific requirements in order to be eligible to administer an Afterschool Care Snack program in the NSLP?			§25.1263	Must a school food authority (SFA) meet any specific requirements in order to be eligible to administer an Afterschool Care Snack program in the NSLP?
		§378.1264	What documentation must a school food authority (SFA) provide to demonstrate that an Afterschool Care Snack program facility has been determined exempt from state licensing requirements?			§25.1264	What documentation must a school food authority (SFA) provide to demonstrate that an Afterschool Care Snack program facility has been determined exempt from state licensing requirements?
<b>Division 3</b>			<b>Contractor Participation Requirements and Responsibilities</b>	<b>Division 3</b>			<b>Contractor Participation Requirements and Responsibilities</b>
		§378.1281	What are the rights and responsibilities of a contractor that participates in the NSLP?			§25.1281	What are the rights and responsibilities of a contractor that participates in the NSLP?

		§378.1282	Does DHS impose any special curriculum or educational conditions or restrictions as a requirement for participation in the NSLP?			§25.1282	Does DHS impose any special curriculum or educational conditions or restrictions as a requirement for participation in the NSLP?
		§378.1283	Is a contractor that participates in the NSLP subject to federal and state procurement guidelines?			§25.1283	Is a contractor that participates in the NSLP subject to federal and state procurement guidelines?
		§378.1284	How does a contractor determine if an individual is eligible to participate and receive benefits in the NSLP?			§25.1284	How does a contractor determine if an individual is eligible to participate and receive benefits in the NSLP?
<b>Division 4</b>			<b>Reimbursement and Financial Management</b>	<b>Division 4</b>			<b>Reimbursement and Financial Management</b>
		§378.1301	How does DHS reimburse a contractor for its participation in the NSLP?			§25.1301	How does DHS reimburse a contractor for its participation in the NSLP?
		§378.1302	Does DHS make advance payments?			§25.1302	Does DHS make advance payments?
		§378.1303	Can a school participating in an approved after school program claim reimbursement for snacks?			§25.1303	Can a school participating in an approved after school program claim reimbursement for snacks?
		§378.1304	How does DHS determine the rate of reimbursement for eligible snacks served in an after school program?			§25.1304	How does DHS determine the rate of reimbursement for eligible snacks served in an after school program?
		§378.1305	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?			§25.1305	Will DHS pay a claim for reimbursement if it is received or postmarked later than 60 days after the end of the claim month?
		§378.1306	How does DHS process a claim received later than 60 days after the end of the claim month(s)?			§25.1306	How does DHS process a claim received later than 60 days after the end of the claim month(s)?
		§378.1307	What happens if DHS finds that good cause did not exist?			§25.1307	What happens if DHS finds that good cause did not exist?
		§378.1308	What happens if DHS finds that good cause beyond the contractor's control existed?			§25.1308	What happens if DHS finds that good cause beyond the contractor's control existed?
		§378.1309	What happens if USDA finds that good cause existed?			§25.1309	What happens if USDA finds that good cause existed?
		§378.1310	What happens if USDA finds that good cause did not exist?			§25.1310	What happens if USDA finds that good cause did not exist?
		§378.1311	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?			§25.1311	Does a contractor have the option not to submit a request for payment of a late claim based on good cause?

		§378.1312	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?			§25.1312	If a contractor chooses not to submit a request for payment of a late claim based on good cause, can a contractor still be reimbursed for that claim?
<b>Division 5</b>			<b>Program Reviews, Monitoring, and Management Evaluations</b>	<b>Division 5</b>			<b>Program Reviews, Monitoring, and Management Evaluations</b>
		§378.1331	How does DHS ensure that a contractor complies with NSLP requirements?			§25.1331	How does DHS ensure that a contractor complies with NSLP requirements?
		§378.1332	Does USDA conduct management evaluations of contractors operating the NSLP?			§25.1332	Does USDA conduct management evaluations of contractors operating the NSLP?
<b>Division 6</b>			<b>Audits</b>	<b>Division 6</b>			<b>Audits</b>
		§378.1341	Must a contractor that participates in the NSLP conduct audits?			§25.1341	Must a contractor that participates in the NSLP conduct audits?
		§378.1342	Must a contractor that participates in the NSLP comply with the requirements of the Single Audit Act?			§25.1342	Must a contractor that participates in the NSLP comply with the requirements of the Single Audit Act?
		§378.1343	Are certain contractors not subject to the requirements of the Single Audit Act?			§25.1343	Are certain contractors not subject to the requirements of the Single Audit Act?
		§378.1344	When is an audit considered acceptable?			§25.1344	When is an audit considered acceptable?
		§378.1345	How is a contractor informed of its obligation to comply with the single audit requirements?			§25.1345	How is a contractor informed of its obligation to comply with the single audit requirements?
<b>Division 7</b>			<b>Sanctions, Penalties, and Fiscal Action</b>	<b>Division 7</b>			<b>Sanctions, Penalties, and Fiscal Action</b>
		§378.1361	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?			§25.1361	How does DHS penalize a contractor who is found guilty of embezzling, willfully misapplying, stealing, or obtaining by fraud any funds, assets, or property, whether received directly or indirectly from DHS?
		§378.1362	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 210 and 245?			§25.1362	Does DHS take fiscal action against a contractor that fails to comply with the program requirements specified in 7 CFR Parts 210 and 245?
		§378.1363	Does DHS investigate irregularities in or complaints about a contractor's operation of the NSLP?			§25.1363	Does DHS investigate irregularities in or complaints about a contractor's operation of the NSLP?

		§378.1364	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?			§25.1364	What does DHS do if a contractor that is subject to single audit requirements fails to submit an audit as required?
		§378.1365	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?			§25.1365	What does DHS do if extenuating circumstances prevent a contractor from conducting an audit as required?
		§378.1366	Who must pay for this audit?			§25.1366	Who must pay for this audit?
		§378.1367	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?			§25.1367	What does DHS do if a contractor submits an audit that does not meet the single audit requirements specified in 7 CFR Part 3052?
		§378.1368	Can DHS extend the deadline by which a contractor must submit an audit?			§25.1368	Can DHS extend the deadline by which a contractor must submit an audit?
		§378.1369	How must a contractor request an extension of its audit deadline?			§25.1369	How must a contractor request an extension of its audit deadline?
		§378.1370	Is DHS required to grant a contractor an extension of its audit deadline?			§25.1370	Is DHS required to grant a contractor an extension of its audit deadline?
		§378.1371	How is a new audit due date determined?			§25.1371	How is a new audit due date determined?
		§378.1372	How is the contractor informed of the decision regarding the extension of its audit due date?			§25.1372	How is the contractor informed of the decision regarding the extension of its audit due date?
		§378.1373	Can a contractor request more than one extension?			§25.1373	Can a contractor request more than one extension?
		§378.1374	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?			§25.1374	What does DHS do if DHS does not receive an audit by the specified deadline and an extension of the deadline has not been granted?
		§378.1375	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the NSLP for failing to comply with the single audit requirements?			§25.1375	Can a contractor participate in any of the Special Nutrition Programs if DHS terminates its participation in the NSLP for failing to comply with the single audit requirements?
<b>Division 8</b>			<b>Suspension and Termination</b>	<b>Division 8</b>			<b>Suspension and Termination</b>
		§378.1401	How does DHS terminate or suspend contracts?			§25.1401	How does DHS terminate or suspend contracts?
<b>Division 9</b>			<b>Appeals</b>	<b>Division 9</b>			<b>Appeals</b>

		§378.1411	Does a contractor applying to participate in the NSLP have the right to appeal the denial of its contract application?			§25.1411	Does a contractor applying to participate in the NSLP have the right to appeal the denial of its contract application?
		§378.1412	Does a contractor participating in the NSLP have the right to appeal any action that affects its continued participation in the NSLP or affects its claim for reimbursement?			§25.1412	Does a contractor participating in the NSLP have the right to appeal any action that affects its continued participation in the NSLP or affects its claim for reimbursement?

Figure: 4 TAC Part 1

Current Rules from Title 4, Part 1 Texas Department of Agriculture			Transferred to Title 4, Part 1 Texas Department of Agriculture		
Chapter and Subchapter	Section	Heading	Chapter and Subchapter	Section	Heading
28		<b>Texas Agricultural Finance Authority: Financial Assistance Program Rules</b>	28		<b>Texas Agricultural Finance Authority</b>
				<b>A</b>	<b>Financial Assistance Program Rules</b>
	§28.1	Authority		§28.1	Authority
	§28.2	Purpose		§28.2	Purpose
	§28.3	Definitions		§28.3	Definitions
	§28.4	Examination of Records		§28.4	Examination of Records
	§28.5	Written Communication with the Authority		§28.5	Written Communication with the Authority
	§28.6	Texas Agricultural Fund		§28.6	Texas Agricultural Fund
	§28.7	Project Eligibility Requirements		§28.7	Project Eligibility Requirements
	§28.8	Filing Requirements and Consideration of Applications		§28.8	Filing Requirements and Consideration of Applications
	§28.9	Contents of Qualified Application		§28.9	Contents of Qualified Application
	§28.10	General Terms and Conditions of the Authority's Financial Assistance		§28.10	General Terms and Conditions of the Authority's Financial Assistance
	§28.11	Criteria for Approval of Financial Assistance		§28.11	Criteria for Approval of Financial Assistance
	§28.12	Loan Administration		§28.12	Loan Administration
	§28.13	Eligible Private Lenders		§28.13	Eligible Private Lenders
	§28.14	Collateral Administration		§28.14	Collateral Administration
	§28.15	Criteria for Approval of a Participation Purchased		§28.15	Criteria for Approval of a Participation Purchased
24		<b>Texas Agricultural Finance Authority: Farm and Ranch Finance Program</b>		<b>B</b>	<b>Farm and Ranch Finance Program</b>
	§24.1	Authority		§28.21	Authority
	§24.2	Purpose		§28.22	Purpose
	§24.3	Definitions		§28.23	Definitions
	§24.4	Examination of Records		§28.24	Examination of Records
	§24.5	Written Communication with the Texas Agricultural Finance Authority		§28.25	Written Communication with the Texas Agricultural Finance Authority
	§24.6	Farm and Ranch Finance Program Fund		§28.26	Farm and Ranch Finance Program Fund
	§24.7	Eligible Uses of Loan Proceeds		§28.27	Eligible Uses of Loan Proceeds
	§24.8	Applicant Requirements		§28.28	Applicant Requirements
	§24.9	Filing Requirements and Consideration of Application		§28.29	Filing Requirements and Consideration of Application
	§24.10	Contents of the Application		§28.30	Contents of the Application
	§24.11	Criteria for Approval of a Loan		§28.31	Criteria for Approval of a Loan



		§24.12	General Terms and Conditions of the Authority's Financial Commitment			§28.32	General Terms and Conditions of the Authority's Financial Commitment
		§24.13	Partial Release			§28.33	Partial Release
		§24.14	Default by Borrower			§28.34	Default by Borrower
		§24.15	Default Proceedings			§28.35	Default Proceedings
		§24.16	Administration of Financing			§28.36	Administration of Financing
<b>25</b>			<b>Texas Agricultural Finance Authority: Rural Development</b>		<b>C</b>		<b>Rural Development Finance Program</b>
	<b>A</b>		<b>Rural Development Finance Program</b>				
		§25.1	Authority			§28.41	Authority
		§25.2	Purpose			§28.42	Purpose
		§25.3	Definitions			§28.43	Definitions
		§25.4	Examination of Records			§28.44	Examination of Records
		§25.5	Written Communication with the Authority			§28.45	Written Communication with the Authority
		§25.6	Texas Agricultural Fund			§28.46	Texas Agricultural Fund
		§25.7	Project Eligibility Requirements			§28.47	Project Eligibility Requirements
		§25.8	Filing Requirements and Consideration of Applications			§28.48	Filing Requirements and Consideration of Applications
		§25.9	Contents of Qualified Application			§28.49	Contents of Qualified Application
		§25.10	General Terms and Conditions of the Authority's Commitment			§28.50	General Terms and Conditions of the Authority's Commitment
		§25.11	Criteria for Approval of a Commitment			§28.51	Criteria for Approval of a Commitment
		§25.12	Collateral Administration			§28.52	Collateral Administration
<b>26</b>			<b>Texas Agricultural Finance Authority: Linked Deposit Program</b>		<b>D</b>		<b>Linked Deposit Program</b>
		§26.1	Definitions			§28.61	Definitions
		§26.2	Introduction			§28.62	Introduction
		§26.3	Purpose			§28.63	Purpose
		§26.4	Scope			§28.64	Scope
		§26.5	Application Procedures for Applicant			§28.65	Application Procedures for Applicant
		§26.6	Application Procedures for the Lender			§28.66	Application Procedures for the Lender
		§26.7	Procedure for Review			§28.67	Procedure for Review
		§26.8	Acceptance and Rejection Procedures			§28.68	Acceptance and Rejection Procedures
		§26.9	Use of the Loan Proceeds			§28.69	Use of the Loan Proceeds
		§26.10	Program Limitations			§28.70	Program Limitations
		§26.11	Severability			§28.71	Severability
		§26.12	Communications with the Authority			§28.72	Communications with the Authority
<b>27</b>			<b>Texas Agricultural Finance Authority: Preferred Lender Program Rules</b>		<b>E</b>		<b>Preferred Lender Program Rules</b>
		§27.1	Purpose			§28.81	Purpose
		§27.2	Definitions			§28.82	Definitions

		§27.3	Qualifications for the Preferred Lender Program (PLP)			§28.83	Qualifications for the Preferred Lender Program (PLP)
		§27.4	Preferred Lender Program Approval Process			§28.84	Preferred Lender Program Approval Process
		§27.5	Required Information for a Commitment Request to the Program(s)			§28.85	Required Information for a Commitment Request to the Program(s)
		§27.6	Approval or Denial and Issuance of Notification			§28.86	Approval or Denial and Issuance of Notification
		§27.7	Commitments in Default			§28.87	Commitments in Default
		§27.8	Review of Preferred Lenders by the Authority			§28.88	Review of Preferred Lenders by the Authority

# 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 Reviews

Texas Department of Criminal Justice

### Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 151 General Provisions, §151.71, Marking of State Vehicles of the Department of Criminal Justice. This review is being conducted pursuant to Texas Government Code §2001.039 which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this rule review notification in the *Texas Register*.

Cross Reference to Statutes: Texas Government Code, §721.002.

TRD-200704275

Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice

Filed: September 17, 2007



The Texas Board of Criminal Justice files this notice of intent to review §155.23, Site Selection Process for the Location of Additional Facilities. This review is conducted pursuant to Texas Government Code §2001.039 which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, [Melinda.Bozarth@tdcj.state.tx.us](mailto:Melinda.Bozarth@tdcj.state.tx.us). Written comments from the general public should be received within 30 days of the publication of this rule review notification in the *Texas Register*.

Cross Reference to Statutes: Texas Government Code, §§493.009, 509.001, 508.118, 508.119, 508.320; Chapter 495, Subchapter A; Chapter 499, Subchapters B, E, and G; Chapter 507.

TRD-200704274

Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice

Filed: September 17, 2007



## Adopted Rule Reviews

Texas Department of Criminal Justice

### Title 37, Part 6

The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 151, General Provisions, §151.3, Texas Board of Criminal Justice Operating Procedures, in accordance with the requirements of the Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §151.3 continue to exist, and it readopts the section.

Notice of the review of §151.3 was published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4637). No comments were received in response to the notice.

As a result of the rule review, the Texas Department of Criminal Justice (TDCJ) published proposed amendments to §151.3 in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4624). The Board adopted the amended rule on September 13, 2007, and it is published in this issue of the *Texas Register*.

TRD-200704285

Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice

Filed: September 17, 2007



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 151, General Provisions, §151.4, Public Testimony and Comments to the Texas Board of Criminal Justice, in accordance with the requirements of the Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §151.4 continue to exist, and it readopts the section.

Notice of the review of §151.4 was published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3377). No comments were received in response to the notice.

As a result of the rule review, the Texas Department of Criminal Justice (TDCJ) published proposed amendments to §151.4 in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3533). The Board adopted the amended rule on September 13, 2007, and it is published in this issue of the *Texas Register*.

TRD-200704284

Melinda Hoyle Bozarth  
General Counsel

Texas Department of Criminal Justice

Filed: September 17, 2007



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 151, General Provisions, §151.25, Texas Department of Criminal Justice, in accordance with the requirements of the Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §151.25 continue to exist, and it readopts the section.

Notice of the review of §151.25 was published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4637). No comments were received in response to the notice.

As a result of the rule review, the Texas Department of Criminal Justice (TDCJ) published proposed amendments to §151.25 in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4625). The Board adopted the amended rule on September 13, 2007, and it is published in this issue of the *Texas Register*.

TRD-200704283

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: September 17, 2007



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 155, Reports and Information Gathering, Subchapter C, Procedures for Resolving Contract Claims and Disputes, §155.31, Establishing Procedures for Resolving Contract Claims and disputes, in accordance with the requirements of the Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §155.31 continue to exist, and it readopts the section.

Notice of the review of §155.31 was published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4637). No comments were received in response to the notice.

As a result of the rule review, the Texas Department of Criminal Justice (TDCJ) published proposed amendments to §155.31 in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4627). The Board adopted the amended rule on September 13, 2007, and it is published in this issue of the *Texas Register*.

TRD-200704282

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: September 17, 2007



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 163, Community Justice Assistance Division, §163.35, Supervision, in accordance with the requirements of the Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §163.35 continue to exist, and it readopts the section.

Notice of the review of §163.35 was published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3377). No comments were received in response to the notice.

As a result of the rule review, the Texas Department of Criminal Justice (TDCJ) published proposed amendments to §163.35 in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3536). The Board adopted the amended rule on September 13, 2007, and it is published in this issue of the *Texas Register*.

TRD-200704281

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: September 17, 2007



The Texas Board of Criminal Justice (TBCJ or Board) has completed its review of Title 37, Part 6, Chapter 163, Community Justice Assistance Division Standards, §163.42, Substantial Noncompliance, in accordance with the requirements of the Texas Government Code, §2001.039. The Board has determined that the reasons for initially adopting §163.42 continue to exist, and it readopts the section.

Notice of the review of §163.42 was published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3377). No comments were received in response to this notice.

As a result of the rule review, the Texas Department of Criminal Justice published proposed amendments to §163.42 in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3538). The Board adopted the amended rule on September 13, 2007, and it is published in this issue of the *Texas Register*.

TRD-200704303

Melinda Hoyle Bozarth  
General Counsel  
Texas Department of Criminal Justice  
Filed: September 18, 2007



Windham School District

**Title 19, Part 8**

The Windham School District (WSD) Board of Trustees (Board) has completed its review of Title 19, Part 8, Chapter 300, General Provisions, §300.1, Public Testimony and Comments to the Windham School District Board of Trustees, in accordance with the requirements of the Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §300.1 continue to exist, and it readopts the section.

Notice of the review of §300.1 was published in the June 8, 2007, issue of the *Texas Register* (32 TexReg 3378). No comments were received in response to this notice.

As a result of the rule review, the Texas Department of Criminal Justice (TDCJ) published proposed amendments to §300.1 in the June 15, 2007, issue of the *Texas Register* (32 TexReg 3458). The Board adopted the amended rule on September 13, 2007, and it is published in this issue of the *Texas Register*.

TRD-200704279

Melinda Hoyle Bozarth  
General Counsel, Texas Department of Criminal Justice  
Windham School District  
Filed: September 17, 2007



The Windham School District (WSD) Board of Trustees (Board) has completed its review of Title 19, Part 8, Chapter 300, General Provisions, §300.2, Windham School District Board of Trustees Operating Procedures, in accordance with the requirements of the Texas Government Code §2001.039. The Board has determined that the reasons for initially adopting §300.2 continue to exist, and it readopts the section.

Notice of the review of §300.2 was published in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4637). No comments were received in response to this notice.

As a result of the rule review, the Texas Department of Criminal Justice (TDCJ) published proposed amendments to §300.2 in the July 27, 2007, issue of the *Texas Register* (32 TexReg 4617). The Board adopted the amended rule on September 13, 2007, and it is published in this issue of the *Texas Register*.

TRD-200704278

Melinda Hoyle Bozarth

General Counsel, Texas Department of Criminal Justice

Windham School District

Filed: September 17, 2007



# TABLES &

# GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 28 TAC §21.113(l)(5)

Item (7)

## NOTICE TO CONSUMERS

### AGE 65 AND OLDER

The Texas Department [~~State Board~~] of Insurance requires that this Notice be given to you at the time you receive a policy.

State law gives you the right to review this policy and return it for a full premium refund if you are not satisfied. By law you have a minimum 10 days if you buy any individual accident and health insurance policy. The Texas Department [~~State Board~~] of Insurance urges you to use this time to verify that this coverage is needed.

The Department [~~Board~~] is concerned that some consumers may buy unnecessary coverage or may replace their coverage needlessly. Buying too much coverage or replacing a policy may be a waste of your money.

1. PURCHASING MORE THAN ONE POLICY OF EACH OF THE FOLLOWING TYPES MAY BE UNNECESSARY [~~UNNECESSRY~~] AND COSTLY:

- SPECIFIED DISEASE (CANCER, STROKE, ETC.)
- HOSPITAL INDEMNITY
- BASIC HOSPITAL EXPENSE OR BASIC MEDICAL/SURGICAL
- EXPENSE (THESE POLICIES ARE TYPIFIED BY A SCHEDULED BENEFIT PER ILLNESS)
- LONG TERM CARE

THE TEXAS DEPARTMENT [~~STATE BOARD~~] OF INSURANCE CANNOT SAY WHETHER YOU SHOULD OR SHOULD NOT PURCHASE ANY OR ALL OF THESE POLICY TYPES. THE DECISION IS YOURS ALONE AND SHOULD BE DETERMINED BY YOUR NEEDS AND CIRCUMSTANCES.

2. IF YOU HAVE MORE THAN ONE POLICY IN ANY OF THE ABOVE CATEGORIES, THE TEXAS DEPARTMENT [~~STATE BOARD~~] OF INSURANCE [~~INSURANCE~~] STRONGLY URGES YOU TO GET A SECOND OPINION FROM SOMEONE YOU TRUST AS TO WHETHER YOU NEED MORE THAN ONE OF THESE POLICIES.

3. IF YOU REPLACE EXISTING HEALTH INSURANCE POLICIES YOU MAY LOSE COVERAGE DURING A PERIOD OF TIME THAT NEW EXCLUSIONS,<sup>[.]</sup> REDUCTIONS, LIMITATIONS, OR WAITING PERIODS MUST BE SERVED.

Item (6)

ACKNOWLEDGEMENT OF NONDUPLICATION

PLEASE READ CAREFULLY BEFORE SIGNING

<p>I _____, certify that I (Agent's Name)</p> <p>have done the following:</p> <ol style="list-style-type: none"> <li>Informed the undersigned applicant of the right to have all existing health insurance policies presently in force reviewed by me to determine whether duplicate coverage will occur with the issuance of this policy.</li> <li>Reviewed the policies listed below and have found that duplication WILL or WILL NOT (circle one) occur with the issuance of the applied for policy.</li> </ol> <p>_____ (Form Number)</p> <p><u>COMPANY</u> POLICY TYPE OF <u>NUMBER (#) POLICY</u></p> <p>_____ _____ _____ _____</p> <p>Check one:</p> <p>a. ___ Duplication will not occur because the above listed policy(ies) # _____ will be replaced by the applied-for policy _____ (form number). Justification for the replacement is (explain benefit to consumer)</p> <p>_____ _____</p> <p>b. ___ No health policies in force at this time.</p> <p>c. ___ Applicant has elected not to have the policy(ies) reviewed.</p> <p>_____ DATE AGENT/COMPANY REPRESENTATIVE</p>	<p style="text-align: center;">NOTICE TO <del>[OF]</del> CONSUMERS</p> <p style="text-align: center;">Age 65 and Older</p> <p>This Notice is required by the <u>Texas Department</u> <del>[State Board]</del> of Insurance because of its concern that some consumers may buy unnecessary coverage or may replace their coverage needlessly. Buying too much coverage or replacing a policy may be a waste of your money.</p> <p>1. PURCHASING MORE THAN <del>[MORE THAN]</del> ONE POLICY OF EACH OF THE FOLLOWING TYPES MAY BE UNNECESSARY AND COSTLY:</p> <p><input type="checkbox"/> SPECIFIED DISEASE (CANCER, STROKE, ETC.)</p> <p><input type="checkbox"/> HOSPITAL INDEMNITY</p> <p><input type="checkbox"/> BASIC HOSPITAL EXPENSE OR BASIC MEDICAL/SURGICAL</p> <p><input type="checkbox"/> EXPENSE (THESE POLICIES ARE TYPIFIED BY A SCHEDULED BENEFIT PER ILLNESS)</p> <p><input type="checkbox"/> LONG TERM CARE</p> <p>THE TEXAS <u>DEPARTMENT</u> <del>[STATE BOARD]</del> OF INSURANCE CANNOT SAY WHETHER YOU SHOULD OR SHOULD NOT PURCHASE ANY OR ALL OF THESE POLICY TYPES. THE DECISION IS YOURS ALONE AND SHOULD BE DETERMINED BY YOUR NEEDS AND CIRCUMSTANCES.</p> <p>2. IF YOU HAVE MORE THAN ONE POLICY IN ANY OF THE ABOVE CATEGORIES, THE <u>TEXAS DEPARTMENT</u> <del>[STATE BOARD]</del> OF INSURANCE STRONGLY URGES YOU TO GET A SECOND OPINION FROM SOMEONE YOU TRUST AS TO WHETHER YOU NEED MORE THAN ONE OF THESE POLICIES.</p> <p>3. IF YOU REPLACE EXISTING HEALTH INSURANCE POLICIES YOU MAY LOSE COVERAGE DURING A PERIOD OF TIME THAT NEW EXCLUSIONS, <del>[,]</del> REDUCTIONS, LIMITATIONS, OR WAITING PERIODS MUST BE SERVED.</p> <p>4. THE <u>TEXAS DEPARTMENT</u> <del>[STATE BOARD]</del> OF INSURANCE STRONGLY URGES YOU TO ALLOW YOUR INSURANCE AGENT OR COMPANY TO REVIEW ALL YOUR CURRENT HEALTH POLICIES PRIOR TO REPLACING EXISTING HEALTH COVERAGE OR PURCHASING ADDITIONAL HEALTH COVERAGE.</p>
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I certify that my right to have all of my existing health policies examined has been explained to me by the agent named above.

\_\_\_ I have been informed that the policy for which I am applying WILL OR WILL NOT (circle one) result in duplicate coverage.

\_\_\_ I have chosen to waive my right to have my policies reviewed to determine if they unnecessarily duplicate each other.

I have read the attached notice. Dated this \_\_\_ day of \_\_\_\_\_, 20 [49]\_\_\_\_\_.

\_\_\_\_\_  
APPLICANT



Figure: 34 TAC §3.448(h)(2)(C)

Gasoline or diesel fuel refund shall be based on the following formula:  
 Total miles traveled / Total fuel consumed = Average fleet MPG  
 Miles traveled on school routes / Average MPG = Refundable gallons

**GASOLINE AND DIESEL FUEL**

A	B	C	D	E	F	G	H
Month	> %5 Non-students	Veh ID	Total Miles	Total Gallons Consumed	Vehicle Avg. MPG (D / E)	School Route Miles	Eligible Refund Gals (G / F)
Jan	NO	#205	4,300	850	5.059	1,200	237
Feb	NO	#205	4,500	900	5.000	1,200	240
May	YES	#205	4,500	900	5.000	-0-	-0-

Figure: 34 TAC §3.448(h)(3)

L G DECAL

A	B	C	D	E	F	G	H
Month	> %5 Non-students	Veh ID	Total Miles	School Route Miles	% School Mile (E / D)	(\$444/12) x F	Refund
Jan	NO	#102	3,200	1,100	34%	\$37 x 34%	\$12.58
Feb	NO	#102	3,400	1,100	32%	\$37 x 32%	\$11.84
May	YES	#102	3,600	-0-	0%	\$37 x 0%	\$0.00

**IN**

**ADDITION**

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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.

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### **Department of Aging and Disability Services**

#### **Notice - Procurement of Services by Area Agencies on Aging**

The Department of Aging and Disability Services' Access and Intake - Area Agencies on Aging Section oversees the delivery of Older Americans Act services for individuals age 60 and older, their family members, and other caregivers through contracts with Area Agencies on Aging located throughout the state. These 28 Area Agencies on Aging are currently seeking qualified entities to provide services, such as: Congregate Meals, Home Delivered Meals, Transportation, Personal Assistance, Homemaker, and Caregiver, as well as other related

services. Parties interested in providing services must contact the Area Agency on Aging operating within their service area to obtain information relating to vendor open enrollment, requests for proposals (RFP), the contracting process, the types of services being considered, and the actual funding available.

Identified in the comprehensive list are all Area Agencies on Aging, contact information, addresses, telephone numbers, and service areas:

List of Area Agencies on Aging

## Area Agencies on Aging

8/29/2007

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### 83101-Alamo Area Agency on Aging

8700 Tesoro, Suite 700; San Antonio, Texas 78217

8700 Tesoro, Suite 700; San Antonio, Texas 78217

Ph: 210-362-5200 1-866-231-4922 Fax: 210-225-5937

#### AAA Director:

Ms. Deborah Billa, Director

dbilla@aacog.com

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### Alamo Area Council of Governments

Ms. Gloria C. Arriaga, Executive Director

garriaga@aacog.com

8700 Tesoro, Suite 700 Zip: 78217

Atascoca, Bandera, Comal, Frio, Gillespie, Guadalupe; Karnes, Kendall, Kerr, Medina, Wilson

#### Fiscal Director:

Blanca Tapia

btapia@aacog.com

#### Counties Served:

#### Fiscal Contact:

Amy Guerra

aguerra@aacog.com

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### 83102-Ark-Tex Area Agency on Aging

4808 Elizabeth St.; Texarkana, Texas 75503

P. O. Box 5307; Texarkana, Texas 75505-5307

Ph: 903-832-8636 1-800-372-4464 Fax: 903-832-3441

#### AAA Director:

Ms. Judy Mattson, Director

jmattson@atcog.org

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### Ark-Tex Council of Governments

Mr. L.D. Williamson, Executive Director

ldwilliamson@atcog.org

P. O. Box 5307 Zip: 75505-5307

Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, Titus

#### Fiscal Director:

Brenda Davis

bdavis@atcog.org

#### Counties Served:

#### Fiscal Contact:

Debra Newton

dnewton@atcog.org

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### 83103-Bexar County Area Agency on Aging

8700 Tesoro, Suite 700; San Antonio, Texas 78217

8700 Tesoro, Suite 700; San Antonio, Texas 78217

Ph: 210-362-5254 1-800-960-5201 Fax: 210-225-5937

#### AAA Director:

Ms. Carol Zernial, Director

czernial@aacog.com

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### Alamo Area Council of Governments

Ms. Gloria C. Arriaga, Executive Director

garriaga@aacog.com

8700 Tesoro, Suite 700 Zip: 78217

Bexar

#### Fiscal Director:

Blanca Tapia

btapia@aacog.com

#### Counties Served:

#### Fiscal Contact:

Amy Guerra

aguerra@aacog.com

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### 83104-Brazos Valley Area Agency on Aging

3991 E. 29th; Bryan, Texas 77802

P. O. Box 4128; Bryan, Texas 77805-4128

Ph: 979-595-2806 1-800-994-4000 Fax: 979-595-2810

#### AAA Director:

Mr. Ronnie Gipson, Director

rgipson@bvcog.org

---

### Brazos Valley Council of Governments

Mr. Tom M. Wilkinson, Jr., Executive Direc

twilkinson@bvcog.org

P. O. Box 4128 Zip: 77805-4128

Brazos, Burlelson, Grimes, Leon, Madison, Robertson, Washington

#### Fiscal Director:

John Jackson

jjackson@bvcog.org

#### Counties Served:

#### Fiscal Contact:

Kay Wilson

kwilson@bvcog.org

## Area Agencies on Aging

8/29/2007

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### 83105-Capital Area Agency on Aging

6800 Burleson Rd. Bldg. 310, Suite 165; Austin, Texas 78744  
PO Box 17848; Austin, Texas 78760

Ph: 512-916-6062 1-888-622-9111 Fax: 512-916-6042

AAA Director:

Ms. Glenda Rogers, Director  
grogers@capcog.org

---

### Capital Area Council of Governments

Ms. Betty Voights, Executive Director  
bvoights@capcog.org

2512 South IH35, Suite 200 Zip: 78704-5798

Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis, Williamson

*Fiscal Director:*

Clay Collins  
ccollins@capcog.org

Counties Served:

*Fiscal Contact:*

Michael Weddell  
mjweddell@capcog.org

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### 83106-Central Texas Area Agency on Aging

2180 North Main Street; Belton, Texas 76513  
P.O. Box 729; Belton, Texas 76513

Ph: 254-770-2330 1-800-447-7169 Fax: 252-770-2227

AAA Director:

Mr. H. Richard McGhee, Director  
richard.mcghee@ctcog.org

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### Central Texas Council of Governments

Mr. Jim Reed, Executive Director  
jreed@ctcog.org

P. O. Box 729 Zip: 76513

Bell, Coryell, Hamilton, Lampasas, Milam, Mills, San Saba

*Fiscal Director:*

Michael Irvine  
mirvine@ctcog.org

Counties Served:

*Fiscal Contact:*

Richard McGhee  
richard.mcghee@ctcog.org

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### 83107-Coastal Bend Area Agency on Aging

2910 Leopard; Corpus Christi, Texas 78649  
P. O. Box 9909; Corpus Christi, Texas 78649

Ph: 361-883-3935 1-800-817-5743 Fax: 361-883-5749

AAA Director:

Ms. Betty Lamb, Director  
betty@cbcogaaa.org

---

### Coastal Bend Council of Governments

Mr. John P. Buckner, Executive Director  
john@cbcog98.org

P. O. Box 9909 Zip: 78649

Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio

*Fiscal Director:*

Veronica Toomey  
veronica@cbcog98.org

Counties Served:

*Fiscal Contact:*

Karen Royal  
karen@fin.cbcog98.org

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### 83108-Concho Valley Area Agency on Aging

2801 W. Loop 306; San Angelo, Texas 76904  
P. O. Box 60050; San Angelo, Texas 76906

Ph: 325-223-5704 1-877-944-9666 Fax: 325-223-8233

AAA Director:

Ms. Rosie Quintela, Director  
rosie@cvcog.org

---

### Concho Valley Council of Governments

Mr. Jeffrey K. Sutton, Executive Director  
jsutton@cvcog.org

P. O. Box 60050 Zip: 76906

Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Schleicher, Sterling, Sutton, Tom Green

*Fiscal Director:*

Nancy Pahira  
nancy@cvcog.org

Counties Served:

*Fiscal Contact:*

Terry Lockart  
terry@cvcog.org

## Area Agencies on Aging

8/29/2007

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### 83109-Dallas County Area Agency on Aging

1349 Empire Central, Suite 400; Dallas, Texas 75247

1349 Empire Central, Suite 400; Dallas, Texas 75247

Ph: 214-871-5065 1-800-548-1873 Fax: 214-871-7442

#### AAA Director:

Ms. Monita McGhee, Director

mmcgee@ccgd.org

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### Community Council of Greater Dallas

Ms. Martha Blaine, Executive Director

mblaine@ccgd.org

1349 Empire Central, Ste. 400 Zip: 75247

Dallas

#### Fiscal Director:

Vicki White

vwhite@ccgd.org

#### Counties Served:

#### Fiscal Contact:

Dena Boyd

dboyd@ccgd.org

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### 83110-Deep East Texas Area Agency on Aging

210 Premier Drive; Jasper, Texas 75951

210 Premier Drive; Jasper, Texas 75951

Ph: 409-384-7614 1-800-435-3377 Fax: 409-384-6177 409-384-5390

#### AAA Director:

Ms. Holly Anderson, Director

handerson@detcog.org

---

### Deep East Texas Council of Governments

Mr. Walter Diggles, Executive Director

wdiggles@detcog.org

210 Premier Drive Zip: 75951

Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler

#### Fiscal Director:

Patricia DuBose

pdubose@detcog.org

#### Counties Served:

#### Fiscal Contact:

Holly Anderson

---

### 83111-East Texas Area Agency on Aging

3800 Stone Road; Kilgore, Texas 75662

3800 Stone Road; Kilgore, Texas 75662

Ph: 903-984-8641 1-800-442-8845 Fax: 903-984-4482

#### AAA Director:

Mr. Claude I. Andrews, Director

Claude.Andrews@twc.state.tx.us

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### East Texas Council of Governments

Mr. David Cleveland, Executive Director

david.cleveland@etcog.org

3800 Stone Road Zip: 75662

Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, VanZandt, Wood

#### Fiscal Director:

Judy Durland

judy.durland@twc.state.tx.us

#### Counties Served:

#### Fiscal Contact:

Beverly Brown

beverly.brown3@twc.state.tx.us

---

### 83112-Golden Crescent Area Agency on Aging

568 Big Bend Drive; Victoria, Texas 77904

568 Big Bend Drive; Victoria, Texas 77904

Ph: 361-578-1587 1-800-574-9745 Fax: 361-578-8865

#### AAA Director:

Ms. Cindy Cornish, Director

cindyco@gcrpc.org

---

### Golden Crescent Regional Planning Commission

Mr. Joe E. Brannan, Executive Director

jbrannan@gcrpc.org

568 Big Bend Drive Zip: 77904

Calhoun, DeWitt, Goliad, Gonzales, Jackson, Lavaca, Victoria

#### Fiscal Director:

Cynthia Skarpa

cindys@gcrpc.org

#### Counties Served:

#### Fiscal Contact:

Cynthia Skarpa

cindys@gcrpc.org

## Area Agencies on Aging

8/29/2007

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### 83113-Harris County Area Agency on Aging

8000 North Stadium Drive, 3rd. Floor; Houston, Texas 77054

8000 North Stadium Drive, 3rd. Floor; Houston, Texas 77054

Ph: 713-794-9001 1-800-213-8471 Fax: 713-794-9238

AAA Director:

Ms. Sheila Savannah, Bureau Chief

sheila.savannah@cityofhouston.net

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#### City of Houston

Stephen Williams, Director

stephen.williams@cityofhouston.net

8000 North Stadium Drive, 3rd. Floor Zip: 77054

Harris

*Fiscal Director:*

Sally Switek

sally.switek@cityofhouston.net

Counties Served:

*Fiscal Contact:*

Sally Switek

sally.switek@cityofhouston.net

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### 83114-Heart of Texas Area Agency on Aging

1514 S. New Road; Waco, Texas 76711

PO Box 20847; Waco, Texas 76712

Ph: 254-292-1800 1-866-772-9600 Fax: 254-756-0102

AAA Director:

Mr. Gary Luft, Director

gary.luft@hot.cog.tx.us

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#### Heart of Texas Council of Governments

Kenneth L. Simons, Executive Director

ken.simons@hot.cog.tx.us

PO Box 20847 Zip: 76712

Bosque, Falls, Freestone, Hill, Limestone, McLennan

*Fiscal Director:*

John Minnix

john.minnix@hot.cog.tx.us

Counties Served:

*Fiscal Contact:*

Donnis Cowan

---

### 83115-Houston - Galveston Area Agency on Aging

3555 Timmons Ln., Suite 120; Houston, Texas 77027

P. O. Box 22777; Houston, Texas 77227-2777

Ph: 713-627-3200 1-800-437-7396 Fax: 713-993-4578

AAA Director:

Mr. Curtis M. Cooper, Manager

curtis.cooper@h-gac.com

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#### Houston-Galveston Area Council

Mr. Jack Steele, Executive Director

jack.steele@h-gac.com

P. O. Box 22777 Zip: 77227

Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Liberty, Matagorda, Montgomery, Walker, Waller, Wharton

*Fiscal Director:*

Nancy Haussler

nancy.haussler@h-gac.com

Counties Served:

*Fiscal Contact:*

Shaun Downie

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### 83116-Lower Rio Grande Valley Area Agency on Aging

311 N. 15th Street; McAllen, Texas 78501-4705

311 N. 15th Street; McAllen, Texas 78501-4705

Ph: 956-682-3481 1-800-365-6131 Fax: 956-682-8852

AAA Director:

Mr. Jose L. Gonzalez, Director

jgonzalez@lrgvdc.org

---

#### Lower Rio Grande Valley Development Council

Mr. Kenneth N. Jones, Executive Director

knjones@lrgvdc.org

311 N. 15th Street Zip: 78501-4705

Cameron, Hidalgo, Willacy

*Fiscal Director:*

Ann Lyles

lyles@acnet.net

Counties Served:

*Fiscal Contact:*

Crystal Balboa

cbalboa@lrgvdc.org

## Area Agencies on Aging

8/29/2007

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### 83117-Middle Rio Grande Area Agency on Aging

307 W. Nopal Street; Carrizo Springs, Texas 78834

P. O. Box 1199; Carrizo Springs, Texas 78834

Ph: 830-876-3533 1-800-224-4262 Fax: 830-876-9415

AAA Director:

Mr. John Ruiz, Jr., Director

john.ruiz@mrgdc.org

---

### Middle Rio Grande Development Council

Mr. Leodoro Martinez, Executive Director

leodoro.martinez@mrgdc.org

P. O. Box 1199 Zip: 78834

Dimmit, Edwards, Kinney, LaSalle, Maverick, Real, Uvalde, Val Verde, Zavala

*Fiscal Director:*

Joe D. Cruz, Jr.

joe.cruz@mrgdc.org

*Fiscal Contact:*

Pete Perez

Counties Served:

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### 83118-North Central Texas Area Agency on Aging

616 Six Flags Drive, Suite 200; Arlington, Texas 76011

P. O. Box 5888; Arlington, Texas 76005-5888

Ph: 817-695-9194 1-800-272-3921 Fax: 817-695-9274

AAA Director:

Ms. Doni Van Ryswyk, Manager

dvanryswyk@nctcog.org

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### North Central Texas Council of Governments

Mr. Mike Eastland, Executive Director

meastland@nctcog.org

P. O. Box 5888 Zip: 76005-5888

Collin, Denton, Ellis, Erath, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Wise

*Fiscal Director:*

Shannan Ramirez

ameadows@nctcog.org

*Fiscal Contact:*

Amber Meadows

Counties Served:

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### 83119-North Texas Area Agency on Aging

4309 Jacksboro Hwy., Suite 2; Wichita Falls, Texas 76302-2745

P. O. Box 5144; Wichita Falls, Texas 76307-5144

Ph: 940-322-5281 1-800-460-2226 Fax: 940-322-6743

AAA Director:

Ms. Rhonda K. Pogue, Director

rpogue@nortexrpc.org

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### Nortex Regional Planning Commission

Mr. Dennis Wilde, Executive Director

dwilde@nortexrpc.org

P. O. Box 5144 Zip: 76307-5144

Archer, Baylor, Clay, Cottle, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, Young

*Fiscal Director:*

Joyce Reynolds

jreynolds@nortexrpc.org

*Fiscal Contact:*

Joyce Reynolds

Counties Served:

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### 83120-Panhandle Area Agency on Aging

415 West 8th; Amarillo, Texas 79101

P. O. Box 9257; Amarillo, Texas 79105-9257

Ph: 806-331-2227 1-800-642-6008 Fax: 806-373-3268

AAA Director:

Ms. Melissa Carter, Director

mcarter@prpc.cog.tx.us

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### Panhandle Regional Planning Commission

Mr. Gary Pitner, Executive Director

gpitner@theprpc.org

P. O. Box 9257 Zip: 79105-9257

Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler

*Fiscal Director:*

Cindy Boone

cboone@theprpc.org

*Fiscal Contact:*

Christy Henderson

chenderson@theprpc.org

Counties Served:



## Area Agencies on Aging

8/29/2007

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### 83121-Permian Basin Area Agency on Aging

2910 Laforce Blvd.; Midland, Texas 79711

P.O. Box 60660; Midland, Texas 79711

Ph: 432-563-1061 1-800-491-4636 Fax: 432-563-1009

AAA Director:

Ms. Sue Fielder, Director

sfielder@aaapb.com

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### Permian Basin Regional Planning Commission

Ms. Teri Moore, Executive Director

tmoore@pbrpc.org

P. O. Box 60660 Zip: 79711

Andrews, Borden, Crane, Dawson, Ector, Gaines, Glasscock, Howard, Loving, Martin, Midland, Pecos, Reeves, Terrell, Upton, Ward, Winkler

*Fiscal Director:*

Helen Grady

heleng@pbrpc.org

Counties Served:

*Fiscal Contact:*

Helen Grady

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### 83122-Rio Grande Area Agency on Aging

1100 North Stanton, Suite 610; El Paso, Texas 79902

1100 North Stanton, Suite 610; El Paso, Texas 79902

Ph: 915-533-0998 1-800-333-7082 Fax: 915-544-5402

AAA Director:

Mr. Adan Dominguez, Director

adand@riocog.org

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### Rio Grande Council of Governments

Mr. Jake Brisbin, Jr., Executive Director

jakeb@riocog.org

1100 North Stanton, Suite 610 Zip: 79902

Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio

*Fiscal Director:*

Hector F. Diaz

hectord@riocog.org

Counties Served:

*Fiscal Contact:*

Lorena Estrada

---

### 83123-Southeast Texas Area Agency on Aging

2210 Eastex Freeway; Beaumont, Texas 77703

2210 Eastex Freeway; Beaumont, Texas 77703

Ph: 409-899-8444 1-800-395-5465 Fax: 409-899-4829

AAA Director:

Ms. Colleen Halliburton, Director

challiburton@setrpc.org

---

### South East Texas Regional Planning Commission

Mr. Chester R. Jourdan, Jr., Executive Direc

cjourdan@setrpc.org

2210 Eastex Freeway Zip: 77703

Hardin, Jefferson, Orange

*Fiscal Director:*

Jim Borel

jborel@setrpc.org

Counties Served:

*Fiscal Contact:*

Teri Barnes

tbarnes@setrpc.org

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### 83124-South Plains Area Agency on Aging

1323 58th Street; Lubbock, Texas 79412

P. O. Box 3730 / Freedom Station; Lubbock, Texas 79452

Ph: 806-687-0940 1-888-418-6564 Fax: 806-765-9544

AAA Director:

Mr. Pete H. Lara, Director

plara@spag.org

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### South Plains Association of Governments

Mr. Tim C. Pierce, Executive Director

tpierce@spag.org

P. O. Box 3730 / Freedom Station Zip: 79452

Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry, Yoakum

*Fiscal Director:*

Cindy Shaver

cshaver@spag.org

Counties Served:

*Fiscal Contact:*

Rodrigo Moyshondt

rodrigo@spag.org

## Area Agencies on Aging

8/29/2007

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### 83125-South Texas Area Agency on Aging

1002 Dicky Lane; Laredo, Texas 78043  
P.O. Box 2187; Laredo, Texas 78044-2187

Ph: 956-722-3995 1-800-292-5426 Fax: 956-722-2670

AAA Director:

Mr. Alberto Rivera, Jr., Aging Services  
arivera@stdc.cog.tx.us

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### South Texas Development Council

Mr. Amando Garza, Jr., Executive Director  
agarzajr@stdc.cog.tx.us

P.O. Box 2187 Zip: 78044-2187

Jim Hogg, Starr, Webb, Zapata

*Fiscal Director:*

Robert Mendiola  
mendiola@stdc.cog.tx.us

*Fiscal Contact:*

Robert Mendiola

Counties Served:

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### 83126-Tarrant County Area Agency on Aging

210 East Ninth Street; Fort Worth, Texas 76102  
210 East Ninth Street; Fort Worth, Texas 76102

Ph: 817-258-8081 1-877-886-4833 Fax: 817-258-8074

AAA Director:

Mr. Don Smith, Director  
dsmith@uwmtc.org

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### United Way Metropolitan Tarrant County

Ms. Ann Rice, Senior Vice President  
arice@uwmtc.org

210 East Ninth Street Zip: 76102

Tarrant

*Fiscal Director:*

Mitch Leach  
mleach@uwmtc.org

*Fiscal Contact:*

Ray Wofford  
rwofford@uwmtc.org

Counties Served:

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### 83127-Texoma Area Agency on Aging

1117 Gallagher, Gallagher Bldg., Suite 200; Sherman, Texas 75090  
1117 Gallagher, Gallagher Bldg., Suite 200; Sherman, Texas 75090

Ph: 903-813-3580 1-800-677-8264 Fax: 903-813-3515

AAA Director:

Mr. Ron Michael, Director  
rmichael@texoma.cog.tx.us

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### Texoma Council of Governments

Mrs. Frances Pelley, Executive Director  
fpelley@texoma.cog.tx.us

1117 Gallagher, Gallagher Prof. Bldg, Suite 200 Z

Cooke, Fannin, Grayson

*Fiscal Director:*

Terrell Culbertson  
tculbertson@texoma.cog.tx.us

*Fiscal Contact:*

Terrell Culbertson

Counties Served:

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### 83128-West Central Texas Area Agency on Aging

841 N. Judge Ely Blvd.; Abilene, Texas 79601  
P. O. Box 3195; Abilene, Texas 79604

Ph: 325-672-8544 1-800-928-2262 Fax: 325-675-5214

AAA Director:

Ms. Gail Kaiser, Director  
gkaiser@wctcog.org

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### West Central Texas Council of Governments

Mr. James K. Compton, Executive Director  
jcompton@wctcog.org

P. O. Box 3195 Zip: 79604

Brown, Callahan, Coleman, Comanche, Eastland, Fisher, Haskell, Jones, Kent, Knox, Mitchell, Nolan, Runnels, Scurry, Shackelford, Stephens, Stonewall, Taylor, Throckmorton

*Fiscal Director:*

Christy Marlar  
cmarlar@wctcog.org

*Fiscal Contact:*

Christy Marlar

Counties Served:

Contact the Department of Aging and Disability Services, Access and Intake - Area Agencies on Aging Section at (512) 438-4290 for questions about this general notice.

TRD-200704221  
Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Filed: September 13, 2007

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**Alamo Regional Mobility Authority**

Notice of Availability of Request for Qualifications: 281 North Toll Project

The Alamo Regional Mobility Authority ("Alamo RMA"), a political subdivision, is soliciting statements of interest and qualifications from entities interested in pursuing the development of the 281 North Toll Project ("the Project") through a design/build comprehensive development agreement ("D/B CDA"). The Project is generally described as a tolled section of US 281 North from Loop 1604 to Marshall Road with a minimum of four tolled lanes (two in each direction); the corridor would also include non-tolled frontage roads. The Alamo RMA is currently evaluating the feasibility of the Project to define the actual scope of the proposed facility. The entity selected for the Project, if any, will be responsible for the planning, design, and construction of the Project through a D/B CDA.

The request for qualifications will be available September 18, 2007. Copies may be obtained from the Alamo RMA website at <http://www.alamorma.org/>, or by contacting the Alamo RMA Office at (210) 495-5256. Periodic updates, addenda, and clarifications will be posted on the Alamo RMA website, and interested parties are responsible for monitoring the website accordingly.

There will be a pre-proposal conference for interested parties at the TransGuide, 3500 N.W. Loop 410, San Antonio, TX 78229 (1st Floor Conference Room) at 9:00 a.m. C.S.T. on September 28, 2007. Attendance at the pre-proposal conference is not a condition of submitting a proposal. Final responses must be received in the offices of the Alamo RMA by or before 4:00 p.m. C.S.T. October 19, 2007, to be eligible for consideration. It is the policy of the Alamo RMA to encourage the participation of HUBs, minorities, and women in all facets of its activities. The commitment of the proposing entity to utilization of HUBs/DBEs will be considered in the RFQ evaluation process. Each proposing entity will be evaluated based on the criteria and process set forth in the RFQ.

Questions concerning this RFQ may be submitted via e-mail to Patrick Irwin, P.E., <mailto:281@AlamoRMA.org> or in writing to: Alamo RMA, c/o Patrick Irwin, P.E., 16500 San Pedro, Suite 350, San Antonio, TX 78232. All questions must be received by 5:00 p.m. C.S.T. October 12, 2007

TRD-200704280  
Leroy Alloway  
Public Information Manager  
Alamo Regional Mobility Authority  
Filed: September 17, 2007

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**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/24/07 - 09/30/07 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/24/07 - 09/30/07 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/07 - 10/31/07 is 8.25% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/07 - 10/31/07 is 8.25% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200704307  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: September 18, 2007

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**Credit Union Department**

Application for a Merger or Consolidation

Notice is given that the following application has been filed with the Credit Union Department (Department) and is under consideration:

An application was received from America's Credit Union (Garland) seeking approval to merge with 1st Garland Community Federal Credit Union (Garland), with America's Credit Union being the surviving 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-200704322  
Harold E. Feeney  
Commissioner  
Credit Union Department  
Filed: September 19, 2007

◆ ◆ ◆  
Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

MemberSource Credit Union, Houston, Texas - See *Texas Register* issue, dated June 29, 2007.

First Central Credit Union, Waco, Texas - See *Texas Register* issue, dated July 27, 2007.

Application to Amend Articles of Incorporation - Approved

Matagorda County Teachers Credit Union, Bay City, Texas - See *Texas Register* issue, dated July 27, 2007.

TRD-200704323

Harold E. Feeney

Commissioner

Credit Union Department

Filed: September 19, 2007



## Texas Education Agency

### Request for Personal Financial Literacy Materials - High School Level for the 2007-2008 School Year

**Description.** The Texas Education Agency (TEA) is notifying organizations that personal financial literacy materials for use in high school economics courses may be submitted for review. Approved materials will be added to the *List of Approved Personal Financial Literacy Materials*. Personal financial literacy materials previously selected for the *List of Approved Personal Financial Literacy Materials* do not need to be resubmitted for approval. Texas Education Code (TEC), §28.002, authorizes the State Board of Education to approve materials for use in courses meeting a requirement for an economics credit under TEC, §28.025.

**Program Requirements.** Materials submitted for review may include any of the following areas of instruction: understanding interest; avoiding and eliminating credit card debt; understanding the rights and responsibilities of renting or buying a home; managing money to make the transition from renting a home to home ownership; starting a small business; being a prudent investor in the stock market and using other investment options; beginning a savings program and planning for retirement; bankruptcy; the types of bank accounts available to consumers and the benefits of maintaining a bank account; balancing a checkbook; the types of loans available to consumers and becoming a low-risk borrower; understanding insurance; and/or charitable giving.

**Selection Criteria.** Organizations will be responsible for submitting materials that they wish to be reviewed for consideration for inclusion on the *List of Approved Personal Financial Literacy Materials*. All materials submitted for review must satisfy at least one of the areas of instruction in the preceding list and must be submitted with a verification of the extent to which the areas are covered in the materials. The verification form may be downloaded from the TEA website at <http://www.tea.state.tx.us/curriculum/social/verify.doc>.

Materials must be submitted to Rosemary Morrow, Director, Social Studies, Texas Education Agency, Room 3-121, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), Friday, October 26, 2007, to be considered for inclusion on the *List of Approved Personal Financial Literacy Materials*.

TRD-200704321

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: September 19, 2007



## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission

may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 29, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 29, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: A & D Auto Pit Stop Ltd dba Roys Auto Center; DOCKET NUMBER: 2007-1399-PST-E; IDENTIFIER: RN101875656; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.50(b)(1)(A), by failing to provide release detection; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(2) COMPANY: Aqua Development, Inc. dba Aqua Texas, Inc.; DOCKET NUMBER: 2007-0691-MWD-E; IDENTIFIER: RN102343233; LOCATION: Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014175001, Interim I Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permit limits; PENALTY: \$12,650; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5423 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Bond-Coat, Inc.; DOCKET NUMBER: 2007-0667-AIR-E; IDENTIFIER: RN105193411; LOCATION: Odessa, Midland County, Texas; TYPE OF FACILITY: custom coating of oil field drill pipe plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and Texas Health and Safety Code (THSC), §382.085(b) and §382.0518(a), by failing to obtain a permit prior to construction or operation of a regulated operation; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Lindsey Jones, (512) 239-4930; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(4) COMPANY: Brookeland Independent School District; DOCKET NUMBER: 2005-0051-MWD-E; IDENTIFIER: RN101517308; LOCATION: Brookeland, Sabine County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(5) and TPDES Permit Number 13092001, Operational Requirement Number 1, by failing to properly operate and maintain all facilities and systems

of treatment and control; 30 TAC §305.125(1), TPDES Permit Number 13092001, Final Effluent Limitations and Monitoring Requirement Number 2, and the Code, §26.121(a), by failing to comply with the chlorine residual effluent limitations; 30 TAC §305.125(1) and TPDES Permit Number 13092001, Monitoring and Reporting Requirement Number 7c, by failing to report, in writing, to the TCEQ Region 10 Office and the Enforcement Division, within five working days, any effluent violation which deviated from the permitted effluent limitation by more than 40%; and 30 TAC §30.331(b) and §30.350(d) and TPDES Permit Number 13092001, Operational Requirement Number 9, by failing to employ a licensed wastewater treatment operator to perform chlorine residual analysis and monitoring; PENALTY: \$4,200; Supplemental Environmental Project (SEP) offset amount of \$4,200 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Bruce's, Inc.; DOCKET NUMBER: 2007-1217-AIR-E; IDENTIFIER: RN102541794; LOCATION: Evadale, Jasper County, Texas; TYPE OF FACILITY: compost operation; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent the occurrence of a nuisance condition at nearby residences; PENALTY: \$2,425; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Cliff J. Chambers; DOCKET NUMBER: 2007-1396-OSI-E; IDENTIFIER: RN103749859; LOCATION: Kountze, Hardin County, Texas; TYPE OF FACILITY: installer; RULE VIOLATED: 30 TAC §283.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an On-Site Sewage Facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Ronald Ray Cooper; DOCKET NUMBER: 2007-1363-WOC-E; IDENTIFIER: RN103463162; LOCATION: Bronte, Coke County, Texas; TYPE OF FACILITY: installer; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(8) COMPANY: Farah Chaudhry dba Country Boy 2; DOCKET NUMBER: 2007-0933-PST-E; IDENTIFIER: RN103194387; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the impressed current cathodic protection system; 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection inspected and tested for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all underground storage tanks (USTs) are monitored; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Destructors, Inc.; DOCKET NUMBER: 2007-0922-AIR-E; IDENTIFIER: RN104916457; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: rock crusher; RULE VIOLATED: 30 TAC §116.115(c), New Source Review (NSR) Permit Number 78322L001, Special Condition 6.G., and THSC, §382.085(b), by failing to comply with permitted maximum stockpile heights;

PENALTY: \$950; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Dome Petrochemical, L.C.; DOCKET NUMBER: 2007-0931-IWD-E; IDENTIFIER: RN102286374; LOCATION: near Baytown, Chambers County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0004116000, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$5,400; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Earth Haulers, Inc.; DOCKET NUMBER: 2007-1362-WQ-E; IDENTIFIER: RN105224547; LOCATION: Azle, Parker County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Multi-Sector General Permit; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2007-0815-AIR-E; IDENTIFIER: RN102926920; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §115.722(c)(1) and §116.115(c), Air NSR Permit Number 6257E, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent the release of unauthorized air contaminants; and 30 TAC §§101.20(1), 101.221(a), 115.722(d), and 116.115(c), 40 Code of Federal Regulations (CFR) §60.18(c)(2), Air NSR Permit Number 6257E, Special Condition Number 7B, by failing to operate the flare with the flame present at all times; PENALTY: \$32,725; Supplemental Environmental Project (SEP) offset amount of \$13,090 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Stephen P. Fey; DOCKET NUMBER: 2007-1167-LII-E; IDENTIFIER: RN105240402; LOCATION: Boerne and San Antonio; Kendall and Bexar Counties, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license; PENALTY: \$500; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: Fiberglass Specialities, Inc.; DOCKET NUMBER: 2007-1094-AIR-E; IDENTIFIER: RN102536091; LOCATION: Henderson, Rusk County, Texas; TYPE OF FACILITY: fiberglass manufacturing; RULE VIOLATED: 30 TAC §122.145(2) and §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification; PENALTY: \$770; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: City of Grand Prairie; DOCKET NUMBER: 2007-1340-PST-E; IDENTIFIER: RN101386092; LOCATION: Grand Prairie, Dallas County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to provide release detection; and 30 TAC §334.51(b)(2), by failing to provide spill containment and overflow prevention; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Sandra L. Hales; DOCKET NUMBER: 2007-1364-WOC-E; IDENTIFIER: RN103659041; LOCATION: Alice, Jim Wells County, Texas; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: Kia Enterprises, Inc. dba Iffi Stop 1 Food Market; DOCKET NUMBER: 2007-0918-PWS-E; IDENTIFIER: RN101737534; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: service station with public water supply; RULE VIOLATED: 30 TAC §290.41(c)(3)(A), by failing to submit well completion data; 30 TAC §290.46(n)(1) and THSC, §341.035(a), by failing to provide accurate up-to-date detailed as-built plans or record drawings and specifications; 30 TAC §290.110(d)(3)(C), by failing to obtain a test kit which uses diethyl-p-phenyldiamine to measure the free chlorine residual; and 30 TAC §290.110(c)(5)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system; PENALTY: \$840; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: King Isles, Inc. dba King Isles Vista Hermosa; DOCKET NUMBER: 2007-0926-WQ-E; IDENTIFIER: RN105229744; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: residential subdivision construction business; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a)(1), by failing to obtain authorization under the TPDES Construction General Permit to discharge storm water associated with construction activities; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Leeco Properties, Inc.; DOCKET NUMBER: 2007-0241-WQ-E; IDENTIFIER: RN105154686; LOCATION: Odessa, Ector County, Texas; TYPE OF FACILITY: construction site for single family housing development; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(20) COMPANY: City of Levelland; DOCKET NUMBER: 2007-0784-PST-E; IDENTIFIER: RN102996238; LOCATION: Levelland, Hockley County, Texas; TYPE OF FACILITY: small aircraft servicing and refueling; RULE VIOLATED: 30 TAC §334.45(c)(3)(A), by failing to properly install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve; 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current cathodic protection system; and 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form; PENALTY: \$4,050; ENFORCEMENT COORDINATOR: Chris Holcomb, (512) 239-2541; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(21) COMPANY: City of Lorena; DOCKET NUMBER: 2005-0492-MWD-E; IDENTIFIER: RN101917870, TPDES Permit Number 12195-001; LOCATION: Lorena, McLennan County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (5), TPDES Permit Number 12195-001, Effluent Limitations and Monitoring Requirements Number 4 and Operational

Requirements Number 1, and the Code, §26.121(a), by failing to prevent the discharge and accumulation of solids in the receiving stream and to ensure that all systems of collection, treatment, and disposal were properly operated and maintained; 30 TAC §305.125(1) and §319.11(a) and (e), and TPDES Permit Number 12195-001, Monitoring and Reporting Requirements Number 2 and 3(c)(vi), by failing to comply with test procedures specified in the permit and commission rules and failing to maintain records of monitoring activities; 30 TAC §305.125(1) and TPDES Permit Number 12195-001, Section III. Requirements Applying to All Sewage Sludge Disposed In a Municipal Solid Waste Landfill, Paragraph G. Reporting Requirements, by failing to submit an annual sludge report; and 30 TAC §317.6(b)(1)(E), by failing to have a functional forced air ventilation system for the chlorination housing; PENALTY: \$10,800; Supplemental Environmental Project (SEP) offset amount of \$8,640 applied to having the respondent partner with Keep McLennan County Beautiful to perform an electronics collection and recycling event; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: James E. Lyles; DOCKET NUMBER: 2007-1397-WOC-E; IDENTIFIER: RN103287918; LOCATION: Cleburne, Johnson County, Texas; TYPE OF FACILITY: operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Darryl Wheeler dba Magnolia Lake RV Park; DOCKET NUMBER: 2007-0883-PWS-E; IDENTIFIER: RN101237154; LOCATION: Polk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement or an approved exception to the easement requirement; 30 TAC §290.46(f)(2), by failing to provide water system records to commission personnel at the time of the investigation; 30 TAC §290.46(n)(2), by failing to maintain an up-to-date map of the distribution system; 30 TAC §290.42(l), by failing to compile and maintain a plant operations manual for operator review and reference; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.46(m)(1), by failing to conduct an annual inspection of the water system's pressure tank; and 30 TAC §290.45(b)(1)(A)(i) and §290.45(c)(1)(A)(i) and THSC, §341.0315(c), by failing to meet the minimum well capacity requirement of 1.5 gallons per minute (gpm) per community connection and failing to meet the minimum well capacity requirement of one gpm per transient unit; PENALTY: \$2,160; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: City of Mexia; DOCKET NUMBER: 2007-0520-MWD-E; IDENTIFIER: RN101918076; LOCATION: Mexia, Limestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and TPDES Permit Number WQ0010222001, Sludge Provisions, by failing to timely submit the annual sludge report; 30 TAC §305.125(5) and §317.4(b)(4) and TPDES Permit Number WQ0010222001, Operational Requirements Number 1, by failing to at all times properly operate and maintain all facilities and systems of treatment and control; 30 TAC §319.11(e) and TPDES Permit Number WQ0010222001, Monitoring and Reporting Requirements Number 2, by failing to calibrate the thermometer in the storage refrigerator against a National Institute of Standards and Technology certified thermometer on an annual basis; and 30 TAC §317.3(a) and TPDES Permit Number WQ0010222001, Operational

Requirements Number 1, by failing to have controlled access to three lift stations; PENALTY: \$26,688; Supplemental Environmental Project (SEP) offset amount of \$21,351 applied to repairing or replacing failing, broken, or inadequately designed private sewer lines, access units, and clean-outs for approximately 20 low to moderate income residents; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Billy Miller dba Miller Station; DOCKET NUMBER: 2007-1395-PST-E; IDENTIFIER: RN102453479; LOCATION: Mills County, Texas; TYPE OF FACILITY: gas station with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ Delivery Certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(26) COMPANY: City of Nederland; DOCKET NUMBER: 2007-0994-MWD-E; IDENTIFIER: RN103016374; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(4), TPDES Permit Number 10483002, Permit Condition Number 2.d., and the Code, §26.121(a), by failing to prevent the unauthorized discharge of partially treated wastewater; PENALTY: \$13,100; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: Robert Choate dba Pop's Tire Shop; DOCKET NUMBER: 2007-0867-MSW-E; IDENTIFIER: RN103073383; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: retail tire; RULE VIOLATED: 30 TAC §328.56(d)(2) and §328.60(a) and THSC, §361.112(a), by failing to obtain a scrap tire storage registration; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Pulte Homes of Texas, L.P.; DOCKET NUMBER: 2007-0992-MSW-E; IDENTIFIER: RN105138325; LOCATION: Frisco, Denton County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste recycling site; RULE VIOLATED: 30 TAC §328.4(a) and §328.5(a), by allegedly having operated an unauthorized recycling facility; and 30 TAC §37.921(a) and §328.5(d), by failing to establish and maintain financial assurance for the closure of a recycling facility that stores combustible material outdoors; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Sabine Cogen, LP; DOCKET NUMBER: 2007-0781-AIR-E; IDENTIFIER: RN100209766; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: electric power generation plant; RULE VIOLATED: 30 TAC §§101.20(1), 116.115(c), and 122.143(4), 40 CFR §60.13(d)(1), NSR Permit Number 36889, Special Conditions (SC) 10A and 13B, Federal Operating Permit (FOP) Number O-1843, General Terms and Conditions (GTC), Special Terms and Conditions 4F and 6A, and THSC, §382.085(b), by failing to perform daily span calibrations of the nitrogen oxide (NO<sub>x</sub>) and carbon monoxide; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 36889, SC 18B, FOP Number O-1843, GTC, SC 6A, and THSC, §382.085(b), by failing to maintain hourly average fuel consumption records; 30 TAC §116.115(c) and §122.143(4), NSR Permit Number 36889, SC 7, FOP Number O-1843, GTC, SC 6A, and THSC, §382.085(b), by failing to limit ammonia emissions below a concentration of 10 parts per million by volume on a dry basis (ppmvd); 30 TAC §116.115(c) and §122.143(4), NSR Permit

Number 36889, SC 2, FOP Number O-1843, GTC, SC 6A, and THSC, §382.085(b), by failing to comply with the hourly average NO<sub>x</sub> concentration limit of 9 ppmvd; 30 TAC §116.115(b)(2)(F) and §122.143(4), FOP Number O-1843, GTC, SC 6A, and THSC, §382.085(b), by failing to maintain the NO<sub>x</sub> emission rate below the maximum allowable emission rate of 23.4 pounds per hour; and 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(1) and (5)(C), FOP Number O-1843, GTC, and THSC, §382.085(b), by failing to include deviations incurred during the semiannual period of May 12, 2006 through November 11, 2006, in the semiannual deviation report and annual compliance certification submitted on December 8, 2006; PENALTY: \$15,730; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: San Antonio Water System; DOCKET NUMBER: 2007-0639-MWD-E; IDENTIFIER: RN102182664; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010137003, Permit Condition 2.g., and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of untreated wastewater; PENALTY: \$11,400; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(31) COMPANY: St. Mary's Hall; DOCKET NUMBER: 2007-1398-PST-E; IDENTIFIER: RN101770683; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing provide release detection; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(32) COMPANY: Sunny Financial LLC dba Normandy Food Mart; DOCKET NUMBER: 2007-1339-PST-E; IDENTIFIER: RN102276441; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing provide release detection; and 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: \$3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: City of Teague; DOCKET NUMBER: 2007-0862-MWD-E; IDENTIFIER: RN101607935; LOCATION: Freestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121(a)(1), by failing to possess a current wastewater treatment permit; and 30 TAC §317.7(e), by failing to provide adequate wastewater treatment facility security; PENALTY: \$9,570; Supplemental Environmental Project (SEP) offset amount of \$7,656 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Household Hazardous Waste Clean-Up; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(34) COMPANY: Tejas Industries, Ltd.; DOCKET NUMBER: 2007-0819-IWD-E; IDENTIFIER: RN102287257; LOCATION: Hereford, Deaf Smith County, Texas; TYPE OF FACILITY: animal rendering plant; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0001300000, Section IV Conditions of the Permit, by failing to comply with the permitted effluent limits for flow

volumes to the anaerobic and lined lagoons and biochemical oxygen demand (BOD); 30 TAC §305.125(1) and TPDES Permit Number WQ0001300000, Monitoring Requirements 7(c), by failing to submit noncompliance notifications; 30 TAC §305.125(5) and TPDES Permit Number WQ0001300000, Special Provisions F and H(3), by failing to maintain a minimum of two feet of freeboard for all wastewater ponds and failing to at all times ensure that the facility and all of its systems are properly operated and maintained; 30 TAC §305.125(1) and TPDES Permit Number WQ0001300000, Section IV Conditions of the Permit, Parameters, by failing to submit the facility results from the analysis of five-day BOD; and 30 TAC §305.125(1) and TPDES Permit Number WQ0001300000, Monitoring Requirements, Section Number 5, Calibration of Instruments, by failing to maintain all records of calibration of the in-line flow meters; PENALTY: \$18,315; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(35) COMPANY: Texas Sludge Disposal, Inc.; DOCKET NUMBER: 2007-0968-WQ-E; IDENTIFIER: RN103197638; LOCATION: Bay City, San Patricio County, Texas; TYPE OF FACILITY: composting and liquid waste processing; RULE VIOLATED: the Code, §26.121(a), by failing to prevent the unauthorized discharge of storm water and process wastewater; PENALTY: \$2,575; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(36) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2007-0023-AIR-E; IDENTIFIER: RN102561925; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number 1593, GTC, and THSC, §382.085(b), by failing to submit the annual compliance certification on time; 30 TAC §§113.260, 116.115(c), and 122.143(4), Air Permit Numbers 1040, SC 3, 9481, SC 5A, and 22110, SC 4A, FOP Number 1593, GTC and SC 12A, and THSC, §382.085(b), by failing to operate a flare with a net heating value of 300 British Thermal Units per standard cubic foot or greater; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 56473, SC 3, FOP Number 1593, GTC and SC 12A, and THSC, §382.085(b), by failing to sample the main cooling tower daily; 30 TAC §§113.260, 116.115(c), and 122.143(4), 40 CFR §63.167(a)(1) and §63.502(a), Air Permit Numbers 9481, SC 7E, 22110, SC 5E, and 56473, SC 11E, FOP Number 1593, GTC, SC 1D and 12A, and THSC, §382.085(b), by failing to seal open-ended lines containing hazardous air pollutants; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 20040/PSD-TX-801, SC 7, FOP Number 1593, GTC and SC 12A, and THSC, §382.085(b), by failing to maintain a permitted limit during a compliance test; 30 TAC §113.260 and §122.143(4), FOP Number 1593, GTC and SC 1D, and THSC, §382.085(b), by failing to conduct quarterly sampling at a cooling tower; and 30 TAC §113.260 and §122.143(4), FOP Number 1593, GTC and SC 1D, and THSC, §382.085(b), by failing to report a flare outage; PENALTY: \$102,564; Supplemental Environmental Project (SEP) offset amount of \$41,026 applied to Southeast Texas Regional Planning Commission ("SETRPC") - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(37) COMPANY: Wal-Mart Stores East, L.P. dba Wal-Mart Distribution Center 7010; DOCKET NUMBER: 2007-1338-PST-E; IDENTIFIER: RN104362777; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c), by failing to submit the initial/renewal UST registration and self-certification form; PENALTY: \$875; ENFORCEMENT

COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(38) COMPANY: WTG Gas Processing, L.P.; DOCKET NUMBER: 2007-0722-AIR-E; IDENTIFIER: RN100211473; LOCATION: Howard County, Texas; TYPE OF FACILITY: oil and gas; RULE VIOLATED: 30 TAC §122.145(2)(A) and (C) and §122.146(2) and THSC, §382.085(b), by failing to submit an annual certification and semi-annual deviation reports; 30 TAC §116.115(c), NSR Permit Number 5301, Special Condition Number 6B, and THSC, §382.085(b), by failing to perform the annual evaluation of the catalyst degradation; 30 TAC §101.20(1) and §116.115(b)(2)(F), and (c), NSR Permit Number 20137, General Condition Number 8, Special Condition Numbers 1 and 5, 40 CFR §60.642(b), and THSC, §382.085(b), by failing to prevent the exceedance of sulfur dioxide and maintaining sulfur dioxide reduction efficiency above 74% federal minimum requirement and 94% permitted minimum requirement; and 30 TAC §122.145(2)(A) and §122.146(2) and THSC, §382.085(b), by failing to properly submit semi-annual deviation reports and include all instances of deviations; PENALTY: \$46,291; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200704308  
Mary R. Risner  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: September 18, 2007

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**Enforcement Orders**

An agreed order was entered regarding Shintech Incorporated, Docket No. 2003-1544-AIR-E on September 10, 2007 assessing \$25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kerens, Docket No. 2004-0623-MWD-E on September 10, 2007 assessing \$5,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Miami, Docket No. 2005-0447-MWD-E on September 10, 2007 assessing \$12,100 in administrative penalties with \$2,420 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 Ramming Land, LLC, Docket No. 2005-0521-PWS-E on September 10, 2007 assessing \$7,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.



An agreed order was entered regarding Peaster Independent School District Public Facility Corporation, Docket No. 2005-0797-MWD-E on September 10, 2007 assessing \$9,870 in administrative penalties with \$1,974 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 4A Investments, Ltd. dba 4A Food Mart Citgo, Docket No. 2005-1852-PST-E on September 10, 2007 assessing \$20,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding University of Texas Medical Branch at Galveston, Docket No. 2005-1973-AIR-E on September 10, 2007 assessing \$11,400 in administrative penalties with \$2,280 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Judy Davis dba Judy's Kountry Kitchen, Docket No. 2006-0063-PST-E on September 10, 2007 assessing \$20,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rafael Ramon db Lil Bitty Trucking, Docket No. 2006-0342-WQ-E on September 10, 2007 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Coast Trades Center, Docket No. 2006-0480-MWD-E on September 10, 2007 assessing \$6,985 in administrative penalties with \$1,397 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 Sharnah Corporation dba Sadlers Food Mart, Docket No. 2006-0621-PST-E on September 10, 2007 assessing \$16,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shawn Slack, Staff Attorney at (512) 239-0063, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Premcor Refining Group Inc., Docket No. 2006-0738-AIR-E on September 10, 2007 assessing \$43,437 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pia-Linda Vantho dba VT Cleaners, Docket No. 2006-1139-DCL-E on September 10, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Bruce Paek dba Little Star Cleaners, Docket No. 2006-1154-DCL-E on September 10, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Hilda Quiros dba Hildas Causeway Cleaners, Docket No. 2006-1293-DCL-E on September 10, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jerrico General Contractor, Inc., Docket No. 2006-1345-WQ-E on September 10, 2007 assessing \$750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dinniah Chahin, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rifat Jaffri dba Pioneer Cleaners, Docket No. 2006-1363-DCL-E on September 10, 2007 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding P & N Star Enterprises, Inc. dba Dry Clean City, Docket No. 2006-1399-DCL-E on September 10, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Navasota, Docket No. 2006-1412-MWD-E on September 10, 2007 assessing \$8,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Paul Anthony Pasillas dba Eldorado Cleaners, Docket No. 2006-1579-DCL-E on September 10, 2007 assessing \$1,185 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin Thompson, Staff Attorney at (512) 239-1297,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF Corporation, Docket No. 2006-1681-MLM-E on September 10, 2007 assessing \$4,239 in administrative penalties with \$848 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Viridis Energy (Texas), LP, Docket No. 2006-1788-MLM-E on September 10, 2007 assessing \$46,046 in administrative penalties with \$9,209 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Junction, Docket No. 2006-1802-MWD-E on September 10, 2007 assessing \$11,550 in administrative penalties with \$2,310 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flying J. Inc. dba Flying J C Store, Docket No. 2006-1813-PST-E on September 10, 2007 assessing \$5,457 in administrative penalties with \$1,091 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 City of Shepherd, Docket No. 2006-1877-MWD-E on September 10, 2007 assessing \$3,840 in administrative penalties with \$768 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 City of Wilmer, Docket No. 2006-1884-PWS-E on September 10, 2007 assessing \$2,087 in administrative penalties with \$417 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Javier B. Armendariz, Docket No. 2006-1902-PST-E on September 10, 2007 assessing \$5,000 in administrative penalties with \$3,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc. dba Aqua Texas, Inc., Docket No. 2006-1924-MWD-E on September 10, 2007 assessing \$7,880 in administrative penalties with \$1,576 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 Cody B. Lewis and Anita Lewis dba Deer Springs Water Company, Docket No. 2006-1962-MLM-E on September 10, 2007 assessing \$1,700 in administrative penalties with \$340 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 City of Gregory, Docket No. 2006-2001-MWD-E on September 10, 2007 assessing \$12,250 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 City of Hudson, Docket No. 2006-2011-MWD-E on September 10, 2007 assessing \$3,060 in administrative penalties with \$612 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rod Packard dba Packard Tire Service, Docket No. 2006-2044-MSW-E on September 10, 2007 assessing \$2,400 in administrative penalties with \$480 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 Koral Industries, Inc., Docket No. 2006-2192-AIR-E on September 10, 2007 assessing \$3,850 in administrative penalties with \$770 deferred.

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 Donny Lloyd dba Lloyd's Electric Motor Repair, Docket No. 2006-2194-AIR-E on September 10, 2007 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Via Bayou, Inc., Docket No. 2006-2196-MWD-E on September 10, 2007 assessing \$9,150 in administrative penalties with \$1,830 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Country Place\Northwest Home Owners' Association, Inc., Docket No. 2007-0006-PWS-E on September 10, 2007 assessing \$1,900 in administrative penalties with \$380 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 Eastman Chemical Company, Docket No. 2007-0013-AIR-E on September 10, 2007 assessing \$33,990 in administrative penalties with \$6,798 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2007-0015-MWD-E on September 10, 2007 assessing \$1,560 in administrative penalties with \$312 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 Flint Hills Resources, LP, Docket No. 2007-0029-AIR-E on September 10, 2007 assessing \$3,425 in administrative penalties with \$685 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randle D. Howard dba Howard Construction Fill Site and D&KW Family, L.P., Docket No. 2007-0033-MLM-E on September 10, 2007 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2007-0034-AIR-E on September 10, 2007 assessing \$44,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Park at Hardy Oak Homeowners Association, Inc., Docket No. 2007-0042-EAQ-E on September 10, 2007 assessing \$2,625 in administrative penalties with \$525 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2007-0077-AIR-E on September 10, 2007 assessing \$20,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PDLA Partners, LP, Docket No. 2007-0083-MLM-E on September 10, 2007 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Garland, Docket No. 2007-0089-AIR-E on September 10, 2007 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Parks & Wildlife Department, Docket No. 2007-0110-MWD-E on September 10, 2007 assessing \$3,810 in administrative penalties with \$762 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 Erath County, Docket No. 2007-0117-WQ-E on September 10, 2007 assessing \$2,100 in administrative penalties with \$420 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 La Marque Independent School District, Docket No. 2007-0120-PST-E on September 10, 2007 assessing \$30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Greg Edward Stovall, Docket No. 2007-0125-MSW-E on September 10, 2007 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BMB Wood Recycling, Ltd., Docket No. 2007-0128-AIR-E on September 10, 2007 assessing \$1,790 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-0132-AIR-E on September 10, 2007 assessing \$20,000 in administrative penalties.

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 Stephen F. Austin State University, Docket No. 2007-0144-MWD-E on September 10, 2007 assessing \$2,380 in administrative penalties with \$476 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 Church Hill Water Supply Corporation, Docket No. 2007-0151-PWS-E on September 10, 2007 assessing \$1,207 in administrative penalties with \$241 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 T.A.B. Lone Star Holdings, Inc. dba Super Stop 20, Docket No. 2007-0194-PST-E on September 10, 2007 assessing \$9,350 in administrative penalties with \$1,870 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 City of Eden, Docket No. 2007-0195-MWD-E on September 10, 2007 assessing \$8,544 in administrative penalties with \$1,708 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johnson County Fresh Water Supply District No. 1, Docket No. 2007-0213-MWD-E on September 10, 2007 assessing \$4,445 in administrative penalties with \$889 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 Martinek Construction, Inc., Docket No. 2007-0218-WQ-E on September 10, 2007 assessing \$1,800 in administrative penalties with \$360 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ameri-Forge Limited, Docket No. 2007-0227-IWD-E on September 10, 2007 assessing \$7,080 in administrative penalties with \$1,416 deferred.

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 Kemp, Docket No. 2007-0256-MWD-E on September 10, 2007 assessing \$12,530 in administrative penalties with \$2,506 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stanley Burse, Docket No. 2007-0263-LII-E on September 10, 2007 assessing \$625 in administrative penalties with \$125 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ezequiel Tapia dba Tapia Dairy 1, Docket No. 2007-0265-WQ-E on September 10, 2007 assessing \$2,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pulte Homes of Texas, L.P., Docket No. 2007-0299-EAQ-E on September 10, 2007 assessing \$11,000 in administrative penalties with \$2,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Crockett, Docket No. 2007-0303-MWD-E on September 10, 2007 assessing \$4,350 in administrative penalties with \$870 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nalco Company, Docket No. 2007-0306-AIR-E on September 10, 2007 assessing \$4,750 in administrative penalties with \$950 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Palo Duro Service Company, Inc., Docket No. 2007-0390-PWS-E on September 10, 2007 assessing \$420 in administrative penalties with \$84 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Zeam, Incorporated dba Shell Food Mart, Docket No. 2007-0855-PST-E on September 10, 2007 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Dharani Amirali dba Star Food Mart, Docket No. 2007-0846-PST-E on September 10, 2007 assessing \$875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Mike Hweidi dba Hicks Country Store, Docket No. 2007-0443-PST-E on September 10, 2007 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Saeed Akhtar dba K & P 1 Food Store, Docket No. 2007-0107-PST-E on September 10, 2007 assessing \$8,400 in administrative penalties with \$1,680 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.

TRD-200704335

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 19, 2007



#### Notice of a Proposed Reissuance of a General Permit Authorizing the Discharge of Storm Water Associated with Construction Activities

Under Texas Water Code, §26.040, the Texas Commission on Environmental Quality (TCEQ) proposes to renew a general permit (Texas Pollutant Discharge Elimination System Permit Number TXR150000) that authorizes discharges from construction sites into surface water in the state. The proposed general permit applies to the entire state of Texas. **Notice of the proposed general permit and an announcement of an October 3, 2007, public meeting was originally published on August 27, 2007. Public comment on the entire general permit will end at 5:00 p.m. on October 3, 2007. However, the fee schedule in the originally noticed permit has been revised. Today's notice extends the public comment period on the fee schedule only an additional 30 days following the issuance date of this public notice.**

**PROPOSED GENERAL PERMIT.** The Executive Director has prepared a draft renewal general permit that authorizes the discharge of storm water runoff associated with small and large construction sites and certain non-storm water discharges into surface water in the state. This general permit would specify which sites may be authorized under this general permit, which may obtain waivers, which may be eligible for coverage without submitting a notice of intent, and which must obtain individual permit coverage. This general permit would also authorize the discharge of storm water associated with industrial activities at construction sites that directly support the construction activity and are located at, adjacent to, or in close proximity to the permitted construction site. The significant proposed changes to the general permit include: restructured permit fees that eliminate the annual fee; fee and provisional coverage timeline incentives for electronic submittal; and a change in the definition of construction site operator. Non-storm water discharges that are not specifically listed in the general permit are not authorized by the general permit. No significant degradation of high quality waters is expected and existing uses will be maintained and protected.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the draft general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's 16 regional offices, and are available at <http://www.tceq.state.tx.us/goto/draftcgp>.

**PUBLIC COMMENTS.** You may submit public comments about this general permit in writing.

**Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 no later than 30 days from the date of publication of this notice.**

**APPROVAL PROCESS.** After the comment period, the Executive Director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least ten days before the scheduled Commission meeting when the Commission will consider approval of the general permit. The Commission will consider all public comment in making its decision and will either adopt the Executive Director's response or prepare its own response. The Commission will issue its written response on the general permit at the same time the Commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the Commission's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the Commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register*.

**MAILING LISTS.** In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific applicant name and permit number; and/or 3) the permanent mailing list for a specific county. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

**INFORMATION.** If you need more information about the permit or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Further information may also be obtained by calling the TCEQ's Water Quality Division, Storm Water and Pretreatment Team, at (512)239-4671.

*Si desea información en Español, puede llamar 1-800-687-4040.*

TRD-200704276

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 17, 2007



#### Notice of District Petition

Notice issued September 17, 2007.

Internal Control No. 08152007-D01; Eagle Mountain Reserve, LLC, (Petitioner) filed a petition for creation of Burnet County Municipal Utility District No. 2 (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, consisting of three tracts, 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 117 acres located in Brazoria, Texas; and (4) the proposed District is not within the extraterritorial jurisdiction of any municipality, 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. 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 \$9,000,000.

#### INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the 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 the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this 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 TCEQ, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200704334

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 19, 2007



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO

when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 29, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 29, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: BASN Corporation dba Swift Food Store; DOCKET NUMBER: 2003-1089-PST-E; TCEQ ID NUMBER: RN102040466; LOCATION: 833 Northeast Green Oaks, Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: \$3,750; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: IZR Corporation dba Garland Fina; DOCKET NUMBER: 2004-1775-PST-E; TCEQ ID NUMBER: RN101551299; LOCATION: 3101 Saturn Road, Garland, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks; PENALTY: \$2,540; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200704302

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 18, 2007

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## Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **October 29, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on October 29, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Waco; DOCKET NUMBER: 2004-0295-MLM-E; TCEQ ID NUMBER: RN101384212; LOCATION: City of Waco, McLennan County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.41(c)(1)(A), by failing to locate ground water sources so there will be no danger of pollution from unsanitary surroundings; 30 TAC §290.44(h), by failing to prohibit water connections to establishments where an actual or potential contamination or system hazard exists without an air gas separation or an approved backflow prevention assembly between the regulated entity and the source of contamination, including failing to test the backflow assemblies and failing to keep the test results on file; 30 TAC §290.44(d)(1), by failing to properly install air release devices in such a manner as to preclude the possibility of submergence or possible entrance of contaminants and to cover all openings with screening; 30 TAC §290.42(e)(4)(B), by failing to provide housing for gas chlorination equipment; 30 TAC §290.43(c)(4), by failing to provide the storage tank with a water level indicator; and 30 TAC §290.44(d)(1) and TCEQ Agreed Order Docket No. 2006-0359-PWS-E, by failing to properly install air release devices in the distribution system so that the events on the double check devices were at a 90 degree elbow to extend the double check's opening to point downward; PENALTY: \$8,435; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2006-0958-AIR-E; TCEQ ID NUMBER: RN100222330; LOCA-

TION: three miles west of Goldsmith on Highway 158, Ector County, Texas; TYPE OF FACILITY: gas plant; RULES VIOLATED: 30 TAC §116.115(c), Air Permit No. 676A, Special Condition No. 1 and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; 30 TAC §116.115(c), Air Permit No. 676A, Special Condition No. 2 and THSC, §382.085(b), by failing to maintain the sulfur recovery efficiency in the sulfur recovery unit of at least 98% based on a rolling seven-day average; 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to submit complete and accurate deviation reports for the periods of January 1st - June 30, 2005, and July 1st - December 31, 2005; 30 TAC §101.20(1) and §116.115(c), 40 Code of Federal Regulations (CFR) §60.7(a), and Air Permit No. 676A, Special Condition No. 7 and THSC, §382.085(b), by failing to submit a startup and a construction notification for modifications to the amine treater unit during 2002 as required; 30 TAC §101.20(1) and 40 CFR, §60.482-6(a)(1), and THSC, §382.085(b), by failing to plug, cap, or double-valve an unreported number of open ended volatile organic compound lines and valves; 30 TAC §122.121, and THSC, §382.085(b), by failing to revise the federal operating permit No. O-00804 to include one turbine, and two compressor engines emission point numbers (EPNS) TUR-B, 22R-1 and 29R-2) prior to the startup of the units; and 30 TAC §101.201(b)(1)(H) and THSC, §382.085(b), by failing to include the correct authorized emissions limits for Scheduled Maintenance Incident No. 77400, and for Emissions Event Incident No. 79882 for the residue compression flare; PENALTY: \$42,848; Supplemental Environmental Project offset amount of \$21,424 applied to the Texas Association of Resource Conservation & Development Areas, Inc.; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(3) COMPANY: Econo Lube N' Tune, Inc.; DOCKET NUMBER: 2005-1909-PST-E; TCEQ ID NUMBER: RN102041910; LOCATION: 9003 Huebner Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: automotive repair, maintenance, and oil change facility; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.50(a)(1)(A) and Texas Water Code (TWC), §26.3475(c)(1), by failing to provide a method of release detection which is capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment; 30 TAC §334.10(b), by failing to make records readily accessible and available upon request by agency personnel; 30 TAC §334.7(d)(3), by failing to amend the registration within 30 days of any change or additional information concerning the UST system; 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 upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; PENALTY: \$6,825; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Edward Jong Kim dba D & J Grocery; DOCKET NUMBER: 2004-2067-PST-E; TCEQ ID NUMBER: RN102275674; LOCATION: 631 South Denton Drive, Lake Dallas, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.51(b) and TWC, §26.3475(c)(2), by failing to maintain the overfill equipment in a

manner that will prevent spilling and overfilling of regulated substances resulting from transfers to the UST; 30 TAC §334.49(c)(2)(C) and (c)(4), and TWC, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years; and by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly; 30 TAC §334.8(c)(5)(B)(ii), by failing to ensure that a delivery certificate was renewed by timely and proper submission of a new UST Registration and Self-Certification form to the commission; 30 TAC §115.242(3)(A) and (J), and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition including; 1) the absence or disconnection of any component that is a part of the approved system; and 2) the pressure/vacuum relief valves, vapor check valves, or Stage I dry breaks that are inoperative or defective; 30 TAC §334.48(c), by failing to conduct effective inventory control procedures for all UST systems in retail service; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to any common carrier, a valid delivery certificate before accepting fuel delivery; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking was permanently applied upon or affixed to either the top of the fill tube or to a non-removable point near the fill tube with an identification number which corresponded to the UST identification number listed on the registration and self-certification form; PENALTY: \$18,900; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2006-0498-AIR-E; TCEQ ID NUMBER: RN102579307; LOCATION: 2800 Decker Drive, Baytown, Harris County, Texas; TYPE OF FACILITY: oil refining company; RULES VIOLATED: 30 TAC §116.715(a), Flexible Permit No. 18287, Special Condition No. 1 and THSC, §382.085(b), by failing to prevent an avoidable emissions event in the delayed coker unit on August 29, 2003, that lasted four hours and five minutes, releasing 40,798 pounds (lbs) of sulfur dioxide, 2,097 lbs of volatile organic compounds, 1,408 lbs of carbon monoxide, 233 lbs of nitric oxide and 438 lbs of hydrogen sulfide. Since these emissions were avoidable and found to be excessive, Exxon failed to meet the demonstration necessary for an affirmative defense in 30 TAC §101.222; and 30 TAC §101.201(c) and THSC, §382.085(b) by failing to submit the final notification for the August 29, 2003, emissions event in a timely manner; PENALTY: \$10,324; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(6) COMPANY: ExxonMobil Oil Corporation dba Mobil Chemical Beaumont Chemical Plant (BMCP); DOCKET NUMBER: 2004-0125-AIR-E; TCEQ ID NUMBER: RN100542844; LOCATION: 2775 Gulf States Road in Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a final emissions event notification within two weeks after the end of an emissions event on October 7, 2003; 30 TAC §§101.20(3), 116.115(b)(2)(G), and 116.115(c), Permit No. 7799/PSD-TX-860, Special Condition 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emission event at the chemical plant on October 7, 2003. The C3 splitter on the Ethylene Unit was not authorized for any emissions but emitted 20,156 pounds of propylene during the 23 minutes of this incident. Since this emissions event was not properly reported, ExxonMobil failed to meet the demonstrations as found in 30 TAC §101.222; 30 TAC §§101.20(3), 116.115(b)(2)(G), and 116.115(c), Permit No. 7799/PSD-TX-860, SC

1; and THSC, §382.085(b), by failing to maintain an emission rate with the Maximum Allowable Emission Rate Table (MAERT) limits; and 30 TAC §§101.20(3), 116.115(b)(2)(G), and 116.115(c); Permit No. 7799/PSD-TX-860, SC 1, and THSC, §382.085(b), by failing to maintain an emission rate within the MAERT limits; PENALTY: \$14,241; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Frances Alvarez dba Frans Laundry; DOCKET NUMBER: 2006-1143-DCL-E; TCEQ ID NUMBER: RN100610005; LOCATION: 210 East Hamilton, Stamford, Jones County, Texas; TYPE OF FACILITY: dry cleaning drop station facility; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$1,185; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(8) COMPANY: Ha Young Shin dba Smile Cleaners; DOCKET NUMBER: 2006-1252-DCL-E; TCEQ ID NUMBER: RN105004030; LOCATION: 14169 Northwest Freeway, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$889; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(9) COMPANY: Johnny Dorton dba Ideal Cleaners and dba Your Laundry; DOCKET NUMBER: 2006-1160-DCL-E; TCEQ ID NUMBERS: RN104136809 and RN104104187; LOCATION: 407 East 3rd Street, Burkburnett (Ideal Cleaners) and 4320 Burkburnett Road, Wichita Falls (Your Laundry), Wichita County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(a) by failing to complete and submit the required registration form to TCEQ for a dry cleaning/drop station facility; and TWC, §5.702, by failing to pay dry cleaner and drop station registration fees for TCEQ Account Nos. 24002319, 2402224, and 24004790; PENALTY: \$2,370; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: Kelvin Ho aka Toan A. Ho dba Crystals Cleaners & Alterations; DOCKET NUMBER: 2006-0695-DCL-E; TCEQ ID NUMBER: RN104959929; LOCATION: 900 Copeland Road, Suite 120, Arlington, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$1,185; STAFF ATTORNEY: Mary E. Coleman, Litigation Division MC R-4, (817) 588-5917; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Morgan Michael and Deven Michael dba M&M Tire; DOCKET NUMBER: 2005-1752-MSW-E; TCEQ ID NUMBER: RN104442256; LOCATION: 2616 Highway 62 North in Orange, Orange County, Texas; TYPE OF FACILITY: tire shop; RULES VIOLATED: 30 TAC §328.56(a)(1) and (d)(2), and §328.60(a), by failing to obtain a registration as a scrap tire generator and storage site while storing in excess of 500 used or scrap tires on the ground; and 30 TAC §328.56(d)(4), by failing to monitor for vectors and apply



the appropriate vector control measures every two weeks; PENALTY: \$7,875; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: Red Dog Track, Inc.; DOCKET NUMBER: 2005-1884-AIR-E; TCEQ ID NUMBER: RN103217485; LOCATION: 3251 State Highway 108, Strawn, Palo Pinto County, Texas; TYPE OF FACILITY: rock crusher; RULES VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the condition of a permit by rule prior to operating a portable rock crusher; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent a nuisance condition; PENALTY: \$31,925; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Summit Dry Cleaners, Inc. dba Summit Cleaners; DOCKET NUMBER: 2006-1476-DCL-E; TCEQ ID NUMBERS: RN102167004 and RN104097712; LOCATION: 6603 Kirby Drive, Site A, and 3738 Westheimer, Houston, Harris, County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required dry cleaning and/or drop station registration form to the TCEQ for the Kirby facility; and 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required dry cleaning and/or drop station registration form to the TCEQ for the Westheimer facility; PENALTY: \$1,778; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(14) COMPANY: Sung Ja Hwang dba Jasper Cleaners; DOCKET NUMBER: 2006-1499-DCL-E; TCEQ ID NUMBER: RN104086582; LOCATION: 508 West Jasper Drive, Killeen, Bell County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$853; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R- 4, (817) 588-5917; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200704301

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 18, 2007



### Notice of Water Quality Applications

The following notices were issued during the period of September 7, 2007 through September 14, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

HARRIS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 109 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 11026-002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 13415 Bammel-North Houston Road in the City of Houston, 0.57 mile southwest of the intersection of Veterans Boulevard (Stuebner-Airline Road) and Bammel-North Houston Road in Harris County, Texas.

KWIK-KOPY CORPORATION has applied for a renewal of TPDES Permit No. 13059-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located at 12715 Telge Road and is approximately 1.25 miles north of the intersection of Telge Road and State Highway 6 and U.S. Highway 290 in Harris County, Texas.

CITY OF PALMER has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014795001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 226,000 gallons per day. The facility was previously permitted under TPDES Permit No. 13620-001 which expired December 1, 2006. The facility is located approximately 0.40 mile south and 0.10 mile west of the intersection of Farm-to-Market Road 813 and Interstate Highway 45 in the City of Palmer in Ellis County, Texas.

UNIMIN CORPORATION which operates the Troup Plant, has applied for a renewal of TPDES Permit No. WQ0002973000, which authorizes the discharge of mine pit water and storm water runoff at an intermittent and flow variable basis via Outfalls 001, 002, 004, 005, 006, and 007. The facility is located approximately one mile southwest of the intersection of Farm-to-Market Road 856 and Farm-to-Market Road 13, and 1.8 miles northwest of the Town of Concord, Cherokee County, Texas.

UNITED STATES GYPSUM COMPANY which operates the Galena Park plant, a gypsum wallboard and wallboard paper manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0000353000, which authorizes the discharge of treated process wastewater, treated domestic wastewater, storm water, and boiler blowdown at a daily average flow not to exceed 375,000 gallons per day via Outfall 001. The facility is located at 1201 Gulf Compress Road (Mayo Shell Road), approximately 1.25 miles east of Loop 610 East and 0.5 mile south of Clinton Drive in the City of Galena Park, Harris County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

UPPER TRINITY REGIONAL WATER DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10698-003, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,225,000 gallons per day. The facility will be located at 27080 Highway 380, Aubrey, Texas approximately 0.25 mile west and 0.15 mile south of the intersection of U.S. Highway 380 and Farm-to-Market Road 1385 in Denton County, Texas.

WOODFOREST PARTNERS, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014814001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 945,000 gallons per day. The facility will be located east of Egypt Community Road and north of Lake Creek, approximately 500 feet south and 6,000 feet east

of the Intersection of Fish Creek Thoroughfare and Mulligan Drive in Montgomery County, Texas.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200704332

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 19, 2007



## Notice of Water Rights Applications

Notices issued September 12, 2007 through September 17, 2007.

APPLICATION NO. 14-1894A; Gailian Dean Bagley, Jr., P.O. Box 1319, Edinburg, Texas, 76540, Applicant, has applied for an amendment to Certificate of Adjudication No. 14-1894 to add a downstream diversion point on the San Saba River, Colorado River Basin, and an additional place of use in San Saba County. The application and fees were received on April 16, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on June 1, 2007. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, by October 8, 2007.

APPLICATION NO. 06-4411E; Lower Neches Valley Authority, applicant, P.O. Box 5117, Beaumont, TX 77726-8117, has applied for an amendment to a certificate to delete two special conditions related to subordination of the certificate to other water rights. The certificate authorizes diversions from Pine Island Bayou, the Neches River, Lake Sam Rayburn on the Angelina River, and B.A. Steinhagen Lake on the Neches River, Neches River Basin in Jasper, Sabine, San Augustine, Angelina, Nacogdoches, Tyler, Hardin, Jefferson, Orange, Liberty, and Chambers Counties. The application was received on August 28, 2006. Additional information and fees were received on February 2, February 7, and February 21, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on September 6, 2007. 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.

APPLICATION NO. 14-1639B; Chanas Ranch, LP, A Texas Limited Partnership, 550 West Texas Ave, Suite 945, Midland, Texas 79701, Applicant, has applied for an amendment to Certificate of Adjudication No. 14-1639 pursuant to an agreement with the Owner, Joan Leifeste Kettner, entitled "Option to Acquire Certificate of Adjudication No. 14-1639" to abandon/delete the existing authorized diversion point on the Llano River, Colorado River Basin, and off-channel reservoir for subsequent diversion and use, and the place of use in Mason County; and to add a new downstream diversion point on the Llano River, Colorado River Basin, a new off-channel reservoir for storage and subsequent diversion and use of authorized water, and a new place of use in Llano County. The application was received on March 5, 2007. Additional information and fees were received on March 30, 2007; April 5, 6, 10, 14, and 16, 2007; and July 5 and 16, 2007. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on July 18, 2007. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by October 2, 2007.

## INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at (512)239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "I/we request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to TCEQ, Office of the Chief Clerk, MC 105, 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](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200704333

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 19, 2007



## Texas Facilities Commission

### Request for Proposal #303-8-10145

The Texas Facilities Commission (TFC), on behalf of the Texas Lottery Commission, announces the issuance of Request for Proposals (RFP) #303-8-10145. TFC seeks a Five (5) year lease of approximately 2,536 square feet of office space in the Houston area, Harris County, Texas. Please refer to the RFP to obtain specific geographic requirement.

The deadline for questions is October 5, 2007 and the deadline for proposals is October 19, 2007 at 3:00 p.m. The award date is October 31, 2007. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/1380/bid\\_show.cfm?bidid=72849](http://esbd.cpa.state.tx.us/1380/bid_show.cfm?bidid=72849).

TRD-200704312  
 Kay Molina  
 General Counsel  
 Texas Facilities Commission  
 Filed: September 18, 2007



**Request for Proposal #303-8-10179**

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposal (RFP) #303-8-10179. TFC seeks a five (5) year lease of approximately 8,868 square feet of office space in the El Paso area, El Paso County, Texas, within the following zip codes: 79907, 79935, or 79936.

The deadline for questions is October 12, 2007 and the deadline for proposals is October 19, 2007 at 3:00 p.m. The expected award date is November 2, 2007. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Myra Beer at (512) 463-5773 or (512) 382-1039. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/1380/bid\\_show.cfm?bidid=72824](http://esbd.cpa.state.tx.us/1380/bid_show.cfm?bidid=72824).

TRD-200704229  
 Kay Molina  
 General Counsel  
 Texas Facilities Commission  
 Filed: September 13, 2007

**Per Diem Rates for Non-state Operated ICF/MR Services by Level of Need and Facility Size**

Level of Need	8 or Less Beds	9 - 13 Beds	14+ Beds
1 Intermittent	\$148.59	\$121.53	\$98.04
5 Limited	\$165.54	\$137.99	\$107.19
8 Extensive	\$188.25	\$163.58	\$128.09
6 Pervasive	\$230.38	\$195.68	\$175.86
9 Pervasive +	\$415.04	\$391.89	\$389.96

**Methodology and justification.** The adopted rates in the chart above were determined in accordance with the rate setting methodology set out at 1 Tex. Admin. Code §355.456(d) (relating to the Rate Setting Methodology for non-state operated facilities). These rates were subsequently adjusted in accordance with 1 Tex. Admin. Code §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). The rate changes are being made based on increased appropriations by the Legislature for these facilities.

TRD-200704309  
 Steve Aragón  
 Chief Counsel  
 Texas Health and Human Services Commission  
 Filed: September 18, 2007



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**Texas Health and Human Services Commission**

**Correction of Error**

The Texas Health and Human Services Commission submitted a public notice concerning Amendment 765, Transmittal Number TX 07-0066, for publication in the August 17, 2007, issue of the *Texas Register* (32 TexReg 5212). The document was docketed as TRD-200703410 and appeared in the "In Addition" portion of the issue. Due to a Texas Register mistake, a typographical error appears in the first line of the notice on page 5212, second column. The number "07-0066" should be "07-006".

The first line of the notice should read as follows: "The Texas Health and Human Services Commission announces its intent to submit Amendment 765, Transmittal Number TX 07-006. . ."

TRD-200704314



**Notice of Adopted Reimbursement Rate for Non-State Operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)**

**Adopted Rates.** As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted the following per diem reimbursement rates for non-state operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR). The proposed rates and public hearing notice were published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4261).

Payment rates are adopted to be effective September 1, 2007, as follows:

**Notice of Public Hearing on Proposed Medicaid Payment Rates for the Truman W. Smith Children's Care Center**

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on October 16, 2007, at 9:00 a.m. to receive public comment on proposed rates for the Truman W. Smith Children's Care Center, a nursing facility that is a member of the pediatric care facility special reimbursement class of the Nursing Facility Program operated by the Texas Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building,

which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes the following per-day payment rates for the nursing facility pediatric care facility special reimbursement class for Truman W. Smith Children's Care Center:

Effective January 1, 2007 through August 31, 2007: \$182.75. Effective September 1, 2007: \$189.04

The proposed rates were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

**Methodology and Justification.** The proposed rates were determined in accordance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapter C, §355.307, Reimbursement Setting Methodology. The rate change for the period January 1, 2007 through August 31, 2007 is being made to recognize increased operating costs for this facility during that time period. The rate change effective September 1, 2007 is being made in accordance with the 2008-09 General Appropriations Act (Article IX, Section 19.82, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated \$27.0 million in general revenue funds for State Fiscal Year 2008 for provider rate increases for the DADS Nursing Facility Program.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on October 2, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

**Written Comments.** Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200704300  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: September 18, 2007



#### Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit a waiver proposal for the reimbursement methodology for a primary care case management (PCCM) program under the authority of §1915(b) of the Social Security Act.

The waiver allows a reimbursement methodology that would permit the Texas Medicaid claims administrator to negotiate PCCM hospital

contracts and discount rates with non-TEFRA (Tax Equity Fiscal Responsibility Act) hospitals. HHSC has the oversight authority to approve the final negotiated contracts and rates.

HHSC is requesting that the waiver application be approved for a two-year period beginning January 1, 2008 and ending December 31, 2009. This waiver application is expected to result in cost savings for the State for each year in the two-year period covering 2008 through 2009.

To obtain additional information or copies of the waiver renewal, interested parties may contact Carmen Samilpa-Hernandez by mail at Texas Health and Human Services Commission, P.O. Box 13247, H-600, Austin, Texas 78711; by telephone at (512) 491-1128; by facsimile at (512) 491-1953; or by e-mail at carmen.capetillo@hhsc.state.tx.us.

TRD-200704234  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: September 14, 2007



#### Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 07-013, Amendment Number 772, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to revise the description of ambulance services by deleting references to "severely disabled" and maintaining the requirement that the ambulance service must be medically necessary and reasonable. The proposed amendment is effective October 1, 2007.

The proposed amendment is estimated to result in no fiscal impact for state fiscal year 2007 - 2008.

Interested parties may obtain copies of the proposed amendment by contacting Barbara Davenport, Policy Analyst, by mail at Policy Development Support, Medicaid and CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, H-600, Austin, Texas 78708-5200; by telephone at (512) 491-1104; by facsimile at (512) 491-1953; or by e-mail at Barbara.Davenport@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200704313  
Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: September 18, 2007



### Department of State Health Services

#### Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Rockdale	Rockdale Blackhawk LLC DBA Richards Memorial Hospital	L06092	Rockdale	00	09/10/07
Throughout Tx	Centex Testing Inc	L06114	Waco	00	09/13/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Amarillo Cardiovascular Center PC	L05577	Amarillo	05	09/04/07
Amarillo	Panhandle Nuclear RX LTD	L04683	Amarillo	21	09/07/07
Arlington	Metroplex Hematology Oncology Associates DBA Arlington Cancer Center	L03211	Arlington	81	09/12/07
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Ctr	L04910	Austin	73	09/05/07
Austin	ARA Imaging	L05862	Austin	20	09/11/07
Baytown	Chevron Phillips Chemical Company LP	L00962	Baytown	38	09/11/07
Borger	WRB Refining LLC DBA ConocoPhillips Company	L02480	Borger	51	09/06/07
Carrollton	Tenet Health System Hospitals Dallas Inc DBA Trinity Medical Center	L03765	Carrollton	54	09/06/07
Cleburne	Johns Manville	L01482	Cleburne	20	09/06/07
Corpus Christi	Citgo Refining and Chemicals Company LP	L00243	Corpus Christi	38	09/11/07
Corpus Christi	Sherwin Alumina Company	L00200	Corpus Christi	45	09/05/07
Corpus Christi	A Lee Guinn MD PA Shoreline Diagnostic Center	L05799	Corpus Christi	03	09/04/07
Cypress	Heart Care Center of Northwest Houston	L05539	Cypress	06	09/11/07
Dallas	Mallinckrodt Inc	L03580	Dallas	57	08/31/07
Dallas	Southern Methodist University Department of Biological Sciences	L02887	Dallas	20	09/12/07
Deer Park	Shell Chemical LP	L04933	Deer Park	20	09/04/07
Del Rio	Val Verde Regional Medical Center	L01967	Del Rio	29	09/04/07
Denton	Mayhill Cancer Center LLC DBA Denton Regional Radiation Oncology	L06093	Denton	01	09/04/07
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	16	09/06/07
Edinburg	The University of Texas Pan American	L00656	Edinburg	30	09/11/07
El Paso	Western Refining Company LP	L02669	El Paso	17	09/06/07
El Paso	Isomedix Operations Inc DBA Steris Isomedix Operations	L04268	El Paso	18	09/05/07
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	76	09/10/07
Greenville	L3 Communications Integrated Systems LP	L00856	Greenville	26	09/10/07
Harlingen	Heart Clinic PLLC	L04514	Harlingen	20	08/30/07
Houston	Harris County Hospital District DBA LBJ General Hospital	L04412	Houston	33	08/31/07
Houston	E+PET Imaging II LP DBA PET Imaging of Houston	L05620	Houston	06	09/04/07
Houston	Sayed Feghali Cardiology Association	L05403	Houston	03	09/04/07
Houston	Nuclear Imaging Services	L05775	Houston	33	09/04/07
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	106	08/31/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Angiocardiatic Care of Texas PA Main Heart Clinic	L05011	Houston	12	09/04/07
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05493	Houston	11	09/06/07
Houston	CMP Group LLC	L02397	Houston	17	09/07/07
Houston	E+PET Imaging XXI LP PET Imaging of Willowbrook	L05916	Houston	02	09/12/07
Houston	Medi Physics Inc DBA GE Healthcare	L05517	Houston	15	09/12/07
Longview	King Tool Company	L05142	Longview	08	09/04/07
McAllen	Valley Positron LLC	L05869	McAllen	02	09/10/07
Midland	American X-ray & Inspection Services Inc DBA A X I S Inc	L05974	Midland	06	08/30/07
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	25	09/10/07
Paris	Advanced Heart Care PA	L05290	Paris	22	09/04/07
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	43	09/11/07
Pasadena	Celanese LTD Clear Lake Plant	L01130	Pasadena	68	09/05/07
San Antonio	Christus Santa Rosa Surgery Center LLP DBA Christus Santa Rosa Surgery Center	L05805	San Antonio	06	08/30/07
San Antonio	The University of Texas Health Science Center at San Antonio DBA UTSCSA Research Imaging Center	L05556	San Antonio	09	09/07/07
San Antonio	Radiology Associates of San Antonio PA DBA Advanced Medical Imaging	L04927	San Antonio	27	09/11/07
San Antonio	Medi-Physics Inc DBA GE Healthcare	L04764	San Antonio	33	09/12/07
Sherman	Texas Oncology PA DBA Texas Cancer Center Sherman	L05019	Sherman	17	09/13/07
Stephenville	Stephenville Medical and Surgical Clinic	L05309	Stephenville	10	08/31/07
Stephenville	Stephenville Medical and Surgical Clinic	L05309	Stephenville	11	09/04/04
Sugar Land	Houston Cardiovascular Consultants LP DBA Houston Cardiovascular Imaging	L05350	Sugar Land	11	08/31/07
Sugar Land	Texas Oncology PA DBA Texas Oncology Cancer Center Sugarland	L05816	Sugar Land	07	09/07/07
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	12	09/12/07
Texarkana	Red River Pharmacy Services	L05077	Texarkana	19	08/30/07
The Woodlands	St Lukes Community Medical Center The Woodlands	L05763	The Woodlands	08	09/04/07
Throughout Tx	Texas Department of Transportation Construction Division	L00197	Austin	133	09/10/07
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	61	09/12/07
Throughout Tx	ATC Group Services Inc	L05920	Carrollton	02	09/12/07
Throughout Tx	DMS Imaging Inc	L05594	Cypress	07	09/10/07
Throughout Tx	Professional Service Industries Inc	L04940	Dallas	09	09/04/07
Throughout Tx	Mestena Uranium LLC	L05939	Encino	03	09/05/07
Throughout Tx	H & H X-ray Services Inc	L02516	Flint	63	09/12/07
Throughout Tx	Weatherford US LP	L05291	Fort Worth	15	08/31/07
Throughout Tx	Permian Nondestructive Testing Inc	L06001	Gardendale	05	09/13/07
Throughout Tx	METCO	L03018	Houston	175	09/04/07
Throughout Tx	RTD Pipeline Services USA LP	L05985	Houston	05	09/11/07
Throughout Tx	ROXAR Inc	L05547	Houston	11	09/15/07
Throughout Tx	Fugro Consultants LP	L00058	Houston	50	09/05/07
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	236	09/04/07
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	237	09/06/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	South Texas Testing Laboratories Inc	L05190	Laredo	03	09/05/07
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	26	09/12/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	30	09/04/07
Throughout Tx	Conam Inspection & Engineering	L05010	Pasadena	131	09/04/07
Throughout Tx	Midwest Inspection Services	L03120	Perryton	101	09/05/07
Throughout Tx	Midwest Inspection Services	L03120	Perryton	102	09/12/07
Throughout Tx	Wind Consultants LLC DBA Renewable Resource Consultants LLC	L06105	Round Rock	01	09/10/07
Throughout Tx	Arias & Associates Inc	L04964	San Antonio	27	09/12/07
Throughout Tx	Isbell Engineering Group Inc	L05355	Sanger	18	08/31/07
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	142	09/04/07
Victoria	E I DuPont De Nemours & Company	L05800	Victoria	04	09/05/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	South Texas Blood & Tissue Center	L04381	San Antonio	12	08/30/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Brownsville	Physician Reliance Network Inc DBA South Texas Cancer Center Brownsville	L04985	Brownsville	10	08/28/07
Omaha	Hodges & Son Construction Co Inc	L05910	Omaha	01	09/04/07
Throughout Tx	A L Helmcamp Inc	L05171	Buffalo	04	09/06/07
Throughout Tx	Richardson Calibration Associates DBA Richardson Associates	L02889	Haltom	21	08/31/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200704328  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: September 19, 2007



Massage Therapy Stakeholder Meeting Regarding Draft Proposed Rules and House Bill 2644 Implementation

The Department of State Health Services Massage Therapy Licensing Program will hold a public hearing to receive stakeholder input on draft proposed rules and topics relating to the implementation of House Bill 2644 (80th Texas Legislature, Regular Session, 2007).

The draft proposed rules were posted on the program's website: <http://www.dshs.state.tx.us/massage/> on September 24, 2007.

The hearing will be held on Monday, October 1, 2007 at 10:00 a.m. at the Department of State Health Services, 1100 West 49th Street, Room K-100, Austin, Texas.

Further information may be obtained from Yvonne Feinleib, Program Director, Massage Therapy Licensing Program, Department of State Health Services, 1100 West 49th Street, Austin TX 78756, telephone (512) 834-4521, fax (512) 834-6677, or email [yvonne.feinleib@dshs.state.tx.us](mailto:yvonne.feinleib@dshs.state.tx.us).

TRD-200704327

Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: September 19, 2007

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## Heart of Texas Council of Governments

### Request for Proposal

The Heart of Texas Council of Governments (HOTCOG) is soliciting proposals for an audit of all grants and programs of the Council. This proposal will serve as a basis for a one-year period beginning October 1, 2006 through September 30, 2007. Contract term may be extended for up to two (2) years.

The audit must be conducted under the guidelines of generally accepted auditing standards and other guidelines as presented in HOTCOG's request for proposal. The proposals will be reviewed by HOTCOG and a contract will be awarded on the basis of the firm's experience, firm knowledge of the work to be performed, and the proposed audit cost by year. Small, female-owned and minority-owned firms are encouraged to submit.

Request for proposal packages may be obtained by contacting John C. Minnix, Director of Administration, HOTCOG, 1514 South New Road, Waco, Texas 76711, (254) 292-1800. Proposal packages will not be faxed or emailed. All proposals must be received no later than 4:30 p.m. (Central Standard Time) on October 12, 2007. Proposals received after the specified date and time will not be considered.

TRD-200704299  
Mary McDow  
Personnel Manager  
Heart of Texas Council of Governments  
Filed: September 17, 2007

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## Texas Higher Education Coordinating Board

### Request for Proposal for Licensed Vocational Nurse (LVN) Consulting Services

**OVERVIEW:** THECB is seeking proposals in response to this Request for Proposal (RFP) for LVN nursing consulting services. The Board is seeking to employ a nationally-recognized nurse educator with experience in curriculum design to assist the Board in developing a new, innovative curriculum model for vocational/practical nurse education programs (LVN programs).

The Board is a state agency with statutory authority to review curriculum and approve degree programs. Within the context of that authority, the 80th Texas Legislature directed the Board (Senate Bill 139) to "conduct a study to identify methods to improve the curricula of professional and vocational nursing programs. The study must focus on methods to improve instruction on providing safe and high-quality nursing care to patients." As a result of the study, the Board must submit to the legislature, governor and each institution of higher education that offers a nursing program "a report that includes specific, detailed recommendations concerning methods to improve the curricula, including instruction relating to patient care." The Board has used this directive as an opportunity to propose a new, innovative curriculum model for the state's 107 LVN programs. The proposed model will fulfill the legislative directive and respond to the state's current and predicted nurse shortage and to changes in student learning, learning technologies, student populations, and the role of nurses in providing quality patient care.

The consultant's responsibility will include, but not necessarily be limited to, developing a new curriculum model for LVN programs. The curriculum model would differentiate the unique content and skill requirements for LVN programs and LVN to associated degree in nursing (ADN) and baccalaureate degree in nursing (BSN) transition programs and would have the following minimum characteristics and/or content requirements. The model will:

1. Meet or exceed standards of national vocational/practical nursing accreditation bodies or clearly identify conflicts with those standards;
2. Be completed by students in no more than 12 months or clearly describe rationale for longer or shorter programs;
3. Emphasize the latest patient safety competencies;
4. Use competency-based testing;
5. Facilitate articulation between LVN programs and mobility among different levels of nursing including certified nurse aide (CNA), LVN, ADN, and BSN education;
6. Promote student success and completion rates;
7. Promote evidence-based practice;
8. Maximize the use of existing and potential vocational nursing faculty at LVN programs and at their clinical affiliates;
9. Propose a faculty to student ratio for clinical courses that is consistent with projected enrollment increases, likely faculty shortages, and availability of new learning technologies;
10. Integrate didactic and clinical content with new instructional technology;
11. Address any characteristics unique to Texas and vocational nursing instruction in Texas;
12. Propose standardized pre-requisite courses, if applicable;
13. Propose any needed modification to the differentiations between LVN and ADN and BSN instruction;
14. Promote easy transition from student nurse to practice vocational nurse to minimize training needed after graduation; and
15. Provide a cost per graduate that is as low as possible.

THECB is, simultaneously with this RFP, also seeking proposals to develop a new curriculum model for degree programs leading to initial licensure of registered nurses (RN programs). Consideration will be given to consultants who respond to both RFPs and display the necessary qualifications and resources in both cases.

**PROPOSER QUALIFICATIONS:** To be eligible for consideration, a consultant must: have a master's degree (a doctoral degree is preferred) in nursing, education or closely related field; experience administering or teaching in a LVN program or a LVN to ADN or BSN transition program; experience developing, modifying and evaluating vocational nursing curriculum to meet professional standards of higher education and vocational nurse practice; and experience writing reports for a broad audience; identify other individuals who would be available to THECB as resources.

**PROPOSAL EVALUATION/AWARD:** THECB shall evaluate all Proposals to determine if they conform to the requirements of the RFP. Those that do not conform may be eliminated from further consideration and applicants shall be notified of that fact upon either: 1.) a contract being awarded or 2.) a decision not to award a contract under this RFP.

THECB will make its selection based on the following criteria: demonstrated knowledge, competence, and experience of consultant with de-



veloping LVN curriculum; reference check; compatibility of Consultant with the goals and objectives of THECB; overall quality of response to RFP; reasonableness of proposed fees.

THECB will negotiate with Awarded Proposer to develop a Contract under which the nursing consultant services described in this RFP will be performed. THECB has sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of THECB to do so. Issuance of this RFP in no way constitutes a commitment by THECB to award a Contract or to pay for any expenses incurred either in the preparation of a response to this RFP, attendance at an oral presentation or in the production of a contract for financial services.

**SERVICE PERIOD:** LVN nursing consultant services related to a Contract resulting from this RFP shall commence upon the date of Contract execution and continue through September 1, 2008. THECB shall have the exclusive option to extend the contract for a one (1) to (4) month extension following the expiration of the original Contract term. It is anticipated that future contract extensions shall be issued per the terms and conditions agreed upon in the Contract and shall be executed via the issuance of a written Contract change document by THECB's Assistant Commissioner for Academic Affairs and Research.

**Proposal Deadline:** Deadline for responding to this RFP is 5:00 p.m., C.S.T., October 21, 2007.

For a complete copy of the RFP, including instructions for submitting a proposal, please contact THECB Project Director:

Donna Carlin, Program Director

(512) 427-6241 - Phone

(512) 427-6168 - Fax

E-mail: donna.carlin@theeb.state.tx.us

TRD-200704304

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: September 18, 2007



### Request for Proposal for Registered Nurse (RN) Consulting Services

**OVERVIEW:** THECB is seeking proposals in response to this Request for Proposal (RFP) for RN nursing consulting services. The Board is seeking to employ a nationally-recognized nurse educator with experience in curriculum design to assist the Board in developing a new, innovative curriculum model for degree programs leading to initial licensure of registered nurses (RN programs).

The Board is a state agency with statutory authority to review curriculum and approve degree programs. Within the context of that authority, the 80th Texas Legislature directed the Board (Senate Bill 139) to "conduct a study to identify methods to improve the curricula of professional and vocational nursing programs. The study must focus on methods to improve instruction on providing safe and high-quality nursing care to patients." As a result of the study, the Board must submit to the legislature, governor and each institution of higher education that offers a nursing program "a report that includes specific, detailed recommendations concerning methods to improve the curricula, including instruction relating to patient care." The Board has used this directive as an opportunity to propose a new, innovative curriculum model for the state's 86 RN programs. The proposed model will fulfill the legislative directive and respond to the state's current and

predicted nurse shortage and to changes in student learning, learning technologies, student populations, and the role of nurses in providing quality patient care.

The consultant's responsibility will include, but not necessarily be limited to, developing a new curriculum model for RN programs. The curriculum model would differentiate the unique content and skill requirements for associate degree in nursing (ADN) and baccalaureate degree in nursing (BSN) programs and would have the following minimum characteristics and/or content requirements. The model will:

1. Meet or exceed standards of national nursing accreditation bodies or clearly identify conflicts with those standards;
2. Be completed by students in no more than four semesters, each semester normally representing 16 weeks of instruction (ADN and BSN), or clearly describe rationale for longer or shorter programs;
3. Emphasize the latest patient safety competencies;
4. Use competency-based testing;
5. Facilitate articulation between RN programs and mobility among different levels of nursing including Licensed Vocational/Practical Nursing (LVN), ADN, and BSN education;
6. Promote student success and completion rates;
7. Promote evidence-based practice;
8. Maximize the use of existing and potential nursing faculty at RN programs and at their clinical affiliates;
9. Propose a faculty to student ratio for clinical courses that is consistent with projected enrollment increases, likely faculty shortages, and availability of new learning technologies;
10. Integrate didactic and clinical content with new instructional technology;
11. Address any characteristics unique to Texas and nursing instruction in Texas;
12. Propose standardized pre-requisite courses at each level of ADN and BSN instruction;
13. Propose any needed modification to the differentiations between ADN and BSN instruction;
14. Promote easy transition from student nurse to practice nurse to minimize training needed after graduation; and
15. Provide a cost per graduate that is as low as possible.

THECB is, simultaneously with this RFP, also seeking proposals to develop a new curriculum model for LVN programs. Consideration will be given to consultants who respond to both RFPs and display the necessary qualifications and resources in both cases.

**PROPOSER QUALIFICATIONS:** To be eligible for consideration, a consultant must: have a doctoral degree in nursing, education or closely related field; experience teaching in an ADN or BSN nursing program; experience developing, modifying and evaluating nursing curriculum to meet professional standards of higher education and nurse practice; and experience writing reports for a broad audience; identify other individuals who would be available to THECB as resources.

**PROPOSAL EVALUATION/AWARD:** THECB shall evaluate all Proposals to determine if they conform to the requirements of the RFP. Those that do not conform may be eliminated from further consideration and applicants shall be notified of that fact upon either: 1.) a contract being awarded or 2.) a decision not to award a contract under this RFP.

THECB will make its selection based on the following criteria: demonstrated knowledge, competence, and experience of consultant with developing RN curriculum; reference check; compatibility of Consultant with the goals and objectives of THECB; overall quality of response to RFP; reasonableness of proposed fees.

THECB will negotiate with Awarded Proposer to develop a Contract under which the nursing consultant services described in this RFP will be performed.

THECB has sole discretion and reserves the right to reject any and all responses to this RFP and to cancel the RFP if it is deemed in the best interest of THECB to do so. Issuance of this RFP in no way constitutes a commitment by THECB to award a Contract or to pay for any expenses incurred either in the preparation of a response to this RFP, attendance at an oral presentation or in the production of a contract for financial services.

**SERVICE PERIOD:** RN nursing consultant services related to a Contract resulting from this RFP shall commence upon the date of Contract execution and continue through September 1, 2008. THECB shall have the exclusive option to extend the contract for a one (1) to (4) month extension following the expiration of the original Contract term. It is anticipated that future contract extensions shall be issued per the terms and conditions agreed upon in the Contract and shall be executed via the issuance of a written Contract change document by THECB's Assistant Commissioner for Academic Affairs and Research.

**Proposal Deadline:** Deadline for responding to this RFP is 5:00 p.m., C.S.T., October 21, 2007.

For a complete copy of the RFP, including instructions for submitting a proposal, please contact THECB Project Director:

Chris Fowler, Project Co-Director

(512) 427-6217 - Phone

(512) 427-6168 - Fax

E-mail: [chris.fowler@thehb.state.tx.us](mailto:chris.fowler@thehb.state.tx.us)

TRD-200704305

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Filed: September 18, 2007

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## Texas Department of Housing and Community Affairs

### Notice of Public Hearing on Section 8 Program 2008 Annual Plan

Section 511 of Title V of the Quality Housing and Work Responsibility Act of 1998 (P.L. 205-276) requires the Texas Department of Housing and Community Affairs (the Department) to prepare a 2008 Annual Plan covering operations of the Section 8 Program. Title 24, §903.17 of the Code of Federal Regulations requires that the Department conduct a public hearing regarding that plan. The Department will hold a public hearing to receive comments for the development of the Department's 2008 Annual Plan. The hearing will take place at the following time and location:

**November 13, 2007**

**Texas Department of Housing and Community Affairs**

**221 East 11th Street, Room 116**

**Austin, Texas 78701**

**1:30 p.m.- 4:30 p.m.**

The proposed 2008 Annual Plan and all supporting documentation are available to the public for viewing at the Department's main office, 221 East 11th Street, Attn: Section 8 Program, Austin, Texas on weekdays during the hours of 8:00 a.m. until 4:30 p.m. The proposed plan will also be available for viewing on the Department's website at [www.td-hca.state.tx.us/sec8.htm](http://www.td-hca.state.tx.us/sec8.htm).

Questions or requests for additional information may be directed to Willie Faye Hurd, Section 8 Program Manager, Community Affairs Division at [whurd@tdhca.state.tx.us](mailto:whurd@tdhca.state.tx.us) or by mail at P.O. Box 13941, Austin, Texas 78711-3941, (512) 475-3892. Comments must be received by 5:00 p.m. Wednesday, October 10, 2007.

Persons who intend to appear at the hearing and express their comments are invited to contact Willie Faye Hurd in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their comments in writing to Willie Faye Hurd prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Willie Faye Hurd 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 for this hearing should contact Gina Esteves at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least 2 days before the scheduled hearing so that appropriate arrangements can be made.

TRD-200704320

Michael G. Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 18, 2007

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## Texas Department of Insurance

### Notice of Public Hearing - Personal Property Title Insurance Rulemaking Hearing and Ratemaking Hearing

DOCKET NOS. 2672 and 2673

Notice is hereby given that a title insurance rulemaking hearing will be held before the Commissioner of Insurance (Commissioner) and that a title insurance ratemaking hearing will be held before the State Office of Administrative Hearings. The rulemaking hearing, under Docket No. 2672, will be for the consideration of rules, forms, and endorsements, and related matters related to the business of personal property title insurance and not having primary rate implications. The ratemaking hearing, under Docket No. 2673, will be for the consideration of fixing the personal property title insurance premium rates and other matters with direct rate implications. The rulemaking hearing will begin at 9:30 a.m., in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, on October 18, 2007, and continue thereafter at dates, times, and places designated by the Commissioner until conclusion. Pursuant to Texas Insurance Code (TIC) §2751.053, as enacted by S.B. 1153, 80th Legislative Session (R), the ratemaking hearing will be conducted by the State Office of Administrative Hearings in accordance with TIC Chapter 40. The Commissioner shall certify which matters have rate implications to be considered in the ratemaking hearing.

Authority, Jurisdiction, Statutes and Rules Involved

The Commissioner has jurisdiction over the promulgation of rules and premium rates, over the promulgation of approved forms, and over

other matters set out in this notice pursuant to TIC Chapter 2751, as enacted by S.B. 1153, 80th Legislative Session (R), pursuant to TIC §31.021 and §2551.003, and pursuant to 28 Texas Administrative Code (TAC) Chapter 9. The procedure of the rulemaking hearing will be governed by the Rules of Practice and Procedure before the Department of Insurance (28 TAC Chapter 1, Subchapter A) and Texas Government Code Chapter 2001. The procedure of the ratemaking hearing will be governed by Texas Government Code Chapter 2001, 1 TAC Chapter 155, and TIC Chapter 40. All procedural rules are subject to TIC Chapter 2751 and relevant portions of law that are incorporated by reference under that chapter.

#### Matters to be Considered

The Commissioner will consider testimony presented and information filed by title insurers, title agents, the Texas Department of Insurance staff, and other interested parties relating to the following issues:

#### Docket 2672

#### Form and Rulemaking Phase

Item 2007-1 - Submission by Stewart Title Guaranty Company to adopt a new form (UCC-\_\_\_), entitled The Expanded Coverage Article 9 Policy of Title Insurance (Owner's), to provide coverage to owners as to filed financing statements and other liens.

Item 2007-2 - Submission by Stewart Title Guaranty Company to adopt a new form (UCC-\_\_\_), entitled The Expanded Coverage Article 9 Policy of Title Insurance (Lender's), to provide coverage to lenders as to attachment, perfection, and priority of the security interest.

Item 2007-3 - Submission by Stewart Title Guaranty Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed Lender's policy, entitled Aggregation Endorsement, to allow aggregation of liability under separate policies where multiple policies are issued in connection with one loan.

Item 2007-4 - Submission by Stewart Title Guaranty Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed Lender's policy, entitled Gap Coverage Endorsement - UCC Lender's Policy Endorsement, to provide coverage between the Date of the Policy and the date of the filing of the financing statement.

Item 2007-5 - Submission by Stewart Title Guaranty Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed Lender's policy, entitled Increase in Liability Endorsement, to provide an increase in liability in the amount of insurance.

Item 2007-6 - Submission by Stewart Title Guaranty Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed Lender's policy, entitled Datedown Endorsement, to allow the Date of the Policy to be extended.

Item 2007-7 - Submission by Stewart Title Guaranty Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed Lender's policy, entitled Change in Location of Debtor Endorsement, to reflect a change in the State of Location of the Debtor.

Item 2007-8 - Submission by Stewart Title Guaranty Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed Lender's policy, entitled Mezzanine Endorsement, to provide coverage for a lender on a loan transaction involving Mezzanine financing.

Item 2007-9 - Submission by Stewart Title Guaranty Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed Lender's policy, entitled Assignment Endorsement, to provide coverage to the assignee if the security interest is assigned.

Item 2007-10 - Submission by Stewart Title Guaranty Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed

Lender's or Owner's policy, entitled Co-Insurance Endorsement, to provide for multiple insurer liability on a single insurance policy and allocate liability amount among insurers.

Item 2007-11 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (UCC P-\_\_\_), entitled Expanded Coverage Article 9 Policy of Personal Property Title Insurance, to restrict the proposed Expanded Coverage Article 9 Policy of Title Insurance (Lender's) and the proposed Expanded Coverage Article 9 Policy of Title Insurance (Owner's) from being issued in consumer transactions and to allow a title insurance company to delete provisions of the policies, add exceptions to a schedule, and add additional provisions to a schedule without seeking promulgation of the new version of the form.

Item 2007-12 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (UCC P-\_\_\_), regarding the proposed Aggregation Endorsement, to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, to require that multiple personal property title insurance policies be issued in connection with the same indebtedness or loan in conjunction with issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-13 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (UCC P-\_\_\_), regarding the proposed Gap Coverage Endorsement, to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-14 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (UCC P-\_\_\_), regarding the proposed Increase in Liability Endorsement, to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-15 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (UCC P-\_\_\_), regarding the proposed Datedown Endorsement, to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-16 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (UCC P-\_\_\_), regarding the proposed Change in Location of Debtor Endorsement, to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-17 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (UCC P-\_\_\_), regarding the proposed Mezzanine Endorsement, to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-18 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (UCC P-\_\_\_), regarding the proposed Assignment Endorsement, to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-19 - Submission by Stewart Title Guaranty Company to adopt a new Procedural Rule (UCC P-\_\_\_), regarding the proposed Co-Insurance Endorsement, to require payment of the promulgated premium prior to issuance, to require underwriting requirements be met

prior to issuance, and to require the issuing title insurance company to charge the applicable premium for each policy.

Item 2007-20 - Submission by Stewart Title Guaranty Company to adopt a new form (UCC-\_\_\_), entitled Personal Property Title Reinsurance Agreement, to allow reinsurance of personal property title insurance liability.

Item 2007-21 - Submission by Stewart Title Guaranty Company to adopt a new form (UCC-\_\_\_), entitled Commitment Letter for Personal Property Title Insurance, to allow a title insurance company to issue a commitment letter in contemplation of a policy for an Owner's or Lender's Expanded Coverage Article 9 Policy of Title Insurance.

Item 2007-22 - Submission by First American Title Insurance Company to adopt a new form (UCC-\_\_\_), entitled UCC Search Insurance Policy, to provide coverage as to the accuracy of the search of the relevant UCC filing office and to provide coverage for filing office indexing error.

Item 2007-23 - Submission by First American Title Insurance Company to adopt a new form (UCC-\_\_\_), entitled UCC Filing Insurance Policy, to provide coverage as to the filing of a UCC financing statement, including correct location of filing, completeness of the financing statement, and perfection of the security interest.

Item 2007-24 - Submission by First American Title Insurance Company to adopt a new form (UCC-\_\_\_), entitled Combined Search Insurance Policy, to provide coverage in one policy as to the accuracy of combined searches, such as searching the relevant UCC filing office, searching relevant courts for judgments, searching relevant state records for encumbrances against vehicles, and searching federal court bankruptcy filings.

Item 2007-25 - Submission by First American Title Insurance Company to adopt a new form (UCC-\_\_\_), entitled UCC Insurance Policy, also referred to as the Lender's policy, to provide coverage for the attachment, perfection, and priority of a lender's security interest in the pledged collateral of a debtor.

Item 2007-26 - Submission by First American Title Insurance Company to adopt a new form (UCC-\_\_\_), entitled UCC Insurance Policy for Buyers, also referred to as the Buyer's policy, to provide coverage for buyers regarding the lien status of acquired assets.

Item 2007-27 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Seller's Lien Endorsement, to provide coverage for liens that have followed the collateral rather than the seller, such as the sale of equipment not in the ordinary course of the seller's business.

Item 2007-28 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Tax Lien Endorsement, to provide coverage for federal and state priming tax liens on collateral in which the insured has a UCC security interest.

Item 2007-29 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Mezzanine Endorsement, to provide coverage for a lender on a loan transaction involving Mezzanine financing where the equity pledgor is a primary obligor.

Item 2007-30 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Pledged Equity Endorsement, to provide coverage for a lender on a loan transaction where the equity pledgor is a secondary obligor.

Item 2007-31 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Change of Name of Insured Endorsement, to allow the name and address of the insured on the policy to be changed by endorsement.

Item 2007-32 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Lender's Aggregation Endorsement, to allow aggregation of liability under separate policies where multiple policies are issued in connection with one loan.

Item 2007-33 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Renewal Endorsement, to provide coverage for advances made subsequent to the issuance of the policy by the insured to the debtor pursuant to a security agreement.

Item 2007-34 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Waiver of Attorney Subrogation Rights Endorsement, to allow a title insurance company to waive its subrogation rights of the insured against the insured's or debtor's counsel for malpractice or other causes of actions.

Item 2007-35 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Springing Control Endorsement, to provide coverage regarding the protected purchaser status of the lender under UCC Article 8 in the event that the pledgor of the equity being used to secure the loan has not, prior to the issuance of the policy, opted-in to Article 8 governance over the security interest.

Item 2007-36 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Post Policy Tax Lien Endorsement, to provide coverage for federal and state priming tax liens on collateral in which the insured has a UCC security interest and future advances on the collateral are anticipated.

Item 2007-37 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Borrower's Status Endorsement, to provide coverage for a lack of attachment, perfection, priority, or enforcement of the security interest as a result of the legal status of the debtor corporation or corporate officer failure to obtain legal consent or authorization for his or her actions in connection with the loan.

Item 2007-38 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Post Policy Date Judgment Lien Endorsements Endorsement, to provide for future lien searches of the relevant records to inform the lender of any subsequent liens filed against the debtor.

Item 2007-39 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy, entitled Buyers Aggregation Endorsement, to allow a buyer to aggregate a personal property title insurance policy with a real property title insurance policy in a mixed collateral acquisition.

Item 2007-40 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy for Buyers, entitled Pending Suits and Judgments Endorsement, to provide coverage as to the accuracy of the search of relevant court records for pending law suits and judgments.

Item 2007-41 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy for Buyers, entitled Increase in Tax Lien Coverage Endorsement, to provide increased coverage limits above the default amount listed in the insuring clause regarding tax lien coverage of the proposed UCC Insurance Policy for Buyers.

Item 2007-42 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy for Buyers, entitled Buyers Equity Ownership Endorsement, to provide coverage regarding the protected purchaser status of the buyer under UCC Article 8.

Item 2007-43 - Submission by First American Title Insurance Company to adopt a new endorsement (UCC-\_\_\_) for issuance with the proposed UCC Insurance Policy for Buyers, entitled Buyers Policy Insuring Clauses Endorsement, to provide increased coverage limits above the default amount listed in the insuring clauses regarding any security interest, lien, or tax lien on the collateral of the proposed UCC Insurance Policy for Buyers.

Item 2007-44 - Submission by Fidelity National Financial to adopt a new form (T-\_\_\_), entitled Owner's Policy, to provide coverage to owners regarding ownership and lien status of the insured interest.

Item 2007-45 - Submission by Fidelity National Financial to adopt a new form (T-\_\_\_), entitled Owner's Vacation Interest Policy, to provide coverage to owners regarding ownership status, lien status, and tax lien status of the insured interest in a vacation interest (time share).

Item 2007-46 - Submission by Fidelity National Financial to adopt a new form (T-\_\_\_), entitled UCCPlus Lender's Policy, to provide coverage for the attachment, perfection, and priority of a lender's security interest.

Item 2007-47 - Submission by Fidelity National Financial to adopt a new endorsement (T -\_\_\_) for issuance with the proposed UCCPlus Lender's Policy, entitled Landlord's Lien Endorsement, to provide coverage for claims by a landlord that may have obtained a priority interest in the lender's collateral.

Item 2007-48 - Submission by Fidelity National Financial to adopt a new endorsement (T -\_\_\_) for issuance with the proposed UCCPlus Lender's Policy, entitled Lapse Endorsement, to provide coverage for a loss of interest in the collateral due to failure to file a continuation of the UCC financing statement.

Item 2007-49 - Submission by Fidelity National Financial to adopt a new endorsement (T -\_\_\_) for issuance with the proposed UCCPlus Lender's Policy, entitled Prior Owner Endorsement, to provide coverage for a UCC financing statement filing against a prior owner of the collateral.

Item 2007-50 - Submission by Fidelity National Financial to adopt a new endorsement (T -\_\_\_) for issuance with the proposed UCCPlus Lender's Policy, entitled Federal Tax Lien Endorsement, to provide coverage for federal tax liens against the debtor, seller, or a prior owner of the collateral.

Item 2007-51 - Submission by Fidelity National Financial to adopt a new endorsement (T -\_\_\_) for issuance with the proposed UCCPlus Lender's Policy, entitled Mezzanine Financing Endorsement, to provide flexible coverage options for a lender on a loan transaction involving Mezzanine financing.

Item 2007-52 - Submission by Fidelity National Financial to adopt a new endorsement (T-\_\_\_) for issuance with the proposed UCCPlus Lender's Policy, entitled Tie-In Endorsement, to provide aggregate coverage under multiple personal property title insurance policies such

that any loss under one policy is deducted from the aggregate liability of all policies.

Item 2007-53 - Submission by the Texas Department of Insurance to adopt a new procedural rule (P-\_\_\_) to clarify that all procedural rules in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas will apply to personal property title insurance.

Item 2007-54 - Submission by the Texas Department of Insurance to adopt a provision to the administrative rules preamble to clarify that all administrative rules in the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas will apply to personal property title insurance.

Item 2007-55 - Submission by the Texas Department of Insurance to adopt a provision to the claims handling principles and procedures section of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas to clarify that all claims handling principles and procedures will apply to personal property title.

Item 2007-56 - Submission by the Texas Department of Insurance to update the organizational structure of the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas by inserting separate tabs for personal property title insurance forms and rates.

Item 2007-57 - Submission by the Texas Department of Insurance to adopt a new procedural rule (P-\_\_\_) to provide a manner for application to the Department for approval of a new or revised personal property title insurance form or a change in rate associated with such a form by requiring that all such applications be made in accordance with TIC §§2703.203 - 2703.205.

Complete copies of the agenda items may be obtained from the Office of the Chief Clerk. Please submit your request to:

Office of the Chief Clerk

Texas Department of Insurance (Mail Code 113-2A)

P.O. Box 149104

Austin, Texas 78714-9104

Notwithstanding the foregoing, the Department reserves the right at any time to propose for adoption, pursuant to TIC §§31.002, 2703.206, and 2703.207 and the Administrative Procedure Act, any rule for the regulation of title insurance.

Docket 2673

Ratemaking Phase

Item 2007-58 - Submission by Stewart Title Guaranty Company to adopt a new Rate Rule (UCC R-\_\_\_) for issuance of the proposed Expanded Coverage UCC Policy to provide a minimum premium of \$500.00 for up to \$100,000 of liability and to provide a decreasing premium rate per \$1000 of liability in excess of \$100,000.

Item 2007-59 - Submission by Stewart Title Guaranty Company to adopt a new Rate Rule (UCC R-\_\_\_) for issuance of the proposed Aggregation Endorsement to provide a \$25.00 premium.

Item 2007-60 - Submission by Stewart Title Guaranty Company to adopt a new Rate Rule (UCC R-\_\_\_) for issuance of the proposed Gap Endorsement to provide a \$25.00 premium.

Item 2007-61 - Submission by Stewart Title Guaranty Company to adopt a new Rate Rule (UCC R-\_\_\_) for issuance of the proposed Increase in Liability Endorsement to provide an increase in premium based on the new amount of liability set forth in the endorsement.

Item 2007-62 - Submission by Stewart Title Guaranty Company to adopt a new Rate Rule (UCC R-\_\_\_) for issuance of the proposed Date-down Endorsement to provide a \$100.00 premium.

Item 2007-63 - Submission by Stewart Title Guaranty Company to adopt a new rate rule (UCC R-\_\_\_) for issuance of the proposed Change in Location of Debtor Endorsement to provide a \$250.00 premium.

Item 2007-64 - Submission by Stewart Title Guaranty Company to adopt a new rate rule (UCC R-\_\_\_) for issuance of the proposed Mezzanine Endorsement to provide a \$25.00 premium.

Item 2007-65 - Submission by Stewart Title Guaranty Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Assignment Endorsement to provide a \$50.00 premium.

Item 2007-66 - Submission by Stewart Title Guaranty Company to adopt a new rate rule (UCC R-\_\_\_) for issuance of the proposed Co-Insurance Endorsement to provide that the premium be the portion of the applicable promulgated premium for the total amount of insurance equal to its allocable amount of insurance set forth in the endorsement.

Item 2007-67 - Submission by First American Title Insurance Company to adopt a new rate rule (UCC R-\_\_\_) for issuance of the proposed UCC Search Insurance Policy to provide a premium of \$29.00 for up to \$25,000 of liability, an additional \$10.00 in premium for the next \$25,000 in liability, and an additional \$10.00 of premium for each additional \$50,000 of liability up to a maximum liability of \$250,000.

Item 2007-68 - Submission by First American Title Insurance Company to adopt a new rate rule (UCC R-\_\_\_) for issuance of the proposed UCC Filing Insurance Policy to provide a premium of \$29.00 for up to \$25,000 of liability, an additional \$10.00 in premium for the next \$25,000 in liability, and an additional \$10.00 of premium for each additional \$50,000 of liability up to a maximum liability of \$250,000.

Item 2007-69 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Combined Search Insurance Policy to provide a premium of \$29.00 for up to \$25,000 of liability, an additional \$10.00 in premium for the next \$25,000 in liability, and an additional \$10.00 of premium for each additional \$50,000 of liability up to a maximum liability of \$250,000 for a UCC search or fixture search, a tax lien search, a judgment search, a recorder's office lien search, or a tax lien search and to provide a premium of \$59.00 for up to \$25,000 of liability, an additional \$10.00 in premium for the next \$25,000 in liability, and an additional \$10.00 of premium for each additional \$50,000 of liability up to a maximum liability of \$250,000 for a pending litigation search.

Item 2007-70 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed UCC Insurance Policy to provide a minimum premium of \$1.7500 per \$1000 of liability for up to \$100,000 of liability and to provide decreasing premium rates per \$1000 of liability in excess of \$100,000.

Item 2007-71 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed UCC Insurance Policy for Buyers to provide a minimum premium of \$1.7500 per \$1000 of liability for up to \$100,000 of liability and to provide decreasing premium rates per \$1000 of liability in excess of \$100,000.

Item 2007-72 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of Seller's Lien Endorsement to provide a premium of 10% of the policy rate for the first seller of pledged collateral and a 5% policy rate for each additional seller with a minimum premium of \$150 per seller.

Item 2007-73 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Tax

Lien Endorsement to provide a premium of \$85 for up to \$250,000 of liability and an additional premium of \$0.18 per \$1000 of liability in excess of \$250,000.

Item 2007-74 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Mezzanine Endorsement to provide a premium of 10% of the policy rate for the first issuer of pledged equity and a 5% policy rate for each additional issuer with a minimum premium of \$250 per issuer.

Item 2007-75 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Pledged Equity Endorsement to provide a premium of 10% of the policy rate for the first issuer of pledged equity and a 5% policy rate for each additional issuer with a minimum premium of \$250 per issuer.

Item 2007-76 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of Change of Name of Insured Endorsement to provide a \$125.00 premium.

Item 2007-77 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Lender's Aggregation Endorsement to provide a \$25.00 premium.

Item 2007-78 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Renewal Endorsement to provide a premium of 10% of the policy rate with a minimum premium of \$100 and a maximum premium of \$1000.

Item 2007-79 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Waiver of Attorney Subrogation Rights Endorsement to provide a \$50 premium if for insured lender's counsel and a \$1000 premium if for debtor's counsel.

Item 2007-80 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Springing Control Endorsement to provide a premium of 5% of the policy rate for the first issuer of pledged equity and a 2.5% policy rate for each additional issuer with a minimum premium of \$125 per issuer.

Item 2007-81 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Post Policy Tax Lien Endorsement to provide a \$75.00 premium per jurisdiction searched per debtor.

Item 2007-82 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Borrower's Status Endorsement to provide a \$50.00 premium.

Item 2007-83 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Post Policy Date Judgment Lien Endorsements Endorsement to provide a \$75 premium per jurisdiction searched per debtor per endorsement.

Item 2007-84 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Buyers Aggregation Endorsement to provide a \$25.00 premium.

Item 2007-85 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Pending Suits and Judgments Endorsement to provide a \$75.00 premium per jurisdiction searched per debtor.

Item 2007-86 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Increase in Tax Lien Coverage Endorsement to provide a premium of \$0.18 per \$1000 of liability in excess of the \$250,000 of liability that is already included in the policy premium.

Item 2007-87 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Buyers Equity Ownership Endorsement to provide a premium of 10% of the policy rate for the first issuer of pledged equity and a 5% policy rate for each additional issuer with a minimum premium of \$250 per issuer.

Item 2007-88 - Submission by First American Title Insurance Company to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Buyers Policy Insuring Clauses Endorsement to provide a premium of \$0.18 per \$1000 of liability in excess of the \$250,000 of liability that is already included in the policy premium.

Item 2007-89 - Submission by Fidelity National Financial to adopt a new rate rule (R-\_\_\_) for issuance of the proposed UCCPlus Owner's Policy and UCCPlus Lender's Policy to provide a minimum premium of \$175 for up to \$100,000 of liability and to provide a decreasing premium rate per \$1000 of liability in excess of \$100,000.

Item 2007-90 - Submission by Fidelity National Financial to adopt a new rate rule (R-\_\_\_) for issuance of multiple policies in conjunction with the proposed UCCPlus Owner's Policy to provide that a personal property title insurance policy issued in conjunction with a real property title insurance policy may be reduced by 10%, 15%, or 25% depending on the amount of insurance; to provide that the premium amount on multiple sales of similar characteristic may be calculated based on the aggregated amount of the loans; and to provide that when an Owner's Policy is issued in conjunction with a Lender's Policy the premium for the additional policy will be issued at 30% of the basic insurance rate.

Item 2007-91 - Submission by Fidelity National Financial to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Owner's Vacation Interest Policy to provide a premium of \$85.00 for up to \$30,000 of liability, \$150.00 for up to \$30,000 of liability, \$215.00 for up to \$100,000 of liability, and a decreasing premium rate per \$1000 of liability in excess of \$100,000.

Item 2007-92 - Submission by Fidelity National Financial to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Landlord's Lien Endorsement to provide a premium of 5% of the policy premium.

Item 2007-93 - Submission by Fidelity National Financial to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Lapse Endorsement to provide a premium of 0% of the policy premium.

Item 2007-94 - Submission by Fidelity National Financial to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Mezzanine Endorsement to provide a premium of 10% of the policy premium.

Item 2007-95 - Submission by Fidelity National Financial to adopt a new rate rule (R-\_\_\_) for issuance of the proposed Prior Owner Endorsement to provide a premium of 5% of the policy premium.

Item 2007-96 - Submission by Fidelity National Financial to adopt a new rate rule (R-\_\_\_) for issuance of Tie-In Endorsement to provide a premium of 10% of the policy premium.

Item 2007-97 - Submission by Fidelity National Financial to adopt a new rate rule (R-\_\_\_) for issuance of Federal Tax Lien Endorsement to provide a premium of 5% of the policy premium.

#### Commissioner's Policies Regarding the Setting of Rates

TIC §2751.052 requires personal property title insurance rates fixed by the Commissioner to be "reasonable, adequate, not unfairly discriminatory, nonconfiscatory, and not excessive," and that the Commissioner must "consider all relevant income and expenses of title insurance companies and title insurance agents attributable to engaging in the business

of personal property title insurance in this state." The Commissioner's policies regarding the setting of rates for personal property title insurance provided for under TIC Chapter 2751 are set out below. This policy statement is not intended to limit the type of evidence a party may offer at the hearing. The pertinent Commissioner's policies are as follows:

1. Parties to provide evidence on all relevant and necessary points.

The parties shall consider and provide evidence on all relevant and necessary points, including but not limited to:

1. Premium, loss, and expense experience in other jurisdictions for the personal property title insurance coverage being proposed for adoption in Texas, and for similar products.

2. Rates charged in other jurisdictions for the personal property title insurance coverage being proposed for adoption in Texas, and for similar products.

3. The expected loss, expense, and underwriting profit provisions underlying the rates being proposed for adoption in Texas.

4. Provisions in the proposed rates, if any, for agent compensation as described in TIC §2751.104.

5. A comparison of the proposed rates for proposed forms or endorsements where such forms or endorsements are similar or the same as other proposed forms or endorsements, and an explanation of any differences in proposed rates for forms or endorsements that are similar or the same.

2. SOAH to conduct ratemaking hearing.

The initial ratemaking hearing for the establishment of personal property title insurance rates shall be conducted by the State Office of Administrative Hearings. Anyone who wishes to participate in the ratemaking hearing as a party must file a Motion for Admission as a Party with the Docketing Division, State Office of Administrative Hearings, 300 West 15th Street, Room 504, Austin, Texas 78701.

3. Deadlines subject to change.

All deadlines in this notice are subject to change at the Commissioner's discretion to the extent permitted by statute and rule.

TRD-200704336

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: September 19, 2007



#### Notice of Stakeholder Meeting Regarding Third Party Administrator Rulemaking

Notice is given to the public of a stakeholder meeting to be held on Thursday, October 18, 2007, from 9:00 a.m. to 12:00 noon, in the Tippy Foster Room, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Austin 78744, for stakeholders interested in third party administrator rulemaking. The purpose of this meeting is to provide an opportunity for stakeholders to present and discuss their concerns and suggestions regarding current third party administrator rules found in 28 Texas Administrative Code §§7.1601 - 7.1617, as well as implementation of HB 472, 80th Legislature, Regular Session, 2007.

TRD-200704331

Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: September 19, 2007

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## Texas Lottery Commission

### Instant Game Number 1015 "Merry Money"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1015 is "MERRY MONEY". The play style is "key number match with auto win".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1015 shall be \$5.00 per ticket.

#### 1.2 Definitions in Instant Game No. 1015.

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, CANDY CANE SYMBOL, TREE SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$200, \$2,000, 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. 1015 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
CANDY CANE SYMBOL	AUTO
TREE SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY

\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$2,000	TWO 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 val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1015 - 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. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100 or \$200.

I. High-Tier Prize - A prize of \$2,000 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 (1015), 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: 1015-0000001-001.

L. Pack - A pack of "MERRY MONEY" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of 001 and front 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 "MERRY MONEY" Instant Game No. 1015 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 "MERRY MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "candy cane" play symbol, the player wins the PRIZE shown instantly! If the player reveals a "tree" play symbol, the player WINS ALL 20 PRIZES INSTANTLY! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- 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;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- 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 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. The top prize will appear on every ticket unless otherwise restricted by the prize structure.
- C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
- D. No four or more matching non-winning prize symbols.
- E. Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.
- F. The "CANDY CANE" (auto win) play symbol will only appear once on a ticket.

G. The "TREE" (win all) play symbol will only appear on winning tickets as dictated by the prize structure.

H. When the "TREE" (win all) play symbol is used, there will be no occurrence of any of YOUR NUMBERS play symbols matching to any WINNING NUMBER play symbol.

I. No duplicate WINNING NUMBERS play symbols on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "MERRY MONEY" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100 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 \$25.00, \$50.00, \$100 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MERRY MONEY" Instant Game prize of \$2,000 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 "MERRY MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MERRY MONEY" 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 "MERRY MONEY" 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

Figure 3: GAME NO. 1015 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	880,000	6.82
\$10	480,000	12.50
\$15	80,000	75.00
\$20	100,000	60.00
\$25	80,000	75.00
\$50	80,000	75.00
\$100	4,000	1,500.00
\$200	2,500	2,400.00
\$2,000	300	20,000.00
\$50,000	10	600,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.52. 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. 1015

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 6,000,000 tickets in the Instant Game No. 1015. The approximate number and value of prizes in the game are as follows:

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. 1015, 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-200704236  
Kimberly L. Kiplin  
General Counsel  
Texas Lottery Commission  
Filed: September 14, 2007



#### Instant Game Number 1016 "\$1 Million Holiday Winnings"

##### 1.0 Name and Style of Game.

A. The name of Instant Game No. 1016 is "\$1 MILLION HOLIDAY WINNINGS". The play style for Game 1 is "key symbol match". The play style for Games 2 and 3 is "match 3 of 6 with doubler". The play style for game 4 is "key number match with auto win".

##### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1016 shall be \$20.00 per ticket.

##### 1.2 Definitions in Instant Game No. 1016.

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: SNOW SYMBOL, EAR MUFFS SYMBOL, CAP SYMBOL, DRUM SYMBOL, MITTENS SYMBOL, WREATH SYMBOL, SACK SYMBOL, HORN SYMBOL, JINGLE BELL SYMBOL, SNOWMAN SYMBOL, COOKIE SYMBOL, FIRE SYMBOL, DEER SYMBOL, MUSIC NOTE SYMBOL, ANGEL SYMBOL, CHRISTMAS BALL SYMBOL, BELL SYMBOL, CANDLE SYMBOL, \$20.00, 40.00, \$50.00, \$100, \$200, \$500, \$10,000, \$ONE MILL, 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 and GIFT 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. 1016 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
SNOW SYMBOL	SNOW
EAR MUFFS SYMBOL	MUFFS
CAP SYMBOL	CAP
DRUM SYMBOL	DRUM
MITTENS SYMBOL	MTTNS
WREATH SYMBOL	WREATH
SACK SYMBOL	SACK
HORN SYMBOL	HORN
JINGLE BELL SYMBOL	JINGLE
SNOWMAN SYMBOL	SNWMAN
COOKIE SYMBOL	COOKIE
FIRE SYMBOL	FIRE
DEER SYMBOL	DEER
MUSIC NOTE SYMBOL	MUSIC
ANGEL SYMBOL	ANGEL
CHRISTMAS BALL SYMBOL	BALL
BELL SYMBOL	BELL
CANDLE SYMBOL	CANDLE
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$10,000	TEN THOU
\$ONE MILL	ONE MIL
STAR SYMBOL	DBL
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN

20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
<b>GIFT SYMBOL</b>	<b>WINX10</b>

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1016 - 1.2E

CODE	PRIZE
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low Tier Prize - A prize of \$20.00.

H. Mid-Tier Prize - A prize of \$40.00, \$70.00, \$100, \$300 or \$500.

I. High-Tier Prize - A prize of \$2,000, \$10,000 or \$1,000,000.

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 (1016), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1016-0000001-001.

L. Pack - A pack of "\$1 MILLION HOLIDAY WINNINGS" Instant Game tickets contains 25 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

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 "\$1 MILLION HOLIDAY WINNINGS" Instant Game No. 1016 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 "\$1 MILLION HOLIDAY WINNINGS" Instant Game is determined once the latex on the ticket is scratched off to expose 58 (fifty-eight) play symbols. In Game 1, if a player matches YOUR SYMBOLS play symbols within a row, the player wins the PRIZE shown for that row. In Games 2 and 3, if a player matches 3 prize amounts in one GAME, the player wins that amount. If a player matches 2 prize amounts and reveals a "star" play symbol in one GAME, the player wins DOUBLE that amount. In Game 4, if a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins the prize shown for that number. If a player reveals a "gift" play symbol, the player wins 10 TIMES the prize shown. No portion of the display printing or any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

#### 2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 58 (fifty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 58 (fifty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 58 (fifty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 58 (fifty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed

in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. The top prize will appear on every ticket unless otherwise restricted.

C. Game 1: No duplicate non-winning rows.

D. Game 1: No two matching play symbols will appear in adjacent columns.

E. Game 1: No more than two matching non-winning prize symbols.

F. Games 2 and 3: No four or more matching prize symbols in a game.

G. Games 2 and 3: No three pairs in a game.

H. Games 2 and 3: No three matching non-winning play symbols will be used in GAMES 2 and 3.

I. Game 2 and 3: The star (doubler) play symbol will only appear as dictated by the prize structure.

J. Game 4: No duplicate non-winning YOUR NUMBERS play symbols.

K. Game 4: No duplicate WINNING NUMBERS play symbols.

L. Game 4: No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 20 and \$20).

M. Game 4: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

N. Game 4: The gift (win x 10) play symbol will only appear as dictated by the prize structure.

O. Game 4: No more than two matching non-winning prize symbols.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$1 MILLION HOLIDAY WINNINGS" Instant Game prize of \$20.00, \$40.00, \$70.00, \$100, \$300 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the



claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$40.00, \$70.00, \$100, \$300 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$1 MILLION HOLIDAY WINNINGS" Instant Game prize of \$2,000, \$10,000 or \$1,000,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$1 MILLION HOLIDAY WINNINGS" top level prize of \$1,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "\$1 MILLION HOLIDAY WINNINGS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; 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.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$1 MILLION HOLIDAY WINNINGS" 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 "\$1 MILLION HOLIDAY WINNINGS" 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 2,520,000 tickets in the Instant Game No. 1016. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1016 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	529,200	4.76
\$40	201,600	12.50
\$70	100,800	25.00
\$100	38,640	65.22
\$300	5,040	500.00
\$500	3,612	697.67
\$2,000	126	20,000.00
\$10,000	15	168,000.00
\$1,000,000	3	840,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 2.87. 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. 1016 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. 1016, 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-200704238  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 14, 2007



Instant Game Number 1017 "Candy Cane Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1017 is "CANDY CANE CASH". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1017 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1017.

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, CANDY CANE SYMBOL, \$2.00, \$3.00, \$4.00, \$12.00, \$20.00, \$50.00, \$100, \$1,000 and \$30,000.

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. 1017 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
CANDY CANE SYMBOL	TPL
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$12.00	TWELVE
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$30,000	30 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 val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 1017 - 1.2E

CODE	PRIZE
TWO	\$2.00
THR	\$3.00
FOR	\$4.00
SIX	\$6.00
NIN	\$9.00
TWL	\$12.00
FTN	\$15.00
TWN	\$20.00
TFR	\$24.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$3.00, \$4.00, \$6.00, \$9.00, \$12.00, \$15.00, \$20.00 or \$24.00.

H. Mid-Tier Prize - A prize of \$36.00, \$40.00, \$50.00, \$100 or \$150.

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 (1017), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1017-0000001-001.

L. Pack - A pack of "CANDY CANE CASH" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D 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 "CANDY CANE CASH" Instant Game No. 1017 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 "CANDY CANE CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If the player reveals a "candy cane" play symbol, the player wins TRIPLE the PRIZE shown for that 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 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No three or more identical non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. There will be no correlation between the matching symbols and the prize amount.

F. The "CANDY CANE" (Tripler) play symbol will only appear on winning tickets as dictated by the prize structure.

G. The top prize will appear on all tickets.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "CANDY CANE CASH" Instant Game prize of \$2.00, \$3.00, \$4.00, \$6.00, \$9.00, \$12.00, \$15.00, \$20.00, \$24.00, \$36.00, \$40.00, \$50.00, \$60.00, \$100 or \$150, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$36.00, \$40.00, \$50.00, \$60.00, \$100 or \$150 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CANDY CANE CASH" 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 "CANDY CANE CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CANDY CANE CASH" 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 "CANDY CANE CASH" 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 6,000,000 tickets in the Instant Game No. 1017. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 1017 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	768,000	7.81
\$3	240,000	25.00
\$4	144,000	41.67
\$6	120,000	50.00
\$9	36,000	166.67
\$12	96,000	62.50
\$15	24,000	250.00
\$20	12,000	500.00
\$24	12,000	500.00
\$36	6,000	1,000.00
\$40	3,950	1,518.99
\$50	2,000	3,000.00
\$60	3,750	1,600.00
\$100	3,500	1,714.29
\$150	1,500	4,000.00
\$1,000	100	60,000.00
\$3,000	50	120,000.00
\$30,000	12	500,000.00

\*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 4.07. 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. 1017 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. 1017, 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-200704239

Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: September 14, 2007

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**Public Utility Commission of Texas**

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 14, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 34748 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 34748.

TRD-200704318  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 18, 2007



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 10, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of State Power Company, Inc., d/b/a Allstate Power Company for Retail Electric Provider (REP) Certification, Docket Number 34719 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 5, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34719.

TRD-200704222  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 13, 2007



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 11, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Prier Energy, Inc. for Retail Electric Provider (REP) Certification, Docket Number 34730 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 5, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34730.

TRD-200704223  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 13, 2007



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 12, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of IDT Energy, Inc. for Retail Electric Provider (REP) Certification, Docket Number 34735 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 5, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34735.

TRD-200704296  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 17, 2007



#### Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 14, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of UG&E Texas Inc. for Retail Electric Provider (REP) Certification, Docket Number 34745 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 5, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34745.

TRD-200704317  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 18, 2007



**Notice of Application for a Certificate to Provide Retail Electric Service**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 14, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Chain Lakes Power, L.P. for Retail Electric Provider (REP) Certification, Docket Number 34750 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 5, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 34750.

TRD-200704319  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 18, 2007



**Notice of Application for Amendment to Service Provider Certificate of Operating Authority**

On September 13, 2007, State Telephone Texas Corporation 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 60259. Applicant intends to reflect a change in ownership/control.

The Application: Application of State Telephone Texas Corporation for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 34739.

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 October 3, 2007. 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 34739.

TRD-200704316  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 18, 2007



**Notice of Application for Waiver of Denial of Request for NXX Code**

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on September 11, 2007, for waiver of denial by the Pooling Administrator (PA) of Verizon Southwest's (Verizon) request for an additional six thousand number DID blocks to satisfy the business requirements of Capital One.

Docket Title and Number: Petition of Verizon Southwest for Waiver of Denial of Numbering Resources in the Plano Rate Center, Docket No. 34733.

The Application: Verizon requested an additional six thousand number DID blocks for the Plano rate center. The PA denied the request based on the grounds that Verizon did not meet the month-to-exhaust utilization criteria.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 3, 2007. 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 34733.

TRD-200704224  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 13, 2007



**Notice of Application to Amend Certificated Service Area Boundaries in Parmer County, Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 11, 2007, for an amendment to certificated service area boundaries within Parmer County, Texas.

Docket Style and Number: Application of Deaf Smith Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Service Area Exception within Parmer County. Docket Number 34728.

The Application: Deaf Smith Electric Cooperative, Inc. (DSEC) filed an application for a service area exception to amend certificated service area boundaries within Parmer County, Texas. DSEC seeks to provide service to a specific customer located within the certificated service area of Xcel Energy.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 5, 2007 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34728.

TRD-200704295  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 17, 2007



**Notice of Application to Amend Certificated Service Area Boundaries in Wilson County, Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on September 11, 2007, for an amendment to certificated service area boundaries within Wilson County, Texas.

Docket Style and Number: Application of Guadalupe Valley Electric Cooperative, Inc. to Amend a Certificate of Convenience and Neces-



sity for Service Area Exception within Wilson County. Docket Number 34727.

The Application: Guadalupe Valley Electric Cooperative, Inc. (GVEC) filed an application for a service area exception to amend certificated service area boundaries within Wilson County, Texas. GVEC seeks to provide service to a specific customer located within the certificated service area of CPS Energy (CPS).

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than October 5, 2007 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 34727.

TRD-200704294

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 17, 2007



#### Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on September 12, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 20, 2007.

Docket Title and Number: Application of Windstream Communications Southwest, Inc. for Approval of LRIC Study for Residential Connect Select Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 34734.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 34734. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 34734.

TRD-200704228

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 13, 2007



#### Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on August 10, 2007, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA).

Project Title and Number: Petition for Expanded Local Calling Service from the McCook Exchange to the Exchanges of Edinburg, El Sauz, McAllen, Mission, and Pharr, Project Number 34623.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512)936-7120 or toll free at 1-888-782-8477 no later than October 15, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 34623.

TRD-200704315

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: September 18, 2007



## Texas State University System

### Request for Proposals - Natural Gas Energy Consulting Services

The Texas State University System (TSUS) invites consultants experienced in advising public entities (particularly institutions of higher education) on ways to reduce natural gas costs to provide offers of consulting services. TSUS intends to select a firm with consulting expertise ("Consultant") to provide the following services to each of its eight institutions: analysis of natural gas costs and usage, negotiation of reduced rates for natural gas, and development of alternatives to reduce natural gas costs.

Any firm intending to respond to this notice should obtain Request for Proposals No. 758-07-00003 and follow the instructions for responding contained therein. A copy of the RFP may be downloaded from the *Electronic Business Daily* at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=72974](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=72974).

The deadline for proposals is **October 9, 2007, 3:00 p.m. (C.D.T)**. The award date is December 1, 2007. TSUS reserves the right to accept or reject any or all proposals submitted. TSUS is under no legal or other obligation to execute a contract or agreement on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TSUS to pay for any costs incurred prior to the award of a contract or agreement.

The Chancellor, as chief executive officer of TSUS, has found that the consulting services sought pursuant to this notice are both reasonable and necessary to TSUS and its components. The System Office of TSUS, with a very limited staff, has the responsibility of managing \$200 million or more in construction projects at any given time at up to nine different locations. The Chancellor finds that System Office personnel can manage these projects in a cost-effective manner by utilizing the planning and construction expertise of consultants on an as-needed basis only. The alternative is to hire a permanent, full-time salaried employee and to pay benefits and other administrative costs occasioned by such a hire. The proposed structure (hiring a consultant for the duration of the task only) will allow TSUS to have the benefit of expertise that it could not reasonably expect to find in a salaried employee and to pay only for the services that it needs to support existing staff's administrative efforts. Moreover, staffing in the planning and construction area at the component institutions differs widely, and the Chancellor finds that the proposed consulting arrangement will be cost effective in providing assistance to components on an as-needed basis.

TRD-200704338

Fernando Gomez  
Vice Chancellor and General Counsel  
Texas State University System  
Filed: September 19, 2007

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## Texas Department of Transportation

### Aviation Division - Request for Proposal for Aviation Engineering Services

Gray County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

The following is a listing of proposed projects at Perry LeFors Field, Pampa, Texas during the course of the next five years through multiple grants.

Current Project: TxDOT CSJ No.0804PAMPA. Scope: Provide engineering/design services to construct hangar access taxiway.

The DBE goal is set at 9%. TxDOT Project Manager is Russell Deason.

Future scope work items for engineering/design services within the next five years may include but are not necessarily limited to the following:

1. Replace asphalt with concrete on terminal apron
2. Rehabilitate and mark hangar access taxiways
3. Rehabilitate and mark Runway 5-23
4. Rehabilitate and mark taxiway to Runway 5-23
5. Expand concrete apron
6. Rehabilitate and mark taxiways to Runway 17-35
7. Rehabilitate and mark Runway 17-35

Gray County reserves the right to determine which of the above scope of services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and criteria are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting Perry LeFors Field. The proposal should address a technical approach for the current scope. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at [www.dot.state.tx.us/services/aviation/consultant.htm](http://www.dot.state.tx.us/services/aviation/consultant.htm). The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

**ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

**Please note:**

Six completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than October 22, 2007, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, phone 1-800-68-PILOT, extension 4519. For technical questions, please contact Russell Deason, Project Manager, at 1-800-68-PILOT, extension 4526.

TRD-200704220

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: September 13, 2007

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### Notice of Request for Proposal - Job Access and Reverse Commute and New Freedom Transportation Projects

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for transportation projects for services relating to two Federal Transit Administration (FTA) programs:

1. 42 U.S.C. §5316 Job Access and Reverse Commute (JARC) Program and
2. 42 U.S.C. §5317 New Freedom (NF) Program

JARC program funds are available for local administration, vehicle capital, planning, marketing, and operating assistance that support **public transportation projects for access to jobs and reverse commute purposes**. A job access project is one that transports welfare recipients and eligible low-income individuals to and from jobs and activities related to employment. A reverse commute project is one that takes individuals from urbanized (cities/downtown areas) and non-urbanized areas to suburban employers. The federal statute has no reference to welfare or income status associated with reverse commute projects; therefore these projects are open to a rider of any income level.

NF program funds are available for local administration, capital and operating expenses that support **new public transportation services beyond those required by the American's with Disabilities Act (ADA) and new public transportation alternatives beyond those required by the ADA** designed to assist individuals with disabilities with accessing transportation services, including transportation to and from jobs and employment support services. Both new public transportation services and new public transportation alternatives are required to go beyond the requirements of the ADA and must (1) be targeted toward individuals with disabilities; and (2) meet the intent of the program by removing barriers to transportation and assisting individuals with disabilities with transportation, including transportation to and from jobs and employment services.

These projects will be administered by the department in compliance with department rules, published at 43 Texas Administrative Code §31.17 and §31.18. The RFP is available in electronic and printed format from the department. See "To Obtain a Copy of the RFP" later in this notice.

**Eligible Applicants:**

Eligible applicants include local governmental authorities, private non-profit organizations, operators of public transportation services, and private for-profit operators of public transportation services.

**Availability of Funds:**

Funds available for the project(s) will be from FY 07 and FY 08 federal appropriations to Texas to fund the competitively selected proposals requested by this RFP. An applicant may request **up to three year's** of funding for the project(s). The department anticipates the project period to be from June 1, 2008 to August 31, 2011.

**Program Goals and Eligible Projects:**

**JARC Goals:**

The department's goal in administering the JARC program is to promote the availability of public transportation services targeted to employment and employment-related transportation needs. To achieve this goal, the department's objectives are to:

- (1) promote the development of employment transportation services throughout the state, in partnership with local officials, public and private non-profit agencies, and operators of public transportation services;
- (2) fully integrate the JARC program with other federal and state programs supporting public, employment, and human service transportation;
- (3) foster the development of local, coordinated public and human service transportation service plans from which JARC projects are derived;
- (4) support local economic development; and
- (5) improve the efficiency and effectiveness of the JARC program.

**JARC Eligible Projects:**

Eligible types of JARC projects have been defined by the Texas Transportation Commission in accordance with FTA guidelines, other laws and regulations, and in consultation with members of the public transportation industry, (see 43 TAC §31.17). These include projects for local administration, vehicle capital, planning, marketing, and operating assistance.

**Job access projects include:**

1. financing the eligible costs of projects that provide public transportation services targeted to welfare recipients and eligible low-income individuals;
2. promoting public transportation use by low-income workers, including the use of public transportation by workers with nontraditional work schedules;
3. promoting the use of employer-provided transportation, including the transit pass benefit program under Section 132 of the Internal Revenue Code of 1986;
4. supporting mobility management and coordination programs among public transportation providers and other human service agencies providing employment or employment-related transportation services; and

5. otherwise facilitating or providing transportation for employment or employment-related purposes by welfare recipients and low income persons.

**Reverse commute projects include:**

1. subsidizing the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and non-urbanized areas to suburban workplaces;
2. subsidizing the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace;
3. supporting mobility management and coordination programs among public transportation providers and other human service agencies providing employment or employment-related transportation services; and
4. otherwise facilitating or providing public transportation services to suburban employment opportunities.

**NF Goals:**

The department's goal in administering the NF program is to provide new or improved public transportation services and alternatives, beyond the requirements of the ADA, to assist individuals with disabilities. To achieve this goal, the department's objectives are to:

- (1) promote the development and maintenance of a network of transportation services and alternatives, beyond the requirements of the ADA, for individuals with disabilities throughout the state, in partnership with local officials, public and private non-profit agencies, and operators of public transportation services;
- (2) fully integrate the NF program with other federal, state, and local resources and programs that are designed to serve similar populations;
- (3) foster the development of local, coordinated public and human service transportation service plans from which NF projects are derived;
- (4) improve the efficiency, effectiveness, and safety of NF project providers through the provision of technical assistance; and
- (5) include private sector operators in the overall plan to provide NF program transportation services for persons with disabilities.

**NF Eligible Projects:**

Eligible types of NF projects have been defined by the Texas Transportation Commission in accordance with FTA guidelines, other laws and regulations, and in consultation with members of the public transportation industry (see 43 TAC §31.18). These include projects for local administration, capital projects, and operating assistance.

**Examples of new public transportation service projects "beyond ADA" include:**

1. providing paratransit services beyond minimum requirements (3/4 mile to either side of a fixed route) for a transit provider operating fixed route service;
2. making accessibility improvements to existing transit and intermodal stations not designated as key stations; for example, adding an elevator or ramp, detectable warnings, or improving signage;
3. building an accessible path to a bus stop that is currently inaccessible, including curbscuts, sidewalks, pedestrian signals, or other accessible features;
4. implementing technology improvements that enhance accessibility for individuals with disabilities;
5. implementing "same day" paratransit services; and

6. otherwise facilitating or providing transportation services beyond ADA requirements, including transportation to and from employment and employment-related destinations.

**Examples of new public transportation alternatives "beyond ADA" include:**

1. purchasing vehicles and supporting accessible taxi, ride-sharing, and vanpooling programs;
2. supporting voucher programs for transportation services offered by human service providers;
3. supporting volunteer driver and aide programs;
4. acquiring transportation services by a contract, lease, or other arrangement;
5. supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation;
6. new feeder service (transit service that provides access) to commuter rail, commuter bus, or intercity rail and intercity bus stations, for which complementary paratransit service is not required under the ADA;
7. new training programs for individual users on awareness, knowledge, and skills of public and alternative transportation options available in their communities. This includes travel instruction and travel training services; and
8. otherwise facilitating or providing new transportation services for persons with disabilities, including transportation to and from employment and employment-related destinations.

**Review and Award Criteria:**

Each application will first be screened for completeness and timeliness. Proposals that are deemed incomplete or arrive after the deadline will not be reviewed. Proposals will be evaluated against a matrix of criteria and then prioritized. Subject to available funding, the department is placing no preconditions on the number or on the types of projects to be selected for funding. During the evaluation phase of each proposal, the department reserves the right to conduct formal negotiations pertaining to a proposer's initial responses, project, and prices. An approximate balance in funding awarded to the two types of projects, or an approximate geographic balance of selected projects, may be seen as appropriate, depending on the proposals that are received. The department may consider these additional criteria when recommending prioritized projects to the Texas Transportation Commission.

**Key Dates and Deadlines:**

**October 12, 2007.** The department's responses to written questions will be posted every two weeks beginning October 12, 2007

on the department's Public Transportation Division website at: [http://www.dot.state.tx.us/services/public\\_transportation/default.htm](http://www.dot.state.tx.us/services/public_transportation/default.htm).

**November 12, 2007.** Statewide Pre-Proposal Video Teleconference. Beginning at 2:00 p.m. **Central Standard Time** at department district offices. Please notify the appropriate department district three days prior to the event if you plan to attend.

**December 14, 2007.** Deadline for written questions about the request for proposal will no longer be accepted after this date. Written responses to questions written prior to this date will be posted every two weeks beginning October 12, 2007 on the department's Public Transportation Division website at: [http://www.dot.state.tx.us/services/public\\_transportation/default.htm](http://www.dot.state.tx.us/services/public_transportation/default.htm).

**February 1, 2008.** Deadline for receipt of proposals is 5:00 p.m. Proposals prepared according to instructions in the RFP package must be received by the Texas Department of Transportation, Public Transportation Division, 150 East Riverside Drive, Austin, Texas 78704 by 5:00 p.m.

**February 29, 2008.** Target date for the department to complete the evaluation, prioritization, and negotiation of proposals.

**April 24, 2008.** Target date for presentation of project selection recommendations to the Texas Transportation Commission for action.

**June 1, 2008.** Target date for all project grant agreements to be executed, with approved scopes of work and calendars of work.

**To Obtain a Copy of the RFP:**

A copy of the RFP is available from the Public Transportation Division on-line under the heading "FY 07 08 JARC NF RFP" at: [http://www.dot.state.tx.us/services/public\\_transportation/default.htm](http://www.dot.state.tx.us/services/public_transportation/default.htm). Interested parties should download the Request for Proposal. For paper copies of the Request for Proposal, interested parties may also contact Kris Dudley, Texas Department of Transportation, Public Transportation Division, 125 East 11th Street, Austin, Texas 78701-2483, (512) 416-2829.

TRD-200704337  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: September 19, 2007



### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).