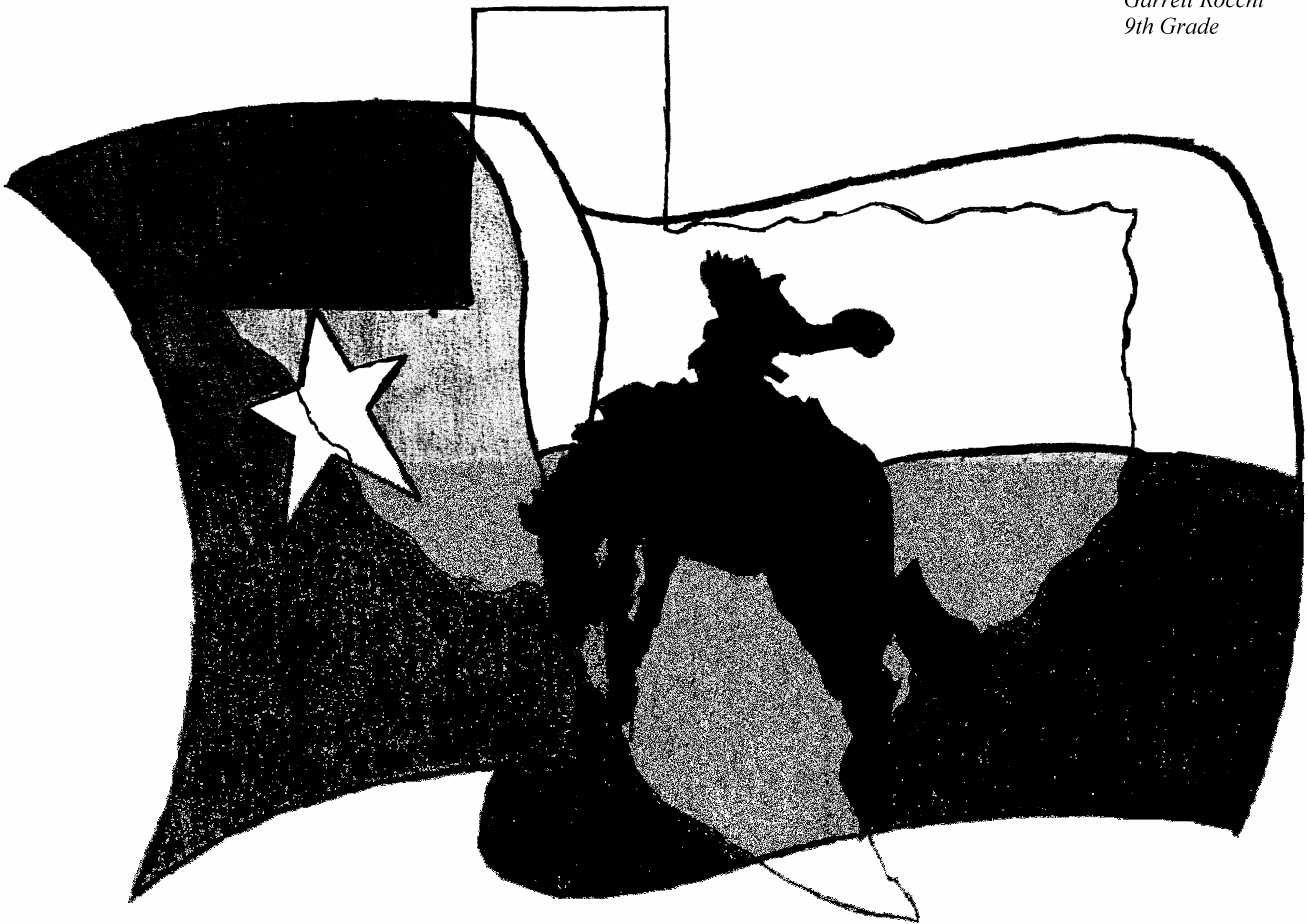

TEXAS REGISTER

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*Garrett Rocchi
9th 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.

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THE ATTORNEY GENERAL

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

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

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

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

Request for Opinions

RQ-0600-GA

Requestor:

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

County Courthouse

111 East Locust, Suite 408A

Angleton, Texas 77515

Re: Whether an election ballot may contain both a proposal to merge two emergency services districts and a provision to increase the tax ceiling (RQ-0600-GA)

Briefs requested by August 13, 2007

RQ-0601-GA

Requestor:

The Honorable Elton R. Mathis

Waller County Criminal District Attorney

846 Sixth Street, Suite #1

Hempstead, Texas 77445

Re: Consequences resulting from the downsizing of the Waller County Appraisal District (RQ-0601-GA)

Briefs requested by August 16, 2007

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

TRD-200703024

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: July 17, 2007

◆ ◆ ◆

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 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 1. GENERAL PROCEDURES

SUBCHAPTER E. ADVISORY COMMITTEES

4 TAC §1.210

The Texas Department of Agriculture (the department) proposes new Chapter 1, Subchapter E, §1.210, concerning the Healthy Students = Healthy Families Advisory Committee. New §1.210 adds the Healthy Students = Healthy Families Advisory Committee to the list of the department's advisory committees. The advisory committee will make recommendations to the department and the Commissioner about the Texas Public School Nutrition Policy and nutrition issues affecting Texas children. The committee also will advise the Commissioner on ways to increase participation in school lunch and breakfast programs, ways to coordinate nutrition education and physical fitness components in the overall school nutrition environment, and ways to improve communication among food and service companies, schools, parents, students and TDA's Food and Nutrition Division.

Fred Higgins, assistant commissioner for food and nutrition, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local government as a result of administering or enforcing the proposed new section.

Mr. Higgins has also 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 administering and enforcing the new section will be to provide interested members of the public with accurate information regarding the department's advisory committees. There will be no cost to micro-businesses, small businesses or individuals required to comply with the new section, as proposed.

Comments may be submitted to Fred Higgins, Assistant Commissioner for Food and Nutrition, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

New §1.210 is proposed under the Texas Government Code, §2110.005, which requires that an agency that establishes an advisory committee adopt rules setting forth the composition, purpose, duration and duties of the committee.

The code that will be affected by this proposal is the Texas Government Code, Chapter 2110.

§1.210. Healthy Students = Healthy Families Advisory Committee.

(a) Purpose. The Healthy Students = Healthy Families Advisory Committee ("Committee") is appointed by the Commissioner of Agriculture ("Commissioner") and is established within the Texas Department of Agriculture (the "Department") to assist the Commissioner with current and future issues associated with the Texas Public School Nutrition Policy ("TPSNP"), Child Nutrition Programs ("CNP") and other nutrition issues affecting Texas children.

(b) Composition; Duties. The Committee is composed of parents, food service directors, teachers, dietitians and nutritionists, school administrators, health specialists, education service centers, the medical community, physical education specialist and procurement. The Committee shall assist the Commissioner with current and future issues associated with the Texas Public School Nutrition Policy ("TPSNP") and Child Nutrition Programs ("CNP") including, but not limited to, identifying and recommending methods to develop a healthy lifestyle for Texas children and reasonable criteria to obtain these goals, methods to implement the TPSNP and CNP in a fair and balanced manner and methods to decrease childhood obesity rates and to promote wellness and physical fitness as part of the TPSNP. In addition, the Committee may evaluate the CNP and make recommendations to improve service and communication.

(c) Duration. The Committee shall remain in existence as long as deemed necessary by the Commissioner.

(d) Reporting. Reporting takes place through meetings held by the Committee. Through these meetings, the Commissioner and Committee discuss matters related to the Committee's business and the Committee provides oral feedback and direction. TDA staff ("Staff") prepares and maintains the minutes of each advisory committee meeting. Staff maintains a record of actions taken and distributes copies of approved minutes and other Committee documents to Committee members and the Commissioner.

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 July 11, 2007.

TRD-200702937

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 26, 2007

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



TITLE 19. EDUCATION

PART 8. WINDHAM SCHOOL DISTRICT

CHAPTER 300. GENERAL PROVISIONS

19 TAC §300.2

The Windham School District (WSD) Board of Trustees (Board) proposes amendments to §300.2, Windham School District Board of Trustees Operating Procedures. The proposed amendments clarify the Board's operating procedures.

David McNutt, Chief Financial Officer for the Windham School District, has determined that for the first five (5) years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McNutt 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. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the rule, will be enhanced understanding of the Board's operating procedures.

Comments should be directed to Michael P. Mondville, General Counsel, Windham School District, P.O. Box 40, Huntsville, Texas 77342, Michael.Mondville@wsdtx.org. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Education Code, §19.004.

Cross Reference to Statutes: Texas Education Code, §19.004.

§300.2. *Windham School District Board of Trustees Operating Procedures.*

(a) General. This section establishes operating procedures for the Windham School District (WSD) Board of Trustees to conduct business.

(b) Organization.

(1) The Texas Board of Criminal Justice (TBCJ) serves as the WSD Board of Trustees (WSD Board), pursuant to Chapter 19, Texas Education Code. The TBCJ is a nine (9)-member body appointed by the Governor to oversee the Texas Department of Criminal Justice (TDCJ or Agency). The TBCJ Chairman, who serves as the WSD Board Chairman, is designated by and serves at the pleasure of the Governor pursuant to Section 492.005, Texas Government Code.

~~[(1) The Texas Board of Criminal Justice (TBCJ) serves as the Board of Trustees for the Windham School District (WSD Board), pursuant to Chapter 19, Texas Education Code. The TBCJ is a nine (9) member body appointed by the Governor to oversee the Texas Department of Criminal Justice (TDCJ). The Chairman of the TBCJ is designated by and serves at the pleasure of the Governor (Section 492.005, Texas Government Code).]~~

(2) The WSD Board operates utilizing the same officers and structure established by the TBCJ.

(3) The TBCJ Education Committee shall provide WSD one (1) reporting avenue to the WSD Board. The TBCJ Education Committee shall operate in accordance with TBCJ practices pursuant to Title 37, Part 6, Texas Administrative Code, Section 151.3.

~~[(3) The TBCJ Education Committee provides WSD a reporting avenue to the WSD Board. By appointment to this committee (in accordance with TBCJ practices), members will be designated to become particularly familiar with various WSD issues, and to bring forward consensus recommendations or a candid report on any disagreements to the full WSD Board.]~~

~~[(4) The Chair of the Education Committee, appointed by the Chairman, may appoint non-members to sit on the committee in an advisory capacity; however, advisory members are non-voting members and cannot be reimbursed for expenses incurred in this capacity.]~~

~~[(5) For employment decisions made specifically by the WSD Board, a limited-purpose committee shall be appointed by the Chairman as deemed necessary to formulate recommendations for full WSD Board consideration.]~~

(c) Meetings.

(1) The WSD Board shall hold its regular meetings in conjunction with those of the TBCJ. Special called meetings of the WSD Board can be held at the discretion of the WSD Board Chairman.

(2) The TBCJ and the WSD Board shall attempt to hold regular meetings at least every odd-numbered month of the year, but shall meet at least once each quarter of the calendar year pursuant to Section 492.006, Texas Government Code. These meetings shall be held in Austin, Texas, or under exceptional circumstances in Huntsville, Texas, pursuant to the General Appropriations Act. If the WSD Board uses video conference technology to convene a meeting, at least three (3) members shall convene at the Austin video conference site, or under exceptional circumstances, the Huntsville video conference site. The other members may convene using the technology from remote sites.

(3) The agenda and date for the WSD Board meetings shall be set by the WSD Board Chairman.

(4) A majority of the WSD Board constitutes a quorum for the convening of and transaction of business at any meeting.

(5) Meetings of the WSD Board shall be conducted according to standard parliamentary procedures.

(6) Meetings of the WSD Board are governed by the *Texas Open Meetings Act* (Texas Government Code, Chapter 551).

(7) The WSD Superintendent, in coordination with appropriate TDCJ staff, shall ensure members are provided the materials necessary to conduct the business of the WSD Board well in advance of the meetings.

(8) The WSD Superintendent, in coordination with appropriate TDCJ staff, shall ensure the minutes of each meeting are prepared, retained and filed with the Legislative Reference Library, and made available to the public. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision or other action taken by the WSD Board.

(9) Requests by the public to make presentations or comments to the WSD Board are governed by Section 300.1 of this title, pursuant to Section 551.042, Texas Government Code.

~~[(2) The TBCJ attempts to hold regular meeting at least every odd-numbered month of the year, but shall meet at least once each quarter of the calendar year. These meetings shall be held in Austin, Texas, or under exceptional circumstances in Huntsville, Texas, (Section 492.006, Texas Government Code and the General Appropriations Act). If the TBCJ uses videoconference technology to convene a meeting, at least three (3) members must convene at the Austin videoconference site, or under exceptional circumstances, the Huntsville videoconference site. The other members may convene using the technology from remote sites.]~~

~~[(3) The agenda for the meetings of the WSD Board shall be set by the Chairman, after consultation with members of the WSD Board and the WSD Superintendent.]~~

{(4) A meeting of the TBCJ Education Committee shall be held at a site chosen by the Chairman of the committee. The Chairman of the committee shall set the agenda for the meeting in consultation with the WSD Superintendent. If the committee uses videoconference technology to convene a meeting, at least a majority of a quorum of the committee, such as, three (3) members of a four (4) member committee, must convene in one location, and the other members may convene using the technology from remote sites.}

{(5) A majority of the WSD Board or the Education Committee constitutes a quorum for the convening of, and transaction of business at, any meeting. A quorum of a committee with two (2) members is two (2).}

{(6) A quorum of a committee cannot depend on the presence of an advisory member. A non-unanimous vote on an action by a committee cannot be decided by an advisory member.}

{(7) Meetings of the WSD Board and its committees shall be conducted according to standard parliamentary procedures.}

{(8) Meetings of the WSD Board and its committees are governed by the Texas Open Meetings Act (Chapter 551, Texas Government Code).}

{(9) The WSD Superintendent, in coordination with appropriate TDCJ staff, shall ensure that members are provided with materials necessary to conduct the business of the WSD Board well in advance of any meeting.}

{(10) The WSD Superintendent, in coordination with appropriate TDCJ staff, shall ensure that minutes of each meeting are prepared, retained, filed with the Legislative Reference Library, and made available to the public. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision, or other action taken by the WSD Board.}

{(11) Requests by the public to make presentations to the WSD Board are governed by WSD Board Rule, §300.1 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 July 13, 2007.

TRD-200702974

Melinda Hoyle Bozarth

General Counsel, Texas Department of Criminal Justice

Windham School District

Earliest possible date of adoption: August 26, 2007

For further information, please call: (512) 463-0422



TITLE 22. EXAMINING BOARDS

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.1

The Texas State Board of Plumbing Examiners (Board) proposes amendments to Board rule §361.1, which define words and terms used in Title 8, Chapter 1301, Occupations Code, (The Plumbing License Law) and Board Rules. Current

§361.1(33) defines the term "paid directly", as the term is used in current §1301.255(e). Section 1301.255(e), currently allows a political subdivision to contract with any plumbing inspector, provided the plumbing inspector is paid directly by the political subdivision.

The amendments to §361.1 are proposed in response to the passage of House Bill 1850, 80th Regular Legislative Session. House Bill (H.B.) 1850 amended §1301.255(e) to allow a political subdivision to contract with any plumbing inspector or qualified plumbing inspection business that is paid directly by the political subdivision, effective September 1, 2007. The proposed amendment to §361.1(33) will reflect the changes made by H.B. 1850.

The amendments to §361.1(33) will also remove a reference to Board Rule §365.1(4)(B), which was previously deleted.

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rules are in effect there will be no fiscal impact on state government. Local governments and small or large plumbing inspection businesses required to comply with these rule amendments may realize a positive fiscal impact. There will be no effect to individuals required to comply with the section as proposed.

Mr. Maxwell also has determined that each year of the first five years the rules are effect the public benefit anticipated as a result of enforcing these rules will be that the Board Rules will be in harmony with recent changes made to the Plumbing License Law.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §361.1 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 80th Legislature ("Plumbing License Law" or "Law"), §§1301.251, 1301.002(8), 1301.255(e), 1301.351(b) and 1301.551(d), the rule it amends and H.B. 1850 (80th Regular Legislative Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002(8) defines "Plumbing Inspector" as a person who is employed by or contracted with a political subdivision for the purpose of performing plumbing inspections.

Section 1301.255(e) as amended by H.B. 1850 (80th Regular Legislative Session), allows a political subdivision to contract with any plumbing inspector or qualified plumbing inspection business that is paid directly by the political subdivision. Section 1301.351(b) prohibits a person from serving as a plumbing inspector without being licensed as a plumbing inspector. Section 1301.551(d) requires plumbing inspections performed in a municipality which has adopted a plumbing code be performed by a plumbing inspector.

No other statute, article or code is affected by this proposed amendment.

§361.1. Definitions.

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

(1) - (32) (No change.)

(33) Paid Directly--As related to §1301.255(e) of the Plumbing License Law [and §365.1(4)(B) of these Rules], "paid" and "directly" have the common meanings and "paid directly" means that

compensation for plumbing inspections must be paid by the political subdivision to the individual Licensed Plumbing Inspector who performed the plumbing inspections or the plumbing inspection business which utilized the plumbing inspector to perform the inspections.

(34) - (57) (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 July 13, 2007.

TRD-200702980

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: August 26, 2007

For further information, please call: (512) 936-5224



22 TAC §361.7

The Texas State Board of Plumbing Examiners (Board) proposes new rule §361.7, which defines eligibility and payment for training and education of Board employees and administrators in accordance with the Employees Training Act, Government Code §§656.041 - 656.049.

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rules are in effect there will be a fiscal impact on the funds appropriated to the Board of approximately \$3,000 per fiscal year, depending upon the need for training and funds available for training. There will be no fiscal impact on state and local government as well as small businesses and persons required to comply with this new rule.

Mr. Maxwell also has determined that each year of the first five years the rules are effect the public benefit anticipated as a result of enforcing the new rule will be that Board employees and administrators will receive job related training based upon available funds and need.

Comments on the proposed new rule may be submitted within 30 days of publication of this new rule in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The new rule §361.7 is proposed under and affects Government Code, Chapter 656, Subchapter C; Title 8, Chapter 1301, Occupations Code, ("Plumbing License Law" or "Law"), §1301.251, and the rule it amends. Government Code, Chapter 656, Subchapter C requires a state agency to adopt rules regarding employee and administrator training and education in order to expend funds for such purposes. §1301.251 of the Plumbing License Law requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law.

No other statute, article or code is affected by this new rule.

§361.7. Employee Training and Education.

(a) With the approval of the Executive Director, the Board may make available to its administrators and employees funds for training and education in accordance with the Employee Training Act, Government Code Chapter 656, Subchapter C, §§656.041 - 656.049.

(b) In order to be eligible for agency supported training and education, the administrator or employee must demonstrate in writing, to the satisfaction of the Executive Director, that the training or education is related to the duties or prospective duties of the administrator or employee.

(c) Eligible training and education expenses that are approved by the Executive Director may include, as appropriate, salary, tuition, and other fees, travel and living expenses, training stipend, expense of training materials, and other necessary expenses of an instructor, student, or other participant in a training or education program.

(d) The Executive Director may determine to pay all or part of the expenses related to training on a reimbursement basis to the employee or administrator, upon successful completion of the training.

(e) An employee who completes training and education to obtain a degree or certification for which the Board has provided all or part of the required fees must agree in writing to fully repay the Board any amounts paid for educational assistance if the employee voluntarily terminates employment with the agency within one year of course completion.

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 July 13, 2007.

TRD-200702984

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: August 26, 2007

For further information, please call: (512) 936-5224



CHAPTER 365. LICENSING AND REGISTRATION

22 TAC §365.5

The Texas State Board of Plumbing Examiners (Board) proposes amendments to Board rule §365.5, which provides the requirements for renewal of a license, endorsement or registration, including a Plumbing Inspector license.

The amendments to §365.5 are proposed to eliminate the requirement that a Plumbing Inspector submit written proof of employment or contract with a political subdivision along with the required renewal fee. This requirement is unnecessary, since Board Rule §367.2 requires plumbing inspector's to have initially submitted such proof prior to performing plumbing inspections and §365.8 requires plumbing inspectors to notify the Board of any change in employment or contract status.

Additional amendments to §365.5 are proposed in compliance with Occupations Code, Chapter 55, §§55.001 - 55.003, which allow certain military personnel to renew an expired license without penalty if the person was ordered to active duty.

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rules are in effect there will be a positive fiscal impact on state and local government and plumbing inspectors required to comply with these rule amendments.

Mr. Maxwell also has determined that each year of the first five years the rules are effect the public benefit anticipated as a result of enforcing these rules will be the elimination of an unnecessary requirement in order for a plumbing inspector to renew his or her license. Additionally, persons serving on active military duty which prevent those persons from renewing a license in a timely manner will be provided additional time to renew the license without penalty.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §365.5 are proposed under and affect Title 8, Chapter 1301, Occupations Code, ("Plumbing License Law" or "Law"), §§1301.251, 1301.002(8), 1301.403 and the rule it amends. Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002(8) defines "plumbing inspector" as a person who contracts with or is employed by a political subdivision. Section 1301.403 provides for license renewal requirements. The amendments to §365.5 are also proposed under and affect Title 2, Chapter 55, Occupations Code, which allow certain military personnel to renew an expired license without penalty if the person was ordered to active duty.

No other statute, article or code is affected by this proposed amendment.

§365.5. Renewals.

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

~~[(d) In the case of the renewal of a Plumbing Inspector License, the licensee must submit written proof of employment or contract with a political subdivision along with the required renewal fee.]~~

~~(d) [(e)]~~ Any Journeyman Plumber, Master Plumber, Tradesman Plumber-Limited Licensee or Plumbing Inspector wishing to renew a license must have proof submitted to the Board of successful completion of the required continuing professional education (CPE) course or courses, subject to the additional requirement in subsection ~~(e) [(f)]~~ of this section.

~~(e) [(f)]~~ Any license holder with a medical gas endorsement must complete a Board approved medical gas continuing professional education class within the three-year period of the endorsement. The classroom hours shall consist of instruction of the most current edition of the National Fire Protection Association (NFPA) 99C, Standard on Gas and Vacuum Systems, and the changes therein. No license holder with a medical gas endorsement may count the same medical gas continuing professional education class twice towards meeting the continuing professional education requirements for renewal of the medical gas endorsement on a plumbing license.

~~(f) [(g)]~~ Any license or endorsement holder who lives in a county having no city with a population in excess of 100,000, or resides out of state, or who submits written proof to the Board from a physician stating the medical reason that the licensee is unable to attend a CPE class, may fulfill the continuing professional education requirements by completing a correspondence course approved by the Board.

~~(g)~~ A person who holds a license and is:

~~(1) a member of the United States armed forces, a reserve component of the United States armed forces or the state military forces;~~

~~(2) is ordered to active duty by proper authority; and~~

(3) submits documentation acceptable to the Board which demonstrates the person was unable to renew the license in a timely manner due to the active duty service is:

(A) exempt from paying a late renewal fee; and

(B) entitled to an additional amount of time, equal to the total number of years or parts of years that the person serves on active duty, to complete any continuing education requirements and any other requirements related to the renewal of the person's license.

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 July 13, 2007.

TRD-200702981

Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

Earliest possible date of adoption: August 26, 2007

For further information, please call: (512) 936-5224



CHAPTER 367. ENFORCEMENT

22 TAC §367.2

The Texas State Board of Plumbing Examiners (Board) proposes amendments to Board rule §367.2, which provide for the standards of conduct to which each licensee and registrant must abide. Current §367.2(f)(2) requires all compensation paid for a plumbing inspection to be paid directly to the individual Licensed Plumbing Inspector by the political subdivision for which the plumbing inspection is performed. Current §367.2(f)(2) was adopted, in part, under the authority of Title 8, Chapter 1301, Occupations Code, (The Plumbing License Law), §1301.255(e), which currently allows a political subdivision to contract with any plumbing inspector who is paid directly by the political subdivision.

The amendments to §367.2 are proposed in response to the passage of House Bill 1850, 80th Regular Legislative Session. House Bill (H.B.) 1850 amended §1301.255(e) to allow a political subdivision to contract with any plumbing inspector or qualified plumbing inspection business that is paid directly by the political subdivision, effective September 1, 2007. The proposed amendment to §367.2(f)(2) will reflect the changes made by H.B. 1850.

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rules are in effect there will be no fiscal impact on state government. Local governments and small or large plumbing inspection businesses required to comply with these rule amendments may realize a positive fiscal impact. There will be no effect to individuals required to comply with the section as proposed.

Mr. Maxwell also has determined that each year of the first five years the rules are effect the public benefit anticipated as a result of enforcing these rules will be that the Board Rules will be in harmony with recent changes made to the Plumbing License Law.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amendments in the *Texas Register*, to Robert L. Maxwell, Executive

Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §367.2 are proposed under and affect Title 8, Chapter 1301, Occupations Code, as amended by the 80th Legislature ("Plumbing License Law" or "Law"), §§1301.251, 1301.002(8), 1301.255(e), 1301.351(b) and 1301.551(d), the rule it amends and H.B. 1850 (80th Regular Legislative Session). Section 1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. Section 1301.002(8) defines "Plumbing Inspector" as a person who is employed by or contracted with a political subdivision for the purpose of performing plumbing inspections. Section 1301.255(e) as amended by H.B. 1850 (80th Regular Legislative Session), allows a political subdivision to contract with any plumbing inspector or qualified plumbing inspection business that is paid directly by the political subdivision. Section 1301.351(b) prohibits a person from serving as a plumbing inspector without being licensed as a plumbing inspector. Section 1301.551(d) requires plumbing inspections performed in a municipality which has adopted a plumbing code be performed by a plumbing inspector.

No other statute, article or code is affected by this proposed amendment.

§367.2. *Standards of Conduct.*

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

(f) In addition to complying with the requirements of subsections (a) - (e) of this section, each Licensed Plumbing Inspector shall also comply with the following:

(1) (No change.)

(2) All compensation paid for a plumbing inspection shall be paid directly to the individual Licensed Plumbing Inspector or qualified plumbing inspection business by the political subdivision for which the plumbing inspection is performed.

(A) The political subdivision may determine the qualifications for the plumbing inspection business.

(B) The plumbing inspection business must utilize only licensed Plumbing Inspectors to perform plumbing inspections, as required by §§1301.002(8), 1301.255(e), 1301.351(b) and 1301.551(d) of the Act and these Rules.

(C) Qualifications for plumbing inspectors shall be determined by the Board, as provided in the Act and these Rules.

(3) (No change.)

(4) Prior to the performance of any Plumbing Inspection, the Plumbing Inspector must have submitted to the Board written proof of employment or contract for the purposes of performing plumbing inspections by each political subdivision that the Plumbing Inspector is employed by, or under contract [~~an independent contractor for~~].

(5) A Plumbing Inspector may be employed by or contract with any political subdivision throughout the state and a Plumbing Inspector's authority to enforce the Act, Board Rules and local ordinances lies only within the jurisdiction of the political subdivision/s that the Plumbing Inspector is employed by or under contract [~~has contracted with~~].

(6) - (7) (No change.)

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

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Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

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For further information, please call: (512) 936-5224



22 TAC §367.3

The Texas State Board of Plumbing Examiners (Board) proposes amendments to Board rule §367.3, which sets forth the requirements for plumbing companies or persons who offer to perform plumbing work to the general public. The requirements include securing the services of a Responsible Master Plumber and the order and level of supervision required for licensed plumbers and registrants who perform plumbing under the license of a Responsible Master Plumber. The current §367.3 also requires a licensed plumber working under the general supervision of a Responsible Master Plumber to be a bona fide employee of, or the owner of the firm, company, or corporation using the license of the Responsible Master Plumber.

The proposed amendments to §367.3 will allow a licensed plumber who works under the general supervision of a Responsible Master Plumber to have a contractual relationship with the Responsible Master Plumber or the firm, company or corporation using the license. The proposed amendments will allow the contractual relationship to be in lieu of the requirement for the licensed plumber to be a bona fide employee of, or the owner of the firm, company, or corporation using the license of the Responsible Master Plumber. The amendments will correct an unintended consequence of the current language which does not allow for such contractual relationships.

All other amendments to §367.3 are proposed to clarify already existing requirements.

The proposed amendments will not change any current requirements of the Plumbing License Law or Board Rules which prohibit a Journeyman Plumber, Tradesman Plumber-Limited Licensee, Drain Cleaner, Drain Cleaner Restricted Registrant or Plumber's Apprentice from contracting with the general public to perform plumbing work.

The proposed amendments will not change any current requirements of the Plumbing License Law or Board Rules which require general or direct supervision of licensees and registrants, as specified in Board Rules §361.1 and §367.3.

The proposed amendments will not change any current requirements of the Plumbing License Law or Board Rules which provide for the responsibilities of Responsible Master Plumbers, as specified in Board Rules §361.1 and §367.3

Robert L. Maxwell, Executive Director of the Texas State Board of Plumbing Examiners, has determined that for the first five-year period the rules are in effect, there will be no negative fiscal impact on state and local government as well as small businesses and persons required to comply with these rules amendments.

Mr. Maxwell also has determined that for the first five year period the rules are effect, there will be no negative impact to public healthy and safety.

Comments on the proposed rule changes may be submitted within 30 days of publication of these proposed rule amend-

ments in the *Texas Register*, to Robert L. Maxwell, Executive Director, Texas State Board of Plumbing Examiners, 929 East 41st Street, P.O. Box 4200, Austin, Texas 78765-4200.

The amendments to §367.3 are proposed under and affect Title 8, Chapter 1301, Occupations Code, §1301.251, §1301.002, §1301.351 and the rule it amends. §1301.251 requires the Board to adopt and enforce rules necessary to administer the Plumbing License Law. §1301.002 defines each type of license and registration issued by the Board, the general scope of work permitted by each type and the level of supervision required for each type of license or registration. §1301.351 prohibits a person from engaging in the business of plumbing without holding a license issued by the Board or being under the supervision of a licensed person.

No other statute, article or code is affected by this proposed amendment.

§367.3. Requirements for Plumbing Companies, Responsible Master Plumbers; Certificate of Insurance.

(a) A company or person advertising or otherwise offering to perform ~~[dø]~~ plumbing or provide plumbing ~~[wørk]~~ must secure the services of at least one Responsible Master Plumber holding a current Master Plumber License.

(1) Only a company or person which has secured the services of a Responsible Master Plumber as required by this Section, may:

(A) advertise or otherwise offer or agree to perform plumbing or provide plumbing to the public; or

(B) contract or agree to perform plumbing or provide plumbing with the public.

(C) For the purposes of this Section, "public" means any person other than Responsible Master Plumbers or companies which have secured the services of Responsible Master Plumbers.

(2) ~~[(+)]~~ A Responsible Master Plumber shall not allow any person, firm, company, or corporation to use his or her Master Plumber License for any purpose unless the Master Plumber is a bona fide employee of the person, firm, company, or corporation or is the owner of the firm, company, or corporation that will use the master plumber's license.

(3) ~~[(2)]~~ A Master Plumber may act as the Responsible Master Plumber for only one such person, company, firm, or corporation.

(4) ~~[(3)]~~ The Responsible Master Plumber shall be knowledgeable of and responsible for all permits, contracts, and agreements to perform plumbing work secured and plumbing ~~[wørk]~~ performed under his or her Master Plumber License.

(5) ~~[(4)]~~ All plumbing ~~[wørk]~~ performed under the license of the Responsible Master Plumber, other than that performed in accordance with §365.1 of these Rules by a Drain Cleaner-Restricted Registrant, Drain Cleaner or Residential Utilities Installer, shall be under the on-the-job direct supervision of a licensed plumber who ~~[that]~~ is under written contract with, a bona fide employee of, or the owner of the firm, company, or corporation using the Responsible Master Plumber's License.

(A) A licensed plumber, whether as an employee or under contract as provided by (a)(5) of this Section, may only perform plumbing under contracts or agreements to perform plumbing secured by the Responsible Master Plumber.

(B) All vehicles used in conjunction with plumbing by an employee or a licensed plumber under contract, must be marked with the Responsible Master Plumber's license number and company name, in the same manner as required in §367.4 of these Rules.

(C) The Responsible Master Plumber is subject to all requirements and responsibilities set forth by the Plumbing License Law and Board Rules, whether or not the plumbing was performed by an employee or a licensed plumber under contract.

(6) ~~[(5)]~~ Prior to acting as a Responsible Master Plumber as defined in these Rules, a Master Plumber shall furnish the Board with a certificate of insurance using a Certificate of Insurance form provided by the Board. The certificate of insurance must:

(A) be written by a company licensed to do business in this state;

(B) provide for commercial general liability insurance for the Master Plumber for claims for property damage or bodily injury, regardless of whether the claim arises from a negligence claim or on a contract claim;

(C) be in a coverage amount of not less than \$300,000 for all claims arising in any one-year period;

(D) state the name and license number of the Master Plumber for whom the coverage is provided;

(E) state the name of the plumbing company for which the Master Plumber is acting as the Responsible Master Plumber.

(7) ~~[(6)]~~ Insurance coverage specified in paragraph ~~(6)~~ ~~[(5)]~~ of this section, shall be maintained at all times during which a Master Plumber acts as a Responsible Master Plumber.

(8) ~~[(7)]~~ The Certificate of Insurance form expires on the date that the insurance coverage, specified in paragraph ~~(6)~~ ~~[(5)]~~ of this section, expires.

(9) ~~[(8)]~~ The Responsible Master Plumber shall furnish the Board with a completed Certificate of Insurance form not later than 10 days after the expiration of the previously furnished Certificate of Insurance form.

(10) ~~[(9)]~~ Each written contract for plumbing services by the licensed Responsible Master Plumber shall contain the Responsible Master Plumber's License number, the Board's name, mailing address and telephone number. The term "written contract" includes documents used by a plumber or plumbing company to define the scope and cost of the work to be provided to the public. This would include items such as service invoices, billing invoices or any document which defines the services and cost of the services provided to the consumer. For the purposes of this section, the public need not sign the document for it to be considered a contract.

(b) A company or person offering to install pipe used solely to transport gases for medical purposes must first secure the services of at least one Responsible Master Plumber that holds a current Master Plumber License that contains a current Medical Gas Installation Endorsement issued by the Board to be responsible for the installation of all pipe used solely to transport gases for medical purposes installed by that company and permits required to install the piping.

(1) The Responsible Master Plumber with the Medical Gas Installation Endorsement shall be responsible for generally supervising any individuals involved in the installation of pipe used solely to transport gases for medical purposes installed by that company and ensuring that all medical gas pipe assembly, brazing, and installation of required pipe markings is performed only by a Licensed Plumber holding a current Medical Gas Installation Endorsement issued by the Board.

(2) The relationship between the Master Plumber and the company or person using the Responsible Master Plumber's License with the Medical Gas Installation Endorsement must be as defined in subsection (a) of this section.

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

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Robert L. Maxwell

Executive Director

Texas State Board of Plumbing Examiners

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For further information, please call: (512) 936-5224



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) proposes amendments to §151.3, Texas Board of Criminal Justice Operating Procedures. The proposed amendments clarify the TBCJ's operating procedures.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for the first five (5) years the rule will be in effect, enforcing or administering the rule 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. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the rule, will be enhanced understanding of the TBCJ's operating procedures.

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 proposal.

The amendments are proposed under Texas Government Code, §492.013.

Cross Reference to Statutes: Texas Government Code, §492.013.

§151.3. *Texas Board of Criminal Justice Operating Procedures.*

(a) General. This section establishes operating procedures for the Texas Board of Criminal Justice (TBCJ or Board) [~~("TBCJ")~~] to conduct business.

(b) Organization.

(1) The TBCJ is a nine (9)-member body appointed by the Governor to oversee the Texas Department of Criminal Justice (TDCJ or Agency). The TBCJ Chairman is designated by and serves at the

pleasure of the Governor pursuant to Section 492.005, Texas Government Code.

~~{(1) The TBCJ is a nine (9)-member body appointed by the Governor to oversee the Texas Department of Criminal Justice ("TDCJ" or "Board"). The Chairman of the TBCJ is designated by and serves at the pleasure of the Governor pursuant to Government Code, §492.005-}~~

(2) The TBCJ shall elect a Vice-Chairman and a Secretary each odd-numbered year. The Board Vice-Chairman shall preside over meetings in the Board Chairman's absence, and the Secretary [~~secretary~~] shall provide any necessary execution of documents.

(3) The Chairman, on behalf of the TBCJ, is empowered to appoint members of the Board [~~TBCJ~~] to be members or chairs of standing or limited-purpose committees, or to serve as liaisons to the TBCJ on particular subject areas or divisions within TDCJ's jurisdiction, or both. The purpose for a committee, if appointed, is to have certain members [~~of the Board~~] become particularly familiar with various issues, and to bring forward consensus recommendations, or a candid report on any disagreements, to the full Board.

(4) A member who chairs a committee appointed by the Board Chairman may appoint non-members to sit on the committee in an advisory capacity; however, advisory members are non-voting members (subsection (c)(6) of this rule) [~~(subsection (e)(5) of this section)] and cannot be reimbursed for expenses incurred in this capacity.~~

~~{(5) For employment decisions made specifically by the TBCJ, a limited-purpose committee shall be appointed by the Chairman as deemed necessary to formulate recommendations for full Board consideration-}~~

(c) Meetings.

(1) The TBCJ shall attempt [~~attempts~~] to hold a regular meeting at least every odd-numbered month of the year, but shall meet at least once each quarter of the calendar year pursuant to Section 492.006, Texas Government Code. Special called meetings can be held at the discretion of the Board Chairman.

(2) TBCJ meetings shall be held in Austin, Texas, or under exceptional circumstances in Huntsville, Texas, pursuant to the General Appropriations Act. If the TBCJ uses video conference technology to convene a meeting, at least three (3) members shall convene at the Austin video conference site, or under exceptional circumstances, the Huntsville video conference site. The other members may convene using the technology from remote sites.

(3) The agenda and date for the TBCJ meetings shall be set by the Board Chairman.

(4) The agenda for committee meetings shall be set by the Committee Chairman in consultation with the committee's lead staff. If the TBCJ committee uses video conference technology to convene a meeting, at least a quorum of the committee, such as, three (3) members of a four (4)-member committee, shall convene in one (1) location, and the other members may convene using the technology from remote sites.

~~{(2) TBCJ meetings shall be held in Austin, Texas, or under exceptional circumstances in Huntsville, Texas pursuant to Government Code, §492.006 and the General Appropriations Act. If the TBCJ uses videoconference technology to convene a meeting, at least three (3) members must convene at the Austin videoconference site, or under exceptional circumstances, the Huntsville videoconference site. The other members may convene using the technology from remote sites-}~~

~~{(3) The agenda for the meetings of the TBCJ shall be set by the Chairman, after consultation with members of the TBCJ and the TDCJ Executive Director.}~~

~~{(4) A meeting of a committee of the TBCJ shall be held at a site chosen by the Chairman of the committee. The Chairman of the committee shall set the agenda for the meeting in consultation with the committee's Lead Staff. If the TBCJ committee uses videoconference technology to convene a meeting, at least a quorum of the committee, such as, three (3) members of a four (4)-member committee, must convene in one location, and the other members may convene using the technology from remote sites.}~~

~~(5) A majority of the TBCJ or of a committee of the TBCJ constitutes a quorum for the convening of [of,] and transaction of business at [at,] any meeting. A quorum of a committee with two (2) members is two (2).~~

~~(6) A quorum of a committee cannot depend on the presence of an advisory member. [A non-unanimous vote on an action by a committee cannot be decided by an advisory member.]~~

~~(7) Meetings of the TBCJ and its committees shall be conducted according to standard parliamentary procedures.~~

~~(8) Meetings of the TBCJ and its committees are governed by the Texas Open Meetings Act, (Texas Government Code, Chapter 551). [Government Code, Chapter 551.]~~

~~(9) The TDCJ Executive Director shall ensure members are provided the materials necessary to conduct the business of the Board and its committees well in advance of the meetings.~~

~~{(9) The TDCJ Executive Director shall ensure that members are provided with materials necessary to conduct the business of Board and committee meetings well in advance of the meeting.}~~

~~(10) The Executive Director shall ensure the [that] minutes of each meeting are prepared, retained and filed [retained, and filed] with the Legislative Reference Library, and made available to the public. The minutes shall state the subject matter of each deliberation and shall indicate each vote, order, decision [decision,] or other action taken by the TBCJ.~~

~~(11) Requests by the public to make presentations or comments to the TBCJ are governed by Section 151.4 of this title, pursuant to Sections 492.007 and 551.042, Texas Government Code.~~

~~{(11) Requests by the public to make presentations to the TBCJ are governed by §151.4 of this title, pursuant to Government Code, §492.007 and §551.042.}~~

~~(12) The TBCJ shall approve meeting minutes for any committees deleted, renamed or [that are deleted, renamed, or] for which their limited-purpose has concluded.~~

~~(13) The agenda of each regularly scheduled meeting shall include an opportunity for: [Pursuant to Sections 492.006 and 501.148, Texas Government Code, the agenda of each meeting shall include an opportunity for:]~~

~~(A) The Presiding Officer of the Board of Pardons and Paroles (BPP) or a designee of the presiding officer to present at a minimum [or a designee to present] any items relating to the operation of the parole system determined by the Presiding Officer to require the Board's consideration; [and]~~

~~(B) The Chairman of the Judicial Advisory Council (JAC) to the Board and the Community Justice Assistance Division (CJAD) to present at a minimum any items relating to the operation~~

of the community justice system determined by the JAC Chairman to require the Board's consideration;

~~{(B) The Chairman of the Judicial Advisory Council (JAC) to the Community Justice Assistance Division (CJAD) to present to the Board any item relating to the operations of the community justice system determined by the Chairman to require the Board's consideration.}~~

~~(C) The TDCJ Executive Director to present any items relating to the Agency as determined by the Executive Director or Board Chairman;~~

~~(D) The Chairman or designee of the Correctional Managed Health Care Committee (CMHCC) to present on the committee's policy decisions, the financial status of the correctional health care system and corrective actions taken by or required of the department or the health care providers; and~~

~~(E) The Chairman of the Advisory Committee on Offenders with Medical or Mental Impairments (ACOOMMI) or a designee of the ACOOMMI Chairman to present on items related to offenders with medical or mental impairments.~~

~~{(14) At least twice a year or at the discretion of the Chairman, the agenda will include a report by the Advisory Committee to the Texas Board of Criminal Justice on Offenders with Medical or Mental Impairments, pursuant to §151.8 of this title and Health and Safety Code, Chapter 614.}~~

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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Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

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For further information, please call: (512) 463-0422



37 TAC §151.25

The Texas Board of Criminal Justice proposes amendments to Title 37, Part 6, Chapter 151 General Provisions, §151.25, Texas Department of Criminal Justice Tobacco Policy. The proposed revisions are necessary to clarify existing procedures.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for the first five (5) years the rule will be in effect, enforcing or administering the rule 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-year period that there will not be an economic impact on persons required to comply with the rule. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the rule, will be to communicate to the employees and the public the Agency's tobacco policy.

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 proposal.

The amendments are proposed under Texas Government Code, §494.010.

Cross Reference to Statutes: Texas Government Code, §492.013.

§151.25. *Texas Department of Criminal Justice Tobacco Policy.*

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

(1) TDCJ or Agency--Texas Department of Criminal Justice.

~~[(1) Tobacco Products--Cigars, cigarettes, snuff, or similar goods prepared for smoking, chewing, dipping, or other such personal use.]~~

(2) TBCJ or Board--Texas Board of Criminal Justice.

~~[(2) Buildings--Buildings and private offices owned, leased or under contract by the TDCJ, excluding individual family dwellings.]~~

(3) Tobacco Products--Cigars, cigarettes, snuff or any similar goods prepared for smoking, chewing, dipping or any other such personal use.

~~[(3) State Vehicles--All vehicles owned, leased, or contracted by the TDCJ.]~~

(4) TDCJ Property--Land, building, private offices and vehicles owned, leased or under contract by the TDCJ, excluding state-owned individual dwellings.

~~[(4) TDCJ Employee--All employees of the TDCJ, including temporary, part-time, contract employees, volunteers.]~~

(5) TDCJ Employee--All employees of the TDCJ, including temporary, part-time, contract employees and volunteers.

(6) Visitor--Any non-TDCJ employee on TDCJ property for any purpose other than conducting official state business.

(7) Persons Conducting Official State Business--Any individual on TDCJ property for the purpose of conducting any form of official state business.

(8) Designated Areas--A location where the use of tobacco products is authorized.

(9) Correctional Facilities--Any secure facility operated by or under contract with the TDCJ.

(b) Applicability. This policy is applicable to all employees, persons conducting official state business and visitors to all TDCJ property.

~~[(b) Applicability. This policy is applicable to all employees of, persons in the custody of, visitors to the Texas Department of Criminal Justice (TDCJ or Agency) and privately operated secure correctional facilities under contract with the TDCJ.]~~

(c) Policy. The TDCJ is committed to providing a safe and healthy environment and working conditions for employees, visitors [employees] and offenders. All [offenders and] persons visiting offenders are prohibited from possessing or using any tobacco products. The TDCJ employees and persons on the TDCJ property conducting official state [State] business are authorized to possess and use tobacco products in accordance with Agency policies and procedures.

(d) Procedures. The use of tobacco products inside all TDCJ property [buildings and vehicles,] is strictly prohibited. Designated outdoor tobacco areas shall [must] be at a sufficient distance from any

[a] place at which employees regularly perform duties to ensure that no employee who abstains from the use of tobacco products is physically affected by the use of tobacco products at the designated areas. Tobacco use in the designated areas shall [must] not negatively affect the comfort or safety of any employee, visitor or offender. Employees shall be permitted to use tobacco products during their work hours while on break and during their lunch period. [employee or offender.]

(1) Administrative Offices.

(A) Employees, visitors and persons conducting official state business are permitted to carry and store tobacco products while in administrative offices that are not located within a correctional facility. The use of tobacco products is only allowed outdoors at designated areas or in personal vehicles. For administrative offices located on a correctional facility, procedures are set forth in subsection (d)(2) of this section.

(B) The Board designates the smoking areas for TDCJ property, other than correctional facilities as provided for in subsection (d)(2) of this section, as any location at least 15 feet from any entryway to the building, preferably removed from the view of passing traffic. The Board designates the same smoking area for administrative offices located in any privately-owned building as the same area set forth by the building owner or local ordinance. If no area is set forth by the building owner or local ordinance, the Board designates the smoking area as any location at least 15 feet from any entryway to the building, preferably removed from the view of passing traffic.

~~[(A) Employees are permitted to carry and store tobacco products while in administrative offices. The use of tobacco products is only allowed outdoors in approved, designated areas or in personal vehicles.]~~

~~[(B) For administrative offices with staff from multiple divisions, designated areas shall be identified by the Deputy Executive Director or his designee and submitted as consent items to the Texas Board of Criminal Justice (TBCJ or Board) for approval. For administrative offices with staff from a single division, designated areas shall be identified by the ranking supervisor, submitted through channels to the Division Director and submitted as consent items to the Board for approval.]~~

~~[(C) Human Resources Representatives shall be responsible for maintaining the approved list of designated areas and posting the list on the employee bulletin board.]~~

(2) Secure Correctional Facilities within the Correctional Institutions and Parole Divisions.

(A) Employees, visitors and persons conducting official state business are prohibited from carrying and storing tobacco products while in secure correctional facilities. The use of tobacco products is only allowed outdoors in designated areas or in personal vehicles.

(B) The Board designates correctional facility parking lots, areas adjacent to these parking lots and established break areas that are at least 15 feet from the correctional facility's main entrance as smoking areas for secure correctional facilities.

(C) Designated areas shall be clearly identified by signs located at the main entrance to the correctional facility.

~~[(2) Secure Correctional Facilities within the Institutional, State Jail, and Parole Divisions.]~~

~~[(A) Employees are permitted to use tobacco products in designated areas of the parking lots, designated areas adjacent to the parking lots, or in personal vehicles.]~~

{(B) Designated areas within or adjacent to the parking lot shall be identified by each Warden/Facility Administrator and submitted through the chain of command to the Division Director. These areas will be submitted as consent items to the Board for approval.}

{(C) Human Resources Representatives shall be responsible for maintaining the approved list of designated areas and posting the list on the employee bulletin board.}

{(D) Tobacco products are prohibited outside of the parking lot. Tobacco products found beyond the parking lot will be considered as contraband. Violation of this policy may result in disciplinary action pursuant to PD-22, "Guidelines for Employee Disciplinary Actions."}

(e) Violation of this policy may result in disciplinary action pursuant to PD-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees." Visitors and persons conducting official state business in violation of this policy may be asked to leave the property at the discretion of the senior supervisor onsite.

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 July 13, 2007.

TRD-200702979

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: August 26, 2007

For further information, please call: (512) 463-0422



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 (TBCJ) proposes amendments to §155.31, Establishing Procedures for Resolving Contract Claims and Disputes. The proposed amendments are necessary to make minor non-substantive changes and to incorporate recent revisions to state law.

Charles Marsh, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for the first five (5) years the amendments will be in effect, enforcing or administering the rule 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. There will not be an effect on small or micro businesses. The anticipated public benefit, as a result of enforcing the amendments, will be the clarification of the Agency's contract dispute resolution procedures.

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 proposal.

The amendments are proposed 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.

{(a) Purpose. These rules are intended to serve as guidelines for the negotiation and mediation of a claim of breach of contract asserted by a contractor against TDCJ under the Government Code, Chapter 2260. These rules are binding upon TDCJ. These rules are not intended to replace agency procedures relating to breach of contract claims that are mandated by state or federal law, but are intended to provide procedures when none are so mandated.}

{(b) Policy. It is the policy of the Texas Board of Criminal Justice (the Board) and TDCJ to resolve breach of contract claims as efficiently and as expeditiously as possible, consistent with prudent stewardship of State of Texas assets.}

(c) Applicability. This rule [section] 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 [section] 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 [section] 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. [~~section.~~]

(d) Definitions. The following words and terms, when used in this rule, [~~section,~~] shall have the following meaning, unless the context clearly indicates otherwise.

~~[(1) Chief administrative officer--The executive director responsible for the day-to-day operations of TDCJ.]~~

(1) ~~[(2)]~~ Claim--A demand for damages by the contractor based upon the TDCJ's alleged breach of the contract.

(2) ~~[(3)]~~ 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) ~~[(4)]~~ 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 [~~furnishing~~] 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.

~~[(5) Counterclaim--A demand by TDCJ based upon the contractor's claim.]~~

~~[(6) Day--a calendar day. If an act is required to occur on a day falling on a Saturday, Sunday or holiday, the first working day which is not one of these days should be counted as the required day for purpose of that act.]~~

(6) ~~[(7)]~~ 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 [~~take~~] 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; [~~contract or in substantial compliance with the contract terms;~~]

(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," [~~"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 [~~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 [~~and TDCJ~~] who have entered into a contract in connection with which a [~~claim of~~] breach of contract claim has been filed under this rule. [~~section.~~]

(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 [~~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 [~~section~~] are exclusive and required prerequisites to suit under the Texas Civil Practice & Remedies Code, Chapter 107 [~~107~~], and the Texas Government Code, Chapter 2260.

~~[(f) Sovereign Immunity. This section does not waive TDCJ's sovereign immunity to suit or liability.]~~

(f) ~~[(g)]~~ Notice of Breach of Contract Claim. [~~Notice of Claim of Breach of Contract.~~]

(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.

~~{(1) A contractor asserting a claim of breach of contract under the Texas Government Code, Chapter 2260, shall file notice of the claim as provided by this section.}~~

(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

~~{(B) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the chairperson of the Contract Disputes Committee, Assistant Director of Purchasing and Leases, Texas Department of Criminal Justice, Spur 59 off Highway 75 North, Administration Building, Room 137, Huntsville, Texas 77340; and}~~

(C) state in detail:

(i) the nature of the alleged breach of contract, including the date of the event ~~{that}~~ 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) ~~{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) ~~{h}~~ Agency Counterclaim.

(1) The TDCJ, ~~{TDCJ}~~ asserting a counterclaim under the Texas Government Code, Chapter 2260, shall file notice of the counterclaim as provided by this subsection. ~~{section.}~~

(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 ~~{claim of breach of contract; 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 ~~{90}~~ 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) ~~{i}~~ Contract Disputes. ~~{Contract Disputes Committee (the Committee).}~~

(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.

~~{(1) The executive director will name the members and chairman of a Committee or Committees to serve at his or her pleasure. It will be the responsibility of the Committee to gather information, study, and meet informally with contractors; if requested, to resolve any disputes that may exist between the department office and the contractor, and which result in one or more contract claims or disputes.}~~

~~{(2) TDCJ stresses that, to every extent possible, disputes between a contractor and TDCJ employee, design professional, or other contractor in charge of a project or providing services in connection with a project should be resolved during the course of the contract. If, however, after completion of a contract, or when required for orderly performance prior to completion, resolution of a breach of contract claim is not reached with the department office, the contractor should file a request with the Committee chairperson. In no event may such a claim be filed with the department more than 180 days after the date of the event giving rise to the claim.}~~

(3) The Committee shall ~~{will}~~ secure detailed reports and recommendations from the appropriate TDCJ division ~~{responsible department office,}~~ and may confer with TDCJ personnel, other persons and outside entities that ~~{any other department office}~~ it deems appropriate.

(4) The Committee shall ~~{will}~~ then afford the contractor an opportunity for a meeting or hearing to ~~{informally}~~ discuss the claim ~~{disputed matters}~~ 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. ~~{department office.}~~

(5) The Committee chairperson shall ~~{will}~~ give written notice of the Committee's proposed disposition of the claim to the contractor and the appropriate TDCJ division. ~~{contractor.}~~ 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 ~~{will}~~ forward the agreed disposition to the ED ~~{executive director}~~ 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 ~~{the contractor}~~ may appeal to the ED. ~~{exec-~~

utive director. If the department office is dissatisfied with the proposal of the Committee, the department office may appeal to the executive director.]

(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.

[(j)] Appeal to the Executive Director]

[(1) An aggrieved contractor or department office may file a written appeal of the Committee's decision to the executive director within ten (10) days of the Committee's decision. The executive director or his or her designee may uphold, reverse or modify the decision of the Committee.]

[(2) The executive director or his or her designee will give written notice of the proposed disposition of the claim or dispute to the contractor and department office. If that disposition is acceptable to the contractor, the contractor shall advise the executive director, in writing, within 20 days of the date such notice is received. The department office shall have no right to object to the disposition of the claim or dispute made by the executive director or his or her designee.]

[(3) Appeal to the Texas Board of Criminal Justice With Respect To Certain Contracts. A contractor that manages a facility that houses inmates of TDCJ or releasees under the supervision of TDCJ may appeal any imposed sanction under the contract to the Texas Board of Criminal Justice.]

(k) Request for Voluntary Disclosure of Additional Information.

(1) Upon the filing of a claim or counterclaim, each party [parties] may request to review and copy information in the possession, custody or [possession or custody or subject to the] control of the other party that pertains to the contract claimed to have been breached, including, without limitation:

(A) accounting records;

(B) [correspondence, including, without limitation,] correspondence between the TDCJ and outside consultants it used when [utilized in] preparing its bid solicitation or any part thereof or in

administering the contract, and correspondence between the contractor and its subcontractors, materialmen [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 [Subsection (a) of this section] 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, [third parties,] including, without limitation, the TDCJ's third-party consultants and the contractor's subcontractors.

(4) Nothing in this subsection [section] requires any party to disclose any [the requested] information or any matter that is privileged under Texas law.

(5) Requests [Material] submitted pursuant to this subsection for material [and] claimed to be confidential by the contractor shall be handled pursuant to the requirements of the *Public Information Act*.

(l) Duty to Negotiate. [negotiate.] The parties shall negotiate in accordance with the timetable set forth in subsection (m) of this rule [section to attempt] 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 [Contract Disputes] Committee [(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 attempt] to resolve the claim(s) and counterclaim(s).

(2) Subject to paragraph (3) of this subsection, 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. [60 days following the later of:]

[(A) the date of termination of the contract;]

[(B) the completion date, or substantial completion date in the case of construction projects; in the original contract; or }

[(C) the date TDCJ receives the contractor's notice of claim.]

[(3) TDCJ may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:]

[(A) delivering written notice to the contractor that the commencement of negotiations will be delayed; and]

[(B) delivering written notice to the contractor when TDCJ is ready to begin negotiations.]

(3) [(4)] The parties may conduct negotiations according to an agreed schedule provided [as long as they begin] negotiations begin no later than the deadlines set forth in paragraphs (2) and (3) of this subsection, whichever is applicable.

(4) [(5)] Subject to paragraph (5) of this subsection, the parties shall complete the negotiations [that are] required by this subsection [section] 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) ~~[(6)]~~ 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. ~~[date certain.]~~ The parties may enter into a series of written extension agreements that comply with the requirements of this rule. ~~[section.]~~

(6) ~~[(7)]~~ The contractor may request, in writing, a contested case hearing before the State Office of Administrative Hearings (SOAH) [~~"SOAH"~~] pursuant to subsection (q) ~~[(r)]~~ of this rule ~~[section]~~ 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) ~~[(8)]~~ The parties may agree to mediate the dispute at any time before the 120th ~~[270th]~~ 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. ~~[(s); (t); (u); (v); (w); and (x) of this section.]~~

(8) ~~[(9)]~~ Nothing in this subsection ~~[section]~~ is intended to prevent the parties from agreeing to commence negotiations earlier than the deadlines established in paragraphs (2) and (3) 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) ~~[Negotiation is a consensual bargaining process in which the parties attempt to resolve a claim and counterclaim.]~~ A negotiation under this subchapter may be conducted by any method, technique ~~[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 ~~[conference,]~~ or by any other method which ~~[that]~~ permits the parties to identify ~~[their]~~ respective positions, discuss ~~[their]~~ respective differences, confer with ~~[their]~~ respective advisers, exchange offers of settlement ~~[settlement,]~~ and settle.

(2) The parties may conduct negotiations with the assistance of one (1) or more neutral third-parties. ~~[third parties.]~~ If the parties choose to mediate the ~~[their]~~ dispute, the mediation shall be conducted in accordance with subsections (r), (s), (t), (u), (v) and (w) of this rule. ~~[(s); (t); (u); (v); (w); and (x) of this section.]~~ 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. ~~[(aa),(bb),(cc),and (dd) of this section.]~~

(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 ~~[their]~~ 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 Approval Procedures. The parties' settlement approval procedures shall be disclosed prior to, or at the beginning of, negotiations. To the extent possible, the parties shall select negotiators who are knowledgeable about the subject matter of the dispute, who are in a position to reach agreement, and who can credibly recommend approval of an agreement.]~~

(o) ~~[(p)]~~ 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 ~~[must]~~ 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 ~~[parties']~~ rights under the Texas Government Code, Chapter 2260 ~~[2260,]~~ as to the parts of the claims or counterclaims that are not resolved.

(p) ~~[(q)]~~ Costs of Negotiation. Unless the parties agree otherwise ~~[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. ~~[the costs of attorney's fees, consultant's fees and expert's fees.]~~

(q) ~~[(r)]~~ Request for Contested Case Hearing.

(1) If a ~~[claim for]~~ breach of contract claim is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this rule ~~[section]~~ 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) ~~[(m)(6)]~~ of this rule, ~~[section,]~~ the contractor may file a request with the TDCJ for a contested case hearing ~~[hearing]~~ before the SOAH.

(2) A request for a contested case hearing shall state the legal and factual basis for the claim ~~[claim,]~~ and shall be delivered to the ED ~~[chief administrative officer of TDCJ]~~ 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) ~~[(m)(6)]~~ of this rule. ~~[section.]~~

(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 ~~[thirty]~~ 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) ~~[(s)]~~ Mediation Timetable.

(1) The contractor and the TDCJ may agree to mediate the dispute at any time before the 120th ~~[270th]~~ day after the TDCJ receives a notice of a breach of contract claim, ~~[a claim of breach of contract,]~~ 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) ~~[(t)]~~ Conduct of Mediation.

~~[(1) Mediation is a consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them. A mediator may not impose his or her own judgment on the issues for that of the parties. The mediator shall be acceptable to both parties.]~~

(1) ~~[(2)]~~ 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.

~~[(3) To facilitate a meaningful opportunity for settlement, the parties, shall to the extent possible, select representatives who are knowledgeable about the dispute, who are in a position to reach agreement, or who can credibly recommend approval of an agreement.]~~

~~[(u) Agreement to Mediate.]~~

~~(2) [(4)] Parties may agree to use mediation as an option to resolve a breach of contract claim at the time the parties [they] 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.~~

~~[(2) Any agreement to mediate should include consideration of the following factors:]~~

~~[(A) The source of the mediator. Potential sources of mediators include governmental officers or employees who are qualified as mediators under §154.052, Civil Practice and Remedies Code, private mediators, SOAH, the Center for Public Policy Dispute Resolution at The University of Texas School of Law, an alternative dispute resolution system created under Chapter 152, Civil Practice and Remedies Code, or another state or federal agency or through a pooling agreement with several state agencies. Before naming a mediator source in a contract, the parties should contact the mediator source to be sure that it is willing to serve in that capacity. In selecting a mediator, the parties should use the qualifications set forth in subsection (v) of this section.]~~

~~[(B) The time period for the mediation. The parties should allow enough time in which to make arrangements with the mediator and attending parties to schedule the mediation, to attend and participate in the mediation, and to complete any settlement approval procedures necessary to achieve final settlement. While this time frame can vary according to the needs and schedules of the mediator and parties, it is important that the parties allow adequate time for the process.]~~

~~[(C) The location of the mediation.]~~

~~[(D) Allocation of costs of the mediator.]~~

~~[(E) The identification of representatives who will attend the mediation on behalf of the parties, if possible, by name or position within TDCJ or contracting entity.]~~

~~[(F) The settlement approval process in the event the parties reach agreement at the mediation.]~~

~~(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) [(w)] 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 [will] govern the mediation.~~

~~(u) [(w)] Confidentiality of Mediation and Final Mediated Settlement Agreement.~~

~~(1) A mediation conducted under this rule [section] 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) [(x)] Costs of Mediation. Unless the contractor and the TDCJ agree otherwise [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, [attorney's fees and] consultant fees or expert fees. The costs of the mediation process itself shall be divided equally between the parties.~~

~~(w) [(y)] Mediated Settlement Agreement. [Initial Settlement Agreement.] Any settlement agreement reached during the mediation shall be signed by the representatives of the contractor and the TDCJ and [TDCJ, and] describe any procedures required to be followed by the parties in connection with final approval of the agreement.~~

~~(x) [(z)] Final Settlement Agreement.~~

~~(1) A final settlement agreement reached through mediation [during, or as a result of, 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 [contractor's] rights under the Texas Government Code, Chapter 2260 [2260,] as to the parts of the claim that are not resolved.~~

~~(y) [(aa)] 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 [(alternative dispute resolution)] processes (alternative dispute resolution) in addition to negotiation and mediation to resolve the [their] dispute.~~

~~(z) [(bb)] Factors Supporting [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 [their] 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 [which] would benefit from the expertise of a third-party expert for technical assistance or fact-finding;~~

~~(6) the parties are having substantial difficulty communicating effectively;~~

~~(7) a mediator third-party [third party] could facilitate the parties' realistic evaluation of the [their] 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 [the other side has an unrealistic view of the merits of their case;]
- (13) the parties (or aggrieved persons) need to hear an evaluation of the case from someone other than their lawyers.

(aa) ~~[(ee)]~~ 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 [they] should agree in writing to a detailed description of the process prior to engaging in the process.

- (1) Mediation. [~~(See the appropriate sections).~~]
- (2) Early evaluation by a neutral third-party. [~~Early evaluation by a third-party neutral.~~]

(A) This is a confidential conference wherein [where] the parties and ~~[their]~~ 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 [neutral] identifies areas of agreement for possible stipulations, assesses the strengths and weaknesses of each party's position [position;] and estimates, if possible, the likelihood of liability and the dollar range of damages that appear reasonable to the neutral third-party. [~~him or her.~~]

(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: [~~This is a less complicated procedure than the mini-trial, described in paragraph (4) of this subsection. It may be appropriate for only some issues in dispute, for example, 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 [in] 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 ~~[will]~~ be binding ~~[on them]~~ in later proceedings (and entered into as a stipulation in the dispute if the matter proceeds to contested

case hearing), or that it shall ~~[will]~~ 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;
- or
- (iii) the neutral third-party's [neutral'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.

~~[(A) A mini-trial is generally a summary proceeding before a representative of upper management from each party, with authority to settle, and a third-party neutral selected by agreement of the parties. A mini-trial is usually divided into three phases: a limited information exchange phase, the actual 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 [information-exchange] stage should be brief, but it shall ~~[must]~~ be sufficient for each party to understand and appreciate the key issues. [~~issues involved in the case.~~]

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 ~~[must]~~ be decided before the case can be resolved. The neutral third-party [neutral] 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) [1-2] days.

(D) Settlement discussions, facilitated by the [third-party] 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 [give] 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 [resolve] 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; [~~gather;~~]
- (ii) the matter justifies the senior executive's time required to complete the process;
- (iii) the issues ~~[involved]~~ 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) ~~(dd)~~ Approval. Any settlement reached pursuant to this rule ~~[section]~~ may require the approval of the TBCJ, ~~[Texas Board of Criminal Justice]~~ the Attorney General of Texas, the Governor of Texas, or the Texas Legislature, as required by TBCJ ~~[Board]~~ policy, statutes and rules of the State of Texas, and the *General Appropriations Act*.

(cc) ~~(ee)~~ 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) ~~(ff)~~ Disclaimer. The TDCJ and the TBCJ ~~[Board]~~ do not waive sovereign immunity from suit or liability due to the establishment of this rule. The TDCJ and the TBCJ ~~[Board]~~ 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 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 July 13, 2007.

TRD-200702985

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Earliest possible date of adoption: August 26, 2007

For further information, please call: (512) 463-0422



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 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER A. MUTUEL OPERATIONS

DIVISION 1. GENERAL PROVISIONS

16 TAC §321.2

The Texas Racing Commission (Commission) adopts new §321.2, concerning Odds Manipulation. The new section is adopted without changes to the proposed text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1454).

The new section makes the intentional manipulation of Odds and Will Pays a practice that is inconsistent with the honesty and integrity of racing. The purpose of the rule is to prevent the dissemination of false information to the wagering public.

The Commission received no comments in response to the proposal.

The new section is adopted under Texas Civil Statutes, Article 179e, §3.02 and §3.021, which authorize the Commission to make rules relating to all aspects of greyhound and horse racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

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 July 16, 2007.

TRD-200702990

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: August 5, 2007

Proposal publication date: March 16, 2007

For further information, please call: (512) 833-6699



DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §§321.29, 321.33, 321.43

The Texas Racing Commission (Commission) adopts amendments to §§321.29, 321.33, and 321.43, concerning Mutuel Tickets and Vouchers. The proposed amendments are adopted without changes to the proposed text as published in the March 16, 2007, issue of the *Texas Register* (32 TexReg 1455).

The change to §321.29 requires an expiration date to be printed on the face of the pari-mutuel ticket, which will assist the betting patron by showing how long the ticket will remain valid.

The change to §321.33 will require an association to print the expiration date on the face of a pari-mutuel ticket. This change will assist the betting patron by showing how long the ticket will remain valid.

The change to §321.43 will allow the cancellation of wagers on self-serve machines. In order to allow cancellations, an association must first establish written policies detailing the procedures the association will use in permitting the cancellation of wagers and detecting odds manipulation. The written policies must be approved by the executive secretary prior to implementation. The mutuel manager shall be responsible for controlling all canceled wagers and for ensuring that the association complies with the rules permitting the cancellation of win wagers. This change will allow the associations to reduce costs by permitting self-serve machines to cancel some wagers that were previously handled only at manned teller windows. It will also provide more convenient access to cancellations for patrons.

The Commission received no comments in response to the proposal.

The amendments are adopted under Texas Civil Statutes, Article 179e, §3.02 and §3.021, which authorize the Commission to make rules relating to all aspects of greyhound and horse racing, and §11.01, which requires the Commission to adopt rules regulating pari-mutuel wagering on greyhound and horse racing.

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 July 16, 2007.

TRD-200702991

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: August 5, 2007

Proposal publication date: March 16, 2007

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board) adopts amendments to §681.14 and §681.125, concerning the licensing and regulation of professional counselors. Specifically, the amendments cover late renewal fees and renewal of inactive status. The amendments are adopted without changes to the proposed text as published in the April 6, 2007, issue of the *Texas Register* (32 TexReg 1990), and the sections will not be republished.

The amendment relating to late renewal fees is required by statutory changes to Texas Occupations Code, Chapter 503, by House Bill 1283, passed during the 79th Legislature, Regular Session, 2005. The amendment relating to the renewal of inactive status conforms that status to the two-year licensing period in effect for licenses in regular status.

SECTION-BY-SECTION SUMMARY

The amendment to §681.14 reflects the change in the method of calculating the late renewal fee in accordance with Texas Occupations Code, Chapter 503, specifically §503.354(c) - (d). The statute provides that a person whose license has been expired for 90 days or less may renew the license by paying to the board a fee that is equal to 1-1/4 times the amount of the renewal fee. The statute further provides that if a person's license has been expired for more than 90 days, but less than one year, the person may renew the license by paying to the board a fee that is equal to 1-1/2 times the amount of the renewal fee. The late renewal fees adjustment in the amendment complies with the statutory directive.

The amendment to §681.125 requires the renewal of inactive status biennially instead of annually. There is not an increased cost to a person who chooses to place a license on inactive status.

COMMENTS

The board did not receive any comments regarding the proposed rules during the comment period.

SUBCHAPTER A. THE BOARD

22 TAC §681.14

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

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 July 16, 2007.

TRD-200702988

Judy Powell

Chairperson

Texas State Board of Examiners of Professional Counselors

Effective date: September 1, 2007

Proposal publication date: April 6, 2007

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



SUBCHAPTER I. REGULAR LICENSE RENEWAL; INACTIVE AND RETIREMENT STATUS

22 TAC §681.125

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

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 July 16, 2007.

TRD-200702989

Judy Powell

Chairperson

Texas State Board of Examiners of Professional Counselors

Effective date: September 1, 2007

Proposal publication date: April 6, 2007

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



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Comptroller of Public Accounts

Title 34, Part 1

TRD-200702944

Filed: July 11, 2007



Proposed Rule Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Board of Criminal Justice (TBCJ) files this notice of intent to review §151.3, Texas Board of Criminal Justice Operating Procedures. This review is conducted pursuant to Texas Government Code Texas Government Code, §2001.039, which requires rule review every four (4) 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. Written comments from the general public should be received within 30 days of the publication of this proposal in the *Texas Register*.

Cross Reference to Statutes: Texas Government Code, §492.013.

TRD-200702975

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: July 13, 2007



The Texas Board of Criminal Justice files this notice of intent to review Title 37, Part 6, Chapter 151 General Provisions, §151.25, Texas Department of Criminal Justice Tobacco Policy.

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 proposal in the *Texas Register*.

Cross Reference to Statutes: Texas Government Code, §492.013.

TRD-200702976

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: July 13, 2007



The Texas Board of Criminal Justice (TBCJ) files this notice of intent to review §155.31, Establishing Procedures for Resolving Contract Claims and Disputes. 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. Written comments from the general public should be received within 30 days of the publication of this proposal in the *Texas Register*.

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.

TRD-200702977

Melinda Hoyle Bozarth

General Counsel

Texas Department of Criminal Justice

Filed: July 13, 2007



Windham School District

Title 19, Part 8

The Windham School District (WSD) Board of Trustees (Board) files this notice of intent to review §300.2, Windham School District Board of Trustees Operating Procedures. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four (4) years.

Comments should be directed to Michael P. Mondville, General Counsel, Windham School District, P.O. Box 40, Huntsville, Texas 77342, Michael.Mondville@wsdtx.org. Written comments from the general public should be received within 30 days of the publication of this rule in the *Texas Register*.

Cross Reference to Statutes: Texas Education Code, §19.004.

TRD-200702973

Melinda Hoyle Bozarth
General Counsel, Texas Department of Criminal Justice
Windham School District
Filed: July 13, 2007

◆ ◆ ◆
Adopted Rule Reviews

Comptroller of Public Accounts

Title 34, Part 1

The Comptroller of Public Accounts (comptroller) readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 1 (Central Administration), Subchapter A (Practice and Procedures), Division 1 (Practice and Procedures):

- §1.1. Intent, Scope, and Construction of Rules.
- §1.4. Representation and Participation.
- §1.5. Initiation of a Hearing.
- §1.6. Extensions of Time for Initiating Hearing Process.
- §1.7. Content of Statement of Grounds; Preliminary Conference.
- §1.8. Resolution Prior to Issuance of a Position Letter.
- §1.9. Position Letter.
- §1.10. Acceptance or Rejection of Position Letter.
- §1.11. Modification of the Position Letter.
- §1.14. Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases.
- §1.15. Reply to the Position Letter.
- §1.16. Response of the Administrative Hearings Section.
- §1.18. Filing of Documents.
- §1.20. Continuances.
- §1.22. Oral and Written Submission Hearings.
- §1.27. Proposal for Decision.
- §1.28. Comptroller's Decision.
- §1.29. Motion for Rehearing.
- §1.31. Computation of Time.
- §1.32. Service.
- §1.33. Discovery.
- §1.35. Nonbinding Nature of Agreed Facts.
- §1.36. Interested Parties.
- §1.37. Joint Hearings; Severance.
- §1.39. Dismissal of Case.
- §1.40. Burden of Proof.
- §1.41. Ex Parte Communications.
- §1.42. Definitions.

The comptroller readopts Texas Administrative Code, Title 34, Part 1, Chapter 1 (Central Administration), Subchapter A (Practice and Procedures), Division 3 (Support Services):

- §1.71. Purchasing.
- §1.72. Protests of Agency Purchases.

The comptroller readopts Texas Administrative Code, Title 34, Part 1, Chapter 1 (Central Administration), Subchapter B (Public Information):

§1.200. Charges for Public Information.

The comptroller has reviewed Chapter 1, Subchapter A, Divisions 1 and 3, and Subchapter B, and determined that the reasons for initially adopting these rules continue to exist. Notice of any changes to these subchapters will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2685). No comments were received concerning the readoption of the sections under Chapter 1, Subchapter A, Divisions 1 and 3, and Subchapter B.

TRD-200702951
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: July 12, 2007

◆ ◆ ◆
The Comptroller of Public Accounts readopts all sections of Texas Administrative Code, Title 34, Part 1, Chapter 9 (Property Tax Administration).

Subchapter A (Practice And Procedure):

- §9.17. Notice of Public Hearing on Tax Increase.
- §9.18. Adjustment for Optional Homestead Exemption.
- §9.101. Conduct of the Property Value Study.
- §9.102. Certification of Property Value Reduction.
- §9.103. Audits of School District Taxable Property Values.
- §9.105. Tax Refund for Economic Development.
- §9.107. Appraised Value Limitation and Tax Credit for Certain Qualified Property.
- §9.109. Procedures for Protesting Preliminary Findings of Taxable Value.

Subchapter B (Performance Audit Administration):

- §9.201. Performance Audit Procedures.

Subchapter C (Appraisal District Administration):

- §9.402. Special Use Application Forms.
- §9.415. Applications for Property Tax Exemptions.
- §9.417. Property Tax Exemption for Organizations Engaged Primarily in Charitable Activities.
- §9.419. Procedures for Determining Property Tax Exemption for Motor Vehicles Leased for Personal Use.

Subchapter D (Appraisal Review Board):

- §9.801. Notice of Protest.
- §9.802. Affidavit for Protest Hearing.
- §9.803. Requirements for Appraisal Review Board Records.
- §9.804. Arbitration of Appraisal Review Board Determinations.

Subchapter E (Tax Office Administration):

§9.1001. Current and Delinquent Tax Receipts and Temporary Tax Receipts.

Subchapter H (Tax Record Requirements):

§9.3001. Appraisal Cards.

§9.3002. Tax Maps.

§9.3003. Uniform Tax Records System.

§9.3004. Appraisal Records of All Property.

§9.3005. Tax Roll for Any Taxing Unit.

§9.3008. Delinquent Tax Roll of Any Taxing Unit.

§9.3009. Alphabetical Index.

§9.3010. Partial Exemption Lists.

§9.3011. Absolute Exemption Lists.

§9.3012. Open-Space Land Valuation; Agricultural Use Valuation; Timber Use Valuation; Recreational, Park, and Scenic Land Valuation; and Public Access Airport Property Lists.

§9.3014. Property Identification System.

§9.3015. Report of Decreased Value Forms.

§9.3031. Rendition Forms.

§9.3034. Notice of Exemption Application Requirement.

§9.3038. Current, Delinquent, and Special Valuation Rollback Tax Bills or Statements.

§9.3039. Tax Refund Form.

§9.3040. Tax Certificates.

§9.3042. Request Forms for Separate or Joint Taxation.

§9.3044. Appointment of Agents for Property Taxes.

§9.3045. Application for September 1 Inventory Appraisal.

§9.3048. Publication of Budget.

§9.3049. Change of Use Determination.

§9.3052. Request Form for Separate Taxation of Stockholders' Interest in Cooperative Housing.

§9.3054. Request to Postpone Tax Bill.

§9.3057. Notice of Hearing on Proposal to Tax Non-business Personal Property.

§9.3059. Certification of Appraisal Roll.

§9.3060. Installment Payment of Taxes on Property Located Within a Disaster Area.

§9.3064. Public Notice of Protest and Appeal Forms.

Subchapter I (Validation Procedures):

§9.4001. Valuation of Open-Space and Agricultural Lands.

§9.4003. Wildlife Management Use.

§9.4005. Formulas for Interstate Allocation of the Tax Value of Railroad Rolling Stock.

§9.4009. Appraisal of Recreation, Park, and Scenic Land.

§9.4010. Appraisal of Public Access Airport Property.

§9.4011. Appraisal of Timberlands.

§9.4013. Residential Real Property Inventory Appraisal.

§9.4031. Manual for Discounting Oil and Gas Income.

§9.4033. Allocation of Value.

§9.4035. Special Types of Personal Property Inventory.

§9.4037. Use of Electronic Communications for Transmittal of Property Tax Information.

§9.4201. Definition of Petroleum Products.

The comptroller has reviewed Chapter 9 and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to these rules will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2703). No comments were received concerning the readoption of these rules. This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 9.

TRD-200702945

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: July 12, 2007



The Comptroller of Public Accounts readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 15 (Electronic Transfer of Certain Payments to State Agencies).

§15.1. Applicability.

§15.2. Penalties.

§15.3. Definitions.

§15.4. Protested Tax Payments.

§15.5. State Agency Rules Requirements.

§15.6. Applicability Determination and Notification Procedures.

§15.7. Voluntary Payments by Electronic Funds Transfer.

§15.8. Payor Information.

§15.9. Means of Electronic Funds Transfer.

§15.10. Transmission of Payment Information.

§15.11. Determination of Settlement Day.

§15.12. Transfer of Funds to the Treasury.

§15.13. Backup Procedures.

§15.14. Late Payments.

§15.15. Proof of Payment.

§15.16. Refunds.

§15.17. Effective Date.

§15.18. Notification.

The comptroller has reviewed Chapter 15 and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to these rules will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 19, 2004, issue of the *Texas Register* (29 TexReg 2927). No comments were received concerning the readoption of these rules. This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 15.

TRD-200702946
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: July 12, 2007



The Comptroller of Public Accounts readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 16 (Electronic Transfer of Payments to the Texas State Treasury Department).

§16.1. Adoption by Reference.

§16.2. Applicability.

The comptroller has reviewed Chapter 16 and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to these rules will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 19, 2004, issue of the *Texas Register* (29 TexReg 2927). No comments were received concerning the readoption of these rules. This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 16.

TRD-200702947
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: July 12, 2007



The Comptroller of Public Accounts (comptroller) readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 17 (Payment Of Fees, Taxes, And Other Charges To State Agencies By Credit, Charge, And Debit Cards).

§17.1. Intent, Purpose, and Definitions.

§17.2. Agency Contracts with Vendors or the Comptroller.

§17.3. Agency Non-Compliance.

The comptroller has reviewed Chapter 17 and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to these rules will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2703). No comments were received concerning the readoption of these rules. This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 17.

TRD-200702948
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: July 12, 2007



The Comptroller of Public Accounts (comptroller) readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 18 (Tobacco Settlement Permanent Trust Account).

§18.1. Purpose and Definitions.

§18.2. Trust Account Distributions.

§18.3. Annual Meeting of Investment Advisory Committee.

§18.4. Other Meetings of the Investment Advisory Committee.

§18.5. Annual Distributions.

§18.6. Administration and Management of the Trust Account.

§18.7. Compliance Audits.

§18.8. Annual Review.

The comptroller has reviewed Chapter 18 and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to these rules will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2703). No comments were received concerning the readoption of these rules. This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 18.

TRD-200702949
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: July 12, 2007



The Comptroller of Public Accounts readopts all sections under Texas Administrative Code, Title 34, Part 1, Chapter 19 (State Energy Conservation Office).

Subchapter A (General Provisions):

§19.1. Purpose of the State Energy Conservation Office.

§19.2. State Energy Conservation Office Business Location and Mailing Address.

Subchapter B (State Facility Energy and Water Management):

§19.11. Purpose of Rules.

§19.12. Application.

§19.13. Definitions.

§19.14. Utility Management Planning.

§19.15. Implementation of Resource Efficiency Plan Recommendations.

§19.16. Long Range Utility Services Plan.

§19.17. Utility Bill Review.

§19.18. Semiannual Reporting.

§19.19. Extension of Time.

Subchapter C (Energy and Water Conservation Design Standards):

§19.31. Requirement to Use Design Standards.

- §19.32. Energy and Water Conservation Design Standards.
- §19.33. Major Renovation Projects.
- §19.34. Submission of Certification and Compliance Documentation.

Subchapter D (Loan Program For Energy Retrofits):

- §19.41. Description of Program.
- §19.42. Definitions.
- §19.43. Eligibility.
- §19.44. Application and Selection.
- §19.45. Project Funding and Repayment.

The comptroller has reviewed Chapter 19 and determined that the reasons for initially adopting these rules continue to exist.

Notice of any changes to these rules will be published in the *Texas Register* as required under the Administrative Procedures Act, Government Code, Chapter 2001.

This review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the May 11, 2007, issue of the *Texas Register* (32 TexReg 2685). No comments were received concerning the re-adoption of these rules. This concludes the review of Texas Administrative Code, Title 34, Part 1, Chapter 19.

TRD-200702950
 Martin Cherry
 General Counsel
 Comptroller of Public Accounts
 Filed: July 12, 2007



Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas files this notice of completion of review and re-adoption of 16 TAC Chapter 1, relating to Practice and Procedure. This review and re-adoption has been conducted in accordance with Texas Government Code, §2001.039.

The agency's reasons for adopting these rules continue to exist. The Commission received no comments on the proposed review, which was published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2884).

Issued in Austin, Texas, on July 17, 2007.

TRD-200703026
 Mary Ross McDonald
 Managing Director
 Railroad Commission of Texas
 Filed: July 17, 2007



The Railroad Commission of Texas files this notice of completion of review and re-adoption of 16 TAC Chapter 8, relating to Pipeline Safety Regulations. This review and re-adoption has been conducted in accordance with Texas Government Code, §2001.039.

The agency's reasons for adopting these rules continue to exist. The Commission received no comments on the proposed review, which was published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2884).

Issued in Austin, Texas, on July 17, 2007.

TRD-200703027
 Mary Ross McDonald
 Managing Director
 Railroad Commission of Texas
 Filed: July 17, 2007



The Railroad Commission of Texas files this notice of completion of review and re-adoption of 16 TAC Chapter 20, relating to Administration. This review and re-adoption has been conducted in accordance with Texas Government Code, §2001.039.

The agency's reasons for adopting these rules continue to exist. The Commission received no comments on the proposed review, which was published in the May 25, 2007, issue of the *Texas Register* (32 TexReg 2884).

Issued in Austin, Texas, on July 17, 2007.

TRD-200703028
 Mary Ross McDonald
 Managing Director
 Railroad Commission of Texas
 Filed: July 17, 2007



IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Public Hearing

The Texas Department of Agriculture (the department) will hold a hearing to take public comment on the department's Asian Cycad Scale Quarantine, Title 4, Part 1, §§19.200 - 19.203, which was published as a proposed rule in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4316).

The hearing will be held on August 2, 2007, beginning at 9:00 a.m., in the department's Regulatory Conference Room located on the 10th floor of the Stephen F. Austin Building, 1700 North Congress, Austin, Texas 78701.

For more information regarding the hearing, please contact Dr. Shashank Nilakhe, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, (512) 463-1145.

TRD-200703044

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: July 18, 2007

Comptroller of Public Accounts

Notice of Public Hearing on Proposed State Procurement and Support Services Office

The Office of the Comptroller of Public Accounts will hold a public hearing regarding proposed State Procurement and Support Services Office rules §§20.1, 20.2, 20.381 - 20.386 and 20.391 on Wednesday, August 8, 2007, at 10:00 a.m. in Room 114 of the LBJ State Office Building, 111 E. 17th Street, Austin, Texas 78711-1440. The proposed rules were published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4185).

The purpose of this hearing is to receive comments from interested persons, pursuant to Government Code, §2001.029. Questions concerning the public hearing or this notice should be referred to Martin Cherry, General Counsel. Phone Number: (512) 463-4606. E-mail address: martin.cherry@cpa.state.tx.us. Fax Number: (512) 475-1218. Hearing and speech-impaired individuals with text telephones (TDD) may contact the agency at (512) 463-4621.

NOTICE FOR PERSONS WITH DISABILITIES

Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, also non-English speaking persons who may need assistance are requested to contact Ms. Nelda Mendoza, 1-800-531-5441, Extension 6-2094, at least two (2) working days prior to the hearing so that appropriate arrangements may be made.

TRD-200703068

Martin Cherry

General Counsel

Comptroller of Public Accounts

Filed: July 18, 2007

Notice of Request for Proposals

Pursuant to Chapters 403, 2155, and 2156, §2155.001 and §2156.121, Texas Government Code and Chapter 2305, §2305.038, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO), announces the issuance of its Request for Proposals (RFP #178g) from qualified, independent firms and institutions to provide Energy Education Outreach Services (Services). One or more successful respondents will assist Comptroller in conducting energy education outreach and related services, as directed by Comptroller. Comptroller reserves the right to award one or more contracts under this RFP. The successful respondent(s), if any, will be expected to begin performance of the contract(s), if any, awarded under this RFP on September 1, 2007, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on or after Friday, July 27, 2007, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller will also make the complete RFP available electronically on the Electronic State Business Daily (ESBD) after 10:00 a.m. (CZT), Friday, July 27, 2007.

All written inquiries, questions, and Non-Mandatory Letters of Intent to propose must be received in the Issuing Office prior to 2 p.m. (CZT) on Wednesday, August 8, 2007. Prospective respondents are encouraged to fax Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The responses to questions and other information pertaining to this procurement will be posted on August 10, 2007, or as soon thereafter as practical, on the ESBD at: <http://esbd.tbpc.state.tx.us>. Questions and inquiries received after the deadline will not be considered; respondents are solely responsible for verifying timely receipt in the Issuing Office of Non-Mandatory Letters of Intent and Questions.

Closing Date: Proposals must be received in the Issuing Office at the location specified above no later than 2 p.m. (CZT), on Friday, August 17, 2007. Proposals received in the Issuing Office after this time and date will not be considered; respondents are solely responsible for verifying timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP.

Comptroller shall pay for no costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 27, 2007; Non-Mandatory Letters of Intent and Questions Due - August 8, 2007, 2 p.m. CZT; Official Questions and Responses posted - August 10, 2007 (or as soon thereafter as practical); Proposals Due - August 17, 2007, 2 p.m. CZT; Contract Execution - September 1, 2007, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2007, or as soon thereafter as practical.

TRD-200703054

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: July 18, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of July 23, 2007 - July 29, 2007 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of July 23, 2007 - July 29, 2007 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200702995

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 17, 2007

◆ ◆ ◆
Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Bluebonnet Credit Union (#1), Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, volunteer or attend school in, businesses and other legal entities located within a 10-mile radius of the Bluebonnet Credit Union member service facilities located at 930 Main Street, Suite T-265, Houston, Texas 77002; 5555 San Felipe, Suite 200, Houston, Texas 77056; and 504 West 19th Street, Houston, Texas 77008, to be eligible for membership in the credit union.

An application was received from Bluebonnet Credit Union (#2), Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, volunteer or attend school in, businesses and other legal entities located within a 20-mile radius of the Bluebonnet Credit Union member service facility located at 9500 I-10 East, Suite 100, Baytown, Texas 77521, to be eligible for membership in the credit union.

An application was received from First Central Credit Union, Waco, Texas to expand its field of membership. The proposal would permit persons who reside, work, worship or attend school within the boundaries of Hill County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcred.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200703045

Harold E. Feeney

Commissioner

Credit Union Department

Filed: July 18, 2007

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Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received from Matagorda County Teachers Credit Union, Bay City, Texas. The credit union is proposing to change its name to Matagorda County 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-200703046

Harold E. Feeney

Commissioner

Credit Union Department

Filed: July 18, 2007

◆ ◆ ◆
Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Fellowship Credit Union, San Antonio, Texas - See *Texas Register* issue dated April 27, 2007.

Beaumont Municipal Employees Credit Union (#1), Beaumont, Texas - See *Texas Register* issue dated April 27, 2007.

First Service Credit Union, Houston, Texas - See *Texas Register* issue dated May 25, 2007.

Applications to Expand Field of Membership - Denied

Beaumont Municipal Employees Credit Union (#2), Beaumont, Texas
- See *Texas Register* issue dated April 27, 2007.

Beaumont Municipal Employees Credit Union (#3), Beaumont, Texas
- See *Texas Register* issue dated April 27, 2007.

Applications to Expand Field of Membership - Withdrawn

Pioneer Muslim Credit Union, Houston, Texas - See *Texas Register*
issue dated April 27, 2007.

Applications for a Merger or Consolidation - Approved

South Texas Credit Union (Kenedy) and KCTA Federal Credit Union
(Kenedy) - See *Texas Register* issue dated May 25, 2007.

IMCO Employees Credit Union (Garland) and America's Credit Union
(Garland) - See *Texas Register* issue dated May 25, 2007.

TRD-200703047

Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 18, 2007



Texas Education Agency

Public Notice: Extension of Public Comment Period on
Proposed Revisions to 19 TAC Chapter 97, Subchapter DD;
Proposed New 19 TAC Chapter 97, Subchapter EE; Proposed
Amendment to 19 TAC §100.1041; and Proposed New 19 TAC
Chapter 157, Subchapter EE

The Texas Education Agency (TEA) published the following proposed
rule actions in the June 15, 2007, issue of the *Texas Register*:
Proposed Revisions to 19 TAC Chapter 97, Planning and Accountability,
Subchapter DD, Procedures for Investigative Reports and Sanctions
(32 TexReg 3440); Proposed New 19 TAC Chapter 97, Planning and
Accountability, Subchapter EE, Accreditation Status, Standards, and
Sanctions (32 TexReg 3443); Proposed Amendment to 19 TAC Chap-
ter 100, Charters, Subchapter AA, Commissioner's Rules Concerning
Open-Enrollment Charter Schools, Division 3, Charter School Fund-
ing and Financial Operations, §100.1041, State Funding (32 TexReg
3453); and Proposed New 19 TAC Chapter 157, Hearings and Appeals,
Subchapter EE, Review by State Office of Administrative Hearings:
Certain Accreditation Sanctions (32 TexReg 3455).

The TEA is extending the public comment period on the proposed rule
actions through August 20, 2007. Comments on the proposals pub-
lished in the June 15, 2007, issue of the *Texas Register* and view-
able on the TEA website at [http://www.tea.state.tx.us/rules/home/coe-
prop.html](http://www.tea.state.tx.us/rules/home/coe-prop.html) 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 or faxed to (512)
463-0028.

Further Information. For clarifying information about this notice, con-
tact Jan Foster, Division of Program Monitoring and Interventions,
TEA, (512) 463-9414.

TRD-200703061

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 18, 2007



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commis-
sion) 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 op-
portunity 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 **August 27, 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 require-
ments 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, Build-
ing C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the ap-
plicable 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 August 27, 2007**.
Written comments may also be sent by facsimile machine to the en-
forcement coordinator at (512) 239-2550. The commission enforce-
ment 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: Albemarle Corporation; DOCKET NUMBER:
2007-0316-AIR-E; IDENTIFIER: RN100218247; LOCATION:
Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical
manufacturing plant; RULE VIOLATED: 30 Texas Administra-
tive Code (TAC) §116.115(c), Air Permit Number 48710, Special
Condition Number 1, and Texas Health and Safety Code (THSC),
§382.085(b), by failing to prevent unauthorized emissions; PENALTY:
\$10,000; ENFORCEMENT COORDINATOR: Rebecca Johnson,
(713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H,
Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Ashler Oaks, LLC; DOCKET NUMBER:
2007-0687-WQ-E; IDENTIFIER: RN103997029; LOCATION: San
Antonio, Bexar County, Texas; TYPE OF FACILITY: apartment com-
plex; RULE VIOLATED: the Code, §26.121(c), by failing to prevent
an unauthorized discharge; PENALTY: \$1,875; ENFORCEMENT
COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL
OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210)
490-3096.

(3) COMPANY: Best Texan, Inc. dba 105 Food Mart; DOCKET
NUMBER: 2006-1881-PST-E; IDENTIFIER: RN102350949; LO-
CATION: Sour Lake, Hardin 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 §334.10(b),
by failing to have required underground storage tank (UST) records
maintained, readily accessible, and available for inspection upon
request; 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; 30 TAC §334.50(d)(1)(B)(iii)(IV) and the Code, §26.3475(c)(1), by failing to measure any water level in the bottom of the tanks to the nearest 1/8-inch at least once a month; 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain records on-site at the station; and 30 TAC §115.242(3) and §115.242(3)(L) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; PENALTY: \$5,850; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2005-1251-AIR-E; IDENTIFIER: RN102495884; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: petroleum refinery and natural gas processing plant; RULE VIOLATED: 30 TAC §116.715(a), Air Flexible Permit Number 9868/PSD-TX-102M5, Special Condition Number 1, and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits; 30 TAC §113.340, 40 Code of Federal Regulations (CFR) §61.356(g) and §63.654(a), and THSC, §382.085(b), by failing to maintain records of quarterly visual reports; 30 TAC §113.340, 40 CFR §61.357(d)(8) and §63.654(a), and THSC, §382.085(b), by failing to submit accurate benzene national emissions standards for hazardous air pollutants (NESHAP) annual report for year 2004; 30 TAC §113.230, 40 CFR §63.424(a), and THSC, §382.085(b), by failing to conduct monthly leak inspections of all equipment in gasoline service; 30 TAC §113.230, 40 CFR §63.428(h)(1), and THSC, §382.085(b), by failing to include all required information in the fourth quarterly report of excess emissions for year 2003; 30 TAC §113.340, 40 CFR §60.482-7 and §63.648(a), and THSC, §382.085(b), by failing to comply with leak repair requirements; 30 TAC §113.340, 40 CFR §60.486(b) and §63.648(a), by failing to maintain tags for leaking components; 30 TAC §113.100, 40 CFR §63.11(b), and THSC, §382.085(b), by failing to operate the flare with flame present at all times; and 30 TAC §122.145(2) and THSC, §382.085(b), by failing to report all instances of deviations; PENALTY: \$144,290; Supplemental Environmental Project (SEP) offset amount of \$57,716 applied to Third Party - Borger ISD asbestos abatement; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: William Newell Cooper dba Cooper Dairy Farm; DOCKET NUMBER: 2007-0551-AGR-E; IDENTIFIER: RN102095635; LOCATION: Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a comprehensive nutrient management plant (CNMP) certified by the Texas State Soil and Water Conservation Board (TSSWCB); PENALTY: \$2,080; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Edgewood; DOCKET NUMBER: 2005-0843-MLM-E; IDENTIFIER: RN101916302 and RN101404887; LOCATION: Van Zandt County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.63(a) and §305.125(2) and the Code, §26.121(a), by failing to submit a permit renewal application prior to the permit expiration date of March 1, 2002, and continued to discharge after permit expiration; 30 TAC §290.113(b)(1) and (f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for trihalomethanes; and 30 TAC §290.113(b)(2) and (f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acids; PENALTY: \$20,447; Supplemental Environmental Project (SEP) offset amount of \$20,447 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Unauthorized Trash Dump Clean-Up; ENFORCEMENT COORDINATOR: Samuel Short, (512)

239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: Fairway Leasing, L.L.C.; DOCKET NUMBER: 2007-0531-EAQ-E; IDENTIFIER: RN105186456; LOCATION: Bulverde, Comal County, Texas; TYPE OF FACILITY: leasing company for commercial buildings; RULE VIOLATED: 30 TAC §213.23(h), by failing to re-apply and receive approval for a contributing zone plan prior to initiating construction as a new property owner; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Fiesta Nursery Co., Inc.; DOCKET NUMBER: 2007-0470-MSW-E; IDENTIFIER: RN103914107; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: plant nursery; RULE VIOLATED: 30 TAC §330.15(c), by failing to dispose of municipal solid waste at an authorized facility; PENALTY: \$22,800; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: John Wayne Green; DOCKET NUMBER: 2007-0251-LII-E; IDENTIFIER: RN105157846; LOCATION: Tyler and Whitehouse, Smith County, Texas; TYPE OF FACILITY: landscape irrigator business; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required; PENALTY: \$625; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10) COMPANY: Harris County Municipal Utility District No. 360; DOCKET NUMBER: 2007-0405-MWD-E; IDENTIFIER: RN103887923; LOCATION: Harris County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number 13753001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations; PENALTY: \$3,900; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Jimmy Don Pack and Meine Huisman dba Jimmy Don Pack Dairy; DOCKET NUMBER: 2007-0528-AGR-E; IDENTIFIER: RN102743119; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a CNMP certified by the TSSWCB; PENALTY: \$1,820; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Elmer Jack Parks dba Lingleville Dairy; DOCKET NUMBER: 2007-0505-AGR-E; IDENTIFIER: RN102091873; LOCATION: Lingleville, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.42(s), by failing to develop and operate under a CNMP certified by the TSSWCB; PENALTY: \$2,040; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Marathon Petroleum Company LLC; DOCKET NUMBER: 2007-0392-AIR-E; IDENTIFIER: RN100210608; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY:

petroleum refinery; RULE VIOLATED: 30 TAC §116.715(a), Air Permit Number 22433, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions and 30 TAC §101.201(b)(1)(H) and THSC, §382.085(b), by failing to include the permit number for the emissions event; PENALTY: \$30,696; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Scott Newland dba North Crete Services; DOCKET NUMBER: 2007-0191-AIR-E; IDENTIFIER: RN105147524; LOCATION: Longview, Harrison County, Texas; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit prior to the construction of a concrete batch plant; PENALTY: \$20,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: Nu-Way Energy Corporation dba NWE 10; DOCKET NUMBER: 2007-0272-PST-E; IDENTIFIER: RN102353919; LOCATION: Comanche, Comanche County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; and 30 TAC §334.54(b)(2), by failing to secure all UST fill tubes; PENALTY: \$3,675; ENFORCEMENT COORDINATOR: Philip DeFrancesco, (817) 588-5800; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(16) COMPANY: PD Glycol LP; DOCKET NUMBER: 2007-0208-AIR-E; IDENTIFIER: RN100825413; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: ethylene glycol plant; RULE VIOLATED: 30 TAC §122.143(4), Federal Operating Permit Number O-02190, Special Condition Number 9, Air Permit Number 8639A, Special Condition Number 3B, Air Permit Number 3631A, Special Condition Number 3, and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere and 30 TAC §101.201(a)(1)(B) and §122.143(4) and THSC, §382.085(b), by failing to report an emission event; PENALTY: \$30,520; Supplemental Environmental Project (SEP) offset amount of \$15,260 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Louis C. Petrik Jr.; DOCKET NUMBER: 2007-0397-LII-E; IDENTIFIER: RN105052120; LOCATION: Austin and Manor; Travis County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §30.5(a) and §344.4, Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$1,125; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712.

(18) COMPANY: Rancho Viejo Cattle Company, Ltd.; DOCKET NUMBER: 2007-0226-WR-E; IDENTIFIER: RN104501119; LOCATION: Uvalde County, Texas; TYPE OF FACILITY: ranch; RULE VIOLATED: 30 TAC §297.11 and the Code, §11.121, by failing to obtain a permit from the commission or qualify for an exemption authorizing the appropriation of state water prior to constructing a dam that impounds state water on Onion Creek; PENALTY: \$5,250; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(19) COMPANY: The Premcor Refining Group Inc.; DOCKET NUMBER: 2007-0149-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Air Permit Number 6825A/PSD-TX-49, Special Condition 5A, Air Permit Number O-02229, General Terms and Conditions and Special Condition 15A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$64,625; Supplemental Environmental Project (SEP) offset amount of \$32,312 applied to South East Texas Regional Planning Commission-West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(20) COMPANY: U.S. Minerals, LLC dba Stan Blast Abrasives; DOCKET NUMBER: 2007-0312-AIR-E; IDENTIFIER: RN100929140; LOCATION: Galveston, Galveston County, Texas; TYPE OF FACILITY: coal slag crushing plant; RULE VIOLATED: 30 TAC §111.111(a)(1)(B) and THSC, §382.085(b), by failing to prevent the opacity of emissions from a stationary vent from exceeding 20%; 30 TAC §101.221(a) and THSC, §382.085(b), by failing to ensure that all emission capture and abatement equipment is maintained in good working order and operated properly during facility operations; 30 TAC §116.315 and THSC, §382.085(b), by failing to renew a permit to operate prior to the date the permit expires; and 30 TAC §101.201(e) and THSC, §382.085(b), by failing to report an excess opacity event; PENALTY: \$26,035; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200702996

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 17, 2007



Notice of Intent to Perform Removal Action at the Sherman Foundry State Superfund Site, Located at 532 East King Street, Sherman (Grayson County), Texas

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action, as provided by Texas Health and Safety Code (THSC), §361.133, for the Sherman Foundry state Superfund site (the site). The site, including all land, structures, appurtenances, and other improvements, is approximately 5.1 acres located at 532 East King Street in Sherman, Grayson County, Texas and is located in a mixed residential/industrial area in south central Sherman bordered on the east and west by Southern Pacific Railroad lines, Cherry Street to the north, and East King Street to the south. The site also includes any areas where hazardous substances have come to be located as a result, either directly or indirectly, of releases of hazardous substances from the site.

The facility was a cast iron foundry. The facility contains industrial process wastes remaining in the former metals process area, three large on-site foundry waste stockpiles, two 55-gallon drum storage areas, two baghouse collection hoppers, and a former paint shop. The site has a closed/capped deed-recorded pre-Resource Conservation and Recovery Act solid waste landfill measuring 15 feet by 50 feet containing a reported 21 cubic yards of buried cupola baghouse dust located in the northeast corner of the property. Based on soil sample results, the site contains elevated levels of the metals cadmium, chromium, cop-

per, lead, silver, and zinc and low levels of volatile organic compounds phenol, toluene, and xylene.

The site is proposed for listing on the State Registry of Superfund Sites under THSC, Chapter 361, Subchapter F. The TCEQ held a public meeting on May 18, 2006, to discuss the proposed listing of the site on the Registry. The removal action is necessary to minimize migration of contamination from the site to off-site properties and surface water pathways in the vicinity of the site. Also, the removal action is necessary to limit impacts to groundwater beneath the site. A removal can be completed without extensive investigation and planning and will achieve a significant cost reduction for the site. The remedial objectives of the site can be achieved through a technically uncomplicated removal action. The removal action will include off-site disposal of several large waste piles from historic foundry operations; disposal of impacted soils; disposal of accumulated wastes from on-site buildings; disposal of numerous 55-gallon drums of wastes from historic foundry operations, emergency response, and groundwater investigations; disposal of water accumulated in loading docks, sumps, etc.; and disposal of numerous empty drums/containers. Thus, a detailed and extensive design process is unnecessary in this case, and the significant costs associated with that process can be averted.

A portion of the records for this site is available for review during regular business hours at the Sherman Public Library, 421 North Travis, Sherman, Texas 75090, telephone number (903) 892-7240. Copies of the complete public record file may be obtained during business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

For further information, please contact Robert Musick, TCEQ Project Manager, Remediation Division, at (512) 239-2243, or Crystal Taylor, TCEQ Community Relations Coordinator at (512) 239-3844.

TRD-200702997

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 17, 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 **August 27, 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, im-

proper, 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 August 27, 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: Delores Petty dba Denton Estates Mobile Home Park; DOCKET NUMBER: 2005-0701-PWS-E; TCEQ ID NUMBER: RN101174894; LOCATION: 22 Christi Lane, Krum, Denton County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.274(a), (b), and (c), by failing to provide annual Consumer Confidence Reports to each bill paying customer, to make a good faith effort to reach customers that do not get water bills, and to certify to the executive director that the reports were distributed during the period 2000 - 2003; 30 TAC §290.51(a)(3) and Texas Water Code (TWC), §5.702, by failing to pay public health service fees for Fiscal Years 2003 - 2006 for TCEQ account number 90610016; and 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A), and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis for the months of August - December 2004, and January - May 2005, and by failing to provide public notification for the failure to collect water samples for the months of August - December 2004, and January - May 2005; PENALTY: \$6,815; 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.

(2) COMPANY: Ken Young dba Paramount Cleaners; DOCKET NUMBER: 2006-1118-DCL-E; TCEQ ID NUMBER: RN104998638; LOCATION: 8670 Antoine Drive, Suite A, 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: \$1,185; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: MDCMS, Inc. dba Millennium Dry Cleaners; DOCKET NUMBER: 2006-1558-DCL-E; TCEQ ID NUMBER: RN104120043; LOCATION: 6900 Alma Drive, Suite 220, Plano, Collin County, Texas; TYPE OF FACILITY: dry cleaner 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: \$1,185; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: N.D.N.Y. Enterprises, Inc. dba Chances Night Club; DOCKET NUMBER: 2005-1016-PWS-E; TCEQ ID NUMBER:

RN101199552; LOCATION: 201 Highway 35 South, Rockport, Aransas County, Texas; TYPE OF FACILITY: transient non-community public water supply system; RULES VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and (g)(4), by failing to collect and submit repeat bacteriological samples following May 2003 and November 2004 coliform-positive sample results, and by failing to provide public notice of the violations; 30 TAC §290.109(f)(3) and §290.122(b)(2)(A), by failing to comply with the maximum contaminant level for coliform bacteria in July 2003, and by failing to provide public notice of the violation; 30 TAC §290.109(c)(2)(F) and (g), and §290.122(c)(2)(B), by failing to collect the required number of additional routine bacteriological samples in January and July 2003, and in December 2004, following coliform-positive sample results, and by failing to provide public notice of the violations; 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect and submit routine bacteriological samples for the months of July and September 2004; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay Public Health Service Fees for Fiscal Year 2005 for Financial Administration Account No. 90040051; PENALTY: \$3,200; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(5) COMPANY: Tempe Water Supply Corporation; DOCKET NUMBER: 2005-1965-PWS-E; TCEQ ID NUMBER: RN101456762; LOCATION: 2120 Highway 190 West, Polk County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification to affected customers within 24 hours of a water outage; and 30 TAC §290.46(r), by failing to operate the public water system to provide a minimum pressure of 35 pounds per square inch throughout the distribution system under normal operating conditions; PENALTY: \$650; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

TRD-200703020

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 17, 2007



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 **August 27, 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 August 27, 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: Ali's Grocery, Inc. dba Raadiyah Chevron; DOCKET NUMBER: 2005-1422-PST-E; TCEQ ID NUMBER: RN102833423; LOCATION: 2075 Farm-to-Market Road 1462, Alvin, Brazoria County, Texas; PENALTY: \$1,940; 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, during a record review on February 23, 2004, for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Capitol City Disposal, Inc.; DOCKET NUMBER: 2005-0383-MSW-E; TCEQ ID NUMBER: RN104157763; LOCATION: 11204 Moore Road, Austin, Travis County, Texas; TYPE OF FACILITY: municipal solid waste Type V processing facility; RULES VIOLATED: 30 TAC §330.4(a), by failing to obtain the proper authorization prior to the operation of a municipal solid waste Type V processing facility; PENALTY: \$8,700; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(3) COMPANY: Demitree Ochoa dba Yo Cleaners; DOCKET NUMBER: 2006-1211-DCL-E; TCEQ ID NUMBER: RN104097530; LOCATION: 9305 North Wayside Drive, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (THSC), §374.252(c), by failing to renew the facility's registration by completing and submitting the required registration to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$1,185; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: Felix Aguilar; DOCKET NUMBER: 2006-1696-LII-E; TCEQ ID NUMBER: RN105006498; LOCATION: 21115 Burnt Amber Lane, Houston, Harris County, Texas; TYPE OF FACILITY: landscaping and lawn maintenance business; RULES VIOLATED: 30 TAC §344.4(a) and §30.5(a) and (b); Texas Water Code (TWC), §37.003; and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$562; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Kirby-Dunstan, Inc. dba Le Bon Cleaners; DOCKET NUMBER: 2006-1563-DCL-E; TCEQ ID NUMBER: RN105017727; LOCATION: 5115 Buffalo Speedway, Suite 400, 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: \$1,185; 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.

(6) COMPANY: Trang Dai Nguyen dba T&T Grocery and Tung An Pham dba T&T Grocery; DOCKET NUMBER: 2004-1771-PST-E; TCEQ ID NUMBER: RN102250800; LOCATION: 3711 FM 359, Pattison, Waller County, Texas; TYPE OF FACILITY: grocery 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 two petroleum USTs; PENALTY: \$2,100; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Tristar Convenience Stores, Inc. dba Handi Stop 46; DOCKET NUMBER: 2006-1591-PST-E; TCEQ ID NUMBER: RN102457918; LOCATION: 10802 Westheimer Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to ensure that all tanks are monitored in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$1,875; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(8) COMPANY: Webb County; DOCKET NUMBER: 2003-0051-MLM-E; TCEQ ID NUMBERS: RN102286986 and RN102698719; LOCATION: approximately one mile west on Hernandez Street and approximately 3.5 miles west of the intersection of United States Highway 83 and Espejo Molina Road, Webb County, (the wastewater facility), and 515 Martha Drive, Rio Bravo, Webb County (the public water supply facility), Texas; TYPE OF FACILITY: wastewater treatment facility, and public water supply system; RULES VIOLATED: 30 TAC §305.125(1) and (5); and Texas Pollutant Discharge Elimination System (TPDES) Permit No. 13577-006, Operational Requirements No. 1, and TWC, §26.121(a), by failing to comply with its Five-Day Biochemicals Oxygen Demand (BOD5) and total suspended solids (TSS) permit limits for the months of March 2003 - February 2004; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit No. 13577-006, Effluent Limitations and Monitoring Requirement, by failing to comply with its individual grab sample limitations of 65 milligrams per liter (mg/L) for both BOD5 and TSS and the permitted chlorine residual of 4.0 mg/L; 30 TAC §305.125(5), by failing to maintain its effluent weir; 30 TAC §317.4(d), TPDES Permit No. 13577-006, Operational Requirements, by failing to have a scum removal baffle and a mechanism to transfer sludge from the clarifier; 30 TAC §317.6(b)(3), by failing to have a surface skimming baffle for the chlorine contact chamber; 30 TAC §305.125(1) and §317.4(b)(1), by failing to have a bar screen to provide preliminary treatment; 30 TAC §305.125(1), and TPDES Permit No. 13577-006, Monitoring and Reporting Requirements No. 5, by failing to have its flow meter calibrated by a trained person at least annually as required by its TPDES permit; 30 TAC §319.7(a), by failing to maintain adequate records for chlorine, pH and dissolved oxygen (DO) meters; 30 TAC §305.125(17) and TPDES Permit No. 13577-006, Monitoring and Reporting Requirements No.1, by failing to submit a monthly effluent report for November 2002 to the TCEQ by the 20th day of the

following month (i.e., December 20, 2002); 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes during the third quarter of 2004 based on a running annual average; and 30 TAC §290.113(f)(5) and THSC, §341.0315(c), by failing to comply with the MCL for haloacetic acids during the third quarter of 2004 based on a running annual average; PENALTY: \$37,260; Supplemental Environmental Project offset amount of \$37,260 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D); STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

TRD-200703019
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 17, 2007

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Notice of Water Quality Applications

The following notices were issued during the period of July 5, 2007 through July 12, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to TCEQ, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

CITY OF EVANT has applied for a renewal of TPDES Permit No. WQ0011011001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 650 Live Oak Street, approximately 200 feet south of Live Oak Street near the southeast corner of the City of Evant in Coryell County, Texas.

HAYS COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 1 has applied for a major amendment to TCEQ Permit No. WQ0014293001 to authorize a discharge of treated domestic wastewater to a receiving body of water and an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 150,000 gallons per day via subsurface drip irrigation of non-public access land to a daily average flow not to exceed 500,000 gallons per day via discharge to a receiving body of water. The facility is located approximately 1,100 feet west of County Road 163 (Nuttly Brown Road) and approximately 1.16 miles south of the intersection of County Road 163 and U.S. Highway 290 in Hays County, Texas.

JIM BROUMLEY AND KEITH BROUMLEY has applied for a major amendment of, and conversion to an individual permit, Wastewater Registration No. WQ0003395000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy facility at a maximum capacity of 1,499 head of which 1,100 head are milking, with no increase in waste production from the previous permit by changing to the smaller Jersey cow breed. The facility is located on the west side of County Road 240, approximately one mile south of the intersection of County Road 240 and State Highway 6, east of the City of Hico in Hamilton County, Texas.

CITY OF POINT has applied for a renewal of TPDES Permit No. 14470-001, which authorizes the discharge of treated filter backwash water at a daily average flow not to exceed 48,000 gallons per day. The facility is located one mile west of the intersection of Farm-to-Market

Road 47 and County Road 1470, on the north side of County Road 1470 in Rains County, Texas.

SPRING WEST MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 12579-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 762,000 gallons per day. The facility is located approximately 1,000 feet east of the intersection of Farm-to-Market Road 2920 and Foster Road in Harris County, Texas

TERRA RENEWAL SERVICES, INC. has applied for a new permit to authorize the land application of sewage sludge and water treatment plant sludge for beneficial use on 437.28 acres. The proposed land application site would be located at approximately 5 miles east of the City of Kaufman, adjacent to the northwest side of County Road 101, approximately 0.75 mile north of the intersection of State Highway 243 and County Road 101 in Kaufman County, Texas.

TIM BENNETT ENGINEERING & CONSTRUCTION, INC. has applied for a renewal of TPDES Permit No. 14432-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility is located 1,000 feet north from the intersection of Farm-to-Market Road 546 and Farm-to-Market Road 3286 in Collin County, Texas.

WALNUT COVE WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 12416-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located 200 feet east of Lake Conroe on Weir Creek, approximately 3 miles west of Interstate Highway 45 and 2 miles north of Farm-to-Market Road 1097 in Montgomery County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200703062

LaDonna Castañuela
Chief Clerk

Texas Commission on Environmental Quality
Filed: July 18, 2007



Texas Health and Human Services Commission

Correction Notice Regarding the Public Hearing on Proposed Medicaid Payment Rates

Correction Notice. This notice corrects the Notice of Public Hearing on Proposed Medicaid Payment Rates that appeared in the July 20, 2007, issue of the *Texas Register*. The hearing involves proposed rates for the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) waiver programs. The hearing date is being changed from August 7, 2007, at 9:00 a.m. to August 14, 2007, at 3:30 p.m. In addition, the Health and Human Services Commission (HHSC) is expanding the scope of the hearing to include proposed rates for the Consolidated Waiver Program (CWP) - Supported Employment, 24-Hour

Residential Habilitation, and Family Surrogate Services. The corrected notice is published in full as follows.

Hearing. The HHSC will conduct a public hearing on August 14, 2007, at 3:30 p.m. to receive public comment on proposed rates for the Home and Community-based Services (HCS) Waiver Program, the Texas Home Living (TxHmL) Waiver Program, and the Consolidated Waiver Program (CWP) - Supported Employment, 24-Hour Residential Habilitation, and Family Surrogate Services. The HCS, TxHmL, and CWP programs are 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 to adjust the rates for the HCS, TxHmL, and CWP programs. The proposed payment rates will be available for public review on July 31, 2007. The proposed rates will be effective September 1, 2007.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology codified at TAC, Title 1, Chapter 355, Subchapter F, §355.723, Reimbursement Methodology for Home and Community-Based Services (HCS), as proposed to be amended; §355.791, Reporting Costs and Reimbursement Methodology for the Texas Home Living (TxHmL) Program; and §355.506, Reimbursement Methodology for Consolidated Waiver Program. The proposed amendment to §355.723, which appeared in the July 6, 2007, issue of the *Texas Register*, requires that the current modeled rates be updated based on audited cost reports to the extent possible within available appropriations. These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, Subchapter A, §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). These changes are being made in accordance with the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated funds to DADS for the State Fiscal Year 2008-2009 biennium for Medicaid rate increases for the HCS, TxHmL, and CWP programs.

Briefing Package. A briefing package describing the proposed payment rates will be available on July 31, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200702998
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 17, 2007

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Notice of Public Hearing on Proposed Medicaid Payment Rates for CPW Services

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 14, 2007, at 8:30 a.m. to receive public comment on the proposed Medicaid rate increases for the Case Management for Children and Pregnant Women (CPW) services. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. 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. The proposed rate increases for CPW services are effective September 1, 2007. The proposed rates will be available for public review beginning July 30, 2007.

Methodology and Justification. The Medicaid reimbursement methodology rules for CPW services are located at 1 TAC §355.8401, Case Management Reimbursement Methodology. The 2008-2009 General Appropriations Act (Article II, HHSC, H.B. 1, 80th Legislature, Regular Session, 2007) appropriated general revenue funds to increase rates for these services.

Briefing Package. A briefing package describing the proposed payment rates will be available on and after July 30, 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-200703043
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 18, 2007

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Notice of Public Hearing on Proposed Medicaid Payment Rates for New Federal Minimum Wage

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 13, 2007, at 10:00 a.m. to receive public comment on proposed rates for Community Based Alternatives - Assisted Living/Residential Care and Personal Assistant Services; Day Activity and Health Services; Consolidated Waiver Program - Personal Assistance Services; Deaf-Blind with Multiple Disabilities Waiver - Chore Services; Medically Dependent Children Program - Personal Assistant Services; and Primary Home Care. These programs are 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 to adjust the rates for the programs and services listed above to account for the new federal minimum wage. The minimum wage will increase \$0.70 from the current \$5.15 per hour to \$5.85 per hour on July 24, 2007. The proposed rates will be effective from August 1, 2007, through August 31, 2007. Proposed rates for these programs and services beginning September 1, 2007, have already incorporated the federal minimum wage change.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology codified at Texas Administrative Code (TAC) Title 1, Chapter 355, §355.109, Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Cost. The proposed rate increases reflect compensation adjustments for those staff who are currently below the new federal minimum wage in order to increase their wages to the new federal minimum wage level. These proposed rates do not include any other wage adjustments.

Briefing Package. A briefing package describing the proposed payment rates will be available on July 27, 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-200703050
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 18, 2007

Notice of Public Hearing on Proposed Medicaid Payment Rates for Personal Care 3

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 13, 2007, at 9:00 a.m. to receive public comment on the proposed rate for services provided in a Personal Care 3 non-apartment assisted living setting under the Community-Based Alternatives Waiver Program. This waiver program is 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 to adjust the rate for services provided in a Personal Care 3 non-apartment assisted living setting as defined in 40 TAC 46.13(a)(4). The proposed payment rate will be available for public review on July 27, 2007. The proposed rate will be effective September 1, 2007.

Methodology and Justification. The proposed rate was determined in accordance with the rate setting methodology codified at Texas Administrative Code (TAC) Title 1, Chapter 355, §355.503(c), Reimbursement Methodology for the Community-Based Alternatives Waiver Program. The proposed rate was developed using a model of direct care cost in accordance with the required staffing for the Personal Care 3 setting and the per day rate component from the non-apartment assisted living non-participant rate per day for the non-direct care costs.

Briefing Package. A briefing package describing the proposed payment rate will be available on July 27, 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 rate 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-200703052

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 18, 2007



Notice of Public Hearing on Proposed Medicaid Payment Rates for Physician/Professional Services to Clients Age 21 and Over

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 14, 2007, at 10:30 a.m. to receive

public comment on Medicaid proposed rate increases for physician and other professional services delivered to clients age 21 and older. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. 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. The proposed Medicaid rates for physician and other professional services delivered to clients age 21 and older are effective September 1, 2007. Under the methodology described below, HHSC will fully expend the appropriations authorized in the 2008-2009 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007), which appropriated \$101.8 million general revenue funds for the State Fiscal Year 2008-2009 biennium for Medicaid rate increases for physicians and other professional services delivered to clients age 21 and older.

The proposed reimbursement rates include the following physician provider types: physicians (i.e., MDs, DOs); dentists; advanced practice nurses (including nurse practitioners, clinical nurse specialists, certified nurse midwives, and certified registered nurse anesthetists); and physician assistants. Additionally, the other professionals include: psychologists; licensed professional counselors; licensed marriage and family therapists; licensed clinical social workers; CCP social workers; podiatrists; chiropractors; optometrists; opticians; certified respiratory care providers; CCP groups; audiologists; prosthetists; orthotists; CCP providers; and genetics providers.

The process for the proposed increases to the reimbursement rates for services provided to clients age 21 and older followed the steps described below:

1. Target Increases for Evaluation and Management Codes: HHSC proposes to increase Evaluation & Management service codes by 15.0 percent across-the-board above existing fees. Since the update to the 2007 Medicare Relative Value Units (RVUs) for these procedure codes would have exceeded the current appropriation, the fees were changed to access-based fees with a 15.0 percent increase.
2. Target Increases for Anesthesia Service Codes: HHSC proposes to increase the anesthesia service codes by updating the existing Medicaid base units to current Medicare or national base units. The update to Medicare or national base units will result in increases and decreases in the Medicaid fees. In addition to the base unit update, HHSC proposes to increase by 7.5 percent the two conversion factors for anesthesia services that are resource-based fees.
3. Immunization and Vaccine Administration Codes: HHSC proposes to adjust the administration fees for immunization and vaccine administration codes by 60 percent of the current fees. This method will be applied consistently to all immunization administration fees.
4. Targeted Increases for Specific Mental Health Procedure Codes: HHSC proposes targeted increases for specific codes for psychiatric diagnostic interviews, comprehensive psychological assessments, and psychotherapy/psychological counseling.
5. Remaining Procedure Codes: HHSC proposes to update the remaining procedure codes to the 2007 Medicare RVUs. If the RVU update results in a fee lower than the current Medicaid fee, the fee will be changed to an access-based fee with a 5.0 percent increase.

Methodology and Justification. The Medicaid reimbursement methodology rules for physician and other professional services are located at 1 TAC §355.8085. These rules provide for the establishment of resourced-based reimbursement fees based upon the RVUs of the individual services as specified in the Medicare Fee Schedule. These rules also allow for the determination of access-based reimbursement fees, which are not based on the RVU methodology, for individual services to account for deficiencies relating to the adequacy of access to health care services, to ensure adequate participation in the Medicaid program by physicians and other practitioners, and to ensure that the eligible Medicaid population receives adequate health care services in an appropriate setting. The 2008-2009 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007) appropriated \$101.8 million general revenue funds for the state fiscal year 2008-2009 biennium for Medicaid rate increases for physician and specialists services delivered to clients age 21 and older.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after July 30, 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-200703039

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 17, 2007



Notice of Public Hearing on Proposed Medicaid Payment Rates for Radiology Procedure Codes

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 15, 2007, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for radiology procedure codes resulting from the 2007 Healthcare Common Procedural Coding System (HCPCS) updates listed below. 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. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Kimbra Rawlings by calling (512) 491-1174, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates will be implemented October 22, 2007, but will be retroactively effective January 1, 2007. The proposed rates are as follows:

*Type of Service Code (TOS)	Procedure Code	Current Medicaid Rate	Proposed Medicaid Rate
6	77371	\$0.00	\$828.64
6	77372	\$0.00	\$628.98
6	77373	\$0.00	\$1,172.87
6	77435	\$0.00	\$499.15

* Type of Service Code Key: 6 = radiation therapy

Methodology and Justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8081, which addresses the reimbursement methodology for radiological providers, 1 TAC §355.8085, which addresses the reimbursement methodology for physicians and certain other practitioners, and the specific fee guidelines published in Section 2.2.1.2 of the 2007 Texas Medicaid Provider Procedures Manual. Rule §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after July 31, 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.

***Required Notice:** *The five character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2006 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice*

medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most recent Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.

TRD-200703038

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 17, 2007



Notice of Public Hearing on Proposed Medicaid Payment Rates for THSteps PDN Services and PCS Benefit

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 14, 2007, at 1:30 p.m. to receive public comment on the proposed Medicaid rates for the Texas Health Steps (THSteps) Private Duty Nursing (PDN) services and Personal Care Services (PCS) benefit. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. 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. The proposed rates for THSteps PDN services and the PCS benefit are effective September 1, 2007. The proposed rates will be available for public review beginning July 30, 2007.

Methodology and Justification. The Medicaid reimbursement methodology rule for THSteps PDN services is located at 1 TAC §355.8441(4). The proposed new Medicaid reimbursement rule for the THSteps PCS benefit at 1 TAC §355.8441(12) was published in the July 6, 2007, issue of the *Texas Register* (32 TexReg 4150-4152). The 2008 - 2009 General Appropriations Act (Article II, HHSC, H.B. 1, 80th Legislature, Regular Session, 2007) appropriated general revenue funds to adjust the rates for these services.

Briefing Package. A briefing package describing the proposed payment rates will be available on July 30, 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-200703049

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 18, 2007



Notice of Public Hearing on Proposed Medicaid Payment Rates to Eliminate High-Volume Provider Payments

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on August 14, 2007, at 9:30 a.m. to receive public comment on the proposed elimination of Medicaid high-volume provider payments to primary care practitioners (PCPs), specialists, and dentists. The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. 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. The proposed elimination of Medicaid high-volume provider payments to PCPs, specialists, and dentists is effective September 1, 2007. The 2002-2003 General Appropriations Act (Article II, Special Provisions, Section 29, S.B. 1, 77th Legislature, Regular Session, 2001) appropriated general revenue funds to increase rates for professional services. The 2004-2005 General Appropriations Act (Article II, HHSC, Rider 30, H.B. 1, 78th Legislature, Regular Session, 2003) continued the funding, as did the 2006-2007 General Appropriations Act (Article II, HHSC, Rider 23, S.B. 1, 79th Legislature, Regular Session, 2005). However, the 80th Legislature did not contain a high-volume provider payment rider for PCPs, specialists, and dentists; rather, those general revenue funds were redistributed for other provider rate increases. Medicaid high-volume provider payments for services delivered by outpatient hospitals, ambulatory surgical centers (ASCs), and hospital ASCs (HASCs) are not affected by this change and will continue beyond September 1, 2007.

Methodology and Justification. The Medicaid reimbursement methodology rules for physician and other professional services are located at 1 TAC §355.8085. These rules provide for the establishment of resourced-based reimbursement fees based upon the Relative Value Units (RVUs) of the individual services as specified in the Medicare Fee Schedule. These rules also allow for the determination of access-based reimbursement fees, which are not based on the RVU methodology, for individual services to account for deficiencies relating to the adequacy of access to health care services, to ensure adequate participation in the Medicaid program by physicians and other practitioners, and to ensure that the eligible Medicaid population receives adequate health care services in an appropriate setting. The Texas Medicaid Program considered these high-volume provider payments as access-based fees.

Briefing Package. A briefing package describing the proposed changes will be available on or after July 30, 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 changes 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-200703040

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 17, 2007



Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Transmittal Number TX 07-007, Amendment Number 766, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

This amendment updates the base year for determining which outpatient hospitals qualify as high-volume providers. The current language identifies a high-volume outpatient hospital provider as one that was paid \$200,000 during calendar year 2000. The amendment changes the qualification period from calendar year 2000 to calendar year 2004. The amendment also removes the 2.5 percent payment reduction for outpatient hospital services that has been in effect since September 1, 2003.

The proposed amendment is estimated to result in additional annual aggregate expenditures of \$2,256,349 for the remainder of federal fiscal year (FFY) 2007 (September 1, 2007 to September 30, 2007), with approximately \$1,371,409 in federal funds and approximately \$884,940 in state general revenue. For FFY 2008 (October 1, 2007 to September 30, 2008), the proposed amendment is estimated to result in additional annual aggregate expenditures of \$27,076,184, with approximately \$16,397,337 in federal funds and approximately \$10,678,847 in state general revenue. For FFY 2009 (October 1, 2008 to September 30, 2009), the estimated additional annual aggregate expenditures are approximately \$27,076,184, with approximately \$16,359,429 in federal funds and approximately \$10,716,755 in state general revenue. These costs are associated with the removal of the 2.5 percent payment reduction.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Alisa Jacquet by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at alisa.jacquet@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-200702986

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 16, 2007



Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 07-011, Amendment Number 770, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The purpose of this amendment is to modify the Medicaid reimbursement methodology for birthing center facility services. The current reimbursement methodology for birthing centers reduces valid birthing center Medicaid payments by 2.5 percent. This reduction has been in place since September 1, 2003. Based on appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007), state funds were provided to restore fees for Medicaid birthing center facility services to the level in place prior to September 1, 2003.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$211 for the remainder of federal fiscal year (FFY) 2007 (September 1, 2007 to September 30, 2007), with approximately \$128 additional expenditure in federal funds and approximately \$83 additional expenditure in state general revenue. For FFY 2008 (October 1, 2007 to September 30, 2008), the estimated additional expenditure is approximately \$2,536, with approximately \$1,536 additional expenditure in federal funds and approximately \$1,000 additional expenditure in state general revenue. For FFY 2009 (October 1, 2008 to September 30, 2009), the estimated additional expenditure is approximately \$2,536, with approximately \$1,532 additional expenditure in federal funds and approximately \$1,004 additional expenditure in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Amber Lovett by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1371; by facsimile at (512) 491-1998; or by e-mail at amber.lovett@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-200702972

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 13, 2007



Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Transmittal Number 07-020, Amendment Number 779, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The proposed amendment allows HHSC to address a situation in which a hospital has its Disproportionate Share Hospital (DSH) qualification disrupted because it is located in a county declared to be a federal natural disaster area. The 2008 - 2009 General Appropriations Act (Article II, Health and Human Services Commission, Rider 65, House Bill 1, 80th Legislature, Regular Session, 2007) requires HHSC to consider the negative impact on DSH funding to hospitals located in counties whose population has changed as a result of a federally declared natural disaster. Rider 65 permits HHSC to adjust population-driven allocation factors or provide for hold-harmless provisions to compensate for the change in population from a federally declared natural disaster when determining funding allocations. Under this amendment, hospitals that are impacted as a result of a federally declared natural disaster

will have the opportunity to request that their disproportionate share funding not be impacted in an adverse manner.

In addition, the proposed amendment updates the conversion factors that expire August 31, 2007, and updates cost reporting citations that have changed due to a format change in the Centers for Medicare and Medicaid Services (CMS) Hospital and Hospital Health Care Complex Cost Report. These changes will ensure equitable funding to DSH safety net hospitals for the remainder of Federal Fiscal Year 2007 (September 1, 2007 to September 30, 2007) and for Federal Fiscal Years 2008 and 2009, and will ensure accurate data is provided to the state.

The proposed amendment is estimated to result in no additional federal or state expenditures.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Henry Welles by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1368; by facsimile at (512) 491-1998; or by e-mail at henry.welles@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-200702994

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 17, 2007



Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 07-027, Amendment Number 786, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The proposed amendment is to modify the Medicaid reimbursement methodology for Maternity Clinic Services (MCS). The current reimbursement methodology for MCS reduces valid maternity clinic services Medicaid payments by 2.5 percent. This reduction has been in place since September 1, 2003. Based on appropriations under the 2008 - 2009 General Appropriations Act (Article II, Special Provisions, Section 57, House Bill 1, 80th Legislature, Regular Session, 2007), state funds were provided to eliminate the 2.5 percent payment reductions for Medicaid maternity clinic services effective September 1, 2007.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$682 for the remainder of federal fiscal year (FFY) 2007 (September 1, 2007 to September 30, 2007), with approximately \$415 additional expenditure in federal funds and approximately \$268 additional expenditure in state general revenue. For FFY 2008 (October 1, 2007 to September 30, 2008), the estimated additional expenditure is approximately \$8,188 with approximately \$4,959 additional expenditure in federal funds and approximately \$3,229 additional expenditure in state general revenue. For FFY 2009 (October 1, 2008 to September 30, 2009), the estimated additional expenditure is approximately \$8,188 with approximately \$4,947 additional expenditure in federal funds and approximately \$3,241 additional expenditure in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Amber Lovett by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by tele-

phone at (512) 491-1371; by facsimile at (512) 491-1998; or by e-mail at amber.lovett@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-200702987

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 16, 2007



Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 07-028, Amendment Number 787 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2007.

The purpose of this amendment is to modify the Medicaid reimbursement methodology for Ambulatory Surgical Centers (ASCs) and Hospital-based Ambulatory Surgical Centers (HASCs). The current reimbursement methodology for ASC and HASC services reduces valid ASC and HASC Medicaid payments by 2.5 percent. This reduction has been in place since September 1, 2003. Based on appropriations under the 2008-09 General Appropriations Act (Article II, Special Provisions, Section 57, H.B. 1, 80th Legislature, Regular Session, 2007), state funds were provided to restore fees for ASC and HASC Medicaid services to the level in place prior to September 1, 2003.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$139,849 for the remainder of federal fiscal year (FFY) 2007 (September 1, 2007 to September 30, 2007), with approximately \$85,000 additional expenditure in federal funds and approximately \$54,849 additional expenditure in state general revenue. For FFY 2008 (October 1, 2007 to September 30, 2008), the estimated additional expenditure is \$1,678,184, with approximately \$1,016,308 additional expenditure in federal funds and approximately \$661,876 additional expenditure in state general revenue. For FFY 2009 (October 1, 2008 to September 30, 2009), the estimated additional expenditure is \$1,678,184, with approximately \$1,013,959 additional expenditure in federal funds and approximately \$664,225 additional expenditure in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Amber Lovett by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1371; by facsimile at (512) 491-1998; or by e-mail at amber.lovett@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-200702971

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: July 13, 2007



Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 07-033, Amendment Number 792, to the Texas State Plan for Medical Assistance, under Title XIX of the

Social Security Act. The proposed amendment is effective August 1, 2007, through August 31, 2007.

The proposed amendment will adjust payment rates for the Primary Home Care program to increase attendant compensation as necessary to comply with the new federal minimum wage that will increase \$0.70 from the current \$5.15 per hour to \$5.85 per hour on July 24, 2007.

The proposed amendment is estimated to result in additional annual aggregate expenditures of \$1,167,405 for a portion of federal fiscal year (FFY) 2007 (August 1, 2007, through August 31, 2007), with approximately \$709,548 of additional costs in federal funds and approximately \$457,856 of additional costs in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@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-200703059
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 18, 2007



Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 07-034, Amendment Number 793, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective August 1, 2007, through August 31, 2007.

The proposed amendment will adjust payment rates for the Day Activity and Health Services program to increase attendant compensation as necessary to comply with the new federal minimum wage that will increase \$0.70 from the current \$5.15 per hour to \$5.85 per hour on July 24, 2007.

The proposed amendment is estimated to result in additional annual aggregate expenditures of \$61,969 for a portion of federal fiscal year (FFY) 2007 (August 1, 2007 through August 31, 2007), with approximately \$37,665 of additional costs in federal funds and approximately \$24,304 of additional costs in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam McDonald by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, Mail Code H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1373; by facsimile at (512) 491-1998; or by e-mail at pam.mcdonald@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-200703060
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 18, 2007



Texas Department of Housing and Community Affairs

Request for Proposals for Foreclosure Prevention and to Certify Participants as Foreclosure Prevention Providers

SUMMARY. The Texas Department of Housing and Community Affairs (TDHCA or Department) announces a Request for Proposals (RFP) for organizations to provide training to Non-Profit Single Family Developers, Housing Finance Agencies, Social Service Providers, or Units of Local Government in the principles and applications of foreclosure prevention and to certify participants as foreclosure prevention providers.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the RFP is 4:00 p.m., Central Daylight Savings time, Friday, August 24, 2007. No proposals will be accepted after the deadline. Faxed or e-mailed applications will not be accepted.

TDHCA reserves the right to accept or reject any (or all) proposals submitted under this RFP. The information contained in this RFP is intended to serve only as a general description of the services sought by TDHCA. In releasing this request, TDHCA is not obligated to proceed with any action and may decide it is in the Department's best interest to discontinue consideration of services. TDHCA reserves the right, with 30 days written notice, to cancel any contract awarded under the terms of this RFP.

Entities interested in submitting a proposal should submitted three copies to the following address:

Texas Department of Housing and Community Affairs
Attn: Dina Gonzalez, Texas Homeownership Division
P.O. Box 13941

221 East 11th Street
Austin, TX 78711-3941

Questions concerning this RFP may be directed in writing to TDHCA, Attention: Julie Dumbeck, P.O. Box 13941, Austin, Texas 78711-3941 or by e-mail at julie.dumbeck@tdhca.state.tx.us.

TRD-200703056
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 18, 2007



Texas Department of Insurance

Company Licensing

Application to change the name of PRIVATE RESIDENTIAL MORTGAGE INSURANCE CORPORATION to GENWORTH FINANCIAL ASSURANCE CORPORATION, a foreign fire and/or casualty company. The home office is in Raleigh, North Carolina.

Application for admission to the State of Texas by THE PROFOR-MANCE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Freehold, New Jersey.

Application to change the name of AMERICAN LIVE STOCK INSURANCE COMPANY to HISCOX INSURANCE COMPANY INC., a foreign fire and/or casualty company. The home office is in Geneva, Illinois.

Application for admission to the State of Texas by FIRSTCOMP INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Omaha, Nebraska.

Application to change the name of HOMELAND CENTRAL INSURANCE COMPANY to ESURANCE INSURANCE COMPANY OF NEW JERSEY, a foreign fire and/or casualty company. The home office is in Madison, Wisconsin.

Application for admission to the State of Texas by TECHNOLOGY INSURANCE COMPANY, INC., a foreign fire and/or casualty company. The home office is in New York, New York.

Application to change the name of AMERUS LIFE INSURANCE COMPANY to AVIVA LIFE AND ANNUITY COMPANY, a foreign life, accident and/or health company. The home office is in Des Moines, Iowa.

Application for admission to the State of Texas by AMERICAN MILLENNIUM INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Hoboken, New Jersey.

Application to change the name of MAPFRE REINSURANCE CORPORATION to MAPFRE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Florham Park, New Jersey.

Application for admission to the State of Texas by AMERICAN INTER-FIDELITY EXCHANGE, a foreign fire and/or casualty company. The home office is in Merrillville, Indiana.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200703058
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 18, 2007



Notice of Call for Issues Related to the Adoption of Premium Rates, Rules, Forms, and the Regulation of the Business of Personal Property Title Insurance

Texas Insurance Code (TIC) §2751.053, as enacted by S.B. 1153, 80th Legislative Session (R), requires the Department of Insurance to hold a hearing pursuant to TIC Chapter 40 Subchapter B to consider adoption of premium rates for personal property title insurance. Prior to the adoption of fair and reasonable rates, the Commissioner has determined that it is necessary to consider adoption of personal property title insurance forms, and other matters and subjects relative to the regulation of the business of personal property title insurance. Any such matters may be requested by any association, any title insurance company, any title insurance agent, any member of the public, or as identified and determined to be necessary by the Commissioner.

This notice of call is issued to receive proposals from any association, any title insurance company, any title insurance agent, or any member of the public so that notice of the matters to be considered may be provided pursuant to the requirements of TIC §2751.053 and §2703.207. Any association, any title insurance company, any title insurance agent, or any member of the public that would like to request that rates, rules, forms and endorsements for personal property title insurance, rules, forms and endorsements, be considered must provide a detailed description of the proposals no later than August 27, 2007. After receipt and correlation of the matters reported and or determined to be necessary for consideration, notices of hearings will appear in the *Texas Register*.

All proposals and submissions should be addressed to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104 (please refer to reference number T-0406-08-I). Such proposals and submissions must be submitted and made available in both paper and electronic format compatible and accessible by a computer using the Windows XP operating system and Microsoft Office software. All information submitted in electronic format to the Office of the Chief Clerk shall be submitted in a format that does not require the use of passwords or other security measures for accessibility and utilization by the Department.

TRD-200703018
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 17, 2007



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application to change the name and home office of CENTENE MANAGEMENT CORPORATION, MILWAUKEE, WISCONSIN to CENTENE MANAGEMENT COMPANY, LLC, a FOREIGN third party administrator. The home office is MADISON, WISCONSIN.

Application of CONSOLIDATED HEALTH PLANS, INC., a foreign third party administrator. The home office is SPRINGFIELD, MASSACHUSETTS.

Application of USB ENROLLMENT SERVICES, LLC, a domestic third party administrator. The home office is DALLAS, TEXAS.

Application of RAMOS ACCOUNTING & ADMINISTRATIVE SERVICES, LLC, a domestic third party administrator. The home office is AUSTIN, TEXAS.

Application of GENRY FINANCIAL GROUP, LLC, a domestic third party administrator. The home office is TYLER, TEXAS.

Application of SPECIALTY RISK SERVICES, LLC, a foreign third party administrator. The home office is HARTFORD, CONNECTICUT.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200703057
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 18, 2007



Texas Lottery Commission

Instant Game Number 768 "Find the 9's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 768 is "FIND THE 9'S". The play style is "match 3 of 6 with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 768 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 768.

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: \$1.00, \$2.00, \$3.00, \$5.00, \$30.00, \$50.00, \$300 and 9.

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. 768 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$30.00	THIRTY
\$50.00	FIFTY
\$300	THR HUND
9	NINE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 768 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
FIV	\$5.00
NIN	\$9.00
NNT	\$19.00

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 \$1.00, \$2.00, \$3.00, \$5.00, \$9.00 or \$19.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$90.00 or \$300.

I. High-Tier Prize - A prize of \$999.

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 (768), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 768-0000001-001.

L. Pack - A pack of "FIND THE 9'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 146 to 150 will be on the last page with backs exposed. Tickets 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIND THE 9'S" Instant Game No. 768 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 "FIND THE 9'S" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 matching amounts in the play area, the player wins that amount. If a player reveals any 9 play symbols in the play area, the player wins the corresponding prize in the PRIZE LEGEND. 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 6 (six) 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 6 (six) 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 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain two sets of three matching prize amounts.

C. No ticket will contain 4 or more matching prize amounts.

D. No ticket will contain more than four "9" play symbols.

E. No ticket will contain one or more "9" symbols and three matching prize symbols.

F. The "9" play symbol will only appear on intended winning tickets as dictated by the prize structure.

G. Tickets can only win once (and will win only the highest amount shown).

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 9'S" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$9.00, \$19.00, \$30.00, \$50.00, \$90.00 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00,

\$50.00, \$90.00 or \$300 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 "FIND THE 9'S" Instant Game prize of \$999, 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 "FIND THE 9'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FIND THE 9'S" 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 "FIND THE 9'S" 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 20,160,000 tickets in the Instant Game No. 768. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 768 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	2,520,000	8.00
\$2	940,800	21.43
\$3	403,200	50.00
\$5	235,200	85.71
\$9	168,000	120.00
\$19	67,200	300.00
\$30	21,000	960.00
\$50	12,600	1,600.00
\$90	10,584	1,904.76
\$300	420	48,000.00
\$999	168	120,000.00

*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 4.60. 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. 768 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. 768, 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-200702955
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: July 13, 2007



Instant Game Number 794 "State Fair of Texas"

1.0 Name and Style of Game.

A. The name of Instant Game No. 794 is "STATE FAIR OF TEXAS". The play style is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 794 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 794.

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: PEPPER SYMBOL, BRANDING IRON SYMBOL, BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, GOLD BAR SYMBOL, SUN SYMBOL, MUSIC SYMBOL, BALLOON SYMBOL, GLOVE SYMBOL, APPLE SYMBOL, PAIL SYMBOL, COOLER SYMBOL, SHADES SYMBOL, PRETZEL SYMBOL, HAMBURGER SYMBOL, FRIES SYMBOL, HOT DOG SYMBOL, SODA SYMBOL, ICE CREAM SYMBOL, CAR SYMBOL, WAGON SYMBOL, TEXAS SYMBOL \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$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. 794 - 1.2D

PLAY SYMBOL	CAPTION
PEPPER SYMBOL	PEPPER
BRANDING IRON SYMBOL	BRAND
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SADDLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HORSE
STAR SYMBOL	STAR
HORSESHOE SYMBOL	SHOE
GOLD BAR SYMBOL	GOLD
SUN SYMBOL	SUN
MUSIC SYMBOL	MUSIC
BALLOON SYMBOL	BLLN
GLOVE SYMBOL	GLOVE
APPLE SYMBOL	APPLE
PAIL SYMBOL	PAIL
COOLER SYMBOL	COOLER
SHADES SYMBOL	SHADES
PRETZEL SYMBOL	PRET
HAMBURGER SYMBOL	HAMBGR
FRIES SYMBOL	FRIES
HOT DOG SYMBOL	HOTDOG
SODA SYMBOL	SODA
ICE CREAM SYMBOL	ICECRM
CAR SYMBOL	CAR
WAGON SYMBOL	WAGON
TEXAS SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$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. 794 - 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 Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$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 (794), 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: 794-0000001-001.

L. Pack - A pack of "STATE FAIR OF TEXAS" 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 "STATE FAIR OF TEXAS" Instant Game No. 794 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 "STATE FAIR OF TEXAS" Instant Game is determined once the latex on the ticket is scratched off to expose 43 (forty-three) Play Symbols. If a player matches any of YOUR SYMBOLS play symbols to any of the WINNING SYMBOLS play symbols, the player wins the PRIZE shown for that symbol. If a player reveals a State of Texas "TEXAS" play symbol, the player wins ALL 20 PRIZES shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 43 (forty-three) 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 43 (forty-three) 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 43 (forty-three) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 43 (forty-three) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more matching non-winning prize symbols on a ticket.

C. The "TEXAS" (auto win) play symbol will only appear as dictated by the prize structure.

D. No duplicate WINNING SYMBOLS play symbols on a ticket.

E. No duplicate non-winning YOUR SYMBOLS play symbols on a ticket.

F. The \$50,000 prize symbol will appear at least once on all tickets unless otherwise restricted by the prize structure.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

2.3 Procedure for Claiming Prizes.

A. To claim a "STATE FAIR OF TEXAS" 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 "STATE FAIR OF TEXAS" 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 "STATE FAIR OF TEXAS" 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 "STATE FAIR OF TEXAS" 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 "STATE FAIR OF TEXAS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 794. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 794 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	598,400	6.82
\$10	353,600	11.54
\$15	54,400	75.00
\$20	136,000	30.00
\$25	54,400	75.00
\$50	27,200	150.00
\$100	884	4,615.38
\$200	1,700	2,400.00
\$2,000	204	20,000.00
\$50,000	5	816,000.00

*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 3.33. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 794 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. 794, 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-200702957
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: July 13, 2007

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Instant Game Number 841 "Green Stuff"

1.0 Name and Style of Game.

A. The name of Instant Game No. 841 is "GREEN STUFF". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 841 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 841.

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, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 3X SYMBOL, 6X SYMBOL, \$2.00, \$3.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$250, \$2,500 and \$25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 841 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
4	FOR
5	FIV
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
3X	WINX3
6X	WINX6
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$250	TWO FTY
\$2,500	25 HUND
\$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 841 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
SIX	\$6.00
NIN	\$9.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$6.00, \$9.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$250.

I. High-Tier Prize - A prize of \$2,500 or \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (841), 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: 841-0000001-001.

L. Pack - A pack of "GREEN STUFF" 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 "GREEN STUFF" Instant Game No. 841 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 "GREEN STUFF" 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 a player reveals a "3X" play symbol, the player wins 3 (three) times the PRIZE shown for that symbol. If a player reveals a "6X" play symbol, the player wins 6 (six) times 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 unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No three or more identical non-winning prize symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. The "3X" (WIN x 3) and "6X" (WIN x 6) play symbols will only appear on winning tickets as dictated by the prize structure.

F. The \$2,500 and \$25,000 prize symbols will both appear on all tickets unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "GREEN STUFF" Instant Game prize of \$2.00, \$4.00, \$5.00, \$6.00, \$9.00, \$10.00, \$20.00, \$50.00 or \$250, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00

or \$250 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 "GREEN STUFF" Instant Game prize of \$2,500 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "GREEN STUFF" 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 "GREEN STUFF" 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 "GREEN STUFF" 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 8,040,000 tickets in the Instant Game No. 841. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 841 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	964,800	8.33
\$4	562,800	14.29
\$5	96,480	83.33
\$6	64,320	125.00
\$9	64,320	125.00
\$10	80,400	100.00
\$20	64,320	125.00
\$50	13,400	600.00
\$250	6,700	1,200.00
\$2,500	44	182,727.27
\$25,000	11	730,909.09

*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 4.19. 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. 841 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. 841, 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-200703051
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: July 18, 2007

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Texas Parks and Wildlife Department
 Notice of Hearing and Opportunity for Public Comment

The Texas Parks and Wildlife Department (TPWD) is accepting public comment on the application of Richmond Materials Company for a TPWD permit to dredge state-owned sand and gravel from the bed of the Brazos River at a location in Fort Bend County approximately three miles downstream from the U.S. Highway 90A crossing and 3.8 miles upstream from the U.S. Highway 59 crossing.

The department will hold a public hearing on the application at 11:00 a.m. on Thursday, September 6, 2007 at the TPWD Headquarters Complex, 4200 Smith School Road, Austin, Texas. The hearing is not a contested case hearing under the Administrative Procedure Act.

Written comments must be submitted within 30 days of the publication of this notice in the *Texas Register* or the newspaper, whichever is later, or at the public hearing.

Written comments, questions, or requests to review the application should be sent to Beth Hilliard, 4200 Smith School Road, Austin, Texas 78744; FAX (512) 389-4482; e-mail: beth.hilliard@tpwd.state.tx.us.

TRD-200703048

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: July 18, 2007

Texas Department of Public Safety

Hazard Mitigation Grant Program (HMGP) FEMA-1709-DR

As a result of severe storms, tornados, and flooding beginning on June 16, 2007, a major disaster (FEMA-1709-DR) was declared by the President. Due to this declaration, Texas is authorized federal funds through the Hazard Mitigation Grant Program (HMGP). This program is a 75/25 federal to local cost-share program by the Federal Emergency Management Agency (FEMA), and administered by the State of Texas. The HMGP is a mitigation grant with a single mission to provide a means to:

- * prevent or reduce future losses to lives and property through the identification and funding of cost-effective mitigation measures.
- * minimize the costs of future disaster response and recovery.

The HMGP can fund mitigation measures that protect both public and private property, so long as the measures fit within the overall mitigation strategy for the disaster area, are cost effective, and comply with all federal and state program guidelines.

All eligible applicants, which include local governments, state agencies, certain non-profit organizations and institutions, and Indian tribes or authorized tribal organizations are invited and encouraged to take advantage of this opportunity and apply for HMGP funds. These funds will be allocated to applicants based on a competitive application process.

If your organization is interested in participating in the HMGP process, you are invited to submit a Notice of Interest to be post-marked by midnight on August 24, 2007 to the Texas Hazard Mitigation Officer, Texas Department of Public Safety, Division of Emergency Management, P.O. Box 4087, Austin, TX 78773-0226, or by e-mail to hildy.soper@txdps.state.tx.us or by fax to (512) 424-5647. The HMGP application deadline for this disaster will be midnight on November 9, 2007. Detailed information including an HMGP Fact Sheet and the forms to use for development and submission of both a notice of interest (NOI), and HMGP application are available on the Department of Public Safety/Governor's Division of Emergency Management website located at the following

address: <http://www.txdps.state.tx.us/dem/pages/downloadable-forms.htm#hmgpgrants>.

If you have questions or need assistance, please contact state Mitigation Grants Officer Hildy Soper at (512) 424-2454 or by e-mail to: hildy.soper@txdps.state.tx.us.

TRD-200703025

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: July 17, 2007

Public Utility Commission of Texas

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 July 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 IDT Energy, Inc. for Retail Electric Provider (REP) Certification, Docket Number 34497 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 August 3, 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 34497.

TRD-200702992

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 16, 2007

Notice of Application for Designation as an Eligible Telecommunications Carrier Pursuant to §26.418 and Designation as an Eligible Telecommunications Provider Pursuant to §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas on July 16, 2007, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418, and as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of NTS Telephone Company, LLC d/b/a NTS of Levelland for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider. Docket Number 34516.

The Application: The company is requesting ETC and ETP designation in the study area of Windstream Communications, Inc. in order to receive support from both the Federal Universal Service Support Mechanisms and the Texas Universal Service. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request,

shall designate qualifying common carriers as ETC/ETPs for service areas set forth by the commission.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by August 16, 2007. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 34516.

TRD-200703053

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 18, 2007



Notice of Application to Relinquish or Strike Certificate of Convenience and Necessity

Notice is given to the public of an application filed on July 13, 2007, with the Public Utility Commission of Texas to relinquish or strike Certificate of Convenience and Necessity Number 40097.

Docket Style and Number: Application of AT&T Communications of the Southwest, Inc. to Relinquish or Strike Certificate of Convenience and Necessity (CCN) Number 40097. Docket Number 34509.

The Application: AT&T stated that it is no longer a provider of telecommunications services within the definition of the Public Utility Regulatory Act and seeks to cancel or strike certificate number 40097.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by August 3, 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 34509.

TRD-200703023

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2007



Notice of Award of Major Consulting Contract

The Public Utility Commission of Texas (PUCT) announces the award of Contract No. 473-07-00311.

Description of Activities

The contractor will provide a review and evaluation of the terms of the proposed acquisition of TXU Corporation (TXU) by Texas Energy Future Holdings Limited Partnership (TEF). It is possible that the PUCT will request that the contractor participate in the contested case hearing as described below.

Background Information: As part of the proposed merger agreement with TEF, TXU has begun the process of separating its primary business units into three businesses as follows:

1. TXU Energy, which provides retail electric service and related services to more than 2.1 million electricity customers in Texas;
2. TXU's power generation and related businesses, formerly known as TXU Power and TXU Wholesale, are now known as Luminant Energy (Luminant); and
3. The electric distribution and transmission business, formerly TXU Electric Delivery, is now Oncor Electric Delivery (Oncor).

Review and Evaluation Services

The Contractor will undertake, but is not limited to, the following tasks:

- * review and evaluate the proposed financing of the resulting company, with a focus on Oncor;
- * review and evaluate the proposed organization of the resulting company;
- * review and evaluate the TEF's commitments concerning, among others, financing and reorganization;
- * review the establishment of Oncor as a separate legal entity from TXU Energy and Luminant;
- * review the separation of management and staff of Oncor from the management and staff of TXU Energy and Luminant;
- * review the establishment of a separate identity for Oncor as a matter of customers' perceptions;
- * review the proposed measures to establish Oncor's financial independence from TXU Energy and Luminant;
- * make a determination whether these measures provide reasonable assurance that Oncor will be in compliance with state law and the PUCT's rules relating to the separation of competitive and regulated businesses that are under common ownership and the Commission's code of conduct rules (see <http://www.puc.state.tx.us/rules/sub-rules/electric/index.cfm>) and whether Oncor will be sufficiently capitalized based on the capital needs for providing transmission and distribution service in its service area and managing the risks associated with providing such service, and whether it will have sufficient access to capital to permit it to provide adequate service to customers, taking into account the growth expectations for the Oncor service area and other factors that may result in future capital needs; and
- * prepare a report of findings and recommendations concerning the matters reviewed.

Contested Case Services

Should the PUCT require the contractor to provide these services in connection with the contractor's report, the contractor's duties will include, but are not limited to:

- * attending Open Meetings at which the Commissioners consider the contested case;
- * propounding and responding to discovery requests;
- * preparing and presenting direct testimony;
- * testifying under cross-examination;
- * attending the entire proceeding;
- * assisting staff during the proceeding;
- * and assisting in preparing post-hearing briefs and exceptions and replies to proposals for decision.

Consultant's Name and Business Address

Boston Pacific Company, Inc.

1100 New York Avenue, NW
Suite 490 East
Washington, DC 20005

Contract Value and Term

The total value of the contract will not exceed \$325,000. The contract was executed on July 5, 2007 and will expire on PUCT's acceptance of all completed services, which is estimated to be on or about August 31, 2007.

Due Date of Deliverables

The final report and recommendations are due on or about August 31, 2007.

TRD-200702993
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 16, 2007



Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of Brazoria Telephone Company (Brazoria) application filed with the Public Utility Commission of Texas (commission) on July 2, 2007, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Docket Title and Number: Application of Brazoria Telephone Company for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171; Docket Number 34483.

The Application: Brazoria filed an application to implement new rates for Foreign Exchange Directory Listings throughout its service territory. The proposed effective date for the proposed rate change is October 1, 2007. Brazoria's estimated annual revenue increase is \$864.00 or less than 5% of Brazoria's gross annual intrastate revenues. Brazoria has 5,650 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by September 17, 2007, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by September 17, 2007. Requests to intervene should be mailed to the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 34483.

TRD-200703055
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 18, 2007



Public Notice of CCN Holders Filing Requirements in Order to Calculate the Weighted Statewide Average Composite Usage Sensitive Intrastate Switched Access Rates

The Public Utility Commission of Texas (commission) is required to recalculate the weighted statewide average composite usage sensitive intrastate switched access rates pursuant to P.U.C. Substantive Rule §26.223. In order to calculate the statewide average, CCN holders are required to submit updated intrastate switched access data. Therefore, all CCN holders must provide the following intrastate data to the commission as a compliance filing pursuant to P.U.C. Substantive Rule §26.223(g) by September 15, 2007.

- (1) The current tariffed rate for originating and terminating common carrier line (CCL).
- (2) The current tariffed rate for originating and terminating local switching (LS).
- (3) The current tariffed rate for originating and terminating transport (TR).
- (4) The current tariffed rate for originating and terminating tandem switching (TS).
- (5) The current average per minute rate for originating and terminating tandem switch transport (TST).
- (6) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).
- (7) The total actual originating and terminating MOUs for the most recent 12-month period (August 1 through July 31) for each rate element listed in (1) - (6) above that is billed on an MOU basis.
- (8) The total revenues for the most recent 12-month period (August 1 through July 31) received from any switched access monthly rate element used to transport or switch the access traffic listed in (1) - (6) above that may be specifically attributable to the element identified (e.g., local switching, transport).

CCN holders' compliance filings should be filed in Project Number 34515 no later than September 15, 2007. Such compliance filings should be designated as confidential pursuant to P.U.C. Procedural Rule §22.71(d). Any questions regarding the filing of confidential material should be directed to Sylvia Hopson in Central Records at (512) 936-7176.

Questions concerning this notice should be referred to John Costello, Senior Policy Specialist, Infrastructure Reliability Division at (512) 936-7377 or James Kelsaw, Senior Network Analyst, Infrastructure Reliability Division at (512) 936-7338. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200703063
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 18, 2007



Request for Comments

The staff of the Public Utility Commission of Texas (commission) is conducting a rulemaking to implement recommendations made by Project Number 32182, *PUC Investigation of Methods to Improve Electric and Telecommunications Infrastructure to Minimize Long Term Outages and Restoration Costs Associated with Gulf Coast Hurricanes*. Specifically, the rulemaking will focus on the initiation

of rules that: (1) require telecommunications utilities to ensure that all central offices in hurricane prone areas are capable of full operation without interruption for at least 72 hours after loss of electric utility power; and (2) require electric utilities to design and construct all new substations located within a 100-year floodplain so that the floor of the control house and all water-sensitive components of the substation operating equipment are above the elevation of the 100-year floodplain. Project Number 34395, *Rulemaking Proceeding to Adopt New Rule relating to Central Office Emergency Power and Electric Facilities in Floodplains as Related to Infrastructure Reliability Under New Chapter 29*, has been assigned to this rulemaking.

The staff of the commission requests that interested persons file comments on the following questions:

1. Should a specific time frame for the implementation of the 72-hour power back-up capability for Central offices in hurricane-prone area be specified in the rule? If so, what is a reasonable time frame?
2. Should a time frame for the construction of central offices, remote units such as switching facilities and Digital Loop Carriers above the elevation of 100-year flood plain be specified in the rule? If so, what should be the construction time frame? As an alternative, should such upgrade coincide with a company's plans for upgrading major equipment in an exchange? (assuming the upgrade is to be accomplished within a reasonable time frame)
3. Should the requirements under questions 1 and 2 above apply to all certificated and registered facilities-based inter-exchange and local exchange service providers in Texas?
4. Should the rule specify the type of power back-up facilities to be considered as meeting the requirements of the rule? If so, what are the different types of power back-up facilities that meet the industry guidelines and do they have 72-hour back-up capabilities?
5. Please identify any exchanges that you serve that are located in the hurricane-prone areas? Should the rule identify these exchanges that are located in the hurricane-prone areas? If not, how should the hurricane-prone areas be defined and/or identified?
6. Should a requirement to design and construct all future electrical substations to an elevation at or above the 100-year floodplain be limited to certain types of substations or should it include all substations and switching stations at all voltage levels? Please explain how your recommendation would be defined and applied, and why it is reasonable.
7. Should substations located in areas that do not have a current FEMA Digital Flood Insurance Rate Maps in place be excluded from the requirements of this proposed rule or should some other method be used to achieve the same protection from flooding? Please explain in detail any other method that could be used to determine the proper elevation of a substation site.
8. Should the proposed rule related to the flooding of substations apply to the entire site or to just the area that includes electrical control devices?
9. Should the proposed rule concerning the flooding of substations consider the effect of storm surge? If so, how should it be considered?
10. For those facilities already in the construction stage, how many months after the approval of a rule related to the construction of substations above the 100-year floodplain should the rule apply to substations being constructed by a utility so that the design and construction plans would not need to be altered?
11. For those facilities already in the design stage, how many months after the approval of a rule related to the construction of substations

above the 100-year floodplain should the rule apply to substations being constructed by a utility so that the design and construction plans would not need to be altered? Or would this be necessary?

12. Should the commission consider in this rule a provision to provide for emergency back-up power facilities to protect against the flooding and damage to outside electrical sources and battery power for the operation of substations? If so, define the type of emergency back-up that should be considered. If not, please explain fully your reasons why emergency back-up power should not be implemented.

13. If the proposed rule includes a provision to address emergency power for electrical substations, should it apply to all existing substations, to only new substations, or to only "critical" substations? Please define the type of substations to which it should apply.

14. Should the rule specify the cost recovery mechanism for upgrades required under questions 1, 2, 6, and 12? If yes, please explain.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by Monday, August 27, 2007. All responses should reference Project Number 34395. This notice is not a formal notice of a proposed rulemaking; however, the parties' responses to the questions will assist the commission staff in developing the proposal for publication for adoption of P.U.C. Substantive Rules §29.8 and §29.9.

The commission's staff will hold a public workshop in Project Number 34395 regarding its rulemaking to adopt P.U.C. Substantive Rules §29.8 and §29.9 on Wednesday, September 5, 2007 at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711.

Questions concerning this notice should be referred to Brian Almon, Director of Electric Transmission Oversight, Infrastructure Reliability Division, brian.almon@puc.state.tx.us, (512) 936-7355; Nara Srinivasa, Director of Communications Network Oversight Section, Infrastructure Reliability Division, nara.srinivasa@puc.state.tx.us, (512) 936-7335; or Nathan Barrow, Attorney, Legal Division, nathan.barrow@puc.state.tx.us, (512) 936-7477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200703021

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 17, 2007

Texas Residential Construction Commission

Notice of Application for Designation as a "Texas Star Builder"

The commission adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective Sept. 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for twenty-one (21) days after the date of publication of the notice. In-

formation provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application for designation as a "Texas Star Builder" of:

Jewel Box Homes, Ltd. 9219 Katy Frwy, #122, Houston, TX 77024. Jewel Box Homes, Ltd. holds TRCC builder registration #12342. The applicant's registered agent is Robert Latham.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding this application will be accepted for twenty-one days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200702952

Susan K. Durso
General Counsel

Texas Residential Construction Commission

Filed: July 12, 2007

Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Texas Government Code, Chapter 2254.

PURPOSE: Stephen F. Austin State University is seeking consulting services for *ELL School Supervision*. This individual will be retained as a residential consultant to perform the following services:

- * work with teachers in the classroom;
- * model instructional strategies;
- * coordinate ongoing staff development at the school level in support of the Project ENLACE goals;
- * spend approximately 56 days each year working in coordination with the project personnel to attain project goals;
- * directly coach teachers in the Nacogdoches and Lufkin public schools to reinforce the instruction from in-service and pre-service professional development for lasting effect; and
- * attend project planning meetings and project institutes.

SELECTION CRITERIA: Expertise in improving reading and writing skills of public school students. Experience as a consultant with public schools for literacy skill development. Knowledge and expertise in best practices for English language learner instruction. Experience with a university in strengthening reading and writing skills of students. Master's degree and experience as a teacher.

CONTRACT COST: The contract amount will be \$28,000/year for up to five years.

DEADLINES AND CONTACT INFORMATION: Proposals must be received in the Department of Secondary Education and Educational Leadership, P.O. Box 13018 by August 6, 2007. For further information contact Dr. Betty Alford, (936) 468-2908, balford@sfasu.edu.

TRD-200703022

R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: July 17, 2007

Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Liberty, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Liberty, Liberty Municipal Airport. TxDOT CSJ No. 0320LBRTY. **Scope:** Provide engineering/design services for the replacement of the Medium Intensity Light System; replace & relocate rotating beacon and drainage improvements at the Liberty Municipal Airport.

The DBE goal is race neutral. TxDOT Project Manager is Clayton Bridwell.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Liberty Municipal Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at www.dot.state.tx.us/services/aviation/consultant.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Seven completed, unfolded copies of Form AVN-550 **must be received** by TxDOT Aviation, Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than August 21, 2007, at 4:00 p.m.

Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All

firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Clayton Bridwell, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200703064
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: July 18, 2007



Aviation Division - Request for Proposal for Aviation Engineering Services

The County of Pecos, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Pecos County, Fort Stockton/Pecos County Airport. TxDOT CSJ No. 0706FTSTK. Scope: Provide engineering/design services to install PAPI-4s on Runway 12-20 and replace the Medium Intensity Runway Lights 12-30 at the Fort Stockton/Pecos County Airport.

The DBE goal is set at race neutral. TxDOT Project Manager is Clayton Bridwell.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Fort Stockton/Pecos County Airport".

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at www.dot.state.tx.us/services/aviation/consultant.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT, Aviation, Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than August 21, 2007, at 4:00 p.m.

Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Clayton Bridwell, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200703065
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: July 18, 2007



Public Hearing - SH 121

Public Notice - Public Hearing for Proposed Removal and Transfer to the North Texas Tollway Authority of a Portion of SH 121 in Dallas and Denton Counties.

Pursuant to Transportation Code, §228.151 and 43 TAC §27.13, the Texas Department of Transportation (department) will conduct public hearings on Tuesday, August 7, 2007 at 6:00 p.m., at Coppell Middle School - North, 120 Neches Trace, Coppell, Texas 75019 and Thursday August 9, 2007, at 6:00 p.m., at City of Lewisville, City Hall Council Chamber, 151 West Church Street, Lewisville, Texas 75057, to receive comments from interested persons concerning the proposed removal from the state highway system and transfer to the North Texas Tollway Authority (authority) of a portion of State Highway 121 from 0.23 miles east of Business 121 to the ramp pair on the west side of FM 2281 in Dallas and Denton counties, to be utilized by the authority under Transportation Code, Chapter 366 for the design, financing, construction, operation, and maintenance of a turnpike project.

Transportation Code, §228.151 authorizes the department to lease, sell, or transfer in another manner a toll project or system that is part of the state highway system, including a nontolled state highway or a segment of a nontolled state highway converted to a toll project, to a governmental entity that has the authority to operate a tolled highway. A lease, sale, or transfer is subject to a prior public hearing in each county in which the project is located, and is subject to the Texas Transportation Commission (commission) and the Governor approving the transfer of the toll project or system as being in the best interests of the state and the entity receiving the project or system. Transportation Code, §228.153 requires the authority to reimburse the department for any expenditures of the department for the financing, design, development, construction, operation, or maintenance of the highway that have not been reimbursed with the proceeds of bonds issued for the highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the public that equal or exceed that cost.

Criteria and guidelines for the approval of the transfer have been adopted by rule by the commission in 43 TAC §27.13, and specify

that the commission may, after considering public comments received, approve the transfer of a toll project to the authority, if:

(1) the authority agrees, through a written commitment, to:

(A) assume all liability and responsibility for the safe and effective maintenance and operation of the highway on its transfer;

(B) assume all liability and responsibility for existing and future environmental permits, issues, and commitments, including obtaining all environmental permits and approvals and for compliance with all federal and state environmental laws, regulations, and policies applicable to the highway and related improvements;

(C) provide for public involvement and to conduct a study of the social and environmental impact of all proposed improvements to the toll project; and

(D) if applicable, comply with the design and construction standards of 43 TAC §27.15 when developing projects on the transferred highway; and

(2) the commission finds that the transfer:

(A) is in the best interests of the state;

(B) is in the best interests of the entity receiving the project; and

(C) will not adversely affect:

(i) the financial viability of the project; or

(ii) regional mobility.

The commission may not approve the transfer unless the governor approves the transfer as being in the best interests of the state and the entity receiving the project.

Metes and bounds description and maps and drawings showing the proposed portion of State Highway 121 to be transferred and other information concerning the proposed transfer are on file and available for public inspection and copying by contacting Bill Compton, Texas Department of Transportation, 4777 E. Hwy 80, Mesquite, TX 75150-6643, telephone (214) 319-4489.

All interested citizens are invited to attend this public hearing, which will be conducted in accordance with the procedures specified in 43 TAC §1.5. Speakers will be recognized in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time and repetitive comment. Groups, organizations, or associations are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Bill Compton, Texas Department of Transportation, 4777 E. Hwy 80, Mesquite, TX 75150-6643, telephone 214-319-4489 at least two work days prior to the hearing so that appropriate arrangements can be made.

TRD-200703067

Bob Jackson
General Counsel
Texas Department of Transportation
Filed: July 18, 2007



Public Notice - Disadvantaged Business Enterprise Goals Fiscal Year 2008

In accordance with Title 49, Code of Federal Regulations (C.F.R.), Part 26, recipients of federal-aid funds authorized by the Transportation Equity Act for the 21st Century (TEA 21) are required to establish Disadvantaged Business Enterprise (DBE) programs. Title 49 C.F.R. §26.45 requires the recipients of federal funds, including the Texas Department of Transportation, to set overall goals for DBE participation in U. S. Department of Transportation assisted contracts. As part of this goal-setting process, the Texas Department of Transportation is publishing this notice to inform the public of the proposed overall goals, and to provide instructions on how to obtain copies of documents explaining the rationale for each goal.

The proposed Fiscal Year 2008 DBE goals are 11.1% for highway design and construction, 12.8% for aviation design and construction, and 4.0% for public transportation. The proposed goals and goal-setting methodology for each is available for inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, for 30 days following the date of this notice. The information may be viewed in the office of the Texas Department of Transportation, Business Opportunity Programs Office, 200 East Riverside Drive, Austin, Texas 78704, Rm 2B.20.

The Department will accept comments on the DBE goals for 45 days from the date of this notice. Comments can be sent to Efreem Casarez, Business Opportunity Programs Office, 125 East 11th Street, Austin, Texas 78701; (512) 486-5502; Fax: (512) 486-5509; Email: ecasarez@dot.state.tx.us.

TRD-200703066
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: July 18, 2007



Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Trinity River Authority of Texas, Denton Creek Regional Wastewater Treatment System, 5300 South Collins Street, Arlington, TX 76018, received June 8, 2007, application for financial assistance in the amount of \$50,000,000 from the Clean Water State Revolving Fund.

Trinity River Authority of Texas, Ten Mile Creek System, 5300 South Collins Street, Arlington, TX 76018, received June 8, 2007, application for financial assistance in the amount of \$50,000,000 from the Clean Water State Revolving Fund.

Bell-Milam-Falls Water Supply Corporation, P.O. Box 150, Cameron, TX 76520, received on April 5, 2007, application for financial assistance in the amount of \$1,225,000 from the Rural Water Assistance Fund.

Greater Texoma Utility Authority on behalf of the Argyle Water Supply Corporation, 5100 Airport, Dennison, TX 75020, received on May 31, 2007, application for financial assistance in the amount of \$5,155,00 from the Rural Water Assistance Fund.

North Kaufman Water Supply Corporation, P.O. Box 870, Kaufman, TX 75142, received on May 4, 2007, application for financial assistance in the amount of \$1,225,000 from the Rural Water Assistance Fund.

Westwood Shores Municipal Utility District, 75 Cottonwood Road, Trinity, TX 75862, received May 31, 2007, application for financial assistance in the amount of \$2,255,000 from the Rural Water Assistance Fund.

Orange County Water Control and Improvement District No. 1, 460 E. Bollivar Street, Vidor, TX 77662, received May 31, 2007, application for financial assistance in the amount of \$27,225,000 from the Clean Water State Revolving Fund.

Angelina Neches River Authority, P.O. Box 387, Lufkin, TX 75902, received May 21, 2007, application for financial assistance in the amount of \$42,230 from the Research and Planning Fund.

TRD-200703042
Marisol Saenz
Attorney
Texas Water Development Board
Filed: July 17, 2007



Notice of Public Hearing

Texas Water Development Board (Board) staff will conduct a public hearing on proposed amendments to Title 31, Texas Administrative Code, Chapter 363, Subchapter E, Division 1, related to the Board's Economically Distressed Areas Program (EDAP).

The hearing will begin at 10:00 a.m. on Tuesday, August 2, 2007, in Room E.1012 of the Capitol Extension at 1400 Congress Avenue, Texas State Capitol Complex, in Austin, Texas. The public may access the Capitol Extension through elevators located within the north wing of the Capitol. Paid parking is available in the visitor's parking garage on San Jacinto Street between 12th and 13th Street (first two hours are free).

The proposed rules changes are based on statutory changes made by the 80th Texas Legislature in Article 6, Senate Bill 3, which becomes effective September 1, 2007. The bill and the proposed rules ensure that existing EDAP projects move forward while maintaining compliance with the model subdivision rules. The proposed rules were published in the July 13, 2007, issue of the *Texas Register* (32 TexReg 4330).

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed rules. In addition, persons may submit written comments no later than Monday, August 13, 2007, to Joe Reynolds, Office of the General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, TX 78711-3231 or by e-mail at joe.reynolds@twdb.state.tx.us.

In addition to the *Texas Register* publication, copies of the proposed rules may be obtained from the Board's website at <http://www.twdb.state.tx.us/publications/rules.asp>.

TRD-200703041
Marisol Saenz
Attorney
Texas Water Development Board
Filed: July 17, 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).