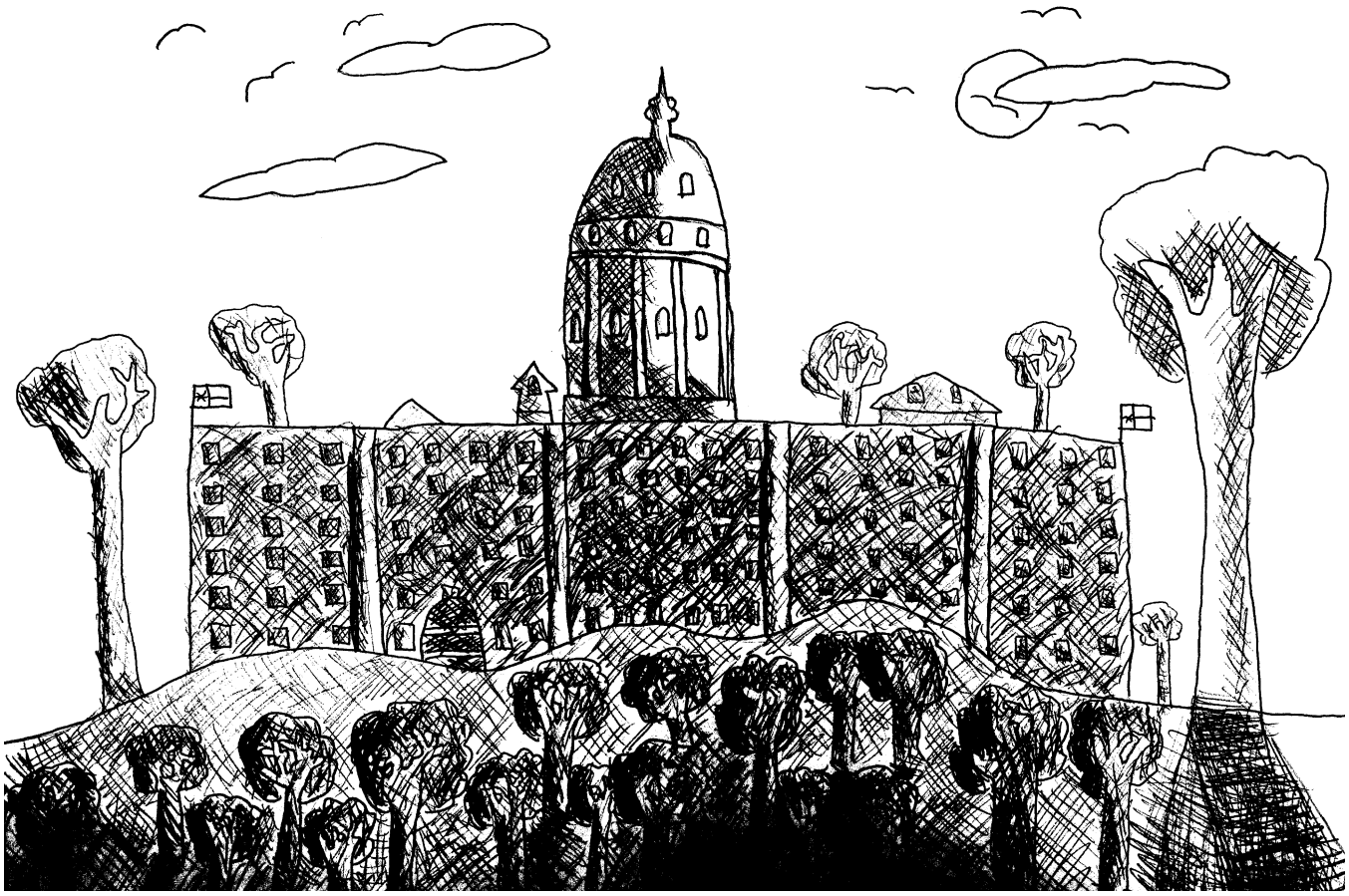
TEXAS REGISTER

Volume 31 Number 20 *May 19, 2006* *Pages 4117-4284*



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

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

Texas Register, **(ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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

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

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
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IN THIS ISSUE

Open Meetings

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at http://www.oag.state.tx.us. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0482-GA

Requestor:

The Honorable Joel D. Littlefield

Hunt County Attorney

Post Office Box 1097

Greenville, Texas 75403-1097

Re: Whether a deputy sheriff may use a county patrol vehicle to perform off-duty security work (Request No. 0482-GA)

Briefs requested by June 8, 2006

RQ-0483-GA

Requestor:

The Honorable David A. Castillo

52nd Judicial District Attorney

Post Office Box 919

Gatesville, Texas 76528-0919

Re: Issuance of a certificate of obligation by a city council for a water system improvement project (Request No. 0483-GA)

Briefs requested by June 8, 2006

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

TRD-200602600
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: May 10, 2006

♦ ♦ ♦

Opinions

Opinion No. GA-0427

The Honorable David Swinford

Chair, Committee on State Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether the Comptroller of Public Accounts has constitutional or statutory authority to "research, analyze and report" about a state agency and the organic legislation creating the agency (RQ-0424-GA)

S U M M A R Y

The Comptroller of Public Accounts does not have the authority to initiate and conduct an investigation into the effectiveness and efficiency of a state agency's policies, management, fiscal affairs, or operations as formerly authorized by the Government Code. State agencies, departments, and offices are statutorily required to provide assistance to a legislative committee upon the committee's request. A state agency, department or office may respond to a single legislator's request for assistance and information only within constitutional and statutory limits of authority. The Tax Code does not authorize the Comptroller to investigate state agencies and their policies, management, and operations and issue a report thereon, except in response to a request from the Governor. Also, the Tax Code authorizes the Comptroller to initiate and conduct an investigation of certain agency expenditures, receipts, and disbursements, but this cannot be construed as authorizing a more broad based investigation into the effectiveness and efficiency of a state agency's policies, management, fiscal affairs, and operations.

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

TRD-200602599
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: May 10, 2006

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 353. MEDICAID MANAGED CARE

The Texas Health and Human Services Commission (HHSC or Commission) proposes to amend Chapter 353, Subchapter A, §353.2 and §353.3 and Subchapter E, §§353.403, 353.405, 353.407, 353.409, 353.411, 353.413, 353.415, 353.417 and 353.419. Chapter 353 describes standards for the Medicaid Managed Care program.

HHSC proposes to amend the following rules: §353.2, Definitions; §353.3, Experience Rebate in the Managed Care Program; §353.403, Enrollment; §353.405, Marketing; §353.407, Requirements of Health Maintenance Organizations; §353.409, Scope of Services; §353.411, Accessibility of Services; §353.413, Managed Care Benefits and Services for Children Under 21 Years of Age; §353.415, Member Complaint Procedures; §353.417, Quality Assessment and Performance Improvement; and §353.419, Financial Standards.

Background and Purpose

The current Medicaid Managed Care rules were adopted to be effective February 28, 1997 (22 TexReg 1799) (1997). They were most recently amended to be effective August 10, 2005, (30 TexReg 4466) (2005). The 79th Legislature, Regular Session, 2005, through Senate Bill 1188, mandated that HHSC adopt rules that define "regular business hours." These rules implement provisions of Section 6 of SB 1188 and include revisions to update and clarify language.

Section-by-Section Summary

HHSC proposes to amend Chapter 353, Medicaid Managed Care, as outlined in this section-by-section summary. Throughout, the amendments replace "Health Maintenance Organization" and "HMO," wherever they occur, with "Managed Care Organization" and "MCO." HHSC proposed to change the term HMO to MCO to designate not only HMOs, but Exclusive Provider Benefit Plans (EPBP) and approved non-profit health corporations as well. In some instances, terms that are not being changed have been capitalized because they have been added to the defined terms in §353.2. These are the only changes made to §§353.405, 353.409, 353.413, and 353.417. Other changes to Chapter 353 are summarized below.

Subchapter A of Chapter 353, relating to general provisions, describes general information for the Medicaid managed care program. In §353.2, Definitions, the proposed amendments add, update, and re-order the definitions of terms used throughout Chapter 353 and make minor, non-substantive editorial corrections. In addition, references to the STAR+PLUS Program have been deleted. In §353.3, Experience Rebate in the Managed Care Program, existing language will be deleted and replaced with new broader language that will align the Medicaid Managed Care and Children's Health Insurance Program (CHIP) experience rebate rules.

Subchapter E, Standards for Medicaid Managed Care, sets forth the standards for the Medicaid managed care program. The criteria and standards for enrollment in a Medicaid managed care organization are described in §353.403. The proposed amendments to §353.403, Enrollment, replace "Health Plan" with "Managed Care Plan" to more clearly describe these organizations. The proposed amendment adds Primary Care Case Management (PPCM) and EPBP to the array of Medicaid managed care arrangements. An EPBP is another form of managed care. Section 353.403(i) is amended to allow HHSC's Executive Commissioner discretion in responding to market forces when a new managed care plan enters a service delivery area. HHSC's requirements for managed care organizations (previously, health maintenance organizations) and their subcontractors are listed in §353.407, Requirements of Health Maintenance Organizations. HHSC proposes to amend this section by adding new language describing the rate at which MCOs must reimburse Federally Qualified Health Centers (FQHC) and Rural Health Clinics for services outside of regular business hours.

Section 353.411, Accessibility of Services, outlines the MCO's obligation to provide services that are accessible to clients. The proposed amendment adds language requiring MCOs to submit to the Commission for approval data showing that covered health services are not available to the member within the required distance. The language was changed to better correspond with upcoming practices.

The procedures MCOs must use when responding to member complaints are defined in §353.415, Member Complaint Procedures. HHSC proposes to amend §353.415 by adding the terms "and Appeal" to the title and the section where indicated. Medicaid Managed Care clients may request an appeal of any "action" taken by the MCO. They may also submit a complaint on any matter other than an "action" taken by the MCO.

The Commission proposes to amend §353.419, Financial Standards. The proposed amendments add new language establishing requirements for MCOs and delete obsolete language establishing requirements for HMOs. The proposed language broadens the standards to cover more than solvency.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendments to the rules are in effect the fiscal impact to the state will be neutral for state fiscal years 2006 -

2010. The proposed amendments will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

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

Public Benefit

Mr. David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed amendments will be improved access to and quality of health care services.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposed amendments to the rules may be submitted to Gilbert Estrada, Policy Analyst in the Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H600, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to gilbert.estrada@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A public hearing is scheduled for May 30, 2006, from 9:00 a.m. to 10:00 a.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §353.2, §353.3

Statutory Authority

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

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.2. Definitions.

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

(1) Action--An action is defined as:

(A) The denial or limited authorization of a requested Medicaid service, including the type or level of service;

(B) the reduction, suspension, or termination of a previously authorized service;

(C) the failure to provide services in a timely manner; [~~, the failure of an HMO to act within the timeframes set forth by the Commission and state and federal law;~~]

(D) the denial in whole or in part of payment for a service;

(E) the failure of a Managed Care Organization (MCO) to act within the timeframes set forth by the Commission and state and federal law; or

(F) [~~(E)~~] [~~or~~] for a resident of a rural area with only one MCO [~~HMO~~], the denial of a Medicaid member's [~~Members'~~] request to obtain services outside [~~of~~] the Network.

(2) Acute Care--Preventive care, primary care, and other medical or behavioral health care provided [~~under the direction of a physician~~] for a condition having a relatively short duration.

(3) Acute Care Hospital--A hospital that provides acute care services.

(4) Adverse Determination--A determination by an MCO that the health and behavioral health care services furnished, or proposed to be furnished, to a patient are not medically necessary or appropriate.

(5) [~~(4)~~] Agreement or Contract--The formal, written, and legally enforceable contract [~~Contract~~] and amendments thereto between the Commission and MCOs [~~HMOs~~].

(6) [~~(5)~~] Allowable Revenue--All managed care revenue received by the MCO [~~HMO~~] pursuant to the contract [~~Contract~~] during the contract period [~~Contract Period~~], including retroactive adjustments made by HHSC. This would include any revenue earned on Medicaid managed care funds such as investment income, earned interest, or third party administrator earnings from services to delegated networks.

(7) [~~(6)~~] Appeal--The formal process by which a member or his or her representative requests a review of the MCO's action. [~~a request for review of an Action.~~]

(8) [~~(7)~~] Behavioral Health Services--Covered services for the treatment of mental health or chemical dependency disorders. [~~emotional disorders, or chemical abuse or dependence.~~]

(9) [~~(8)~~] Capitation Rate--A fixed predetermined fee paid by HHSC to the MCO [~~HMO~~] each month, in accordance with the contract [~~Contract~~], for each enrolled member [~~Member~~] in exchange for which the MCO arranges [~~HMO arranging~~] for or provides [~~providing~~] a defined set of covered services [~~Covered Services~~] to the member [~~such a Member~~], regardless of the amount of covered services [~~Covered Services~~] used by the enrolled member [~~Member~~].

(10) [~~(9)~~] Client--Any Medicaid-eligible recipient.

(11) [~~(10)~~] CMS--The Centers for Medicare & Medicaid Services, which is the federal agency responsible for administering Medicare and overseeing state administration of Medicaid and the Children's Health Insurance Program (CHIP). [~~the federal agency charged with oversight of all states participating in the Medicaid program.~~]

(12) [~~(11)~~] Commission--The Texas Health and Human Services Commission.

(13) [~~(12)~~] Complainant--A member [~~Member~~] or a treating provider or other individual designated to act on behalf of the member[~~,~~] who files a complaint.

(14) [~~(13)~~] Complaint--Any dissatisfaction expressed by a complainant [~~Complainant~~], orally or in writing to the MCO [~~HMO~~], about any matter related to the MCO [~~HMO~~] other than an action [~~Action~~]. Subjects for complaints [~~Complaints~~] may include, but are not limited to:

(A) the quality of care of services provided,

(B) aspects of interpersonal relationships such as rudeness of a provider or employee [~~or failure to respect~~]; and

(C) failure to respect the Medicaid member's rights.

(15) [~~(14)~~] Contract--The formal, written, and legally enforceable agreement and any[~~,~~] amendments[~~,~~] and documents [~~document~~] incorporated into the agreement between an MCO [~~HMO~~] and HHSC.

(16) [~~(15)~~] Core Service Area--The core set of service area counties defined by HHSC for the Medicaid Managed Care [~~STAR and STAR+PLUS~~] programs in which Medicaid eligibles[~~, people who are eligible for managed care,~~] will be required to enroll in the MCO [~~HMO~~].

(17) [~~(16)~~] Covered Services--Health Care Services [~~care services~~] the MCO [~~HMO~~] must arrange to provide to member [~~Members~~], including all services required by the Commission, state and federal law, and all value added services [~~Value-added Services~~] negotiated by the Commission and an MCO [~~HMO~~]. Covered services [~~Services~~] include behavioral health services [~~Behavioral Health Services~~].

(18) [~~(17)~~] Cultural Competency--The ability of individuals and systems to provide services effectively to people of various cultures, races, ethnic backgrounds, and religions in a manner that recognizes, values, affirms, and respects the worth of the individuals and protects and preserves their dignity.

(19) [~~(18)~~] Day--A calendar day, unless specified otherwise.

(20) [~~(19)~~] Default Enrollment--The process established by HHSC to assign a mandatory Medicaid Managed Care enrollee to an MCO when an MCO has not been selected by the client. [~~Assignment of a client to a PCP and HMO by the Commission if the client does not select a PCP and HMO during the enrollment period established by the Commission.~~]

(21) [~~(20)~~] Disproportionate Share Hospital (DSH)--A hospital that serves a higher than average number of Medicaid and other low-income patients and receives additional reimbursement from the State.

(22) [~~(21)~~] Disability--A physical or mental impairment that substantially limits one or more of an individual's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, socializing and/or working.

(23) [~~(22)~~] Elective Enrollment--Selection of a PCP and MCO [~~HMO~~] by a client during the enrollment period established by the Commission.

(24) [~~(23)~~] Emergency Behavioral Health Condition--Any condition, without regard to the nature or cause of the condition, which in the opinion of a prudent layperson possessing an average knowledge of health and medicine:

(A) requires immediate intervention and/or medical attention without which the client [~~Client~~] would present an immediate danger to themselves or others, or

(B) renders the client [~~Client~~] incapable of controlling, knowing or understanding the consequences of his or her actions.

(25) [~~(24)~~] Emergency Services--Covered inpatient and outpatient services furnished by a Provider that is qualified to furnish such services that are needed to evaluate or stabilize an emergency medical condition and/or an emergency behavioral health condition, including Post-stabilization Care Services [~~Emergency Medical Condition and/or an Emergency Behavioral Health Condition~~].

(26) [~~(25)~~] Emergency Medical Condition--A medical condition manifesting itself by acute symptoms of recent onset and sufficient severity (including severe pain), such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical care could result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions;

(C) serious dysfunction of any bodily organ or part;

(D) serious disfigurement; or

(E) serious jeopardy to the health of a pregnant woman or her unborn child.

(27) [~~(26)~~] Encounter--A covered service [~~Covered Service~~] or group of covered service [~~Covered Services~~] delivered by a provider [~~Provider~~] to a member [~~Member~~] during a visit between the member [~~Member~~] and provider [~~Provider~~]. This also includes value added [~~Value-added~~] services.

(28) [~~(27)~~] EPSDT--The federally mandated Early and Periodic Screening, Diagnosis and Treatment program defined in Chapter 33 of Title 25 of the Texas Administrative Code. The State of Texas has adopted the name Texas Health Steps (THSteps) for its EPSDT program.

(29) [~~(28)~~] EPSDT-CCP--The Early and Periodic Screening, Diagnosis and Treatment-Comprehensive Care Program, includes medically necessary benefits for children under 21 years of age in addition to benefits available to the general Medicaid population.

(30) Exclusive Provider Benefit Plan (EPBP)--A Managed Care Plan that complies with 28 TAC §§3.9201 - 3.9212, relating to the Texas Department of Insurance's requirements for exclusive provider benefit plans, and contracts with the Commission to provide CHIP or Medicaid coverage.

(31) [~~(29)~~] Experience Rebate--The portion of the MCO's [~~HMO's~~] net income before taxes that is returned to the State in accordance with 28 TAC Chapter 11, Subchapter S, relating to solvency standards for Medicaid managed care organizations.

(32) [~~(30)~~] Fair Hearing--The process adopted and implemented by HHSC in Chapter 357 of this title, relating to Medical Fair

Hearing rules, in compliance with federal regulations and state rules relating to Medicaid Fair Hearings.

(33) Federally Qualified Health Center (FQHC)--An entity certified by CMS to meet the requirements of §1861(aa)(3) of the Social Security Act (42 U.S.C. §1395x(aa)(3)) as a Federally Qualified Health Center that is enrolled as a Provider in the Texas Medicaid program.

(34) [~~(31)~~] Federal Waiver--Any waiver permitted under federal law and approved by CMS that allows states to implement Medicaid managed care.

(35) [~~(32)~~] Health Care Services--The acute, behavioral health care and health-related services that an enrolled population might reasonably require in order to be maintained in good health, including, at a minimum, emergency services and inpatient and outpatient services.

(36) [~~(33)~~] Health and Human Services Commission (HHSC)--The single state agency charged with administration and oversight [~~over sight~~] of the state Medicaid program. The Commission's authority is established in Chapter 531 of the Government Code.

(37) [~~(34)~~] Health Maintenance Organization (HMO) [~~HMO (Health Maintenance Organization) or Contractor~~]--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 843 [~~20A~~] of the Texas Insurance Code or a certified Approved Non-Profit Health Corporation (ANHC) formed in compliance with Chapter 844 [~~Article 21.52F~~] of the Texas Insurance Code.

(38) [~~(35)~~] Hospital--A licensed public or private institution as defined in the Texas Health and Safety Code at [~~by~~] Chapter 241, relating to hospitals, or Chapter 261, relating to municipal hospitals [~~Texas Health and Safety Code~~].

(39) [~~(36)~~] Managed Care--A health delivery system in which the overall care of a patient is coordinated by or through a single provider or organization.

(40) MCO--An entity that has a valid Texas Department of Insurance certificate of authority to operate as a Health Maintenance Organization under Chapter 843 of the Texas Insurance Code, an approved nonprofit health corporation under Chapter 844 of the Texas Insurance Code, or an Exclusive Provider Benefit Plan issued by an insurer licensed by the Texas Department of Insurance, as described at 28 TAC Chapter 3, Subchapter KK, relating to exclusive provider benefit plans.

(41) Managed Care Plan--Includes Primary Care Case Management (PCCM), HMO, and Exclusive Provider Benefit Plans (EPBP).

(42) [~~(37)~~] Marketing--Any communication from an MCO to a client who is not enrolled with an MCO that can reasonably be interpreted as intended to influence the client's decision to enroll, not to enroll, or to disenroll from a particular MCO. [~~Any communication from the HMO to a Client that can reasonably be interpreted as intended to influence the Client's decision to enroll or to disenroll from a particular HMO.~~]

(43) [~~(38)~~] Marketing Materials--Materials that are produced in any medium by or on behalf of the MCO that [~~HMO and~~] can reasonably be interpreted as intending to market to potential members. Health-related materials are not marketing materials. [~~transfer goods, ideas, concepts or information from producer to consumer or Clients.~~]

(44) [~~(39)~~] Medicaid--The medical assistance program authorized and funded pursuant to Title XIX, of the Social Security Act (42 U.S.C. §1396 *et seq*) and administered by HHSC.

(45) [~~(40)~~] Medical Home--A PCP or specialty care provider [~~Provider~~] who has accepted the responsibility for providing accessible, continuous, comprehensive and coordinated care to members [~~Members~~] participating in an HHSC MCO [~~HMO~~].

(46) [~~(41)~~] Medically Necessary Behavioral Health Services--Those behavioral health services that are documented and:

(A) are reasonable and necessary for the diagnosis or treatment of a mental health or chemical dependency disorder or to improve, maintain or prevent deterioration of functioning resulting from such a disorder;

(B) are in accordance with professionally accepted clinical guidelines and standards of practice in behavioral health care;

(C) are furnished in the most appropriate and least restrictive setting in which services can be safely provided;

(D) are the most appropriate level or supply of service that can [~~safely~~] be safely provided;

(E) could not have been omitted without adversely affecting the member's mental and/or physical health or the quality of care rendered; [~~, and~~]

(F) are not experimental or investigational; and [~~.~~]

(G) are not primarily for the convenience of the Member or Provider.

(47) [~~(42)~~] Medically Necessary Health Services [~~necessary health services~~]--Health services other than behavioral health services that are documented and:

(A) reasonable and necessary to prevent illness [~~illnesses~~] or medical conditions, or provide early screening, interventions, and/or treatments for conditions that cause suffering or pain, cause physical deformity or limitations in function, threaten to cause or worsen a handicap, cause illness or infirmity of a member, or endanger life;

(B) provided at appropriate facilities and at the appropriate levels of care for the treatment of the member's medical conditions;

(C) consistent with health care practice guidelines and standards that are issued by professionally recognized health care organizations or governmental agencies;

(D) consistent with the diagnoses of the conditions; [~~and~~]

(E) no more intrusive or restrictive than necessary to provide a proper balance of safety, effectiveness, and efficiency; [~~. ~~]

(F) are not experimental or investigative; and

(G) are not primarily for the convenience of the member or provider.

(48) [~~(43)~~] Member--A person who is eligible for benefits under Title XIX of the Social Security Act and Medicaid, is in a Medicaid eligibility category included in the Medicaid Managed Care Program, and is enrolled in the Medicaid Managed Care Program and a Medicaid MCO. [~~the (Medicaid) medical assistance program under Title XIX of the Social Security Act and is enrolled with the STAR or STAR +PLUS program.~~]

(49) [~~(44)~~] Member education program--A planned program of education:

(A) concerning [~~regarding~~] access to health care through the managed care organization and about specific health topics;

(B) that is approved by the Health and Human Services Commission; and

(C) is provided to members through a variety of mechanisms that must include, at a minimum, written materials and face-to-face or audiovisual communications.

(50) [~~(45)~~] Member Materials--All written materials produced or authorized by the MCO [~~HMO~~] and distributed to members [~~Members~~] or potential members containing information concerning the MCO [~~HMO~~]. Member materials [~~Materials~~] include, but are not limited to, Member ID cards, Member handbooks, Provider directories, and Marketing Materials.

(51) Outside Regular Business Hours--As applied to FQHCs and RHCs, means before 8 a.m. and after 5 p.m. Monday through Friday, weekends, and federal holidays.

(52) [~~(46)~~] Participating MCOs [~~HMOs~~]--Those MCOs [~~HMOs~~] that have a contract with the Commission to provide services to Medicaid managed care members.

(53) [~~(47)~~] Primary Care Case Management (PCCM) [~~PCCM (Primary Care Case Management)~~]--PCCM is a managed care model [~~delivery system~~] allowed under federal regulations in which the Commission contracts with providers to form a managed care provider network.

(54) [~~(48)~~] Primary Care Provider (PCP)--A physician or other provider who has agreed with the MCO [~~HMO~~] to provide a Medical Home to members [~~Members~~] and who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(55) [~~(49)~~] Provider--A credentialed and licensed individual, facility, agency, institution, organization or other entity, and its employees and subcontractors, that have a Contract with the MCO for the delivery of covered services to the MCO's members. [~~Credentialed and licensed individuals, facilities, agencies, institutions, organizations or other entities, and its employees and subcontractors, that have a contract with the HMO for the delivery of Covered Services to the HMO's Members.~~]

(56) [~~(50)~~] Provider Education Program [~~education program~~]--Program of education about the Medicaid managed care program and about specific health care issues presented by the managed care organization to its providers through written materials and training events.

(57) [~~(51)~~] Provider Network or Network--All providers [~~Providers~~] that have contracted with the MCO [~~HMO~~] for the applicable program.

(58) [~~(52)~~] QAPI--Quality Assessment Performance Improvements.

(59) [~~(53)~~] Quality Improvement--A system to continuously examine, monitor and revise processes and systems that support and improve administrative and clinical functions.

(60) [~~(54)~~] Risk--The potential for loss as a result of expenses and costs of the MCO exceeding payments made by HHSC under the contract. [~~if the HMO's expenses and costs exceed payments made by HHSC under the Contract.~~]

(61) Rural Health Clinic (RHC)--An entity that meets all of the requirements for designation as a rural health clinic under §1861(aa)(1) of the Social Security Act (42 U.S.C. §1395x(aa)(1)) and is approved for participation in the Texas Medicaid program.

(62) [~~(55)~~] Service Area--The counties included in any HHSC-defined Core Service Area as applicable to each MCO [~~HMO~~].

(63) [~~(56)~~] Significant Traditional Provider (STP)--Providers identified by HHSC as having provided a significant level of care to the target population. Disproportionate Share Hospitals (DSH) are also Medicaid STPs.

[~~(57) STAR Program--The State of Texas Access Reform (STAR), means the State of Texas Medicaid managed care program in which HHSC contracts with HMOs to provide, arrange for, and coordinate preventive, primary, and acute care Covered Services to non-disabled children and families, and pregnant women.~~]

[~~(58) STAR+PLUS Program--The State of Texas Medicaid managed care program in which HHSC contracts with HMOs to provide and coordinate preventive, primary, acute, and long-term care covered services to persons age 21 years and older with disabilities and elderly persons age 65 and over who qualify for Medicaid through SSI/MAO.~~]

(64) [~~(59)~~] Supplemental Security Income (SSI)--The federal cash assistance program of direct financial payments to the aged, blind, and disabled administered by the Social Security Administration (SSA) under Title XVI of the Social Security Act. All persons who are certified as eligible for SSI in Texas are eligible for Medicaid. Local SSA claims representatives make SSI eligibility determinations. The transactions are forwarded to the SSA in Baltimore, which then notifies the states through the State Data Exchange (SDX).

(65) [~~(60)~~] TDI--Texas Department of Insurance.

(66) [~~(61)~~] Texas Health Steps (THSteps)--The name adopted by the State of Texas for the federally mandated Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program described at 42 U.S.C. §1905d(r) and 42 CFR §440.40 and §§441.40 - 441.62.

(67) [~~(62)~~] Value-Added Services--Additional services for coverage beyond those specified in the Request For Proposal. Value-Added Services must be actual health care services or benefits rather than gifts, incentives, health assessments or educational classes. Best practice approaches to delivering covered services [~~Covered Services~~] are not considered Value-Added Services. For foster children in a statewide Medicaid managed care program, value added services may include non-health care services and benefits that support the physical, mental and/or developmental well being of the child.

§353.3. Experience Rebate in the Managed Care Program.

[~~(a)~~] Each Managed Care Organization (MCO) participating in Medicaid managed care must pay to the state an experience rebate calculated according to the graduated rebate method described in the MCO's contract with HHSC. [~~Each health maintenance organization (HMO) participating in the State of Texas Access Reform (STAR) and the State of Texas Access Reform Plus (STAR+Plus) program must pay to the state an experience rebate calculated according to the graduated rebate method described in subsection (b) of this section. The experience rebate is based on the excess of allowable HMO revenues, as defined by the state, over allowable HMO expenses, as defined by the state, as reviewed and confirmed by the state and as specified in the contract between HHSC and the HMO.~~]

[~~(b) The graduated rebate method is as follows:~~]

[~~(1) The HMO retains 100 percent of that portion of excess allowable revenues that falls between zero and less than or equal to three percent of total allowable revenues.~~]

[(2) The HMO retains 75 percent of that portion of excess allowable revenues that falls between three percent and less than or equal to seven percent of total allowable revenues. The remaining 25 percent is paid to the state.]

[(3) The HMO retains 50 percent of that portion of excess allowable revenues that falls between seven percent but less than or equal to 10 percent of total allowable revenues. The remaining 50 percent is paid to the state.]

[(4) The HMO retains 25 percent of that portion of excess allowable revenues that falls between 10 percent but less than or equal to 15 percent of total allowable revenues. The remaining 75 percent is paid to the state.]

[(5) The HMO pays to the state 100 percent of that portion of excess allowable revenues that is greater than 15 percent of total allowable revenues.]

[(6) The state reserves the right to modify the rebate method in this subsection for purposes of establishing incentive programs to encourage HMO's to meet or exceed goals and objectives of the Medicaid Managed Care Program established by the Commission through its contract.]

[(c) The experience rebate is based on a pre-tax basis.]

[(d) Losses incurred for one contract period can only be carried forward to the next contract period.]

[(e) There are two settlements for payment of the experience rebate, which will be paid by the HMO to the state as prescribed by the state. The state reserves the right to make corrections to the settlements based on an audit/review by the state or other documentation acceptable to the state. The state may also adjust the experience rebate if the state determines that the HMO paid affiliates amounts for goods or services that are higher than the fair market value of the goods and services in the service area.]

[(f) Effective for the SFY 2003 contract period, the tiered methodology is applied to the sum of the Net Income Before Taxes for all STAR, STAR+PLUS HMO, and Children's Health Insurance Plan (CHIP) service areas.]

[(g) HHSC is the final authority in assessing the amount of the experience rebate.]

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 May 8, 2006.

TRD-200602548
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 424-6900

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SUBCHAPTER E. STANDARDS FOR MEDICAID MANAGED CARE

1 TAC §§353.403, 353.405, 353.407, 353.409, 353.411, 353.413, 353.415, 353.417, 353.419

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

The proposed amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§353.403. Enrollment.

(a) For purposes of this section, managed care plan [Health Plan] includes Primary Care Case Management (PCCM), [and] health maintenance organizations (HMO) and Exclusive Provider Benefit Plans (EPBP).

(b) The Commission will determine which Medicaid eligible clients residing in a Medicaid Managed Care service area will be mandatory or voluntary members and which Medicaid eligible clients may be excluded from participation in managed care.

(c) The Commission or its designee will conduct enrollment and disenrollment activities. The Commission may not contract with a participating managed care organization to serve as the administrator for enrollment or disenrollment activities in any area of the state.

(d) The Commission will establish procedures for enrollment into participating managed care plans [Health Plans] and with primary care providers (PCPs), including enrollment periods and time limits within which enrollment must occur. Members who are mandatory members must select a managed care plan [Health Plan] and PCP within the time period allowed by the department or be defaulted to a managed care plan [Health Plan] and PCP.

(e) Mandatory members who fail to select a managed care plan [Health Plan] or PCP during the period established by the Commission will have a managed care plan [Health Plan] or PCP selected for them by the Commission or its designee using criteria determined by the Commission. The Commission shall establish a detailed default methodology that incorporates the following requirements.

(1) A member who does not select a PCP and managed care plan [Health Plan] will be assigned a PCP and managed care plan [Health Plan] through the default process established by the Commission. A member who selects a managed care plan [Health Plan] but not a PCP, will be assigned to the selected managed care plan [Health Plan] and the member will be assigned to a PCP through the default process. A member who selects a PCP but not a managed care plan [Health Plan] will be assigned to the PCP chosen by the member, subject to PCP restrictions on client age, gender, and capacity, and the member will be assigned to a managed care plan [Health Plan] through a manual default process that is established by the Commission.

(2) Each member, who has not selected a PCP, will be defaulted to the PCP with whom there is the most recent Medicaid managed care encounter history. The number of encounters between the member and the PCP may also be considered.

(3) If there is no Medicaid managed care encounter history, each member will be defaulted to the PCP with whom there is the most recent traditional Medicaid claims history. The number of prior encounters between the member and the PCP may also be considered.

(4) If a member does not have history with a PCP, the member will be defaulted to a PCP on the basis of geographic proximity to the PCP.

(5) The Commission may identify other criteria to be used along with the criteria based on geographic proximity such as, but not limited to, capacity of the PCP, PCP performance, and greatest variance between the percentage of elective and default enrollments (with the

percentage of default enrollments subtracted from the percentage of elective enrollments).

(6) The Commission will develop a methodology for assignment of defaults to each managed care plan [~~Health Plan~~] in the service area. Such methodology may be based on managed care plan [~~Health Plan~~] performance, the greatest variance between the percentage of elective and default enrollments (with the percentage of default enrollments subtracted from the percentage of elective enrollments), or other factors determined by the Commission.

(7) Members who cannot be assigned to a PCP and managed care plan [~~Health Plan~~] on the basis of an automated default process may be assigned through a manual default process determined by the Commission.

(8) Members with special medical needs may be defaulted on the basis of a manual default methodology if such members can be identified and if the automated default process cannot be administered for such members.

(9) A member [~~Member~~] who is defaulted to a PCP who is contracted with only one managed care plan [~~Health Plan~~] will be assigned to that managed care plan [~~Health Plan~~].

(10) PCP restrictions on Client age, gender, and capacity will be considered as limitations to default assignments to PCPs.

(11) Family members shall be defaulted to the same PCP and managed care plan [~~Health Plan~~] to the maximum extent possible within the limitation of PCP restrictions on client age, gender, and capacity by managed care plan [~~Health Plan~~] as well as geographic proximity.

(12) The detailed default methodology developed by the Commission will be fully applicable to each managed care plan [~~Health Plan~~] in the Medicaid managed care program by service area. However, the number of defaults assigned to the state-administered PCCM network will be restricted as follows:

(A) If a member [~~Member~~] is defaulted to a PCP who is contracted only with the PCCM program, the member [~~Member~~] will be defaulted to the PCCM program;

(B) If a member [~~Member~~] is defaulted to a PCP who is contracted with the PCCM program and an MCO [~~HMO~~], the member [~~Member~~] will be defaulted to the MCO [~~HMO~~];

(C) If a member is defaulted to a PCP who is contracted with the PCCM program and two or more MCOs [~~HMOs~~], the member will be defaulted to one of the MCOs [~~HMOs~~] on the basis of paragraph (6) of this subsection;

(D) A member will be defaulted to the PCCM program if a PCCM provider is the only PCP within reasonable geographical proximity to the member as defined by the Commission.

(f) A member may request to change managed care plan [~~Health Plan~~] at any time and for any reason, regardless of whether the managed care plan [~~Health Plan~~] was selected by the member or assigned by the Commission. Disenrollment will take place no later than the first day of the second month after the month in which the member has requested termination. Managed care plans [~~Health Plans~~] must inform members of disenrollment procedures at the time of enrollment. Managed care plans [~~Health Plans~~] must notify members in appropriate communication formats.

(g) The Commission shall establish limits for the number of members each PCP may accept to ensure members have reasonable access to the provider. The Commission shall develop criteria to allow exceptions to this limit on a case-by-case basis, provided the exceptions do not adversely affect member access.

(h) Recipients who are located more than 30 miles from the nearest PCP in a managed care plan [~~Health Plan~~] cannot be enrolled in the managed care plan [~~Health Plan~~] unless an exception is made by the Commission.

(i) The Commission has the option to implement a modified default process of member enrollment [~~for a period not to exceed 6 months~~], when contracting with a new managed care plan [~~Health Plan~~] or when implementing managed care in a new service area.

§353.405. Marketing.

(a) Managed Care Organizations (MCOs) [~~Health Maintenance Organizations (HMOs)~~] must submit a marketing plan and all marketing materials to the Commission for prior written approval.

(b) MCOs [~~HMOs~~] may present their marketing materials to eligible Medicaid clients through any method or media determined to be acceptable by the Commission. The media may include, but are not limited to: written materials, such as brochures, posters, or fliers, which can be mailed directly to the client or left at HHSC eligibility offices; [~~Commission-sponsored community~~] enrollment events; and public service announcements on radio.

(c) MCO [~~HMO~~] enrollment or marketing representatives are required to complete the Commission's marketing orientation and training program prior to engaging in marketing activities on behalf of the MCO [~~HMO~~].

(d) Prohibited marketing practices.

(1) MCOs [~~HMOs~~] and providers shall not conduct any direct contact marketing except through [~~Commission-sponsored~~] enrollment events.

(2) MCOs [~~HMOs~~] and providers shall not make any written or oral statement containing material misrepresentations of fact or law relating to their plan or the Medicaid Managed Care Program.

(3) MCOs [~~HMOs~~] and providers [~~Providers~~] shall not make false, misleading or inaccurate statements relating to services or benefits, providers, or potential providers through their plan.

(4) MCOs [~~HMOs~~] and providers shall not offer Medicaid recipients material or financial gain as an inducement for enrollment, unless an exception is made by the Commission.

(5) Marketing or enrollment practices of MCOs [~~HMOs~~] and providers shall not discriminate against a client because of a client's race, creed, age, color, religion, national origin, ancestry, marital status, sexual orientation, physical or mental disability, health status, or existing need for medical care.

§353.407. Requirements of Managed Care [~~Health Maintenance~~] Organizations.

[~~(a) An entity or person that contracts with the Commission under a federal waiver to provide or arrange for services under this subchapter on a comprehensive risk basis.~~]

(a) [~~(b)~~] Entities or individuals who subcontract with a Managed Care Organization (MCO) [~~health maintenance organization (HMO)~~] to provide benefits, perform services, or carry out any essential function of the MCO [~~HMO~~] contract shall meet the same qualifications and contract requirements as the MCO [~~HMO~~] for the service, benefit, or function delegated under the subcontract.

(b) MCOs must reimburse a Federally Qualified Health Center (FQHC) or a Rural Health Clinic (RHC) for Health Care Services

provided to a Member Outside of Regular Business Hours as defined at §353.2(51) of this title, at a rate that is equal to the allowable rate for those services as determined under §32.028(e) and (f), Human Resources Code, if the Member does not have a referral from the Member's Primary Care Physician.

(c) The Commission will require all MCOs [~~HMOs~~] to comply with the Commission's policy on contracting and subcontracting with historically underutilized businesses (HUBs). The Commission's policy is to meet the goals and good faith effort requirements as stated in the Texas Building and Procurement Commission rules at 1 TAC §§111.11-111.28, relating to Historically Underutilized Business Program.

§353.409. Scope of Services.

(a) All Managed Care Organizations (MCOs) [~~health maintenance organizations (HMOs)~~] shall provide services and benefits available to Medicaid clients under the Medicaid program, as defined in Chapter 354 of this title, relating to Medicaid Health Services, except services that are excluded from the Medicaid Managed Care Program.

(b) The Commission will establish the scope and level of benefits, which all MCOs [~~HMOs~~] must agree to provide as a condition for participation. These requirements may exceed the scope and level of covered benefits and services available to fee-for-service Medicaid clients [~~Clients~~]. These requirements will be contained in all contracts entered into by an MCO [~~HMO~~] and the Commission.

(c) MCOs [~~HMOs~~] are encouraged to provide any value added [~~value-added~~] services or benefits beyond the level and scope required as a condition for participation in the competitive procurement process. These services and benefits cannot increase the cost borne or capitation rates paid by the Commission during any current contract term or in any subsequent contract term. These services or benefits cannot violate any other state or federal rule or regulation.

§353.411. Accessibility of Services.

(a) Managed Care Organizations (MCOs) [~~Health maintenance organizations (HMO)~~] must provide a broad-based and accessible primary care provider (PCP) network within the service area to ensure member accessibility to providers in time, distance, cultural competency and language.

(b) MCOs [~~HMOs~~] must have pediatric and family practitioner PCPs in their network of providers in sufficient numbers to provide regular and preventive pediatric care and THSteps services to all eligible children enrolled in the service area.

(c) MCOs [~~HMOs~~] must have PCPs and acute care hospitals available throughout the service area to ensure that no member must travel more than 30 miles to access the PCP, unless the Commission has made an exception [~~unless an exception has been made by the Commission~~].

(d) MCOs [~~HMOs~~] must have PCPs in sufficient numbers to ensure that no member must wait an unreasonable amount of time for an appointment, and that no member must wait an unreasonable amount of time to be seen at their appointed time.

(e) MCOs [~~HMOs~~] must ensure the reasonable availability and accessibility of specialists in all areas of medical and behavioral health practice. Specialists must also be reasonably accessible to members in time, distance, cultural competency and language.

(f) A member must not be required to travel in excess of 75 miles to secure initial contact with referral specialists; special hospitals; psychiatric hospitals; diagnostic and therapeutic services; and single service health care physicians, dentists or providers except as provided in subsections (g) and (h) of this section.

(g) If any service or provider is not available to a member within the mileage radius specified in subsection (f) of this section, the MCO [~~HMO~~] must submit to the Commission for approval data that indicates covered health services are not available to the member within the required distance [~~health care utilization data that indicate a normal pattern for securing health care services within the service area~~].

(h) The provisions in subsection (f) of this section do not preclude an MCO [~~HMO~~] from making arrangements with another source outside the service area for members to receive a higher level of skill or specialty than the level that is available within the MCO [~~HMO~~] service area such as, but not limited to, treatment of cancer, burns, and cardiac diseases.

(i) MCOs [~~HMOs~~] must provide education and training to providers on the specific health and behavioral health problems and needs of Medicaid Managed Care Program members, and the contract and rule requirements for accessibility and availability. MCO's [~~HMOs~~] and the Commission shall cooperate and coordinate education and training activities for providers.

(j) MCOs [~~HMOs~~] must develop a written cultural competency plan describing how the MCO [~~HMO~~] will effectively provide health care services to members from varying cultures, races, ethnic backgrounds and religions to ensure those characteristics do not pose barriers to gaining access to needed services. As part of the requirement to develop the cultural competency plan, the MCO [~~HMO~~] must at a minimum:

(1) employ multi-cultural and multi-lingual staff;

(2) make available interpreter services for members as necessary to ensure availability of effective communication regarding treatment, medical history or health education;

(3) display to HHSC through the written plan a method for incorporating the plan into the MCOs [~~HMOs~~] policy-making process, administration, and daily practices; and

(4) submit the written plan to HHSC for review and approval at intervals specified by the department.

(k) MCOs [~~HMOs~~] must ensure that communication or physical access barriers do not deter members' timely access to health care services. The MCOs [~~HMOs~~] shall provide information in appropriate communication formats, including formats accessible to people with disabilities.

(l) MCOs [~~HMOs~~] are prohibited from excluding Significant Traditional Providers from their network for a period of time and under conditions determined by the state and specified in the contract.

(m) MCOs [~~HMOs~~] must develop written provider manuals clearly stating the policies and procedures adopted by the MCO [~~HMO~~] to meet the provider's duties and obligations required by these and other agency rules and the contract.

§353.413. Managed Care Benefits and Services for Children Under 21 Years of Age.

(a) The Commission will require all participating managed care organizations (MCOs) [~~health maintenance organizations (HMOs)~~] to provide comprehensive, timely and cost-effective diagnostic, screening and treatment services for the medical, vision, hearing, and dental needs of Medicaid Managed Care Program members under the age of 21, at a level and frequency that meet the requirements of the federal EPSDT Program, as determined by the Commission. These requirements will be contained in all contracts.

(b) The Commission will require each MCO [~~HMO~~] to make available special training about THSteps benefits and goals to all

providers of health and dental services contracting with the MCO [~~HMO~~] to providers' staffs, and to all employees and contractors of the MCO [~~HMO~~] who will provide oral presentations or marketing to members or prospective members. To fulfill this requirement, the MCOs [~~HMOs~~] may use the training programs created by the Commission or its contractors, or they may create their own training programs. Any training program created by the MCO [~~HMO~~] under this subsection must meet the requirements of and be approved by the Commission.

(c) MCOs [~~HMOs~~] must coordinate and cooperate with the Commission in developing effective outreach, access, and monitoring systems to ensure that all qualified members receive THSteps benefits.

(d) The managed care programs of participating MCOs [~~HMOs~~] are intended to complement and enhance the effectiveness and availability of THSteps benefits in the service areas. The Commission may not delegate the responsibility and accountability for monitoring and ensuring that THSteps benefits are available and accessible to all eligible children.

§353.415. Member Complaint and Appeal Procedures.

(a) Managed Care Organizations (MCO) [~~Health maintenance organizations (HMO)~~] must develop and maintain a system and process for taking, tracking, reviewing, and reporting member complaints and appeals.

(b) MCOs [~~HMOs~~] must establish and maintain internal procedures for the resolution of member complaints and appeals. The procedures must be in writing. The procedures must be detailed and specific regarding how complaints and appeals are to be taken, to whom complaints are referred, and by when a complaint must be resolved.

(c) MCOs must establish a procedure to assist members in understanding and using the MCO's internal complaint and appeal process. The member's complaint and appeal procedure must be:

(1) in writing and distributed to each member upon enrollment;

(2) provided to the member each time the member's benefits are reduced, denied, or terminated for any reason;

(3) easy for members to understand and follow; and

(4) contain a prominent notice to the member that complies with the Fair Hearings rules found in Chapter 357 of this title, relating to Fair Hearings, stating the member retains all rights as a Medicaid client to a Fair Hearing through the Commission, in addition to the MCO's complaint and appeal process.

[~~(c) HMO's must establish a procedure to assist members in understanding and using the HMOs internal complaint process. The members' complaint procedure must be in writing and distributed to each member upon enrollment. The member must also receive written notice of the procedure each time the member's benefits are being reduced, denied, or terminated for any reason. The procedure must be easy for members to understand and simple to follow. The procedure must contain a prominent notice to the Member that he or she retains all rights as Medicaid Clients to a fair hearing through the Commission, in addition to the HMOs complaint process. The HMO notice to the Member should comply with the Fair Hearing rules found at Chapter 357 of this title, relating to Fair Hearings.~~]

(d) The Commission will review the MCO's [~~HMOs~~] complaint and appeals procedures to determine if they comply with HHSC's standards before HHSC approves use of the procedures. Reports containing complaint summaries must be submitted to the Commission in compliance with Commission's policy.

(e) The Commission shall retain the authority to make the final decision following the Commission's fair hearing process.

§353.417. Quality Assessment and Performance Improvement.

(a) Each managed care organization (MCO) [~~health maintenance organization (HMO)~~] must develop and implement an ongoing quality assessment and performance improvement program for services it furnishes to its enrollees. The MCO [~~HMO~~] must maintain and provide documentation of its compliance for the Commission's review, including performance measurement data. The MCO's [~~HMO's~~] quality assessment and performance improvement program must meet the requirements contained in 42 CFR §438.240 and, at a minimum, include:

(1) a program of performance improvement projects that focus on clinical and non-clinical areas;

(2) mechanisms to assess the quality and appropriateness of care furnished to enrollees with special health care needs;

(3) mechanisms to detect both under and over-utilization of services;

(4) practice guidelines that meet CMS requirements under 42 CFR §438.236.

(b) The Quality Assessment Performance Improvement (QAPI) functions may be subcontracted but the responsibility for QAPI compliance cannot be delegated by the MCO [~~HMO~~].

(c) The Commission will develop monitoring and review systems and procedures to ensure MCO [~~HMO~~] compliance with MCO [~~HMO~~] contracts, this subchapter, and all related state and federal rules, regulations, and guidelines. Commission monitoring and review will include, but not be limited to, the following.

(1) The Commission will monitor each MCO [~~HMO~~] to ensure it is following its QAPI standards.

(2) The Commission will require MCO [~~HMO~~] to submit QAPI information at regular and periodic intervals.

(3) The Commission will require all MCOs [~~HMOs~~] to submit to periodic inspection and review to determine compliance with all contract terms, and state and federal rules, regulations, and policies.

(d) Evaluation of each MCO's [~~HMOs~~] quality of services in each Medicaid managed care service area and the cost-effectiveness, member access, and quality of care under each waiver shall be conducted by independent, external entities after initial implementation of Medicaid managed care in a particular service [~~delivery~~ area. The quality evaluation must be conducted at the end of the first year following initial implementation; and the assessment of cost-effectiveness, member access, and quality of care under each waiver must be conducted once during the first two years of the time period for which a waiver has been approved. The Commission will reevaluate the periodicity of both evaluation types after each evaluation is initially completed in a managed care service [~~delivery~~] area.

§353.419. Financial Standards.

(a) Managed Care Organizations (MCO) must maintain compliance with the Texas Insurance Code and rules promulgated and administered by the Texas Department of Insurance requiring a fiscally sound operation. [~~Health maintenance organizations (HMOs) must meet solvency standards established by the Texas Department of Insurance at 28 TAC Chapter 11, Subchapter S, and by the Commission in its competitive procurement proposals.~~]

(b) The Commission may share in the experience rebates in accordance with §353.3, Experience Rebate in Managed Care Organization.

(c) The Commission may establish incentive payment programs to encourage MCOs [~~HMOs~~] to meet or exceed the goals and objectives of the Medicaid Managed Care Program established by the Commission through its contract.

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 May 8, 2006.

TRD-200602549
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 424-6900

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CHAPTER 361. CHILDREN'S HEALTH INSURANCE PROGRAM

1 TAC §361.1

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

The Texas Health and Human Services Commission (HHSC or Commission) proposes to repeal Chapter 361, §361.1, Children's Health Insurance Program (CHIP). The definition for Significant Traditional Provider is now found in new Subchapter E, Provider Requirements, in Chapter 370, State Children's Health Insurance Program, which is proposed elsewhere in this issue of the *Texas Register*.

Background and Justification

This chapter is repealed in order to consolidate all CHIP rules in a single chapter of the Texas Administrative Code.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed repeal is in effect there should not be a fiscal impact to state government. The proposed repeal should not result in any fiscal implications for local health and human services agencies. Local governments should not incur additional costs.

Small and Micro-business Impact Analysis

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

Public Benefit

Mr. David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed repeal is in effect, the public will benefit from the repeal of the rule. The anticipated public benefit, as a result of repealing the rule, will be the consolidation of all CHIP rules in a single chapter of the Texas Administrative Code.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

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

Public Hearing

A public hearing is scheduled for May 30, 2006, from 1:00 p.m. to 2:00 p.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

Statutory Authority

The repeal is proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed repeal affects the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by the proposed rule.

§361.1. Definition of Significant Traditional Provider.

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 May 8, 2006.

TRD-200602521
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 424-6900

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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

SUBCHAPTER E. PROVIDER REQUIREMENTS

1 TAC §§370.451 - 370.454

The Texas Health and Human Services Commission (HHSC or Commission) proposes new Subchapter E, Provider Requirements, §§370.451 - 370.454, in Chapter 370, State Children's Health Insurance Program. This subchapter defines Significant Traditional Provider (STP) for the Children's Health Insurance Program (CHIP). This term was previously defined in Chapter 361, CHIP, which is being repealed elsewhere in this issue of the *Texas Register*. HHSC also proposes new rules in this subchapter to prohibit balance billing and to describe the experience rebate requirements in the CHIP program.

Background and Justification

The definition of STP for CHIP is revised from its previous definition to conform to the term as it is defined in Medicaid Managed Care. Balance billing has not previously been addressed in the CHIP program rules. The new rules formalize what is currently found only in contract language. Experience rebate requirements for CHIP also are currently found only in contract language. Referencing them in rule makes these rules more consistent with what is found in the Medicaid Managed Care rules. Definitions are added to support the new rules.

Section-by-Section Summary

Definitions of terms used in this subchapter are added in new §370.451. The new §370.452 aligns the CHIP definition of STP with the definition in the Medicaid Managed Care rules. New §370.453 prohibits a CHIP provider from billing the member or guardian for any balance remaining after payment is made by CHIP for a covered service or for any billing error made by the provider. The balance billing prohibition does not apply to an unauthorized out-of-network service or to any service that is not a covered CHIP benefit. New §370.454 describes the requirement for a health plan to pay an experience rebate to the State, which is calculated according to the graduated rebate method described in the health plan's contract with HHSC.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rules are in effect there should not be a fiscal impact to state government. The proposed rules should not result in any fiscal implications for local health and human services agencies. Local governments should not incur additional costs.

Small and Micro-business Impact Analysis

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

Public Benefit

Mr. David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed new rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit, as a result of enforcing the rules, will be a consistent definition of Significant Traditional Provider in Medicaid and CHIP, the prohibition of CHIP balance billing, and clarification that CHIP experience rebate requirements are specified in each health plan's contract with HHSC.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

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

Public Hearing

A public hearing is scheduled for May 30, 2006, from 1:00 p.m. to 2:00 p.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

Statutory Authority

The new rules are proposed under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

The proposed new rules affect the Texas Health and Safety Code, Chapter 62, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed new rules.

§370.451. Definitions.

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

(1) Claims Processing Entity--The Health Maintenance Organization (HMO), Exclusive Provider Benefit Plan (EPBP) or its subcontractor who processes claims for CHIP.

(2) Day--A calendar day.

(3) Eligible Provider--A network or non-network provider who provides medical services to a covered CHIP member.

(4) Exclusive Provider Benefit Plan (EPBP)--A managed care plan that complies with 28 TAC §§3.9201 - 3.9212, relating to the Texas Department of Insurance's requirements for exclusive provider benefit plans, and contracts with the Commission to provide CHIP or Medicaid coverage.

(5) Experience Rebate--A portion of the HMO or EPBP's net income before taxes that is returned to the State.

(6) Health Maintenance Organization (HMO)--An organization that holds a certificate of authority from the Texas Department of Insurance to operate as an HMO under Chapter 843 of the Texas Insurance Code or a certified Approved Non-Profit Health Corporation (ANHC) formed in compliance with Chapter 844 of the Texas Insurance Code.

(7) Significant Traditional Provider or STP--A provider with whom CHIP members have well-established or longstanding provider/client relationships, or to whom the members have typically or traditionally visited for health care.

§370.452. Significant Traditional Provider.

(a) The Health and Human Services Commission (HHSC) will determine whether a provider meets the definition of STP at §370.451(7) of this title (relating to Significant Traditional Provider or STP).

(b) If a provider is not initially determined to be an STP, the provider may appeal that determination by sending a written notice to the HHSC, Children's Health Insurance Program, P.O. Box 13247, Austin, Texas 78711-3247, stating that it wishes to appeal the STP determination. HHSC will then notify the provider of the appeal procedure to follow.

§370.453. Balance Billing.

(a) Providers who contract with an HMO or EPBP must agree that payment received for covered services will be accepted as payment in full and must agree that they will not bill the member or the member's guardian for any remaining balance for covered services rendered.

(b) The prohibition in subsection (a) of this section does not apply to unauthorized out-of-network services, or to services that are not a covered benefit.

(c) Providers who contract with an HMO or EPBP may not bill or take other recourse against the member or the member's guardian for claims denied as a result of error attributed to the eligible provider or Claims Processing Entity.

§370.454. Experience Rebate in the Children's Health Insurance Program.

Each HMO and EPBP participating in CHIP must pay to the State an experience rebate calculated according to the graduated rebate method described in the HMO's or EPBP's contract with HHSC.

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 May 8, 2006.

TRD-200602520
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 65. BOILERS

16 TAC §§65.10, 65.70, 65.100

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§65.10, 65.70, and 65.100 regarding definitions, responsibilities, and technical requirements in the boiler program.

The proposed amendments make technical changes and clarifications to the boiler rules. Section 65.10(39) is amended to clarify that a repair requirement form signed by the Department's chief boiler inspector or a deputy inspector is considered a preliminary order. A repair requirement form is the Department form that is used to notify boiler owners and operators of needed repairs or alterations. The purpose of the amendment is to make clear that a repair requirement form signed by a Department inspector constitutes a preliminary order that is required to be issued to the boiler owner or operator by Texas Health and Safety Code, §755.041(a).

The amendments to §65.70(f)(2) remove references to "side" clearances. This clarifies that all minimum manufacturer's recommended clearances for boilers must be maintained, including top and bottom clearances. The amendments to §65.70(h)(3)(A) and (B) bring the rules more in line with requirements of the National Board Inspection Code (NBIC), published by the National Board of Boiler and Pressure Vessel Inspectors. Currently, the Department is requiring ultrasonic thickness measurements at each inspection of a nonstandard boiler, under the authority of §65.70(h)(3)(B). However, the Department believes that requiring such an examination only for the first inspection of a nonstandard boiler and at five-year intervals thereafter is sufficient to protect the public safety.

Amendments to §65.100(k)(2)(G)(ii) change the specifications for hydrostatic test pressure for hot water heating boilers. Amendments to §65.100(k)(4)(D) add specifications for pressure gages for certain potable water heaters. These changes make the rules more consistent with requirements of the American Society of Mechanical Engineers (ASME) Code.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect, there will be no impact to costs or revenues of the State as a result of enforcing or administering the proposed rules. The Department anticipates no impact to costs or revenues of local government.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be rule requirements that are clearer and more consistent with national standards for the boiler industry. In addition, owners and operators of nonstandard boilers may see some reduction in compliance costs because ultrasonic thickness measurements will be required only at five-year intervals rather than at every inspection of the boiler.

Mr. Kuntz has determined that there will be no adverse economic effect on small or micro-businesses as a result of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the rules as amended.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: Caroline@license.state.tx.us. The

deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Health and Safety Code, Chapter 755 and Texas Occupations Code, Chapter 51. In particular, Texas Health and Safety Code, §755.032(a) authorizes the Commission to adopt rules, in accordance with standard boiler usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers. Texas Occupations Code, §51.203 directs the Commission to adopt rules as necessary to implement each law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Health and Safety Code, Chapter 755 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§65.10. Definitions.

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

(1) - (38) (No change.)

(39) Preliminary order--A written order issued by the chief inspector or any deputy inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued. A Repair Requirement form that is signed by the chief inspector or a deputy inspector is a Preliminary Order.

(40) - (49) (No change.)

§65.70. Responsibilities of the Licensee/Certificate Holder/Registrant.

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

(f) Clearance.

(1) (No change.)

(2) The minimum manufacturer's recommended [~~side~~] clearances shall be maintained [~~on all sides of the boiler~~], except for portable boilers. A minimum of one foot (305 millimeters) shall be maintained between the bottom of scotch-type boilers and the foundation or floor.

(g) (No change.)

(h) Preparation for inspection.

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

(3) Portable or stationary nonstandard boilers shall be prepared for inspection as described in this section with the following additional requirements.

(A) External lagging and insulation shall be removed and ultrasonic thickness measurements shall be performed for the first inspection and at five-year intervals for subsequent inspections.

(B) Other [~~Ultrasonic thickness measurements or other~~] examinations as required by the chief inspector or deputy inspector shall be performed to determine the condition of the boiler.

(C) Any other inspections or examinations shall be performed as determined by the chief inspector as a condition for registration.

(i) - (m) (No change.)

§65.100. Technical Requirements.

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

(k) Heating boilers.

(1) (No change.)

(2) Hot water heating.

(A) - (F) (No change.)

(G) Provisions for thermal expansion.

(i) (No change.)

(ii) Closed heating system - If the system is of closed type, an airtight tank or other suitable air cushion that is consistent with the volume and capacity of the system shall be installed . If the system is designed for a working pressure of 30 psi (207 kilopascals) or less, the tank shall be suitably designed for a minimum hydrostatic test pressure of 75 psi (520 kilopascals). [~~, and it shall be suitably designed for a hydrostatic test pressure of two and one-half times the allowable working pressure of the system.~~] Expansion tanks for systems designed to operate above 30 psig (207 kilopascals) shall be constructed in accordance with the ASME Code, Section VIII, Division 1. Alternatively, a tank built to ASME Section X requirements may be used if the pressure and temperature ratings of the tank are equal to or greater than the pressure and temperature ratings of the system. Provision shall be made for draining the tank without emptying the system, except for pre-pressurized tanks.

(3) (No change.)

(4) Potable water heaters.

(A) - (C) (No change.)

(D) Gages

(i) Temperature gages. Each hot water heater shall have a thermometer located and connected at or near the outlet that is easily readable. The thermometer shall at all times indicate the temperatures of the water in the hot water heater.

(ii) Pressure gages. Each hot water heater that is of the coil type or water tube shall have a pressure gage that is graduated to not less than 1 1/2 or more than 3 1/2 times the pressure at which the safety relief valve is set.

(E) - (G) (No change.)

(l) - (o) (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 May 1, 2006.

TRD-200602424
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 463-7348

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PART 8. TEXAS RACING COMMISSION

CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER D. TEXAS BRED INCENTIVE PROGRAMS

DIVISION 2. PROGRAM FOR HORSES

16 TAC §303.93

The Texas Racing Commission (Commission) proposes an amendment to §303.93, relating to the Texas Bred Incentive Programs. The purpose of the amendment is to encourage participation in the Texas Bred Incentive Program for quarter horses, and to bring the rule into conformity with current practice at the Texas Quarter Horse Association.

The current rule establishes an application deadline for accreditation of an Accredited Texas Bred (ATB) stallion of January 31 of the year in which an ATB eligible foal is conceived. The Texas Quarter Horse Association (TQHA) may still accredit an ATB stallion after January 31, but no later than December 31, of the year in which an ATB eligible foal is conceived, provided that the application includes payment of a late fee.

The Commission proposes changing the due date for timely applications for ATB quarter horse stallions to April 15 of the year in which an ATB eligible foal is conceived. This change will encourage participation in the Texas Bred Incentive Program for quarter horses by allowing owners a longer period of time to register their stallions without payment of a late fee. It will also bring the rule into conformity with current practice at TQHA, which already waives its right to a late fee for stallion applications filed between January 31 and April 15.

Charla Ann King, Executive Secretary for the Commission, has determined that for each year of the first five years that the amended rule will be in effect, the following statements will apply:

The anticipated public benefit of the proposed amendment will be to support the breeding of quarter horses in Texas. The Texas Bred Incentive Programs provide financial incentives to owners and breeders for breeding their racing horses and greyhounds in Texas. By extending this application deadline to April 15, more quarter horse owners and breeders will be able to participate in the program at the regular fee rate without the additional expense of a late fee.

There are no foreseeable implications relating to costs or revenues for state or local governments as a result of enforcing or administering the amended rule.

Small or micro-businesses in the fields of quarter horse breeding and racing will benefit from the longer period of time in which to apply for accreditation without incurring a late fee. There are no foreseeable implications relating to costs or revenues for other small or micro-businesses as a result of enforcing or administering the amended rule.

There are no economic costs to persons required to comply with the amended rule.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendment.

Comments on the proposed amendment may be submitted on or before June 19, 2006, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02 and §3.021, which authorizes the Commission to make rules relating to all aspects of greyhound and horse racing, and §9.01, which establishes that the rules of horse breed registries establishing the qualifications of Texas-bred horses are subject to rules adopted by the Commission.

The amendment implements Article 9 of Texas Civil Statutes, Article 179e.

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

§303.93. Quarter Horse Rules.

(a) (No change.)

(b) Eligibility for Accreditation.

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

(3) ATB Stallions.

(A) (No change.)

(B) An application for accreditation must be on a form prescribed by TQHA and include the applicable payment as prescribed by TQHA. The deadline for filing an application for accreditation is April 15 [~~January 31~~] of the year in which an ATB eligible foal is conceived. TQHA may accredit a stallion for which the application for accreditation is filed after April 15 [~~January 31~~] but no later than December 31 of the year in which an ATB eligible foal is conceived, provided the application includes payment of a late fee as established by TQHA. An application for accreditation is considered timely filed if it is placed in U.S. mail and is postmarked on or before the applicable deadline.

(C) (No change.)

(c) - (f) (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 May 4, 2006.

TRD-200602497
Mark Fenner
General Counsel
Texas Racing Commission
Proposed date of adoption: June 26, 2006
For further information, please call: (512) 490-4009

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CHAPTER 321. PARI-MUTUEL WAGERING

SUBCHAPTER C. REGULATION OF LIVE WAGERING

DIVISION 2. DISTRIBUTION OF PARI-MUTUEL POOLS

16 TAC §321.310, §321.314

The Texas Racing Commission (Commission) proposes amendments to §321.310 and §321.314, relating to the minimum number of different wagering interests that must be present in a race before an association may offer Trifecta and Superfecta wagers on that race. The purpose of the amendments is to increase the number of wagering opportunities for the public, increase the size of the mutuel handle, and increase the size of the purse.

The current rules establish the minimum number of different wagering interests that must leave the paddock in a race for which the association is offering Trifecta and Superfecta wagering. In order for an association to offer Trifecta wagering, a minimum of six different wagering interests must leave the paddock. In order for an association to offer Superfecta wagering, a minimum

of seven different wagering interests must leave the paddock. If an association offers Trifecta and/or Superfecta wagering, and fewer than the minimum number of different wagering interests required for the wager leave the paddock, the association must cancel the Trifecta and/or Superfecta wagers for that race and refund the entire amount in the pool.

The Commission proposes amending the rules to permit the board of stewards or judges (the "board") to approve Trifecta and Superfecta wagering on races with fewer than the current minimum number of different wagering interests.

The proposed amendments will not require any changes for those races in which the number of different betting interests leaving the paddock meets the current standards. However, the amendments would allow an association to offer Trifecta or Superfecta wagering on a race for which there are fewer different wagering interests than meets the current standard, but only if approved by the board. In addition, if scratches cause the number of different wagering interests to drop below the minimum number required by rule, or further below the number already approved for that race by the board, the board would retain the authority to order the association to cancel the wager and refund the entire pool. In determining whether to cancel the wager and refund the pool, the board will consider the affect the decrease in the number of interests has on the integrity of the wager.

Charla Ann King, Executive Secretary for the Commission, has determined that for each year of the first five years that the amended rules will be in effect, the following statements will apply:

The anticipated public benefit of the proposed amendments will be to increase the number of wagering opportunities for the public, increase the size of the mutuel handle, and increase the size of the purses for the horsemen.

There are no foreseeable implications relating to costs or revenues for local governments as a result of enforcing or administering the amended rules.

There is likely to be a small increase in revenue to state government as a result of enforcing or administering the amended rules. This increase will result from the larger pari-mutuel handles, and the increase in taxes that ensue from those larger handles. There are no foreseeable implications relating to costs for state government as a result of enforcing or administering the amended rules.

There are no foreseeable implications relating to costs or revenues for other small or micro-businesses as a result of enforcing or administering the amended rules.

There are no economic costs to persons required to comply with the amended rules.

There are no negative impacts upon employment conditions in this state as a result of the proposed amendments.

Comments on the proposed amendments may be submitted on or before June 19, 2006, to Gloria Giberson, Assistant to the Executive Secretary for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02 and §3.021, which authorizes 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.

The amendments implement Article 11 of Texas Civil Statutes, Article 179e.

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

§321.310. Trifecta.

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

~~[(c) A coupled entry or mutuel field may not start in a horse race with trifecta wagering unless there are six or more betting interests.]~~

(c) ~~[(d)]~~ If after wagering has begun an animal entered in a trifecta race is scratched or otherwise prevented from racing, all money wagered on the affected animal shall be deducted from the trifecta pool and refunded to the holders of tickets on the affected animal.

(d) ~~[(e)]~~ If no ticket is sold on the winning combination, the net pool shall be distributed equally among the holders of tickets selecting the animals finishing first and second.

(e) ~~[(f)]~~ If no ticket is sold that requires distribution under subsection (d) ~~[(e)]~~ of this section, the net pool shall be distributed equally among the holders of tickets selecting the animals finishing first and third.

(f) ~~[(g)]~~ If no ticket is sold that requires distribution under subsections (d) ~~[(e)]~~ or (e) ~~[(f)]~~ of this section, the net pool shall be distributed equally among the holders of tickets selecting the animal finishing first.

(g) ~~[(h)]~~ If no ticket is sold requiring distribution under subsections (d) - (f) ~~[(e) - (g)]~~ of this section, the net pool shall be distributed equally among the holders of tickets selecting the animals finishing second and third.

(h) ~~[(i)]~~ If no ticket is sold requiring distribution under subsections (d) - (g) ~~[(e) - (h)]~~ of this section, the net pool shall be distributed equally among the holders of tickets selecting the animal finishing second.

(i) ~~[(j)]~~ If no ticket is sold requiring distribution under subsections (d) - (h) ~~[(e) - (i)]~~ of this section, the net pool shall be distributed equally among the holders of tickets selecting the animal finishing third.

(j) ~~[(k)]~~ If a trifecta race ends in a dead heat for first place, the winning combination shall include the first two animals as finishing in either first or second and the animal finishing third. If a trifecta race ends in a dead heat for second place, the winning combinations shall include the animal finishing first and the two animals finishing in a dead heat as finishing either second or third. If a trifecta race ends in a dead heat for third place, the winning combinations include the animals finishing first and second and any of the animals finishing in the dead heat as finishing third. In all combinations paid under this subsection, the net pool shall be divided into separate pools, calculated as a place pool, and paid out accordingly.

(k) ~~[(l)]~~ If a trifecta race ends in a triple dead heat or double dead heats, the net pool shall be divided by the number of all win, place, and show combinations formed, calculated as separate pools, and paid out accordingly.

(l) ~~[(m)]~~ If no ticket is sold that would require distribution under this section, the trifecta is considered "no contest" and the association shall carry forward all money wagered in the trifecta pool to the next consecutive trifecta pool.

(m) An association shall not offer trifecta wagering on any race placed on the official program that does not have six or more different wagering interests unless approved by the board of stewards or judges.

(n) In the event scratches cause the number of different wagering interests to fall below six, or below an amount previously approved by the board of stewards or judges, the board of stewards or judges may order the wager to be canceled and the pool to be refunded if deemed in the interest of wagering integrity.

[(n) If fewer than six horses of different betting interests leave the paddock for a race on which there is trifecta wagering, the association shall cancel the trifecta wager for that race and refund the entire amount in the pool.]

§321.314. Superfecta.

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

(g) An association shall not offer superfecta wagering on any race placed on the official program that does not have seven or more different wagering interests unless approved by the board of stewards or judges. [A coupled entry or mutuel field may not start in a horse race with superfecta wagering unless there are seven or more betting interests.]

(h) In the event scratches cause the number of different wagering interests to fall below seven, or below an amount previously approved by the board of stewards or judges as outlined in subsection (g) of this section, the board of stewards or judges may order the wager to be canceled and the pool to be refunded if deemed in the interest of wagering integrity. [If fewer than seven horses of different betting interests leave the paddock for a race in which there is superfecta wagering, the association shall cancel the superfecta wager for that race and refund the entire amount in the pool.]

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 May 4, 2006.

TRD-200602498
Mark Fenner
General Counsel
Texas Racing Commission
Proposed date of adoption: June 26, 2006
For further information, please call: (512) 490-4009

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES

SUBCHAPTER H. PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND PUBLIC TWO-YEAR COLLEGES

19 TAC §9.147

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

The Texas Higher Education Coordinating Board proposes the repeal of §9.147 concerning Partnerships between Secondary Schools and Public Two-Year Colleges. Specifically this section is proposed for repeal in order that new §§9.201 - 9.206 can be considered for adoption. These proposed new sections are being published simultaneously in this issue of the *Texas Register*.

Ms. Lynette Heckmann, Acting Assistant Commissioner, has determined that there will not be any fiscal implications to state or local government as a result of repealing the section.

Ms. Heckmann has also determined that there is no effect on small businesses. There are no anticipated economic costs. There is no impact on local employment.

Comments on the proposal may be submitted to Lynette Heckmann, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or by email to lynette.heckmann@THECB.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the Texas Register.

The repeal of this section is proposed under the Texas Education Code, §61.853 and §61.858, which provide the Board with the authority to adopt rules regarding Tech-Prep consortia and §61.027 provides the Board with the authority to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61.

The repeal of this section affects Texas Education Code, §§61.851 - 61.858.

§9.147. Tech-Prep Education.

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

Filed with the Office of the Secretary of State on May 8, 2006.

TRD-200602526
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 20, 2006
For further information, please call: (512) 427-6114

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SUBCHAPTER K. TECH-PREP PROGRAMS AND CONSORTIA

19 TAC §§9.201 - 9.206

The Texas Higher Education Coordinating Board proposes new §§9.201- 9.206 concerning Tech-Prep Programs and Consortia. Specifically, §§9.201 - 9.203 establish purpose, authority and general provisions for Tech-Prep consortia; §9.204 outlines the state administration of Tech-Prep Programs and Consortia; how the state is to administer Tech-Prep; §9.205 establishes the responsibilities of the consortia; §9.206 establishes the criteria for a statewide system to evaluate each consortium biennially, the process for the evaluations, and any requisite action that results from the evaluations.

Ms. Lynette Heckmann, Acting Assistant Commissioner, has determined that for each year of the first five years the sections are

in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Heckmann has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be an alignment of expectations for all 26 Tech-Prep consortia. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lynette Heckmann, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, or by email to lynette.heckmann@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §61.853 and §61.858, which provide the Board with the authority to adopt rules regarding Tech-Prep consortia and §61.027, which provides the Board with the authority to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61.

The new rules affect Texas Education Code, §§61.851 - 61.858.

§9.201. Purpose.
This subchapter provides rules for the operation and evaluation of Tech-Prep programs and consortia.

§9.202. Authority.
The Board is authorized to adopt policies, enact regulations, and establish rules for the operation and oversight of Tech-Prep programs and consortia under Texas Education Code, §§61.851- 61.858.

§9.203. General Provisions.

(a) The State Board of Education, in its capacity as the Board for Career and Technology Education, is the eligible agency responsible for implementation and evaluation of all programs funded in Texas under the Carl D. Perkins Vocational and Technical Education Act (the Act), as amended, (20 USC 2301 et seq.) until such time as the Act amends the provision defining the eligible agency.

(b) The State Board of Education, in its capacity as the eligible agency, has designated the Texas Higher Education Coordinating Board as the administering agency responsible for the operation and supervision of that section, part, or title of the Act referring to Tech-Prep Education.

(c) An entity established after January 1, 2005, may not be a Tech-Prep consortium unless the entity is established or otherwise formed after that date as a result of an action taken under §9.206(f) of this title (relating to Evaluation of Tech-Prep Programs and Consortia).

§9.204. State Administration of Tech-Prep.

(a) The Board shall annually award Tech-Prep funds to eligible consortia in accordance with the Act, as amended, the Texas Education Code (Code), and these provisions.

(b) Annual awards to eligible consortia shall be based upon a formula which shall be adopted by the Board after a public hearing.

(c) To be eligible for an award, an eligible consortium shall submit an application and all supporting documentation on an annual basis and in a manner and time frame determined by Board staff that documents and ensures the progress of local consortium activities addressing the requirements of the Act and the Code and enables the state to meet state goals, objectives, and performance criteria.

(d) Board staff shall evaluate local consortia according to the performance measures and standards outlined under §9.206 of this title (relating to Evaluation of Tech-Prep Programs and Consortia). Board staff shall provide technical assistance to consortia that do not meet evaluation standards or upon request by a consortium.

(e) Board staff shall provide oversight of all Tech-Prep activities and programs to ensure that funds provided for Tech-Prep education are expended according to provisions of the Act and the Code.

§9.205. Consortium Responsibilities.

In accordance with the requirements of the grant, each consortium shall:

(1) Create, evaluate, and maintain a long-term Strategic Continuous Improvement Plan that addresses goals, objectives, activities, and evaluation criteria supporting local, state, and federal goals and evaluation criteria;

(2) Develop and implement local programs and activities, and coordinate the expenditure of funds in accordance with guidelines determined by the Act and the Code, as well as state and local goals and objectives;

(3) Maintain the records on local activities and budgetary expenditures to support evaluation criteria and participate in a scheduled, systematic, evaluation program;

(4) Provide reports on programs, activities, activity outcomes, and budgetary expenditures in a manner and time as established by Board staff; and

(5) Ensure that every local school district and public college and university in the consortium service area will have the opportunity to develop Tech-Prep programs of study as defined by the Act and the Code.

§9.206. Evaluation of Tech-Prep Programs and Consortia.

(a) The Board shall biennially evaluate each Tech-Prep consortium to determine the success of the consortium's Tech-Prep programs and activities.

(b) The performance measures and standards by which each consortium shall be evaluated include the following:

(1) Measure 1: The secondary participation rate. Standard 1: The rate shall be at least the state average (based on data provided by the Texas Education Agency) for the previous year and shall be increasing from year-to-year.

(2) Measure 2: The postsecondary participation rate. Standard 2: The rate shall be at least the state average (based on data provided by the Texas Higher Education Coordinating Board) for the previous year and shall be increasing from year-to-year.

(3) Measure 3: The appropriate and timely expenditure of Tech-Prep funds. Standard 3: The consortium shall have spent at least 95 percent of its allocated funds during the previous year and not had any findings during the fiscal desk review process.

(4) Measure 4: Maintenance of detailed time distribution records for staff paid from multiple sources of funds. Standard 4: Time distribution records shall be completed for each consortium employee paid from multiple funds on at least a monthly basis, and be an accurate reflection of the time-on-task for consortium activities related to Tech-Prep. Monthly time sheets must be on file at the consortium office for a minimum of three years.

(5) Measure 5: Timely submission of accurate quarterly reports to the Coordinating Board. Standard 5: Quarterly reports shall be submitted by Coordinating Board due dates and include a response for each goal and objective listed in that report.

(6) Measure 6: Participation of consortia at state Tech-Prep quarterly and called meetings. Standard 6: Attendance by at least one consortium representative is required at all state Tech-Prep meetings.

(7) Measure 7: Site visits to member institutions and public schools. Standard 7: All consortium member institutions and public schools shall receive at least two site visits each grant year from consortium staff. Documentation of site visits shall be included as part of the final report for the grant year to the Coordinating Board.

(c) The Board shall provide each consortium with a written report on the results of the evaluation. A consortium shall respond to any finding of the failure to meet performance measures and standards within thirty (30) days of the receipt of the report.

(d) If a consortium fails to meet two or more of the performance measures and standards established in this provision, Board staff shall conduct a technical site visit. As part of the technical site visit, the consortium shall provide to Board staff any additional documentation needed for a review of the following activities:

(1) Increasing secondary and/or postsecondary participation rates;

(2) Past and present marketing efforts to increase participation rates;

(3) Opportunities for professional development for teachers, counselors, and administrators;

(4) Career exploration activities for students;

(5) Current articulation agreements between and among public schools and institutions;

(6) Current Strategic Continuous Improvement Plan as described in §9.205(1) of this title (relating to Consortium Responsibilities);

(7) Use of funds;

(8) Support and opportunities for participation by member institutions and public schools; and

(9) Operation of the consortium within all the bylaws of the organization. Compliance with all by-laws shall by certified by the consortium governing board chair as part of the annual application to the Coordinating Board.

(e) Within thirty (30) days of the technical site visit, Board staff shall provide a final evaluation of the consortium's programs and activities. If a consortium fails to meet the standards set out in subsection (b) of this section, Board staff shall provide assistance to the consortium governing board in developing a revised Strategic Continuous Improvement Plan. The revised Plan shall set requirements with reasonable deadlines for the purpose of assisting the consortium in meeting required performance measures and standards established in this provision.

(f) Board staff shall monitor the consortium's performance of the revised Plan for six (6) months. If the consortium fails to comply with the requirements of the revised Plan, the Commissioner may determine that a consortium shall be reorganized, consolidated, or abolished as follows:

(1) If the consortium fails to improve its performance relating to participation rates, the Commissioner may require the consortium to reorganize or require the consolidation of the consortium with an existing, high-performing consortium.

(2) If the consortium fails to improve its performance for appropriate and timely expenditure of Tech-Prep funds and maintenance of accurate time distribution records, the Commissioner may require the consortium to be abolished and a new consortium, or consortia, be established to serve the area.

(3) If the consortium fails to improve its performance for operation within the organization's established bylaws, the Commissioner may require the consortium to be abolished and a new consortium, or consortia, be established to serve the area.

(g) Not later than October 1 of each even-numbered year, the Board shall report to each Tech-Prep consortium the results of all evaluations and follow-up actions during the previous two years. The report shall include the following:

(1) Any failure of the consortium to meet the performance measures and standards established in this provision;

(2) The activities and achievements of the consortium in meeting the performance measures and standards established in this provision;

(3) Those areas in which the consortium has made improvement in meeting the performance measures and standards established in this provision; and

(4) Any actions taken by Board staff.

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 May 8, 2006.

TRD-200602525
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: July 20, 2006
For further information, please call: (512) 427-6114

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

The State Board of Education (SBOE) proposes amendments to §§74.1, 74.3, 74.24, 74.28, 74.32, 74.43, 74.44, 74.52, 74.53, 74.54, 74.61, 74.63, and 74.64 and new §74.34 concerning curriculum requirements. The rules provide for curriculum requirements for school districts, outline graduation requirements, and include other provisions that relate to curriculum requirements.

19 TAC Chapter 74 is organized as follows: Subchapter A, Required Curriculum; Subchapter B, Graduation Requirements; Subchapter C, Other Provisions; Subchapter D, Graduation Requirements, Beginning with School Year 2001-2002; Subchapter E, Graduation Requirements, Beginning with School Year 2004-2005; and Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008.

The proposed amendments would incorporate changes in 19 TAC Chapter 74, Subchapters A and C-F, to reflect legislation passed in 2005, an additional science course option, and technical corrections, as follows.

During the regular 2005 legislative session, the 79th Texas Legislature passed Senate Bill (SB) 42, which allows the SBOE to amend rules to include a physical activity requirement for stu-

dents in Grades 6-8. SB 42 specified that the SBOE may choose (1) not to adopt rules for a physical activity requirement for students in Grades 6-8; (2) to adopt rules that state specific time requirements for physical activity in Grades 6-8; or (3) to adopt rules permitting some flexibility at the district level for meeting this requirement. In adopting rules for this requirement, SB 42 includes specific provisions the SBOE must incorporate relative to how the physical activity requirement can be met and permissible exemptions. SB 42 also adds language to the health curriculum requirement to include emphasis on the importance of proper nutrition and exercise. To incorporate these legislative changes, the SBOE proposes amendments to 19 TAC §74.1 in Subchapter A and §74.32 in Subchapter C. Section 74.1(a)(2)(B) would be modified to add language relating to the importance of proper nutrition and exercise in the health curriculum to match TEC, §28.002, as amended by SB 42. Section 74.32 would be modified to add language requiring a local school board to establish a policy that determines the extent to which students enrolled in middle and junior high school settings are allowed to meet physical activity requirements throughout the school year. The proposed SBOE rule addresses how the physical activity requirement can be met and includes permissible exemptions. The section title would also be revised to extend the provisions to include Kindergarten-Grade 8.

The 79th Texas Legislature also passed House Bill (HB) 492 during the 2005 regular legislative session. HB 492 requires the SBOE to adopt rules relating to personal finance education. Proposed new 19 TAC §74.34, Additional Requirements for Economics Classes, Grades 9-12, would be added in Subchapter C to satisfy this requirement. The proposed new rule would address the requirement for a school district to incorporate instruction in personal financial literacy into any course meeting a requirement for an economics credit, using materials approved by the SBOE. The proposed new rule would establish the minimum elements that must be included in personal financial literacy instruction. In consideration of the fact that calendars and curriculum may already be established for the upcoming school year, the proposal includes a provision for school districts to request an extension from the commissioner of education in complying with these new requirements for the 2006-2007 school year.

Proposed technical corrections include adding clarification to the languages other than English requirement in §74.3(b)(2)(J) in Subchapter A and §§74.43(b)(6), 74.44(b)(6), 74.53(b)(6), 74.54(b)(6), 74.63(b)(6), and 74.64(b)(6) in Subchapters D-F to allow for students who are at higher proficiency levels to meet the graduation requirements by taking higher level language courses.

A proposed technical correction in Subchapter C would add language to 19 TAC §74.24(a)(1)-(2) to provide clarification that there are two uses for credit by examination: (1) acceleration for each primary school grade level and (2) course credit for secondary school academic subjects. This proposed amendment would mirror language in the TEC. In addition, 19 TAC §74.24(b) would be modified to clarify that all three delineated requirements must be met for acceleration.

Also in Subchapter C, the proposed amendment in 19 TAC §74.28(h) would require, rather than permit, school districts to provide parent education programs for parents/guardians of students with dyslexia and related disorders.

Proposed technical corrections also include replacing the term "tech prep articulated" with the correct term "advanced technical credit courses" and adding "dual credit courses" in §§74.44(d)(3), 74.54(d)(3), and 74.64(d)(3) in Subchapters D-F that describe requirements for advanced measures for the distinguished achievement program. Tech prep is a program of study, not a course. The program may include dual credit or advanced technical credit courses. This change would make the options clearer.

Other proposed amendments include minor technical edits in §§74.52(c), 74.53(c), and 74.54(c) in Subchapter E to correct the cross reference to elective courses. Proposed amendments in §§74.53(b)(10)(D), 74.54(b)(10)(D), 74.63(b)(10)(D), and 74.64(b)(10)(D) in Subchapters E-F that describe requirements to satisfy the technology applications credit for the recommended and distinguished achievement program would delete redundant language regarding credit by examination. This change would permit districts to measure proficiency in the technology applications course in a variety of ways in addition to credit by examination. Districts may continue; however, to use this option.

Finally, the proposed amendment to 19 TAC §74.61(i)(1)(B) in Subchapter F would add engineering as an option for the fourth year of science beginning with students entering Grade 9 in school year 2007 - 2008.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendments and new rule are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments and new rule.

Dr. Barnes has determined that for each year of the first five years the amendments and new rule are in effect the public benefit anticipated as a result of enforcing the amendments and new rule would be to continue to provide students with appropriate curricular choices as they complete their public school education. School districts would need to notify students and parents about any changes made. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments and new rule.

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

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.1, §74.3

The amendments are proposed under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; and §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels.

The amendments implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

§74.1. Essential Knowledge and Skills.

(a) A school district that offers kindergarten through Grade 12 must offer the following as a required curriculum:

(1) a foundation curriculum that includes:

(A) English language arts;

(B) mathematics;

(C) science; and

(D) social studies, consisting of Texas, United States and world history, government, and geography; and

(2) an enrichment curriculum that includes:

(A) to the extent possible, languages other than English;

(B) health , with emphasis on the importance of proper nutrition and exercise ;

(C) physical education;

(D) fine arts;

(E) economics, with emphasis on the free enterprise system and its benefits;

(F) career and technology education; and

(G) technology applications.

(b) A school district must provide instruction in the essential knowledge and skills of the appropriate grade levels in the foundation and enrichment curriculum as specified in paragraphs (1)-(19) of this subsection. A school district may add elements at its discretion but must not delete or omit instruction in the foundation and enrichment curriculum specified in subsection (a) of this section.

(1) Chapter 110 of this title (relating to Texas Essential Knowledge and Skills for English Language Arts and Reading);

(2) Chapter 111 of this title (relating to Texas Essential Knowledge and Skills for Mathematics);

(3) Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science);

(4) Chapter 113 of this title (relating to Texas Essential Knowledge and Skills for Social Studies);

(5) Chapter 114 of this title (relating to Texas Essential Knowledge and Skills for Languages Other Than English);

(6) Chapter 115 of this title (relating to Texas Essential Knowledge and Skills for Health Education);

(7) Chapter 116 of this title (relating to Texas Essential Knowledge and Skills for Physical Education);

(8) Chapter 117 of this title (relating to Texas Essential Knowledge and Skills for Fine Arts);

(9) Chapter 118 of this title (relating to Texas Essential Knowledge and Skills for Economics with Emphasis on the Free Enterprise System and Its Benefits);

(10) Chapter 119 of this title (relating to Texas Essential Knowledge and Skills for Agricultural Science and Technology Education);

(11) Chapter 120 of this title (relating to Texas Essential Knowledge and Skills for Business Education);

(12) Chapter 121 of this title (relating to Texas Essential Knowledge and Skills for Health Science Technology Education);

(13) Chapter 122 of this title (relating to Texas Essential Knowledge and Skills for Home Economics Education);

(14) Chapter 123 of this title (relating to Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education);

(15) Chapter 124 of this title (relating to Texas Essential Knowledge and Skills for Marketing Education);

(16) Chapter 125 of this title (relating to Texas Essential Knowledge and Skills for Trade and Industrial Education);

(17) Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications);

(18) Chapter 127 of this title (relating to Texas Essential Knowledge and Skills for Career Orientation); and

(19) Chapter 128 of this title (relating to Texas Essential Knowledge and Skills for Spanish Language Arts and English as a Second Language).

§74.3. Description of a Required Secondary Curriculum.

(a) Middle Grades 6-8. A school district that offers Grades 6-8 must provide instruction in the required curriculum as specified in §74.1 of this title (relating to Essential Knowledge and Skills). The district must ensure that sufficient time is provided for teachers to teach and for students to learn English language arts, mathematics, science, social studies, fine arts, health, physical education, technology applications, and to the extent possible, languages other than English. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(b) Secondary Grades 9-12.

(1) A school district that offers Grades 9-12 must provide instruction in the required curriculum as specified in §74.1 of this title (relating to Essential Knowledge and Skills). The district must ensure that sufficient time is provided for teachers to teach and for students to learn the subjects in the required curriculum. The school district may provide instruction in a variety of arrangements and settings, including mixed-age programs designed to permit flexible learning arrangements for developmentally appropriate instruction for all student populations to support student attainment of course and grade level standards.

(2) The school district must offer the courses listed in this paragraph and maintain evidence that students have the opportunity to take these courses:

(A) English language arts--English I, II, III, and IV;

(B) mathematics--Algebra I, Algebra II, Geometry, Precalculus, and Mathematical Models with Applications;

(C) science--Integrated Physics and Chemistry, Biology, Chemistry, and Physics. Science courses shall include at least 40% hands-on laboratory investigations and field work using appropriate scientific inquiry;

(D) social studies--United States History Studies Since Reconstruction, World History Studies, United States Government, and World Geography Studies;

(E) economics, with emphasis on the free enterprise system and its benefits--Economics with Emphasis on the Free Enterprise System and Its Benefits;

(F) physical education--Foundations of Personal Fitness and at least two courses selected from Adventure/Outdoor Education; Aerobic Activities; Individual Sports; or Team Sports;

(G) health education--Health 1;

(H) fine arts--courses selected from at least two of the four fine arts areas (art, music, theatre, and dance)--Art I, II, III, IV; Music I, II, III, IV; Theatre I, II, III, IV; or Dance I, II, III, IV;

(I) career and technology education--courses selected from at least three of the eight career and technology areas (agricultural science and technology education, business education, career orientation, health science technology education, family and consumer sciences education/home economics education, technology education/industrial technology education, marketing education, and trade and industrial education) taught on a campus in the school district with provisions for contracting for additional offerings with programs or institutions as may be practical;

(J) languages other than English--Levels I, II, and III or higher of the same language;

(K) technology applications--at least four courses selected from Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications;

(L) speech--Communication Applications.

(3) Districts may offer additional courses from the complete list of courses approved by the State Board of Education to satisfy graduation requirements as referenced in this chapter.

(4) The school district must provide each student the opportunity to participate in all courses listed in subsection (b)(2) of this section. The district must provide students the opportunity each year to select courses in which they intend to participate from a list that includes all courses required to be offered in subsection (b)(2) of this section. If the school district will not offer the required courses every year, but intends to offer particular courses only every other year, it must notify all enrolled students of that fact. The school district must teach a course in which ten or more students indicate they will participate or that is required for a student to graduate. For a course in which fewer than ten students indicate they will participate, the district must either teach the course or employ options described in Subchapter C of this chapter (relating to Other Provisions) to provide the course and must maintain evidence that it is employing those options.

(c) Courses in the foundation and enrichment curriculum in Grades 6-12 must be provided in a manner that allows all grade promotion and high school graduation requirements to be met in a timely manner. Nothing in this chapter shall be construed to require a district to offer a specific course in the foundation and enrichment curriculum except as required by this subsection.

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

Filed with the Office of the Secretary of State on May 8, 2006.

TRD-200602534
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 475-1497

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SUBCHAPTER C. OTHER PROVISIONS

19 TAC §§74.24, 74.28, 74.32, 74.34

The amendments and new rule are proposed under the Texas Education Code, §§7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; 28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; 28.002(l), which authorizes the SBOE to adopt rules to include a physical activity requirement for students in Grades 6-8; 28.023, which authorizes the SBOE to establish guidelines for examinations for acceleration for primary school grade levels and secondary school academic subjects; and 38.003, which requires the SBOE to adopt rules relating to screening and treatment for dyslexia and related disorders.

The amendments and new rule implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.023, 28.025, and 38.003.

§74.24. Credit by Examination.

(a) General provisions.

(1) A school district must provide at least three days between January 1 and June 30 and three days between July 1 and December 31 annually when examinations for acceleration for each primary school grade level and for credit for secondary school academic subjects required under Texas Education Code, §28.023, shall be administered in Grades 1-12. The days do not need to be consecutive but must be designed to meet the needs of all students. The dates must be publicized in the community.

(2) A school district shall not charge for an exam for acceleration for each primary school grade level or for credit for secondary school academic subjects . If a parent requests an alternative examination, the district may administer and recognize results of a test purchased by the parent or student from Texas Tech University or The University of Texas at Austin.

(3) A school district must have the approval of the district board of trustees to develop its own tests or to purchase examinations that thoroughly test the essential knowledge and skills in the applicable grade level or subject area.

(4) A school district may allow a student to accelerate at a time other than one required in paragraph (1) of this subsection by developing a cost-free option approved by the district board of trustees that allows students to demonstrate academic achievement or proficiency in a subject or grade level.

(b) Assessment for acceleration in kindergarten through Grade 5.

(1) A school district must develop procedures for kindergarten acceleration that are approved by the district board of trustees.

(2) A student in any of Grades 1-5 must be accelerated one grade if he or she meets the following requirements : [.]

(A) the [The] student scores 90% on a criterion-referenced test for the grade level he or she wants to skip in each of the following areas: language arts, mathematics, science, and social studies ; [.]

(B) a [A] school district representative recommends that the student be accelerated ; and [.]

(C) the [The] student's parent or guardian gives written approval for the acceleration.

(c) Assessment for course credit in Grades 6-12.

(1) A student in any of Grades 6-12 must be given credit for an academic subject in which he or she has had no prior instruction if the student scores 90% on a criterion-referenced test for the applicable course.

(2) If a student is given credit in a subject on the basis of an examination, the school district must enter the examination score on the student's transcript.

(3) In accordance with local school district policy, a student in any of Grades 6-12 may be given credit for an academic subject in which he or she had some prior instruction, if the student scores 70% on a criterion-referenced test for the applicable course.

§74.28. Students with Dyslexia and Related Disorders.

(a) The board of trustees of a school district must ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate instructional services to the student are implemented in the district. These procedures will be monitored by the Texas Education Agency with on-site visits conducted as appropriate.

(b) A school district's procedures must be implemented according to the State Board of Education (SBOE) approved strategies for screening, and techniques for treating, dyslexia and related disorders. The strategies and techniques are described in "Procedures Concerning Dyslexia and Related Disorders," a set of flexible guidelines for local districts that may be modified by SBOE only with broad-based dialogue that includes input from educators and professionals in the field of reading and dyslexia and related disorders from across the state. Screening should only be done by individuals/professionals who are trained to assess students for dyslexia and related disorders.

(c) A school district may purchase a reading program or develop its own reading program for students with dyslexia and related disorders, as long as the program is characterized by the descriptors found in "Procedures Concerning Dyslexia and Related Disorders." Teachers who screen and treat these students must be trained in instructional strategies which utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in the "Procedures Concerning Dyslexia and Related Disorders" and in the professional development activities specified by each district and/or campus planning and decision making committee.

(d) Before an identification or assessment procedure is used selectively with an individual student, the school district must notify the student's parent or guardian or another person standing in parental relation to the student.

(e) Parents/guardians of students eligible under the Rehabilitation Act of 1973, §504, must be informed of all services and options available to the student under that federal statute.

(f) Each school must provide each identified student access at his or her campus to the services of a teacher trained in dyslexia and related disorders. The school district may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus.

(g) Because early intervention is critical, a program for early identification, intervention, and support for students with dyslexia and related disorders must be available in each district as outlined in the "Procedures Concerning Dyslexia and Related Disorders."

(h) Each school district shall [~~may~~] provide a parent education program for parents/guardians of students with dyslexia and related disorders. This program should include: awareness of characteristics of dyslexia and related disorders; information on testing and diagnosis of dyslexia; information on effective strategies for teaching dyslexic students; and awareness of information on modification, especially modifications allowed on standardized testing.

§74.32. Physical Activity Programs for [~~Elementary School~~] Students in Kindergarten-Grade 8.

(a) In accordance with Texas Education Code, §28.002, all students enrolled in full-day kindergarten or Grades 1-6 in an elementary school setting are required to participate in physical activity for a minimum of either 30 minutes daily or 135 minutes weekly under the following conditions:

(1) participation must be in a Texas Essential Knowledge and Skills (TEKS)-based physical education class or a TEKS-based structured activity; and

(2) each school district shall establish procedures for providing the required physical activity that must consider the health-related education needs of the student and the recommendations of the local health advisory council.

(b) A school district board of trustees or charter school shall adopt a policy that determines the extent to which students enrolled in middle and junior high school settings are allowed to meet physical activity requirements throughout the school year, under Texas Education Code, §28.002(l). School districts may permit an exemption for students participating in private or commercially-sponsored physical activities including only those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Students certified to participate at this level may not be dismissed from any part of the regular school day. Under Texas Education Code, §28.002, school districts must provide for an exemption for:

(1) students identified in the categories specified in paragraphs (2) and (3) under §74.31 of this title (relating to Health Classifications for Physical Education); or

(2) students participating in a TEKS-based physical education class or a TEKS-based structured activity.

§74.34. Additional Requirements for Economics Classes, Grades 9-12.

(a) A school district and an-open enrollment charter school shall incorporate instruction in personal financial literacy into any course meeting a requirement for an economics credit, using the materials approved by the State Board of Education for this purpose in accordance with Texas Education Code, §28.0021.

(b) A school district may add elements at its discretion but must include the following areas of instruction:

(1) understanding interest and avoiding and eliminating credit card debt;

(2) understanding the rights and responsibilities of renting or buying a home;

(3) managing money to make the transition from renting a home to home ownership;

(4) starting a small business;

(5) being a prudent investor in the stock market and using other investment options;

(6) beginning a savings program and planning for retirement;

(7) bankruptcy;

(8) the types of bank accounts available to consumers and the benefits of maintaining a bank account;

(9) balancing a checkbook;

(10) the types of loans available to consumers and becoming a low-risk borrower;

(11) understanding insurance; and

(12) charitable giving.

(c) A school district or open-enrollment charter school may apply to the commissioner of education for an extension in complying with the requirements of this section for the 2006-2007 school year.

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

Filed with the Office of the Secretary of State on May 8, 2006.

TRD-200602535
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 475-1497

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SUBCHAPTER D. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2001 - 2002

19 TAC §74.43, §74.44

The amendments are proposed under the Texas Education Code, §§7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; 28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; 28.023, which authorizes the SBOE to establish guidelines for examinations for acceleration for primary school grade levels and secondary school academic subjects; and 28.025(a), which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.023, and 28.025(a).

§74.43. Recommended High School Program.

(a) Credits. A student must earn at least 24 credits to complete the Recommended High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Recommended High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);

(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--two credits. The credits earned must be for any two levels [~~consist of Level I and Level II~~] in the same language.

(7) Physical education--one and one-half credits to include Foundations of Personal Fitness (one-half credit).

(A) A student may not earn more than two credits in physical education toward state graduation requirements.

(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.

(C) In accordance with local district policy, a school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(8) Health education--one-half credit, which may satisfied by Health 1 or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.

(9) Speech--one-half credit. The credit must consist of Communication Applications.

(10) Technology applications--one credit, which may be satisfied by:

(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications;

(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia; or

(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology.

(11) Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).

(c) Elective Courses--three and one-half credits. The credits may be selected from the list of courses specified in §74.41(f) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.44. Distinguished Achievement High School Program--Advanced High School Program.

(a) Credits. A student must earn at least 24 credits to complete the Distinguished Achievement High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Distinguished Achievement High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);

(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--three credits. The credits earned must be for any three levels [~~consist of Level I, Level II, and Level III~~] in the same language.

(7) Physical education--one and one-half credits to include Foundations of Personal Fitness (one-half credit).

(A) A student may not earn more than two credits in physical education toward state graduation requirements.

(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.

(C) In accordance with local district policy, a school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(8) Health education--one-half credit, which may be satisfied by Health 1 or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.

(9) Speech--one-half credit. The credit must consist of Communication Applications.

(10) Technology applications--one credit, which may be satisfied by:

(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications;

(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Com-

puter Programming, Telecommunications and Networking, or Business Image Management and Multimedia; or

(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology.

(11) Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).

(c) Elective Courses--two and one-half credits. The credits may be selected from the list of courses specified in §74.41(f) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data where a student receives:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary Scholastic Assessment Test (PSAT) that qualifies the student for recognition as a commended scholar or higher by the National Merit Scholarship Corporation, as part of the National Hispanic Scholar Program of the College Board or as part of the National Achievement Scholarship Program for Outstanding Negro Students of the National Merit Scholarship Corporation. The PSAT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses , advanced technical credit courses, and dual credit courses [~~and tech-prep articulated college courses~~] with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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 May 8, 2006.

TRD-200602536
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 475-1497

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SUBCHAPTER E. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2004 - 2005

19 TAC §§74.52, 74.53, 74.54

The amendments are proposed under the Texas Education Code, §§7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; 28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; 28.023, which authorizes the SBOE to establish guidelines for examinations for acceleration for primary school grade levels and secondary school academic subjects; and 28.025(a), which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.023, and 28.025(a).

§74.52. Minimum High School Program.

(a) Credits. A student must earn at least 22 credits to complete the Minimum High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following.

(1) English language arts--four credits. The credits must consist of:

(A) English I, II, and III (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency); and

(B) Fourth credit of English, which may be satisfied by English IV, Research/Technical Writing, Creative/Imaginative Writing, Practical Writing Skills, Literary Genres, Business Communication, Journalism, or concurrent enrollment in a college English course.

(2) Mathematics--three credits to include Algebra I and Geometry.

(3) Science--two credits. The credits must consist of Biology and Integrated Physics and Chemistry (IPC). A student may substitute Chemistry or Physics for IPC and then must use the second of these two courses as the academic elective credit identified in subsection (b)(6) of this section.

(4) Social studies--two and one-half credits. The credits must consist of World History Studies (one credit) or World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Academic elective--one credit. The credit must be selected from World History Studies, World Geography Studies, or any science course approved by the State Board of Education (SBOE) for science credit as found in Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science). If a student elects to replace IPC with either Chemistry or Physics as described in subsection (b)(3) of this section, the academic elective must be the other of these two science courses.

(7) Physical education--one and one-half credits to include Foundations of Personal Fitness (one-half credit).

(A) A student may not earn more than two credits in physical education toward state graduation requirements.

(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; two- or three-credit career and technology work-based training courses, and off-campus physical education.

(C) In accordance with local district policy, a school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(8) Health education--one-half credit, which may be satisfied by Health 1 or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.

(9) Speech--one-half credit. The credit must consist of Communication Applications.

(10) Technology applications--one credit, which may be satisfied by:

(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications;

(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia; or

(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology.

(c) Elective Courses--five and one-half credits. The credits must be selected from the list of courses specified in §74.51(g) [~~(f)~~] of this title (relating to High School Graduation Requirements).

§74.53. Recommended High School Program.

(a) Credits. A student must earn at least 24 credits to complete the Recommended High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Recommended High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);

(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--two credits. The credits earned must be for any two levels [~~consist of Level I and Level II~~] in the same language.

(7) Physical education--one and one-half credits to include Foundations of Personal Fitness (one-half credit).

(A) A student may not earn more than two credits in physical education toward state graduation requirements.

(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.

(C) In accordance with local district policy, a school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(8) Health education--one-half credit, which may satisfied by Health 1 or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.

(9) Speech--one-half credit. The credit must consist of Communication Applications.

(10) Technology applications--one credit, which may be satisfied by:

(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications, or state-approved technology applications innovative courses;

(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119-125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11 [~~through credit by examination as described in §74.24 of this title (relating to Credit by Examination)~~] .

(11) Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).

(c) Elective Courses--three and one-half credits. The credits may be selected from the list of courses specified in §74.51(g) [~~(f)~~] of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.54. Distinguished Achievement High School Program--Advanced High School Program.

(a) Credits. A student must earn at least 24 credits to complete the Distinguished Achievement High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Distinguished Achievement High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);

(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--three credits. The credits earned must be for any three levels [~~consist of Level I, Level II, and Level III~~] in the same language.

(7) Physical education--one and one-half credits to include Foundations of Personal Fitness (one-half credit).

(A) A student may not earn more than two credits in physical education toward state graduation requirements.

(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior

Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.

(C) In accordance with local district policy, a school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(8) Health education--one-half credit, which may be satisfied by Health 1 or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.

(9) Speech--one-half credit. The credit must consist of Communication Applications.

(10) Technology applications--one credit, which may be satisfied by:

(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications, or state-approved technology applications innovative courses;

(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119-125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11 [~~through credit by examination as described in §74.24 of this title (relating to Credit by Examination)~~] .

(11) Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).

(c) Elective Courses--two and one-half credits. The credits may be selected from the list of courses specified in §74.51(g) [~~(f)~~] of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data where a student receives:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary Scholastic Assessment Test (PSAT) that qualifies the student for recognition as a commended scholar or higher by the National Merit Scholarship Corporation, as part of the National Hispanic Scholar Program of the College Board or as part of the National Achievement Scholarship Program for Outstanding Negro Students of the National Merit Scholarship Corporation. The PSAT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses , advanced technical credit courses, and dual credit courses [~~and tech-prep articulated college courses~~] with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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 May 8, 2006.

TRD-200602537

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 475-1497

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SUBCHAPTER F. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2007 - 2008

19 TAC §§74.61, 74.63, 74.64

The amendments are proposed under the Texas Education Code, §§7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; 28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; 28.023, which authorizes the SBOE to establish guidelines for examinations for acceleration for primary school grade levels and secondary school academic subjects; and 28.025(a), which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, 28.023, and 28.025(a).

§74.61. High School Graduation Requirements.

(a) Graduates of each high school are awarded the same type of diploma. The academic achievement record (transcript), rather than the diploma, records individual accomplishments, achievements, and courses completed and displays appropriate graduation seals.

(b) All credit for graduation must be earned no later than Grade 12.

(c) A student entering Grade 9 in the 2007-2008 school year and thereafter shall enroll in the courses necessary to complete the curriculum requirements for the recommended high school program specified in §74.63 of this title (relating to Recommended High School Program) or the advanced program specified in §74.64 of this title (relating to Distinguished Achievement High School Program--Advanced High School Program) unless the student, the student's parent or other persons standing in parental relation to the student, and a school counselor or school administrator agree that the student should be permitted to take courses under the minimum high school program specified in §74.62 of this title (relating to Minimum High School Program).

(d) To receive a high school diploma, a student entering Grade 9 in the 2007-2008 school year and thereafter must complete the following:

(1) in accordance with subsection (c) of this section, requirements of the minimum high school program specified in §74.62, the recommended high school program specified in §74.63, or the advanced program specified in §74.64; and

(2) testing requirements for graduation as specified in Chapter 101 of this title (relating to Assessment).

(e) A maximum of three credits of reading (selected from Reading I, II, or III) may be offered by districts for state graduation elective credit for identified students under the following conditions.

(1) The school district board of trustees shall adopt policies to identify students in need of additional reading instruction.

(2) District procedures shall include assessment of individual student needs, ongoing evaluation of each student's progress, and monitoring of instructional activities to ensure that student needs are addressed.

(f) An out-of-state or out-of-country transfer student (including foreign exchange students) or a transfer student from a Texas nonpublic school is eligible to receive a Texas diploma, but must complete all requirements of this section to satisfy state graduation requirements. Any course credit required in this section that is not completed by the student before he or she enrolls in a Texas school district may be satisfied through the provisions of §74.23 of this title (relating to Correspondence Courses and Distance Learning) and §74.24 of this title (relating to Credit by Examination) or by completing the course or courses according to the provisions of §74.26 of this title (relating to Award of Credit).

(g) Elective credits in all three graduation programs may be selected from the following:

(1) the list of courses approved by the State Board of Education (SBOE) for Grades 9-12 as specified in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) state-approved innovative courses as specified in §74.27 of this chapter (relating to Innovative Courses and Programs);

(3) Junior Reserve Officer Training Corps (JROTC)--one to four credits;

(4) Driver Education--one-half credit.

(h) College Board advanced placement and International Baccalaureate courses may be substituted for courses required in appropriate areas in all three high school graduation programs. College Board advanced placement and International Baccalaureate courses may be used as electives in all three high school graduation programs.

(i) In addition to the requirements of this subchapter, a student entering Grade 9 in the 2007-2008 school year is required to demonstrate proficiency in science by earning four science credits to complete the recommended high school program or the distinguished achievement high school program, as specified in this subsection.

(1) One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose two credits from subparagraph (A) and one credit from subparagraph (B) of this paragraph to complete the four-year science requirement.

(A) In addition to a biology course, a student must select two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement.

(i) Integrated Physics and Chemistry (IPC);

(ii) Chemistry, AP Chemistry, or IB Chemistry; and

(iii) Physics, Principles of Technology I, AP Physics, or IB Physics.

(B) After successful completion of a biology course and two credits from IPC, a chemistry course, and/or a physics course, a student may select the fourth required credit from any of the following courses.

(i) Geology, Meteorology, and Oceanography (GMO);

(ii) Environmental Systems;

(iii) Aquatic Science;

(iv) Astronomy;

(v) Anatomy and Physiology of Human Systems;

(vi) AP/IB Biology;

(vii) Chemistry;

(viii) AP/IB Chemistry;

(ix) Physics;

(x) AP/IB Physics;

(xi) AP Environmental Science;

(xii) IB Environmental Systems;

(xiii) Scientific Research and Design; [~~and~~]

(xiv) Principles of Technology I ; and [.]

(xv) Engineering.

(2) Under this subsection, a student is required to demonstrate proficiency in elective courses by earning two and one-half credits to complete the recommended high school program or one and one-half credits to complete the distinguished achievement high school program.

(3) This subsection does not apply to any student who completes all course requirements for high school graduation on or before September 1, 2010.

(4) This subsection expires on September 1, 2007, unless the State Board of Education, on or prior to August 1, 2007, determines that sufficient funding has been appropriated by the legislature to implement this subsection.

§74.63. Recommended High School Program.

(a) Credits. A student must earn at least 24 credits to complete the Recommended High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Recommended High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);

(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--two credits. The credits earned must be for any two levels [~~consist of Level I and Level II~~] in the same language.

(7) Physical education--one and one-half credits to include Foundations of Personal Fitness (one-half credit).

(A) A student may not earn more than two credits in physical education toward state graduation requirements.

(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.

(C) In accordance with local district policy, a school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(8) Health education--one-half credit, which may satisfied by Health 1 or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.

(9) Speech--one-half credit. The credit must consist of Communication Applications.

(10) Technology applications--one credit, which may be satisfied by:

(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications, or state-approved technology applications innovative courses;

(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119-125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11 [~~through credit by examination as described in §74.24 of this title (relating to Credit by Examination)~~] .

(11) Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).

(c) Elective Courses--three and one-half credits. The credits may be selected from the list of courses specified in §74.61(g) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.64. Distinguished Achievement High School Program--Advanced High School Program.

(a) Credits. A student must earn at least 24 credits to complete the Distinguished Achievement High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Distinguished Achievement High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);

(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--three credits. The credits earned must be for any three levels [~~consist of Level I, Level II, and Level III~~] in the same language.

(7) Physical education--one and one-half credits to include Foundations of Personal Fitness (one-half credit).

(A) A student may not earn more than two credits in physical education toward state graduation requirements.

(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I-IV; and two- or three-credit career and technology work-based training courses.

(C) In accordance with local district policy, a school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(8) Health education--one-half credit, which may be satisfied by Health 1 or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.

(9) Speech--one-half credit. The credit must consist of Communication Applications.

(10) Technology applications--one credit, which may be satisfied by:

(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications, or state-approved technology applications innovative courses;

(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Com-

puter Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119-125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11 [~~through credit by examination as described in §74.24 of this title (relating to Credit by Examination)~~] .

(11) Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).

(c) Elective Courses--two and one-half credits. The credits may be selected from the list of courses specified in §74.61(g) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data where a student receives:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary Scholastic Assessment Test (PSAT) that qualifies the student for recognition as a commended scholar or higher by the National Merit Scholarship Corporation, as part of the National Hispanic Scholar Program of the College Board or as part of the National Achievement Scholarship Program for Outstanding Negro Students of the National Merit Scholarship Corporation. The PSAT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses , advanced technical credit courses, and dual credit courses [~~and tech-prep articulated college courses~~] with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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 May 8, 2006.

TRD-200602538
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 475-1497

CHAPTER 101. ASSESSMENT
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF TESTING PROGRAM

19 TAC §101.3001, §101.3005

The Texas Education Agency (TEA) proposes an amendment to §101.3001 and new §101.3005, concerning implementation of the testing program. Section 101.3001 addresses implementation of assessment instruments. Proposed new §101.3005 would address required test administration procedures and training activities. The purpose of the proposed rule action is to clarify the commissioner's authority to develop and implement test administration procedures and training activities to ensure the security, validity, and reliability of the assessment program as required by TEC, §39.023(i).

The TEC, §39.023, requires the commissioner of education to adopt rules for implementing the testing program established by the State Board of Education in 19 TAC Chapter 101, Subchapters A-E. Senate Bill (SB) 103, Section 9, 76th Texas Legislature, 1999, requires the commissioner of education to adopt rules for the implementation of the TEC, §39.023. In accordance with TEC, Chapter 39, Subchapter B, and SB 103, Section 9, the commissioner adopted rules concerning implementation of the testing program in 19 TAC Chapter 101, Subchapter CC, to be effective February 16, 2003. Rules in this subchapter were revised, effective February 2005, to clarify transitional issues related to the Texas Assessment of Knowledge and Skills (TAKS), as specified by the 76th Texas Legislature, 1999, and to establish rules for implementation of the Grade 8 science test required by the 78th Texas Legislature, 2003.

The TEC, §39.023(i), requires that each assessment instrument adopted under TEC, Chapter 39, Subchapter B, be reliable and valid and must meet any applicable federal requirements for measurement of student progress. The proposed rule action in 19 TAC Chapter 101, Subchapter CC, would add new 19 TAC §101.3005 and amend the section title in 19 TAC §101.3001, as follows.

The proposed new 19 TAC §101.3005, Required Test Administration Procedures and Training Activities to Ensure Validity, Re-

liability, and Security of Assessments, would be added to clarify in rule the commissioner's authority to develop and implement test administration procedures and required training activities to ensure the validity, reliability, and security of assessments administered under the TEC, Chapter 39, Subchapter B. The new section would clarify in rule the authority for the commissioner to establish test administration procedures and required training activities that support the standardization of the test administration process. These test administration procedures shall be delineated in the test administration materials provided to districts and charter schools annually. The new section would clarify the commissioner's authority to require training activities to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. The commissioner may require evidence of the successful completion of training activities.

The proposed amendment to 19 TAC §101.3001 would only change the rule's title to read "Implementation of Assessment Instruments." No changes are proposed for the text of the rule.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five- year period the amendment and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment and new section.

Dr. Barnes has determined that for each year of the first five years the amendment and new section are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the commissioner's authority to develop and implement procedures and training activities that ensure the security, validity, and reliability of the assessments administered under the TEC, §39.023. The Texas student assessment program provides Texas students, schools, and the public with an accurate gauge of students' academic progress in learning the key components of the Texas Essential Knowledge and Skills. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment and new section.

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

The amendment and new section are proposed under Senate Bill 103, Section 9, 76th Texas Legislature, 1999 (Acts of the 76th Texas Legislature, 1999, Chapter 397), and Texas Education Code, §39.023, which authorize the commissioner of education to adopt rules for the implementation of the Texas Education Code, §39.023.

The amendment and new section implement the Texas Education Code, §39.023, and Senate Bill 103, Section 9, 76th Texas Legislature, 1999 (Acts of the 76th Texas Legislature, 1999, Chapter 397).

§101.3001. Implementation of [~~New~~] Assessment Instruments.

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

§101.3005. Required Test Administration Procedures and Training Activities to Ensure Validity, Reliability, and Security of Assessments.

(a) Purpose. To ensure that each assessment instrument is reliable and valid and meets applicable federal requirements for measurement of student progress, as required by the Texas Education Code (TEC), §39.023(i), the commissioner of education shall establish test administration procedures and required training activities that support the standardization of the test administration process.

(b) Test administration procedures. These test administration procedures shall be delineated in the test administration materials provided to school districts and charter schools annually. Districts and charter schools must comply with all of the applicable requirements specified in the test administration materials. Test administration materials shall include, but are not limited to, the following:

(1) general testing program information;

(2) requirements for ensuring test security and confidential integrity;

(3) procedures for test administration;

(4) responsibilities of various personnel involved in test administration; and

(5) procedures for materials control.

(c) Training activities. As part of the test administration procedures, the commissioner shall require training activities to ensure that testing personnel have the necessary skills and knowledge required to administer assessment instruments in a valid, standardized, and secure manner. The commissioner may require evidence of successful completion of training activities. Test coordinators and administrators must receive all applicable training as required in the test administration materials.

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 May 8, 2006.

TRD-200602539
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.61, §535.63

The Texas Real Estate Commission (TREC) proposes amendments to §535.61, concerning Examinations and §535.63, concerning Education and Experience Requirements for a License. The amendment to §535.61 authorizes the commission to waive

the national portion of the examination for an applicant who has passed a comparable national examination that has been certified by a nationally recognized real estate regulator association. The amendment to §535.63 requires a salesperson subject to annual education (SAE) requirements to furnish documentation to the commission of successful completion of appropriate courses 10 business days prior to the day the salesperson renews the salesperson's license. The amendment to §535.63 is necessary to implement on-line renewal of a salesperson's license subject to SAE.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are is in effect there will be no fiscal implications for the state as a result of enforcing or administering the amended sections. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amended sections.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended sections will be acceptance of national test results from other states with comparable examinations and facile implementation of on-line renewal requirements. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purposed and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.61. Examinations.

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

(g) The commission may waive the national portion of the examination of an applicant for a broker or salesperson license if the applicant has passed a comparable national examination accredited or certified by a nationally recognized real estate regulator association.

§535.63. Education and Experience Requirements for a License.

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

(c) Education requirements for a salesperson license.

(1) In order to maintain a license, a salesperson subject to annual education requirements shall furnish documentation to the commission of successful completion of appropriate courses no later than 10 business days prior to the day the salesperson files an application with the commission to renew the salesperson's license.

(2) (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 May 5, 2006.

TRD-200602514
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.217

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

The Texas Real Estate Commission (TREC) proposes the repeal of §535.217, concerning Dishonest Conduct as Grounds for Disciplinary Action. The repeal is proposed because the subjects addressed in this section will be covered in the proposed amendments to §535.220 TREC is simultaneously proposing as part of the Real Estate Inspector Committee recommendations regarding Professional Conduct and Ethics. As the new subsection will comprehensively address the subjects of the proposed repealed rule as well as implement the recommendations, repeal of the rule is necessary to avoid confusion and repetition.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the repeal. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the repeal.

Ms. DeHay also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification of inspector standards of real estate inspector professional conduct and ethics. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments on the proposed repeal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The repeal is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed repeal.

§535.217. Dishonest Conduct as Grounds for Disciplinary Action.

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 May 5, 2006.

TRD-200602515
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 465-3900

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22 TAC §535.220

The Texas Real Estate Commission (TREC) proposes amendments to §535.220, concerning Professional Conduct and Ethics. The Texas Real Estate Inspector Committee has recommended that the Commission amend the rule to prohibit contingency arrangements in cases where compensation depends on specific findings or on closing or settlement; to prohibit an inspector from paying a fee to or receiving a fee from a "settlement service provider" as defined in the rule for the referral of inspections, for inclusion on a list of preferred providers, or for inclusion on a list of inspectors contingent on other financial agreements; to prohibit an inspector from accepting a fee for referring services that are not settlement services or other products to the inspector's client without the consent of the inspector's client; to clarify that an inspector may pay or receive a fee for services actually rendered; to prohibit an inspector from conducting repair for a fee of any systems or components of property covered by the Standards of Practice on which the inspector has performed an inspection under an earnest money contract, lease, or exchange of real property within 12 months of the date of the inspection; and to prohibit an inspector from disclosing inspection results or client information without prior approval from the client, except for observed immediate safety hazards to occupants exposed to such hazards.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amended section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amended section.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amendments will be full transparency and disclosure of the cost of obtaining a real estate inspection in connection with the purchase or sale of real property. While there may be an economic cost to licensed persons who currently rely on a business model that encourages payment or acceptance of referral fees, such impact is difficult to calculate as such information is generally only disclosed to the client. Those licensees whose business models are inconsistent with the proposed amendments may need to reassess their business models to comply with the proposed amendments. However, since federal law already prohibits referral fee arrangements except in very limited circumstances, it is anticipated that few licensees should be affected in that regard. Those licensees will be unable to either pay or accept fees for referrals from settlement service providers.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.220. Professional Conduct and Ethics.

(a) The responsibility of those persons who engage in the business of performing independent inspections of improvements in real estate transactions imposes integrity beyond that of a person involved in ordinary commerce. Each inspector must maintain a high standard of professionalism, independence, objectivity and fairness while performing inspections in a real estate transaction. Each inspector licensee must also uphold, maintain, and improve the integrity, reputation, and practice of the home inspection profession.

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

(e) An inspector shall comply with the following requirements.

(1) An inspector shall not inspect properties under contingent arrangements whereby any compensation or future referrals are dependent on reported findings or on the closing or settlement of a property.

(2) In this section "settlement service" means any service provided in connection with a prospective or actual settlement, and "settlement service provider" includes, but is not limited to, any one or more of the following:

(A) Federally related mortgage loan originator;

(B) Mortgage broker;

(C) Title service provider;

(D) Attorney;

(E) A person who prepares documents, including notarization, delivery, and recordation;

(F) Appraiser;

(G) Inspector;

(H) Settlement agent;

(I) A person who provides mortgage insurance services;

(J) A person who provides services involving hazard, flood, or other casualty insurance or homeowner's warranties;

(K) Real estate agent or broker; and

(L) A person who provides any other services for which a settlement service provider requires a borrower or seller to pay.

(3) An inspector shall not pay or receive a fee or other valuable consideration to or from any other settlement service provider for, but not limited to, the following:

(A) The referral of inspections;

(B) inclusion on a list of inspectors, preferred providers, or similar arrangements; or

(C) inclusion on lists of inspectors contingent on other financial agreements.

(4) An inspector shall not receive a fee or other valuable consideration, directly or indirectly, for referring services that are not

settlement services or other products to the inspector's client without the client's consent.

(5) This section does not prohibit an inspector from paying or receiving a fee or other valuable consideration, such as to or from a contractor, for services actually rendered.

(6) An inspector shall not accept employment to repair, replace, maintain or upgrade systems or components of property covered by the Standards of Practice under this subchapter on which the inspector has performed an inspection under an earnest money contract, lease, or exchange or real property within 12 months of the date of the inspection.

(7) Inspectors shall not disclose inspection results or client information without prior approval from the client. Inspectors, at their discretion, may disclose observed immediate safety hazards to occupants exposed to such hazards when feasible.

(f) [~~(e)~~] The inspector should make a reasonable attempt to cooperate with other professionals and related tradespersons [~~tradesmen~~] at all times and in all manners in a method that is conducive to the promotion of professionalism, independence and fairness to himself, his business, and the inspection industry.

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 May 5, 2006.

TRD-200602516
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 465-3900

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22 TAC §535.223

The Texas Real Estate Commission (TREC) proposes an amendment to §535.223, concerning standard inspection report forms. The amendment would adopt by reference a standard inspection report form. TREC has a statutory duty to adopt standard inspection report forms and to adopt rules requiring licensed inspectors to use the report forms under Senate Bill Number 1100, 75th Legislature (1997).

The proposed revisions to the report form, Inspection Report Form REI 7A-1, have been recommended by the Texas Real Estate Inspector Committee, an advisory committee of nine professional inspectors appointed by TREC, to correspond to proposed revisions to the inspector standards of practice that are otherwise explained in this issue of the *Texas Register*.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for the state as a result of enforcing or administering the amended section. There are no anticipated fiscal implications for units of local government. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the amended section except to the extent that a licensed corporation or limited liability company that engages in professional home inspecting for buyers and sellers in Texas would be required to pay the $10 fee every two years to renew its professional inspector license.

Ms. DeHay also has determined that for each year of the first five years the amendment as proposed is in effect the public benefit anticipated as a result of enforcing the amended section will be clarity in the implementation of the statutory requirements for licensing and renewal, and to assist interested person in the application process. The anticipated economic cost to persons who are required to comply with the proposed amendments is the $10 fee every two years to renew a license.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed amendments.

§535.223. Standard Inspection Report Forms.

(a) The Texas Real Estate Commission adopts by reference Property Inspection Report, REI 7A-1 [~~7A-0~~], approved by the Texas Real Estate Commission in 2006 [~~1998~~] and published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Except as provided by this section, inspections performed for a prospective buyer or prospective seller of one-to-four family residential property must be reported on Form REI 7A-1 [~~7A-0~~] ("the form"). Licensed inspectors shall complete the applicable portions of the form and provide the report within a reasonable period of time to the persons for whom the inspection has been performed. If necessary to report the inspection of a part, component or system not contained in the form, or space provided on the form is inadequate for a complete reporting of the inspection, such as when the inspector provides a higher level of inspection performance than that required by the standards of practice adopted by the commission, the inspector may attach additional pages to the form. When providing comments or additional pages to report on items listed on a form, the inspector shall arrange the comments or additional pages to follow the sequence of the items listed in the form adopted by the commission. If a part, component or system contained in the form is present in the property and has not been inspected under the departure provisions of §535.227 of this title (relating to Standards of Practice: General Provisions), the inspector shall make an appropriate notation on the form, clearly indicating the reason the part, component, or system has not been inspected.

(c) (No change.)

(d) When using form REI 7A-1 [~~7A-0~~], the inspector may make the following changes.

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

(e) - (h) (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 May 5, 2006.

TRD-200602517

Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 465-3900

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22 TAC §§535.232 - 535.238

The Texas Real Estate Commission (TREC) proposes new §§535.232 - 535.238, concerning inspector standards of practice. TREC will consider proposing the repeal of existing rules to be replaced by these proposed rules as part of the Real Estate Inspector Committee comprehensive review and recommendations regarding inspector standards of practice. The proposed new rules divide the standards of practice for inspectors into seven sections by providing two additional sections and contain a number of substantive changes recommended by the Texas Real Estate Inspector Committee, an advisory committee of nine professional inspectors appointed by TREC.

Generally, the proposed new sections rearrange the current standards of practice, listing the systems, components and items in a home which the inspector must include in an inspection unless the inspector's client agrees to limit the scope of the inspection.

New §535.232 addresses standards of practice: general provisions which include definitions, the scope, and the departure provisions of an inspection. New §535.233 addresses inspection guidelines for building systems, including the foundation; site conditions; exterior surfaces; interior surfaces; fireplace and chimney; roof covering; roof framing and attics; and balconies, steps, porches, decks and carports. New §535.234 addresses inspection guidelines for heating ventilation and air conditioning systems.

New §535.235 address inspection guidelines for plumbing systems. New §535.236 addresses inspection guidelines for appliances. New §535.237 addresses inspection guidelines for electrical systems. New §535.238 addresses inspection guidelines for optional systems.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the new sections will be more streamlined inspector standards of practice that are similar in scope to standards in other jurisdictions and within the private industry. There is no anticipated economic cost to persons who are required to comply with the proposed new sections.

Comments on the proposed new sections may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The new sections are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by this proposal are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the proposed new sections.

§535.232. Standards of Practice: General Provisions.

(a) Definition of terms. The following words have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible--Can be approached, entered or viewed without moving items, probing, using specialized tools, damaging property or disassembly, and without physical limitation or danger to the inspector.

(2) Deficiency--A condition adversely and materially affecting the performance of a system or component, as judged by the inspector. General deficiencies include but are not limited to: Inoperability, material distress, interior water penetration, damage, deterioration, missing parts and unsuitable installation.

(3) Inspect--To observe accessible systems or items in a non-exhaustive manner and report apparent deficiencies. Equipment listed herein shall be operated in at least one mode with ordinary controls at typical settings.

(4) Performance--Achievement of an operation, function or configuration consistent with accepted industry practice.

(5) Report--To provide the inspector's opinions and findings on the approved TREC form.

(6) Representative--Sampled according to homogenous use, age and design. Representative samples include sufficient repeated inspection to provide reasonable confidence as to the condition of similar items.

(7) Specialized Tools--Equipment other than ladders, flashlights, receptacle testers and ordinary hand tools.

(8) Verify--To closely inspect or test for one or more specific characteristics.

(b) Scope.

(1) These Standards of Practice define the minimum levels of inspection required for substantially completed residential improvements to real property up to four dwelling units. A real estate inspection is a limited survey and basic operation of the systems and components of a building using normal controls. The purpose of the inspection is to provide the client with information regarding the general condition of the residence at the time of inspection.

(2) Precedence. In the event of a conflict between specific provisions and general provisions in the Standards of Practice, specific provisions shall take precedence.

(3) General Requirements. The inspector shall:

(A) inspect accessible systems or components as listed herein;

(B) complete the standard inspection report form as applicable (under §535.223 of this title); and

(C) provide identification of the inspector and sponsor where applicable, by name(s) and license number(s).

(4) General Limitations. The inspector is not required to do the following.

(A) Inspect:

(i) items other than those listed herein;

(ii) anything buried, hidden, latent or concealed;

(iii) cosmetic or aesthetic conditions; or

(iv) automated or programmable control systems, automatic shut-off, photoelectric sensors, timers, clocks, metering devices, signal lights, lighting arrestors, remote controls, security or data distribution systems.

(B) Report:

(i) past repairs that appear to be effective and workmanlike; or

(ii) finish damages that are unlikely to affect performance or unrelated to water penetration.

(C) Determine:

(i) conditions prior or subsequent to inspection;

(ii) insurability, warrantability, habitability, adequacy, capacity, reliability, marketability, operating costs, recalls, life expectancy, age, insulation characteristics, energy efficiency, thermostatic operation, code compliance, utility sources, manufacturer or regulatory requirements;

(iii) presence or absence of pests or wood-destroying organisms;

(iv) presence, absence or risk of any environmental pathogen, carcinogen, toxin or poison; or

(v) types of wood, preservative treatment or fastener compatibility.

(D) Warrant:

(i) absence of leakage; or

(ii) future performance of any item.

(E) Operate:

(i) items requiring use of codes, keys, combinations or other such devices; or

(ii) shut-off, safety or stop valves.

(F) Designate conditions as hazardous or safe.

(G) Recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, real estate brokerage, or other specialist services.

(H) Review historical records, installation instructions, repair plans, cost estimates, disclosure documents, or other reports.

(I) Verify drain systems, recirculation or sump pumps.

(J) Test pressure or pressure regulation.

(K) Remedy conditions preventing inspection of any item.

(L) Apply open flame to operate any appliance.

(M) Turn on decommissioned equipment, systems or utility services.

(5) Care and Custody.

(A) The inspector shall practice reasonable care and custody when performing the inspection.

(B) The inspector is not responsible for discovered defects or consequential damages resulting from inspection as required by these Standards.

(C) The inspector is not responsible for the behavior or care of persons other than those employed or sub-contracted by the inspector.

(6) Departure. Items listed herein may be excluded from inspection provided the client is advised in a timely manner and such exclusions are stated in the written report. These exclusions are permissible where one or more of the following apply:

(A) the inspector and client agree the item is not to be inspected;

(B) the inspector is not qualified to inspect the item;

(C) conditions beyond the control of the inspector reasonably prevent inspection of an item; or

(D) the item is a common element of a multi-family development or shared by more than one dwelling.

(7) Enforcement. Failure to comply with provisions herein (§§535.232 - 535.238 of this title) is grounds for disciplinary action under Chapter 1102, Texas Occupations Code.

§535.233. Standards of Practices: Inspection Guidelines for Building Systems.

(a) Foundation.

(1) Describe:

(A) The type(s) of principal foundation(s).

(B) Representative indicators associated with adverse performance, such as:

(i) open or offset concrete cracks;

(ii) exposed or damaged reinforcement;

(iii) binding doors;

(iv) framing separations;

(v) out-of-square wall openings;

(vi) sloping floors;

(vii) wall, floor and ceiling cracks;

(viii) rotating, buckling, or deflecting masonry veneer panels;

(ix) separating of walls from ceilings or floors; and

(x) deteriorated materials.

(2) Slab Foundations. Inspect slab surfaces.

(3) Pier and Beam/Raised Floor Foundations.

(A) Describe the method used to inspect the crawlspace.

(B) Inspect:

(i) crawlspace ventilation;

(ii) crawlspace moisture conditions; and

(iii) the raised floor assembly:

(I) post/pier supports;

(II) beams and girders;

(III) joists; and

(IV) subfloor.

(4) Specific limitations. The inspector is not required to:

(A) enter a crawlspace or any area where headroom is less than 18 inches, or the access opening is of a size less than 24 inches wide by 18 inches high or is obstructed; or

(B) provide an exhaustive list of distress indicators.

(b) Site Conditions.

(1) Inspect adjacent surface grading.

(2) Specific limitations. The inspector is not required to:

(A) determine area hydrology or presence of ground water; or

(B) inspect flatwork condition, retaining walls or detention/retention ponds.

(c) Exterior Surfaces.

(1) Inspect:

(A) walls;

(B) entry doors;

(C) garage doors;

(D) windows:

(i) glazing;

(ii) screens; and

(iii) burglar bar releases.

(2) Specific limitations. The inspector is not required to:

(A) inspect awnings, storm doors, screen doors, or shutters; or

(B) exhaustively observe glazing or identify specific locations of damage.

(d) Interior Surfaces.

(1) Inspect:

(A) walls, floors and ceilings;

(B) doors;

(C) stairs, rails and guards; and

(D) glazing.

(2) Specific limitations. The inspector is not required to inspect cabinetry or countertops.

(e) Fireplace and Chimney.

(1) Inspect:

(A) chimney exterior;

(B) firebox;

(C) damper;

(D) surround and hearth extension;

(E) flue interior; and

(F) gas supply connections and shut off.

(2) Specific limitations. The inspector is not required to:

(A) Inspect:

(i) fireplaces in use; or

(ii) stoves, inserts, door, screens or mantels.

(B) Determine draft characteristics.

(f) Roof Covering

(1) Describe:

(A) representative covering type(s); and

(B) method used to inspect roof.

(2) Inspect:

(A) coverings;

(B) flashings;

(C) skylights;

(D) vents;

(E) vent chimneys;

(F) other roof penetrations; and

(G) guttering system.

(3) Specific limitations. The inspector is not required to:

(A) determine number of layers; or

(B) identify latent hail damage.

(g) Roof Framing and Attics.

(1) Describe:

(A) method used to inspect attic; and

(B) approximate depth of attic insulation.

(2) Inspect:

(A) framing system;

(B) ventilation;

(C) insulation; and

(D) fireblocking around flue penetration(s).

(3) Specific limitations. The inspector is not required to:

(A) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches, headroom is less than 30 inches or walkways are not provided; or

(B) operate powered ventilation.

(h) Balconies, Steps, Porches, Decks and Carports.

(1) Inspect:

(A) balconies;

(B) attached decks;

(C) porches;

(D) stairs, rails and guards; and

(E) attached carports.

(2) Specific limitations. The inspector is not required to enter any area where headroom is less than 18 inches, or the access opening is of a size less than 24 inches wide by 18 inches high or is obstructed.

§535.234. Standards of Practices: Inspection Guidelines for Heating, Ventilation and Air Conditioning Systems.

(a) Heating Systems.

(1) Describe energy source.

(2) Inspect:

(A) heating operation;

(B) unit housing;

(C) gas units:

(i) gas supply connections and shut-off,

(ii) venting,

(iii) clearances, and

(iv) combustion air provisions;

(D) electric units:

(i) electrical supply provisions, and

(ii) presence of disconnect.

(3) Specific limitations. The inspector is not required to

(A) inspect:

(i) boilers, radiators or oil-fired units;

(ii) supplemental heating appliances;

(iii) electric elements, multi-stage controllers or sequencers;

(iv) reversing valves or de-icing provisions; and

(v) humidifiers or unvented gas appliances;

(B) verify integrity of heat exchangers; or

(C) operate heat pumps when temperatures may damage equipment.

(b) Direct Exchange Cooling Systems.

(1) Inspect:

(A) cooling operation;

(B) electrical supply provisions and presence of disconnect;

(C) condenser unit;

(D) evaporator enclosure;

(E) condensate disposal provisions;

(F) attic overflow provisions; and

(G) refrigerant lines.

(2) Specific limitations. The inspector is not required to:

(A) inspect window units or through wall-systems;

(B) identify types of refrigerants;

(C) operate equipment when outdoor temperatures are below 60 degrees; or

(D) verify:

(i) integrity of coils; and

(ii) sizing or component matching.

(c) Evaporative Cooling Systems.

(1) Inspect:

(A) cooling operation;

(B) electrical supply provisions and disconnect;

(C) unit housing;

(D) water supply provisions; and

(E) interior components.

(2) Specific limitations. The inspector is not required to verify system capacity, sizing or compatibility.

(d) Conditioned Air Distribution Systems.

(1) Inspect:

(A) plenums;

(B) filters;

(C) representative ducts;

(D) representative supply registers; and

(E) return grills.

(2) Specific limitations. The inspector is not required to inspect:

(A) zone balancing, duct leakage or sizing;

(B) motorized dampers or heat reclamation equipment; or

(C) indoor air quality equipment.

§535.235. Standards of Practices: Inspection Guidelines for Plumbing Systems.

(a) Inspect:

(1) representative supply and, drain and vent piping;

(2) enclosure surfaces in bathtub and shower areas;

(3) representative gas piping or tubing; and

(4) connections, flow and drainage of fixtures, faucets and fittings at:

(A) bathtubs;

(B) sinks;

(C) showers;

(D) toilets;

(E) clothes washer valves and drains; and

(F) hose bibs.

(b) Specific limitations. The inspector is not required to:

(1) Inspect:

(A) fixtures without a functional receptor or attached to an appliance;

(B) drain without a functional fixture;

(C) expansion tanks, rim drains, water conditioning, cleanouts or fire sprinklers; or

(D) hose bibs not immediately adjacent the residence.

(2) Verify:

(A) clothes washer valves or drains;

(B) shower pans or surrounds;

(C) back flow prevention; or

(D) anodic protection.

(3) Winterize.

(c) Water Heaters.

(1) Describe energy source.

(2) Inspect:

(A) heating operation;

(B) tank housing and covers;

(C) water supply connections and shut-off;

(D) temperature and pressure relief valve and piping;

(E) overflow pan;

(F) electrical supply provisions and presence of disconnect in electric units; and

(G) gas units:

(i) gas supply connections and shut-off;

(ii) venting;

(iii) clearances; and

(iv) combustion air provisions.

(3) Specific exclusions and limitations. The inspector is not required to:

(A) Inspect:

(i) units used for space heating; and

(ii) Sacrificial anodes, dielectric unions or electric heating elements.

(B) Change the setting of a thermostat or measure water temperature; or

(C) Determine delivery time or recovery rate.

§535.236. Standards of Practices: Inspection Guidelines for Appliances.

(a) Kitchen Appliances.

(1) Inspect:

(A) dishwasher;

(B) trash Compactor;

(C) food waste disposer;

(D) range hood;

(E) cooktop, range or oven; and

(F) microwave oven.

(2) Specific limitations. The inspector is not required to:

(A) operate appliances in all modes or self-cleaning cycles; or

(B) inspect appliances in use.

(b) Built-In Appliances Other than Kitchen.

(1) Inspect:

(A) garage door openers;

(B) hydrotherapy equipment; and

(C) bathroom vent fans.

(2) Specific limitations. The inspector is not required to inspect integral bathtub water heaters.

§535.237. Standards of Practices: Inspection Guidelines for Electrical Systems.

(a) Describe branch conductor material(s).

(b) Inspect:

(1) Service equipment:

(A) service entrance; and

(B) mast and weatherhead:

(i) presence of grounding electrode conductor; and

(ii) main disconnection means.

(2) Distribution panelboards:

(A) enclosures;

(B) feeders; and

(C) overcurrent protection devices.

(3) Branch circuit wiring and devices:

(A) lighting fixtures;

(B) ceiling-suspended fans;

(C) presence of smoke detectors;

(D) ground fault circuit interrupters; and

(E) representative:

(i) boxes;

(ii) conductors;

(iii) receptacles; and

(iv) switches and dimmers.

(c) Specific limitations. The inspector is not required to:

(1) Inspect:

(A) exterior or landscape lighting,

(B) power conditioning, or

(C) fan or fixture attachment integrity;

(2) insert anything into electrical enclosures;

(3) operate or verify overcurrent protection devices;

(4) remove covers where hazardous as judged by the inspector;

(5) trace circuits or verify label accuracy;

(6) verify appliance feed capacities; or

(7) verify the grounding continuity or methods.

§535.238. Standards of Practices: Inspection Guidelines for Optional Systems.

(a) Lawn Irrigation Systems. Inspect:

(1) zones and spray heads;

(2) control box and wiring; and

(3) presence of back flow prevention provisions and shut-off.

(b) Swimming Pools, Spas and Hot Tubs.

(1) Inspect:

(A) vessel surfaces;

(B) air blowers;

(C) deck, coping and tile;

(D) diving boards and slides;

(E) electrical provisions;

(F) gas provisions;

(G) pool barriers;

(H) pool cleaning equipment;

(I) pumps, air blowers and filtration equipment;

(J) skimmers and drain covers;

(K) underwater lights and ground fault circuit interrupter protection;

(L) valves and above grade piping; and

(M) water heating equipment.

(2) Specific limitations. The inspector is not required to:

(A) determine diving and slide clearances;

(B) inspect automatic controls;

(C) operate valves; or

(D) inspect ancillary equipment such as computer controls, covers, chlorinators, chemical dispensers, ionization devices or conditioners.

(c) Outbuildings. Inspect outbuildings in accordance with these Standards of Practice.

(d) Water Well Equipment.

(1) Inspect:

(A) well head site conditions;

(B) functional flow;

(C) water storage equipment;

(D) pressure switch; and

(E) electrical supply provision and disconnect.

(2) Specific limitations. The inspector is not required to determine water quality, reliability or capacity.

(e) On Site Private Sewage Facility.

(1) Inspect in accordance with accepted industry practices.

(2) Specific limitations. The inspector is not required to:

(A) excavate or remove tank covers;

(B) verify tank or leach field integrity;

(C) determine system capacity; or

(D) inspect water conditioning equipment.

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 May 8, 2006.

TRD-200602522

Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 465-3900

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

SUBCHAPTER B. CONCENTRATED ANIMAL FEEDING OPERATIONS

30 TAC §321.33

The Texas Commission on Environmental Quality (TCEQ or commission) proposes an amendment to §321.33.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

This rulemaking implements Senate Bill (SB) 1707, 79th Legislature, 2005, which changed the permitting requirements under Texas Water Code (TWC), Chapter 26 for certain concentrated animal feeding operations (CAFOs) located in the protection zone of a sole-source surface drinking water supply. Prior to SB 1707, any CAFO where any part of the production area of the CAFO is located or proposed to be located within the protection zone of a sole-source surface drinking water supply must obtain an individual permit. SB 1707 revised TWC, §26.0286 by removing the requirement for poultry CAFOs that do not use a liquid waste handling system (dry litter poultry) located in the protection zone of a sole-source surface drinking water supply to obtain an individual permit. This allows these facilities the ability to apply for coverage under a general permit.

Additionally, this rulemaking would modify the permitting requirements for new source dry litter poultry CAFOs and for expanding dry litter poultry animal feeding operations (AFOs) to be consistent with TCEQ regulations regarding existing dry litter poultry CAFOs. The Second Circuit Court of Appeals in *Waterkeeper Alliance, Inc. v. EPA*, 399 F.3d 486 (2nd Cir. 2005), vacated and remanded portions of the federal CAFO rules to the United States Environmental Protection Agency (EPA). EPA has not indicated how it will address the *Waterkeeper* decision in the National Pollutant Discharge Elimination System (NPDES) rules, but has extended the deadline by which newly defined CAFOs must obtain permit coverage until July 31, 2007. In Texas, dry litter poultry CAFOs were the only newly defined CAFOs affected by this change to the federal requirements. In order to maintain consistency with federal regulations, TCEQ extended the deadline for existing dry litter poultry CAFOs to obtain permit coverage to July 31, 2007. Currently, TCEQ rules require new source dry litter poultry CAFOs and expanding dry litter poultry AFOs to obtain a permit prior to construction, while allowing existing dry litter poultry CAFOs to operate without a permit until July 31, 2007. TCEQ is proposing that all dry litter poultry CAFOs meet the same permitting deadline.

SECTION DISCUSSION

Section 321.33, Applicability and Required Authorizations, the proposed change to subsection (b)(3) adds the following sentence "This paragraph does not apply to a poultry operation that does not use a liquid waste handling system, which is commonly referred to as a dry litter poultry operation." The proposed change to subsection (d) adds the following sentence: "This subsection does not apply to dry litter poultry operations until the date specified in subsection (f) of this section." The proposed change to subsection (f) deletes the word "existing" so that subsection (f) now reads "Dry litter poultry operations. Dry litter poultry operations must obtain authorization by an individual water quality permit or a CAFO general permit in accordance with subsection (a), (b), or (c) of this section not later than July 31, 2007."

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, determined that, for the first five-year period the proposed amendment is in effect, no significant fiscal implications are anticipated for the agency or other units of state or local government. The proposed rule implements SB 1707, 79th Legislature, 2005, which changed the permitting requirements for certain CAFOs located in the protection zone of a sole-source surface drinking water supply. The proposed rulemaking removes the requirement for poultry CAFOs that do not use a liquid waste handling system (dry litter poultry) located in the protection zone of a sole-source surface drinking water supply to obtain an individual permit. This change allows these facilities to apply for coverage under a general permit. There are estimated to be less than 50 existing regulated entities that would be affected by implementing SB 1707. The proposed rule would also allow new source dry litter poultry CAFOs and expanding dry litter poultry AFOs to meet the same July 31, 2007, permitting deadline as existing facilities. Current rules require new source dry litter poultry CAFOs and expanding dry litter poultry AFOs to obtain permit coverage prior to construction. It is not known how many new or expanding facilities may be affected by extending this deadline.

In general, no significant fiscal implications are anticipated for the agency to implement the proposed rule, though permit processing times may be shortened, and because the general permit does not allow for a contested case hearing, any future potential contested case hearings costs may be avoided. Any decrease in fee revenue due to the proposed change from an individual permit to a general permit is not expected to be significant. The renewal fee for an individual permit is $315 and $100 for a general permit. There are estimated to be less than 50 existing CAFOs affected by implementing SB 1707. If all 50 CAFOs were affected, the agency would see a revenue decrease of $10,750 over the five-year period. Other units of state and local government are not expected to be affected by the proposed rule as they do not own or operate CAFOs.

PUBLIC BENEFITS AND COSTS

Mr. Perry also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated from the changes seen in the proposed rule will be compliance with state and federal law and the continued protection of public health and the environment.

Cost savings, which could be significant, are anticipated for businesses or individuals who own or operate dry litter poultry CAFOs located in the protection zone of a sole-source surface drinking water supply. The proposed rulemaking to implement SB 1707 is anticipated to affect approximately 50 existing facilities.

Under the current rules, the renewal cost for an individual permit is $315 and $100 for authorization under the general permit. CAFO permits are renewed every five years. Affected dry litter poultry CAFO owners would realize a cost savings of $215 for a renewal authorization under the general permit. However, costs for those seeking permit applications would still include consultant and/or engineering fees for permit application preparation; publication fees for public notices and potential public meeting notices permit fees; and costs associated with facility design and construction to meet agency and statutory requirements, just as with an individual permit. The most significant difference will be that applicants will no longer have the possible costs of a contested case hearing that could range anywhere from $5,000 to $100,000 for attorney fees. The amount of fees would vary, depending on the complexity of the issues involved, and the length of the hearing. CAFO owners and operators may also benefit from the reduced time necessary to process a new or significant expansion authorization under the general permit rather than an individual permit. New source dry litter poultry CAFOs and expanding dry litter poultry AFOs will benefit from the extension of the July 31, 2007, deadline in that they may be able to delay any associated permit costs. It is not known how many new or expanding facilities will be affected by the proposed rules.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The proposed rulemaking would result in no additional costs for small and micro-businesses. Small and micro-businesses would experience the same potential cost savings as larger businesses. It is believed that the majority of businesses who own and operate CAFOs, and would be affected by the rulemaking, are small and micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirement of Texas Government Code, §2001.0225, and made a determination that the rulemaking is not subject to §2001.0225. The proposed amendment does not meet the definition of a "major environmental rule" as defined in §2001.0225, and the rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b) because it does not meet any of the four applicability requirements listed in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

"Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human

health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendment, which is intended to protect the environment and reduce risks to human health, will not have a material adverse effect on the economy or sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the change incorporates new state requirements. The rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of the rulemaking in accordance with Texas Government Code, §2007.043. The rulemaking would implement SB 1707 and allow dry litter poultry facilities located in the protection zone of a sole-source surface drinking water supply the ability to obtain coverage under either an individual or general permit. Additionally, the rulemaking would make all dry litter poultry CAFOs meet the same permitting deadline. The rule substantially advances these stated purposes. The commission's assessment indicates that Texas Government Code, Chapter 2007 applies to the implementation of SB 1707 and the addition of the permitting deadline because this rulemaking is a governmental action that results in the adoption of a rule or regulatory requirement. However, this governmental action does not result in a burden on private real property. If adopted, this rulemaking allows certain dry litter poultry facilities to obtain coverage under either an individual or general permit. Also, if adopted, this rulemaking would change the dates when all dry litter poultry CAFOs are required to obtain authorization. Therefore, the adoption of this change does not result in a constitutional or statutory taking of private real property and no real property interests are burdened or impacted by this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because the rulemaking is an administrative rule that changes the authorization type available to dry litter poultry CAFOs located in the protection zone of a sole-source surface drinking water supply; makes permitting requirements consistent for all dry litter poultry CAFOs; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendment will not violate (exceed) any standards identified in the applicable CMP goals and policies.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 13, 2006, at 2:00 p.m. in Building F, Room 2210 at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-062-321-PR. Comments must be received by 5:00 p.m., June 19, 2006. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Beth Helms, Water Quality Division, at (512) 239-2526.

STATUTORY AUTHORITY

The amendment is proposed under TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §26.027, regarding TCEQ's authority to issue permits for the discharge of waste into or adjacent to water in the state; and TWC, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission.

This amendment is also proposed under TWC, §26.011, regarding the commission's authority over water quality in the state; and TWC, §26.0286, which requires the commission to process an application for authorization to construct or operate a CAFO, except dry litter poultry CAFOs, located in the protection zone of a sole-source surface drinking water supply as an application for an individual permit. Finally, this amendment is also proposed under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed amendment implements SB 1707, 79th Legislature, 2005, which changed the permitting requirements under TWC, §26.0286, for dry litter poultry CAFOs located in the protection zone of a sole-source surface drinking water supply.

§321.33. Applicability and Required Authorizations.

(a) (No change.)

(b) Individual permit required. A discharge from the following CAFOs may be authorized only under an individual water quality permit in accordance with §321.34 of this title (relating to Permit Applications). Except as provided by subsections (e) and (f) of this section, any operator who is required to obtain an individual water quality permit under this subsection may not commence physical construction and/or operation of any new control facilities until an individual water quality permit is issued for that CAFO, or unless otherwise authorized by the commission in accordance with Texas Water Code (TWC), §26.027(c) [~~§26.027(c)~~].

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

(3) Any CAFO where, on the date the executive director determines that the application is administratively complete, any part of the production area of the CAFO is located or proposed to be located within the protection zone of a sole-source surface drinking water supply, in accordance with TWC, §26.0286. This paragraph does not apply to a poultry operation that does not use a liquid waste handling system, which is commonly referred to as a dry litter poultry operation.

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

(c) (No change.)

(d) New or expanding AFO. After the effective date of this subchapter, no person may commence construction or operation of a new CAFO or alter any existing AFO such that it becomes defined as a CAFO without prior authorization through an individual water quality permit or a CAFO general permit, unless otherwise authorized by the commission under TWC, §26.027(c). This subsection does not apply to dry litter poultry operations until the date specified in subsection (f) of this section.

(e) (No change.)

(f) Dry litter poultry operations. Dry [~~Existing dry~~] litter poultry CAFOs [~~operations~~] must obtain authorization by an individual water quality permit or a CAFO general permit in accordance with subsection (a), (b), or (c) of this section not later than July 31, 2007. Prior to July 31, 2007, a dry litter poultry CAFO is authorized to be constructed and operated if the operation has a certified water quality management plan approved by the Texas State Soil and Water Conservation Board.

(g) - (o) (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 May 3, 2006.

TRD-200602479

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Earliest possible date of adoption: June 18, 2006

For further information, please call: (512) 239-5017

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

The General Land Office (GLO) and the School Land Board (SLB) propose the repeal of Title 31, Part 1, Chapter 13, Subchapter F, relating to Application to Purchase or Lease Vacant and Unsurveyed Public School Land, §§13.71 - 13.86 of the Texas Administrative Code and simultaneously proposes a new Subchapter F, relating to Vacancy Process, §§13.71 - 13.83 of the Texas Administrative Code. The proposed new Subchapter F, §§13.71 - 13.83 will contain rules governing the administrative procedures for processing and investigation of vacancy applications submitted to the GLO and the terms and conditions for the sale or lease of the vacant land. These rules are proposed pursuant to new legislation that requires the GLO and the SLB to adopt rules governing the administration of the statutes and the terms and conditions for the sale or lease of vacant land in accordance with Tex. Nat. Res. Code §51.174(c).

The GLO proposes the repeal of the existing Subchapter F, relating to Application to Purchase or Lease Vacant and Unsurveyed Public School Land, §§13.71 - 13.86 of the Texas Administrative Code as all applications pending before the GLO and actions arising out of vacancy applications pending in the courts of the State of Texas that came within the purview of these rules have been finalized. The statute with which these rules originally correspond has been amended twice, most recently by S.B.1103, 79th Leg., R.S. (2005). Therefore as all applications are finalized and the statue had been amended these rules no longer have a force or effect and are no longer necessary.

The GLO and the SLB simultaneously propose the new Subchapter F, relating to Vacancy Process, §§13.71 - 13.83. The proposed new sections are pursuant to Texas S.B. 1103 79th Leg., R.S. (2005) which amended Texas Natural Resources Code, Chapter 51, Subchapter E. The Legislature amended the vacancy statute to create a more expedient and efficient administrative process for processing vacancy applications for landowners, interested and affected property interest owners, good faith claimants and applicants. These rules establish the requirements of the administrative proceedings included in the new statute.

Proposed §13.71, relating to General Provisions describes the rules applicability, delegations by the commissioner, and incorporates the Administrative Procedure Act, Chapter 2001, Texas Government Code. Proposed §13.72, relating to Definitions provides definitions for additional terms used in the rules but not defined by the statute.

The Legislature's amendment of Texas Natural Resources Code, Chapter 51, Subchapter E included additional deadlines to the GLO's administrative process for processing vacancy applications. The new statute allows for extension of the deadlines under Tex. Nat. Res. Code §51.174(b) and new proposed §13.73, relating to Extension of Deadlines explains how requests for extensions shall be submitted and granted. The rule also allows the Commissioner to suspend such the deadlines in the statute for good cause or extreme circumstances outlined in the proposed rule.

The new statute significantly amended the application process and proposed §13.74 relating to Application Process explains the GLO's initial processing of the vacancy application and when a vacancy application may be refused for filing and dismissed without prejudice. The new statute greatly increased the definition of property interests under which a person now may be defined as a Necessary Party to the vacancy application and process. Proposed §13.75, relating to Exceptions to Application, explains how the Necessary Parties may file their exceptions to the Vacancy Application pursuant to the new statute.

As with the previous laws governing the Vacancy process, the commissioner has the statutory authority to recover from the applicant certain costs the agency expends in processing and investigating the vacancy application. The commissioner under the new statute shall require the applicant to submit a deposit to cover the reasonable costs and proposed §13.76, relating to Deposits describes how the commissioner shall use the deposit, how the applicant may submit the requested funds to the agency, the time frame for submission of the deposit or supplemental deposits, and how failure to do so will result in the termination of that particular vacancy application.

Under the new statute the commissioner has the discretion as to the appointment of a surveyor for a particular vacancy application. If the commissioner decides a surveyor is needed, the commissioner shall appoint a licensed state land surveyor who is not associated with the vacancy application to prepare a report in accordance with the statutory requirement under Tex. Nat. Res. Code §51.185. Proposed §13.77, relating to Disqualification and Removal of an Appointed Surveyor, details the process the GLO will take if a Necessary Party submits a petition to the commissioner requesting the removal of a surveyor because of bias, prejudice or conflict of interest. The proposed rule contains the deadline for filing the exception and the form and content of the petition the Necessary Party must submit. The proposed rule details procedures for the hearing the GLO will hold to consider the petition and how the commissioner will make a determination on the petition. The proposed rule also allows the commissioner to remove a surveyor for bias, prejudice or conflict of interest on his own motion but in accordance with the requirements of this proposed section.

In order to ensure that all possible property interest owners receive notice of the vacancy application, the Legislature added a new Attorney Ad Litem requirement. If an applicant cannot provide evidence that the applicant owns all the property interests in the land surrounding the land claimed to be vacant, the commissioner must appoint an Attorney Ad Litem to ensure that all such property interest owners are identified and properly noticed. Proposed §13.78, relating to Attorney Ad Litem explains that the Ad Litem will search all property records identified in the statute, as well as any other records related to the land claimed to be vacant that in the reasonable professional judgment of the Ad Litem will ensure that all Necessary Parties are identified. The Ad Litem will present the results of his or her search to the commissioner in order for those identified parties to receive notice of the pending vacancy application. The Attorney Ad Litem will represent those parties that have not been located in accordance with the statute for the duration of the vacancy proceedings. The addition of the Attorney Ad Litem will ensure that all reasonable steps have been taken to identify any property owners that may have an interest in the land claimed to be vacant and that those parties may participate, if they so choose, in the vacancy application process.

The Legislature amended the vacancy hearing process to bring the hearings back under the Administrative Procedure Act, Chapter 2001, Texas Government Code (APA). The GLO will still hold the hearings, the State Office of Administrative Hearings will not be involved; however the GLO will use the hearing procedures under the APA to ensure that all property interest owners are accorded due process in the determination of whether a vacancy exists. Proposed §13.79, relating to Forms of Pleadings contains the requirements for pleadings that Necessary Parties may file for the hearing. Proposed §13.80, relating to Conduct of Vacancy Hearings explains that the vacancy hearings will be conducted in accordance with the APA and includes the actions that each Necessary Party may take during the hearing such as calling witnesses and the right to cross examination. Proposed §13.81, relating to Appearance of Parties at Vacancy Hearings; Representation discusses how parties may either represent themselves or have an attorney or other representative represent their interests in the vacancy hearing. This section also includes the expected conduct and decorum of all parties attending the hearings and the commissioner's ability to remove people from such hearings under certain circumstances.

As with the previous legislation governing Vacancies, the commissioner must issue a final order determining whether a vacancy exists under the pending vacancy application. Proposed §13.82, relating to Commissioner's Final Order and Record of Proceedings contains the administrative processes the commissioner and staff will follow upon the execution of the final order. All Necessary Parties will receive a copy of the Final Order and attachments. Each Final Order will contain a staff recommendation, list of documents examined and staff consulted, and findings of facts and conclusion of law. The GLO will file a Notice of Claim of Vacancy with the real property records of the County Clerk and County Surveyor no later than the 121st day of the date of the commissioner's final order in the event the commissioner determines a vacancy exists.

The Legislature expanded the definition of persons who may claim to be Good-Faith Claimants under the vacancy statute to include mineral estate holders, royalty interest holders, persons holding easements or right-of-ways in the land claimed to be vacant, and persons who used the alleged vacancy for any purpose including the exploration of oil, gas, sulphur, other minerals or geothermal resources, or persons holding title under persons described more fully in §51.172, Tex. Nat. Res. Code (Vernon Supp. 2005). Proposed §13.83, relating to Determination of Good-Faith Claimant Status explains the documentary evidence a person applying for Good-Faith Claimant Status must submit to the commissioner as well as the Good-Faith Claimant affidavit. Those documents include among others, documents establishing previous use, proof of color of title and a statement of fact supporting the good faith belief that the vacant land was within the boundaries of land to which they claimed title. If there exist multiple parties claiming Good Faith Status to the same portion of land, proposed §13.83, relating to Determination of Good-Faith Claimant Status, provides a priority of claims under which the status will be granted that accords with the description of Good-Faith Claimants under §51.172(2)(B), Tex. Nat. Res. Code (Vernon Supp. 2005). If a person is denied their Good-Faith Claimant status, under §51.193(1), that person may request a hearing regarding that determination. Proposed §13.83 states that such a hearing will be held in accordance with 31 TAC, Part 1, Chapter 2, Subchapter B, §§2.31 - 2.36 (relating to Procedures from Non-Contested Case Hearings).

These rules apply to all vacancy applications filed after June 17, 2005, the date when amended Tex. Nat. Res. Code §§51.171 - 51.195 became effective. These rules supplement the new statutes by including the necessary administrative processes the GLO staff needs in order to effectively carry out the statutory authority granted in the amended statutes.

Mr. Ben Thomson, Chief Surveyor of the General Land Office, has determined that during the first five-year period the proposed repeal and proposed new sections are in effect, there will be no fiscal implications for state or local governments. These rules

do not have any fiscal impact or affect on state or local governments; the costs of preparing and filing an application to purchase or lease vacant land are borne by the applicant and the GLO processing of the applications are already accounted for in GLO budgeting.

Mr. Thomson has also determined that for each year of the first five years the proposed repeal and proposed new sections are in effect, the public will benefit from the newly established administrative deadlines resulting in a more expedient processing of the vacancy applications and the hearing procedures under the APA. There will be no effect on small businesses or local economies as the result of proposed repeal and proposed new section.

Comments on the proposed rulemaking may be submitted to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711-2873, facsimile number (512) 463-6311, or email to walter.talley@glo.state.tx.us. Comments must be received by no later than thirty (30) days from the date of publication of this proposal.

SUBCHAPTER F. APPLICATION TO PURCHASE OR LEASE VACANT AND UNSURVEYED PUBLIC SCHOOL LAND

31 TAC §§13.71 - 13.86

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

The repeals are proposed under the authority of Tex. Nat. Res. Code §51.174(c) and §51.175 Tex. Nat. Res. Code (Vernon Supp. 2005) which authorizes the commissioner to adopt rules necessary and convenient to administer the vacancy subchapter and the SLB to adopt rules for among other things establishing the preferential rights of Good-Faith Claimants under the statute respectively.

Tex. Nat. Res. Code, Sale and Lease of Vacancies, §§51.171 - 51.195, are affected by the proposed repeals.

§13.71. Purpose and Scope.

§13.72. Definitions.

§13.73. General Provisions/Exclusions.

§13.74. Application.

§13.75. Filing the Application.

§13.76. Establishing Good-Faith Status.

§13.77. Priority Among Good-Faith Claimants.

§13.78. Deposit for Cost of Proceeding on the Application.

§13.79. Appointment of Surveyor.

§13.80. Notice of Intent To Survey.

§13.81. Disqualification of a Surveyor.

§13.82. Survey Report.

§13.83. Exceptions to Survey.

§13.84. Additional Surveys.

§13.85. Action on Application.

§13.86. Decision Without a Hearing.

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

Filed with the Office of the Secretary of State on May 5, 2006.

TRD-200602509
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 475-1859

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SUBCHAPTER F. VACANCY PROCESS

31 TAC §§13.71 - 13.83

The new rules are proposed under the authority of Tex. Nat. Res. Code §51.174(c) and §51.175 Tex. Nat. Res. Code (Vernon Supp. 2005) which authorizes the commissioner to adopt rules necessary and convenient to administer the vacancy subchapter and the SLB to adopt rules for among other things establishing the preferential rights of Good-Faith Claimants under the statute respectively.

Tex. Nat. Res. Code, Sale and Lease of Vacancies, §§51.171 - 51.195, are affected by the proposed new rules.

§13.71. General Provisions.

(a) This subchapter applies to applications to purchase or lease vacant land filed on or after June 17, 2005. These rules implement Tex. Nat. Res. Code §§51.171 - 51.195, enacted Tex. S.B. 1103, 79th Leg., R.S. (2005).

(b) Previous Tex. Nat. Res. Code §§51.171 - 51.192 and regulations promulgated thereunder 31 TAC, Part 1, Chapter 13 §§13.87 - 13.94 continue to apply to applications pending before the General Land Office and actions arising out of vacancy applications pending in the courts of the State of Texas on or before June 16, 2005.

(c) The Commissioner delegates responsibility for implementing the provisions of Tex. Nat. Res. Code Chapter 51, Subchapter E to the Chief Surveyor of the General Land Office Surveying Division. Additionally, the Commissioner may delegate to one or more employees of the agency the authority to perform any action of the Commissioner or the agency required or permitted by this subchapter, with the exception of the Final Order, which must be executed by the Commissioner.

(d) These rules supplement the procedures required by the Administrative Procedure Act, Chapter 2001, Texas Government Code, which are incorporated herein by reference.

(e) To the extent that any provisions of this subchapter are in conflict with any statute or substantive rule of the Texas General Land Office, the statute or substantive rule shall control.

§13.72. Definitions.

(a) The following words and terms, when used in this subchapter, have the same meaning as set forth in Tex. Nat. Res. Code, Chapter 51, Subchapter E: Vacancy Application; Good-Faith Claimant; Interest; Necessary Party; and Vacancy. The following terms, when used in this subchapter, mean the following unless the context clearly indicates otherwise:

(1) Agency--The General Land Office.

(2) Commissioner--The Commissioner of the General Land Office.

(3) Eligible Surveyor--A duly elected county surveyor in a county that has an elected county surveyor or a Licensed State Land Surveyor licensed by the Texas Board of Professional Land Surveying.

(b) The following term when used in Tex. Nat. Res. Code §51.194(d) means: Permanent Interest--An Interest established under any existing instrument or document that is not limited to a finite time period is a Permanent Interest. An Interest established under any existing instrument or document having a finite time period is not a Permanent Interest.

§13.73. Extensions of Deadlines.

(a) A request for extension of time pursuant to Tex. Nat. Res. Code §51.174(b) shall be submitted in writing to the Commissioner not less than 10 days prior to the applicable deadline. The request for extension must include the factual reason(s) for requesting the extension. The Commissioner shall make a written determination within 10 days of receiving the request for extension of time.

(b) The Commissioner may suspend any timelines set out in Tex. Nat. Res. Code Chapter 51, Subchapter E for good cause or extreme circumstances such as catastrophic events or force majeure including acts of God or the public enemy, sabotage, war, mobilization, revolution, civil unrest, riots, strikes, lockouts, fires, accidents, terrorist attacks, floods, earthquakes, hurricanes or any other natural disaster or any government action, or if a surveyor is removed in accordance with this subchapter.

§13.74. Vacancy Application Process.

(a) Applicant must submit a Vacancy Application that complies with the requirements of Tex. Nat. Res. Code §51.176 including the applicable filing fees. The Commissioner shall mark each Vacancy Application submitted with the date it is received and shall assign it a file number. The prefix "MA" (Mineral Application) shall be assigned to all Vacancy Applications to lease minerals or geothermal resources. The prefix "SF" (Scrap File) shall be assigned to all Vacancy Applications to purchase or lease the surface estate.

(b) The Commissioner may refuse to accept for filing a Vacancy Application by providing written notice to the Applicant that the Vacancy Application:

(1) has material omissions or is incomplete; and

(2) the notice shall include a reasonable period of time of not more than 30 days for Applicant to resolve any deficiencies.

(c) The Vacancy Application is Administratively Complete when all deficiencies have been resolved to the Commissioner's satisfaction. The Commissioner shall inform the Applicant in writing that the Vacancy Application is complete as provided under Tex. Nat. Res. Code §51.177(b).

(d) If deficiencies have not been resolved in the time frame provided in subsection (b)(2) of this section, such application shall be dismissed without prejudice as provided under Tex. Nat. Res. Code §51.177(d).

§13.75. Exceptions to Application.

(a) A Necessary Party may file an exception to the Vacancy Application pursuant to Tex. Nat. Res. Code §51.182 by filing:

(1) a written statement with the Commissioner setting forth the factual and legal reasons for the objection; and

(2) any documentation supporting the objection pursuant to Tex. Nat Res. Code §51.182.

(b) Only exceptions that adhere to requirements under this rule will be considered.

§13.76. Deposits.

(a) The Commissioner or his designee shall determine whether a deposit is required to evaluate and investigate the Vacancy Application. Any required deposit shall be held and accounted for pursuant to Tex. Nat. Res. Code §51.179 and shall be used only for the Agency's administrative costs, the expenses of a survey, other investigative and related costs, including attorney ad litem fees and the cost of hearings.

(b) The Commissioner or his designee has sole discretion to determine whether an expenditure is necessary and to set the amount of the initial deposit and any supplemental amounts required to be deposited by the Applicant.

(c) The Applicant shall submit the funds to the Agency in cash (including cashier checks, certified checks, money orders or electronic funds transfer). For purposes of this subchapter the deposit date shall be the date of tender.

(d) The Applicant has thirty (30) days from date of letter requesting the cost deposit or supplemental deposit(s) to submit such deposit. If the Applicant fails to deposit the initial or supplemental deposit within thirty (30) days, the Vacancy Application is terminated without prejudice, and the file wrapper will be endorsed "terminated without prejudice for failure to submit cost deposit within time prescribed by law."

(e) Termination of the Vacancy Application under this subsection terminates all rights of the Applicant under the terminated Vacancy Application.

§13.77. Disqualification and Removal of an Appointed Surveyor.

(a) Petition for Removal.

(1) Any Necessary Party may petition the Commissioner for the removal of an appointed surveyor because of bias, prejudice, or conflict of interest.

(2) The person petitioning the Commissioner shall pay all actual costs, but not less than $250.00, for processing the petition for removal including but not limited to the cost of the hearing, mailing, copying and staff time and expenses.

(3) The petition must be post marked no later than fifteen days after the date of the notice to Necessary Parties under Tex. Nat. Res. Code §51.184(c).

(4) Any petition for removal of an appointed surveyor must comply with the time limits in this subchapter. The Commissioner will not consider petitions for removal not timely received.

(b) Form and Contents of Petition. A petition to the Commissioner for removal of an appointed surveyor shall be in writing and shall contain the following information:

(1) The name and address of the Necessary Party and a succinct statement of the basis of the person's status as a Necessary Party pursuant to the definition in Tex. Nat. Res. Code §51.172(4).

(2) The appropriate SF or MA number assigned by the Agency to the pending Vacancy Application and the name of the surveyor.

(3) An allegation that the appointed surveyor exhibits bias, is prejudiced or has a conflict of interest and the factual basis for such claim or claims. Each allegation shall clearly state whether it is founded on bias, prejudice or conflict of interest. Affidavits alleging facts in support of each allegation must be appended to the petition. The Com-

missioner may summarily deny any petition that does not include such affidavits.

(c) The petition shall be limited to ten standard 8 1/2 by 11 inch pages and shall be typewritten in font no smaller than 12 points. In addition to the affidavits required by subsection (b)(3) of this section, other relevant documents and evidence may be appended to the petition. The total number of appended pages, including affidavits, shall not exceed fifteen.

(d) No complaint filed with Texas Board of Professional Land Surveying can be introduced in support of the petition for removal.

(e) A copy of the petition seeking removal of the surveyor shall be provided by the petitioner to the surveyor, Commissioner, and all other Necessary Parties by first class U.S. Mail.

(f) Response to Petition.

(1) A response may be filed for the purpose of joining in, urging further grounds for disqualification, or opposing the disqualification of the surveyor. A response under this subsection shall comply with the affidavit requirements of subsection (b)(3) of this section.

(2) Failure to submit a response to the petition shall not be deemed an admission of or agreement with any allegation in the petition. The Commissioner shall not consider failures to respond in determining whether a surveyor should be removed.

(3) The appointed surveyor may renounce his appointment by notifying the Commissioner who will then notify all Necessary Parties. If the surveyor renounces his appointment, the petition for removal is moot and the Commissioner shall appoint another surveyor pursuant to Tex. Nat. Res. Code §51.184.

(g) Hearing. A hearing shall be conducted within a reasonable time period and shall conform to the requirements of the applicable provisions of the Agency's hearing rules at 31 TAC, Part 1, Chapter 2, Subchapter B.

(h) Scope of Hearing. The hearing shall be limited to matters relevant to bias, prejudice or conflict of interest. The following evidence is not relevant to bias, prejudice or conflict of interest and is not admissible at a hearing to determine whether the surveyor should be removed if it relates to:

(1) the surveyor's professional competence or judgment;

(2) the substantive surveying issues in the vacancy proceeding;

(3) the surveyor's compliance with Texas Occupations Code, Title 6, Chapter 1071 or any technical standards promulgated thereunder; or

(4) the procedural irregularities in the appointment of the surveyor.

(i) Commissioner's Determination. The Commissioner shall issue his written decision within thirty days of the close of the hearing and a copy will be sent, by first class, U.S. Mail, to the surveyor, the person seeking disqualification, and all other Necessary Parties.

(j) Reconsideration and Appeal. No petition to remove a surveyor shall be reconsidered unless the Commissioner finds that relevant facts, which could not have been discovered timely through due diligence, compel the reconsideration to avoid a gross injustice. The Commissioner's decision regarding the removal of a surveyor is not a final administrative order and is not subject to appeal.

(k) The Commissioner will consider the following factors to determine whether an appointed surveyor should be disqualified because of bias, prejudice, or conflict of interest.

(1) The surveyor has made known to another person orally or in writing a personal animus against the Necessary Party or against their position in the vacancy proceeding.

(2) The surveyor has made known to another person orally or in writing a personal preference for the Necessary Parties or for their position in the vacancy proceeding.

(3) The surveyor is a relative within the second degree of consanguinity or affinity of the Applicant, Commissioner or an employee of the Agency who participates in vacancy determinations. For purposes of this subsection, "participates" means decides, approves, disapproves, recommends, gives advice, investigates, influences or takes other similar action.

(4) The surveyor agrees to accept any significant benefit, financial or otherwise, or has accepted any significant benefit, financial or otherwise, from any person interested in the outcome of the survey. Neither the acceptance of an appointment nor receipt of funds from a person required to pay for the survey constitutes a conflict of interest requiring removal.

(5) The surveyor is a relative of any person who has a significant direct or indirect financial interest in the determination of the vacancy application or in any project or enterprise dependent upon the final determination on the vacancy application.

(6) Any other factors relevant to the bias, prejudice, or conflict of interest alleged by a Necessary Party seeking removal.

(7) For purposes of this subsection, financial interest includes any ordinary investment, real property interest, including contingent or conditional interest, and other ordinary interest which monetarily benefits the surveyor or his estate presently or in the reasonably foreseeable future.

(l) Complaint Against Surveyor. The fact that a Petition for Removal of a surveyor has been filed or the actual removal of a surveyor by the Commissioner of the General Land Office shall not be a basis for any disciplinary action against that surveyor under the Texas Occupations Code, Title 6, Chapter 1071.

(m) The Commissioner on his own motion may remove a surveyor for bias, prejudice, or conflict of interest only in accordance with this section.

§13.78. Attorney Ad Litem.

(a) Upon the Commissioner's determination that an Applicant does not own all interests in the land surrounding the land claimed to be vacant, the Commissioner shall appoint an attorney ad litem to secure such identification.

(b) The attorney ad litem will conduct a thorough search of all property records identified in §51.172(4)(C) Tex. Nat. Res. Code. The attorney ad litem will also conduct a thorough search of any other records related to the land claimed to be vacant that, in the reasonable professional judgment of the attorney ad litem, will result in the identification of Necessary Parties.

(c) The attorney ad litem will produce a list, including the last known name and addresses, of all Necessary Parties identified through this search and present the list to the Commissioner.

(d) The attorney ad litem will document and, in an affidavit, attest to the actions performed during the course of the search conducted in subsection (b) of this section and the time spent performing these duties.

(e) If, after performing a diligent search as required by this subsection, the attorney ad litem determines that one or more Necessary Parties have been identified but cannot be located in accordance with §51.180 Tex. Nat. Res. Code, the ad litem will be retained to represent the interest of such parties until the Commissioner issues a Final Order for that particular Vacancy Application.

(f) The attorney ad litem appointed under this section is entitled to reasonable compensation for services in an amount set by the Commissioner to be charged as costs incurred during the investigation of a Vacancy Application under Subchapter E of the Texas Natural Resources Code.

(g) The costs incurred by the attorney ad litem shall be paid from the deposit submitted by the Applicant as required under Subchapter E of the Texas Natural Resources Code.

§13.79. Form of Pleadings.

(a) All pleadings filed under this subchapter shall contain:

(1) the name of the party filing the pleading;

(2) a concise statement of the facts and the law relied upon;

(3) a prayer stating the type of relief, action, or order desired;

(4) a certificate of service; and

(5) the signature of the party or the party's authorized representative.

(b) All pleadings shall include the style of the vacancy application assigned by the Agency.

§13.80. Conduct of Vacancy Hearings.

(a) Hearings for the determination of vacant land shall be conducted in accordance with the Administrative Procedures Act, Chapter 2001, Texas Government Code.

(b) Each Necessary Party may:

(1) file pleadings;

(2) call witnesses;

(3) offer evidence;

(4) cross-examine any witness called by any Necessary Party; and

(5) make opening and closing statements.

(c) Objections shall be timely noted in the record.

§13.81. Appearance of Parties at Vacancy Hearings; Representation.

(a) A person may represent himself or herself.

(b) A person may be represented by an attorney authorized to practice law in the State of Texas or other representative when authorized by law. As used herein, the term "representative" shall include a party's attorney of record or other representative of record, as applicable.

(c) A party's attorney of record remains the attorney of record in the absence of a formal withdrawal.

(d) A party's representative shall enter his or her appearance in the case by filing a notice of appearance with the Agency.

(e) A party's representative of record shall be copied on all notices, pleadings, and other correspondence.

(f) Not more than one representative for each party or aligned group of parties shall be heard on any question in the hearing.

(g) Party representatives shall:

(1) observe the letter and spirit of the Texas Lawyer's Creed, as adopted by the Texas Supreme Court, and the State Bar of Texas' Texas Disciplinary Rules of Professional Conduct, including those provisions concerning improper ex parte communications with the Commissioner; and

(2) advise their clients and witnesses of applicable requirements of conduct and decorum.

(h) Conduct and Decorum:

(1) Those who attend or participate in hearings should conduct themselves in a manner respectful of the conduct of public business, and conducive to orderly and polite discourse. All those in attendance shall comply with the stated directions concerning the offer of public comment and conduct decorum.

(2) In any hearing a person shall receive a first warning regarding the violation of this section and will be asked to refrain from the specific conduct in violation. Upon further violation of this section by the same person, that person may be excluded from the proceeding for such time and under such conditions as necessary to correct the situation. Violation of this section shall also be sufficient cause to recess the hearing.

§13.82. Commissioner's Final Order and Record of Proceedings.

(a) All final orders shall be in writing and shall be signed and dated by the Commissioner.

(b) The effective date of the final order is the date it is signed by the Commissioner.

(c) The Agency shall send a copy of the final order with attachments by first class mail to each Necessary Party and their representative and shall keep an appropriate record of that mailing. A Necessary Party or representative notified by mail of the final order as required by this section shall be presumed to have been notified on the date such notice is mailed.

(d) The Commissioner's final order finding "Not Vacant Land" or "Vacancy Exists" shall be retained at the Agency and must contain:

(1) Staff recommendation;

(2) List of documents examined and staff consulted; and

(3) Findings of Fact and Conclusions of Law.

(e) Findings of fact. Findings of fact shall include any and all Agency records consulted or relied upon during the vacancy process, whether introduced during the hearing or not.

(f) The Commissioner shall file the "Notice of Claim of Vacancy" as provided in Tex. Nat. Res. Code §51.188(e) in the real property records of the County Clerk and the records of the County Surveyor not earlier than the 121st day from the date of the Commissioner's final order. The "Notice of Claim of Vacancy" must contain:

(1) Final order with attachments; and

(2) Field note description.

(g) Contents of hearing record. The requirements for contents of the hearing record under §2001.060, Texas Government Code are adopted herein and also include the Commissioner's Final Order.

§13.83. Determination of Good-Faith Claimant Status.

(a) Any person asserting Good-Faith Claimant status must submit a Good-Faith Claimant affidavit in a form prescribed by the Commissioner together with the applicable filing fee.

(b) In addition a person asserting Good-Faith Claimant status shall submit the following documents:

(1) documentary evidence, including, if appropriate, affidavits, to establish past or present use or occupation of the surface or mineral estate of the land claimed to be vacant;

(2) proof of color of title or other muniment of title;

(3) documentary evidence of possession for a period of at least ten (10) years;

(4) a description of the method of enclosure and relevant information about the definite boundaries recognized in the community, including a physical description of those boundaries and evidence of their recognition; and

(5) a statement of facts supporting a good-faith belief that the vacant land was within legal boundaries that would have vested title in the person asserting Good-Faith Claimant status.

(c) If more than one interested person files a claim of Good-Faith status on land claimed to be vacant or on some portion thereof or Interest therein, and the Commissioner enters a finding that more than one claimant is a Good-Faith Claimant under Tex. Nat. Res. Code §51.172, the following shall be the priority of such claims in descending order:

(1) claimants qualifying under Tex. Nat. Res. Code §51.172(2)(B),

(2) claimants qualifying under Tex. Nat. Res. Code §51.172(2)(A),

(3) claimants qualifying under Tex. Nat. Res. Code §51.172(2)(D) with persons claiming under Tex. Nat. Res. Code §51.172(2)(B) given highest priority,

(4) claimants qualifying under Tex. Nat. Res. Code §51.172(2)(D) with persons claiming under Tex. Nat. Res. Code §51.172(2)(A) given highest priority,

(5) claimants qualifying under Tex. Nat. Res. Code §51.172(2)(C),

(6) claimants qualifying under Tex. Nat. Res. Code §51.172(2)(D) with persons claiming under Tex. Nat. Res. Code §51.172(2)(C) given highest priority.

(d) In the event the Commissioner determines there are multiple Good-Faith Claimants who desire to purchase land claimed to be vacant or some portion thereof or Interest therein, the Commissioner shall apply the priority rules set forth in subsection (c) of this section. The preferential right to purchase may be exercised as provided in Tex. Nat. Res. Code §51.194 by Good-Faith Claimants in descending order of priority.

(e) If under Tex. Nat. Res. Code §51.193 a hearing is required, such hearing will be conducted in accordance with 31 TAC, Part 1, Chapter 2, Subchapter B, §§2.31 - 2.36 (relating to Procedures for Non-Contested Case Hearings).

(f) An Applicant may assert Good-Faith Claimant status to the land claimed to be vacant or some portion thereof or Interest therein if the Applicant meets the requirements under Tex. Nat. Res. Code §51.193 and this subchapter.

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

Filed with the Office of the Secretary of State on May 5, 2006.

TRD-200602510
Trace Finley
Policy Director
General Land Office
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 475-1859

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.21, 745.35, 745.37, 745.117, 745.4151, 745.8901, 745.8931, 745.8933, 745.8951, 745.8955, 745.8957, 745.8959, 745.8961, 745.8963, 745.8965, 745.8967, 745.8969, 745.8991, 745.8993, 745.8995, 745.8997, 745.8999, 745.9001, 745.9003, 745.9005, 745.9007, and 745.9031; the repeal of §§745.4001, 745.4003, 745.4021, 745.4023, 745.4027, 745.4029, 745.4061, 745.4069, 745.4071, 745.4073, 745.4077, 745.4079, 745.4091, 745.4093, 745.4095, 745.4097, 745.4099, 745.4101, 745.4103, 745.8903, 745.8905, 745.8907, 745.8909, 745.8911, 745.8913, 745.8953, 745.9009, 745.9011, 745.9013, 745.9035, 745.9037, 745.9039, 745.9041, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, and 745.9071; and new §§745.8903, 745.8905, 745.8907, 745.8909, 745.8911, 745.8913, 745.8915, 745.8917, 745.8919, 745.8921, 745.8935, 745.9009, 745.9011, 745.9013, 745.9015, 745.9017, 745.9019, 745.9021, 745.9023, 745.9035, 745.9037, 745.9039, 745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071,745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097, 745.9099, and 745.9100 in its Licensing chapter. The proposed changes are the result of (1) legislation passed during the 79th Legislature, Regular Session, 2005; (2) changes necessary to complement the proposed minimum standards in Chapter 748, General Residential Operations and Residential Treatment Centers; Chapter 749, Child-Placing Agencies; and Chapter 750, Independent Foster Homes; and (3) changes necessary to provide clarification to existing rules.

Legislated changes are the result of requirements stated in Senate Bill (S.B.) 6, passed by the 79th Legislature, Regular Session, 2005 (hereafter referred to as S.B. 6). Sections 1.111 to 1.121 of S.B. 6 made significant revisions to Human Resources Code (HRC), Chapter 43, Regulation of Child-Care and Child-Placing Agency Administrators. These sections of S.B. 6 added the Child-Placing Agency Administrator License (CPAAL), changed the minimum educational requirement for a Child-Care Administrator's License (CCAL) to a bachelor's degree, doubled the required training hours for renewal of an Administrator's License, and added to the law several conditions that may result in remedial action regarding an Administrator's License. The proposed revisions to Subchapter N of this chapter (relating to Administrator Licensing) complement these changes in the law, while also introducing some needed rule changes/additions such as rules addressing persons who hold both licenses and a rule regarding a person's inability to renew a license due to active military duty.

Changes necessary to complement the proposed minimum standards in Chapters 748, 749, and 750 include the repeal of many of the rules of Subchapter H of this chapter (relating to Residential Child-Care Minimum Standards). These rules are now in the proposed minimum standards chapters. The proposed changes include revising the definition of "minimum standards" to reflect the proposed new minimum standards chapters. They also include changes in the list of residential child-care operation types, as many will now fall under the license type of "general residential operation" rather than more restrictive license types such as "emergency shelter" or "halfway house." These changes also resulted in replacing the previous Subchapter O with standalone rules regarding the qualifications, guidelines, and requirements for conducting, evaluating, and approving independent pre-adoptive home screenings and independent post-placement adoptive reports. For individuals performing these home screenings and adoptive reports, having the rules in one place is more user friendly and no judgment calls have to be made regarding what rules are applicable. Changes to specific rules are described below.

Section 745.21 deletes the definition for "child-care administrator" and replaces it with a definition for "licensed administrator." The definition of "controlling person" is added to reflect legislation adding the definition of "controlling person" to the HRC §42.002(18). The definition of "minimum standards" is revised to reflect the impending changes to residential child care minimum standards. DFPS's name is changed in three paragraphs.

Section 745.35 changes the definition of residential child care according to the definition specified in §1.90 of S.B. 6.

Section 745.37 changes the types of residential child-care operations to correlate with the new minimum standards. Proposed Chapter 748 reflects a "general residential operation" which may offer a variety of services. This proposed license type will replace the following more limited license types: emergency shelter, operation providing basic child care, operation serving children with mental retardation, therapeutic camp, and halfway house. Paragraph (4) is combined with paragraph (3).

Section 745.117 revises the exemption in paragraph (1) to more closely mirror the intent of HRC §42.041(b)(3) and to correspond to the previous rule for this exemption. In paragraph (6), the exemption is changed to clarify that it applies to how long the program operates, rather than the length of time in care. It clearly establishes that a respite care program that operates more than 40 days per year is subject to regulation.

Sections 745.4001 to 745.4023, 745.4027, 745.4029, 745.4061, 745.4069 to 745.4073, and 745.4077 to 745.4103 are repealed, and the rules, with some revisions, are proposed in Chapters 748, 749, 750, and Subchapter O of this chapter, so that they are grouped more appropriately with other minimum standard rules.

Section 745.4151 is revised as follows. Subsection (c)(2) clarifies the scope of the rule, which requires random drug testing of employees and applicants for employment. With respect to allegations of drug abuse, the rule applies more broadly and requires drug testing of any person who works under the auspices of a residential child-care operation. Subsection (c)(3)(C) adds the definition of "employee." Subsection (c)(3)(E) revises the definition of "good cause to believe that the employee may be abusing drugs" to make the language consistent with HRC §42.057(c) to require drug testing of a "*person*" who is alleged to be abusing drugs. Subsection (c)(3)(F) adds the definition of "A person who works under the auspices of the residential child care operation." Subsection (c)(4)(D) makes the language consistent with HRC §42.057(c) to require drug testing of a "*person*" who directly cares for or has access to a child in care and who is alleged to be abusing drugs. Subsection (c)(7) clarifies that an applicant whose drug test is positive may, at the applicant's expense, challenge the results of the test. Subsection (c)(8)(B) clarifies that drug test results, other than those of employees, must be kept for one year from the date the drug test was administered.

Section 745.8901 modifies the definition of a child-care administrator to reflect the proposed residential child-care operation types.

New §745.8903 implements §1.112, S.B. 6, by adding the definition of a child-placing agency administrator.

New §745.8905 adds the definition "licensed administrator" so both licenses can be referenced using one term.

New §745.8907 (previously §745.8903) amends the language to be consistent with the proposed residential child-care operation types and to reflect that, per §1.112 of S.B. 6, independent foster group homes are no longer required to have a licensed administrator.

New §745.8909 is added to clarify under what circumstances a person is required to have a Child-Placing Agency Administrator's License (CPAAL).

New §745.8911 (previously §745.8905) is revised to (1) reflect the proposed residential child-care operation types; and (2) change the Director of Licensing to the Assistant Commissioner for Child-Care Licensing.

New §745.8913 (previously §745.8909) clarifies that the rule only applies to the Child-Care Administrator's License.

New §745.8915 (previously §745.8911) is revised to correspond with §1.114 of S.B. 6. New §745.8917 is added as a result of this same section.

New §745.8919 (previously §745.8913) is revised as a result of §1.114 of S.B. 6. Subsections (a) and (b) state the qualifications for a CCAL and a CPAAL. Subsection (d) allows the Assistant Commissioner for Child-Care Licensing, or designee, to grant an exception to this rule when there is a compelling justification that a person is qualified.

New §745.8921 is added to clarify what "child-placing personnel" means.

Section 745.8931 changes the application fee from $50 to $100 to more accurately reflect the cost of processing applications. Also, the address in the rule is deleted and the rule now references the address on the application form.

Section 745.8933 changes the application fee to $100. Also, language is added to more accurately reflect the expectations for a complete license application.

New §745.8935 is added to implement §1.112 of S.B. 6. It addresses the requirements for a person who wishes to obtain both a Child-Care Administrator's License and a Child-Placing Agency Administrator's License.

Section 745.8951 is revised to explain that we will notify the applicant whether he meets the initial qualifications and is eligible to take the licensing examination. Paragraph (3) addresses the

chronic problem of incomplete applications left pending indefinitely.

Section 745.8955 is revised to clarify the language of the rule, delete references to a CCAL, and make the rule applicable to both licenses.

Section 745.8957 is revised in several ways. The passing score in subsection (a) is modified based on the new exams now being administered. A sentence is added to subsection (b) regarding reapplication after three failed exams based on §1.115 of S.B. 6. Language is added to address the chronic problem of applications that are left pending indefinitely.

Section 745.8959 changes the amount of the examination fee from $25 to $50 to more accurately reflect the administrative costs for the exam. Licensing is now contracting with the University of Texas at Arlington (UTA) to administer the exam, so the cost of the exam is now dependent upon our internal costs and the cost of the contract with UTA. The rule also clarifies that the examination fee applies to an exam for either license.

Section 745.8961 shortens the time frame by one day so that it is exactly two weeks. Also, clarification is added that the decision to issue a license cannot be finalized until any necessary risk evaluation has been completed.

Section 745.8963 changes the wording to reflect that a background check match does not necessarily require action against the person's license.

Sections 745.8965 and 745.8967 change references to the "Director of Licensing" to "Assistant Commissioner for Child-Care Licensing." The name of the Department is also changed.

Section 745.8969 is revised to mirror §745.327 of this title (relating to When does Licensing have good cause for exceeding its timeframes for processing my application?).

Sections 745.8991, 745.8999, and 745.9001 are revised as a result of §1.112 of S.B. 6. "CCAL" is changed to "administrator's license" to reference both license types.

Sections 745.8993 and 745.8997 are revised to implement §1.117 of S.B. 6 by doubling the required amount of training for a license renewal. Also, the language has been changed to apply to both licenses.

Section 745.8995 is revised to implement §1.112 of S.B. 6. The language has been changed to apply to both licenses. Also, the requirement to submit a renewal request 15 days before the license expires has been deleted, as the request only needs to be submitted prior to the license expiration.

Sections 745.9003 and 745.9005 are revised to clarify that an increase in fees for a late renewal is not waived when a licensee does not receive a renewal reminder from Licensing. This is meant to address a chronic problem of licensees requesting that penalty fees be waived because they did not submit an address change to us, and therefore did not receive correspondence sent, or their mail was not routed to them once it arrived at their operation.

Section 745.9007 clarifies in subsection (a)(3) that there is a separate fee for background checks. Also, subsection (b) is added to clarify the differences between changing license status at the time of renewal versus in the middle of a renewal period.

New §745.9009 is added to implement §1.112 of S.B. 6. The rule addresses renewal requirements for both licenses.

New §745.9011 (previously §745.9013) is revised as follows. Subsection (a) is added to clarify that a person cannot continue to act as a licensed administrator with an expired license. Subsection (b) clarifies that a license that has been expired for one year is lapsed and no longer eligible for renewal, per HRC §43.009(f). Subsection (c) adds the requirement to return a lapsed license before a new license application can be accepted.

New §745.9013 requires a license to be renewed when a remedial action is pending against the licensee. This rule clarifies that a renewal fee will be refunded if the administrator's license is not renewed.

New §745.9015 addresses licensees who are unable to renew due to active military duty (deployment) outside of Texas. The rule explains how a person in this circumstance can renew his/her license upon return to Texas.

New §745.9017 (previously §745.9009) clarifies that renewal fees will only be refunded upon written request from the licensee.

New §745.9019 (previously §745.9011) clarifies that (1) another license is only issued if the original license was lost or destroyed; and (2) any fraud or deceit related to such a request may result in remedial action against the licensee.

New §745.9021 addresses chronic problems with licensees not reporting contact information and not reporting criminal convictions or other pertinent events that may impact their continued eligibility to hold a license. This rule is intended to specify for licensees what they are required to report and within what time frame.

New §745.9023 is added as a companion to new rule §745.9021. This rule specifies that failure to make a report required by §745.9021 may result in remedial action.

Section 745.9031 clarifies that the basis for a remedial action is not limited to violation of the law. Paragraph (6) in the chart regarding "invalidation" is deleted and replaced with a paragraph on application denial.

New §745.9035 (previously §745.9037) is revised to implement §1.112 of S.B. 6. "CCAL" is changed to "administrator's license" in order to reference both licenses.

New 745.9037 (previously §745.9039) is revised to implement §1.112 of S.B. 6. "CCAL" is changed to "administrator's license" in order to reference both licenses with one term. Subsections (a) and (b) correspond to §1.119 of S.B. 6 and lists the circumstances when DFPS may take remedial action against a licensee. Subsection (c) clarifies that a remedial action may affect both licenses. Subsection (d) specifies the expectation that a license that is no longer valid must be returned to Licensing.

Section 745.9039 (previously §745.9041) is revised to implement §1.112 of S.B. 6. "CCAL" is changed to "administrator's license" in order to reference both the Child-Care Administrator's License and the Child-Placing Agency Administrator's License with one term. The word "invalidate" is deleted to be consistent with the change to §745.9031.

New §§745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071 745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097, 745.9099, and 745.9100 in Subchapter O list the qualifications, guidelines, and requirements for conduct-

ing, evaluating and approving independent pre-adoptive home screenings and independent post-placement adoptive reports.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will not be costs to state or local government as a result of enforcing or administering the sections. Additional revenues to state government due to an increase in the application and examination fees for Licensed Administrators are an estimated $12,650 in each of the first five years the proposed sections will be in effect.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the health, safety, and welfare of children in residential child care will be enhanced and the quality of residential child care will improve. There will be a minimal cost to each potentially affected person or business due to the increase in the Licensed Administrator application and examination fees.

Questions about the content of the proposal may be directed to Amy Chandler at (512) 438-3134 in DFPS's Licensing Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-344, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

DIVISION 3. DEFINITIONS FOR LICENSING

40 TAC §745.21

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC, Chapter 43, as amended and added by S.B. 6, and HRC, §42.042.

§745.21. What do the following words and terms mean when used in this chapter?

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

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

[~~(6) Child-care administrator--As defined in §745.8901 of this title (relating to What is a child-care administrator?).~~]

(6) [~~(7)~~] Child-care facility--An establishment subject to regulation by Licensing which provides assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the establishment operates for profit or charges for its services. A child-care facility includes the people, administration, governing body, activities on or off the premises, operations, buildings, grounds, equipment, furnishings, and materials. A child-care facility does not include child-placing agencies, listed family homes, or maternity homes.

(7) [~~(8)~~] Child day care--As defined in §745.33 of this title (relating to What is child day care?).

(8) [~~(9)~~] Child-placing agency (CPA)--A person, including an organization, other than the parents of a child who plans for the placement of or places a child in a child-care operation or adoptive home.

(9) [~~(10)~~] Children related to the caregiver--Children who are the children, grandchildren, siblings, great-grandchildren, first cousins, nieces, or nephews of the caregiver, whether by affinity or consanguinity or as the result of a relationship created by court decree.

(10) [~~(11)~~] Consanguinity--Two individuals are related to each other by consanguinity if one is a descendant of the other; or they share a common ancestor. An adopted child is considered to be related by consanguinity for this purpose. Consanguinity is defined in the Government Code, §573.022 (relating to Determination of Consanguinity).

(11) [~~(12)~~] Contiguous operations--Two or more operations that touch at a point on a common border or located in the same building.

(12) Controlling person--As defined in §745.901 of this title (relating to Who is a controlling person in a residential operation?).

(13) - (14) (No change.)

(15) Division--The Licensing Division within the Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS).

(16) - (23) (No change.)

(24) Licensed administrator--As defined in §745.8905 of this title (relating to What is a licensed administrator?).

(25) [~~(24)~~] Minimum standards--The rules contained in Chapters [~~720 of this title (relating to 24-Hour Care Licensing),~~] 727 of this title (relating to Licensing of Maternity Facilities), 746 of this title (relating to Minimum Standards for Child-Care Centers), [~~and~~] 747 of this title (relating to Minimum Standards for Child-Care Homes), 748 of this title (relating to General Residential Operations and Residential Treatment Centers), 749 of this title (relating to Child-Placing Agencies), 750 of this title (relating to Independent Foster Homes) and Subchapter [~~Subchapters H and~~] I of this chapter (relating to [~~Residential Child-Care Minimum Standards, and~~] Maternity Home [~~Homes~~] Minimum Standards), which are minimum requirements for permit holders that [~~and which~~] are enforced by DFPS [~~PRS~~] to protect the health, safety and well-being of children.

(26) [~~(25)~~] Neglect--As defined in the Texas Family Code, §261.401(3) (relating to Agency Investigation) and §745.8559 of this title (relating to What is neglect?).

(27) [~~(26)~~] Operation--A person or entity offering a program that may be subject to Licensing regulation. An operation includes the building and grounds where the program is offered, any person involved in providing the program, and any equipment used in providing the program. An operation includes a child-care facility, child-placing agency, listed family home, or maternity home.

(28) [~~(27)~~] Parent--A person that has legal responsibility for or legal custody of a child, including the managing conservator or legal guardian.

(29) [~~(28)~~] Permit--A license, certification, registration, listing, or any other written authorization granted by Licensing to operate a child-care facility, child-placing agency, listed family home, or maternity home. This also includes a child-care administrator's license.

(30) [~~(29)~~] Permit holder--The person or entity granted the permit.

(31) [~~(30)~~] Pre-kindergarten age--As defined in §745.101(2) of this title (relating to What words must I know to understand this subchapter?).

(32) [~~(31)~~] Program--Activities and services provided by an operation.

(33) [~~(32)~~] Regulation--The enforcement of statutes and the development and enforcement of rules, including minimum standards. Regulation includes the licensing, certifying, registering, and listing of an operation or child-care administrator.

(34) [~~(33)~~] Report--An expression of dissatisfaction or concern about an operation, made known to DFPS [~~PRS~~] staff, that alleges a possible violation of minimum standards or the law and involves risk to a child/children in care.

(35) [~~(34)~~] Residential child care--As defined in §745.35 of this title (relating to What is residential child care?).

(36) [~~(35)~~] State Office of Administrative Hearings (SOAH)--See §745.8831 and §745.8833 of this title (relating to What is a due process hearing? and What is the purpose of a due process hearing?).

(37) [~~(36)~~] Sustained perpetrator--See §745.731 of this title (relating to What are designated perpetrators and sustained perpetrators of child abuse or neglect?).

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 May 3, 2006.

TRD-200602454
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER B. CHILD CARE AND OTHER OPERATIONS THAT WE REGULATE

40 TAC §745.35, §745.37

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC, Chapter 42, as amended and added by S.B. 6.

§745.35. What is residential child care?

Residential child care means the care, custody, supervision, assessment, training, education, or treatment of a [~~an unrelated~~] child who is not related by blood, marriage, or adoption to the owner or operator of the operation, for all of the 24-hour day, regardless of whether the operation is operated for profit or charges for the services it offers. [~~or children up to the age of 18 years for 24 hours a day that occurs in a place other than the child's own home. Residential child care also includes maternity homes and child-placing agencies.~~]

§745.37. What specific types of operations does Licensing regulate?

The charts in paragraphs (1), (2), and (3) of this section list the types of operations for child day care and residential child care that we regulate. Maternity homes, [~~and~~] child-placing agencies, and foster homes verified by a child-placing agency are included in the residential child-care chart. [~~The chart in paragraph (4) of this section lists the operations verified by a child-placing agency.~~]

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

(3) Types of Residential Child-Care Operations.
Figure: 40 TAC §745.37(3)

[~~(4) Type of CPA Homes.~~]
[~~Figure: 40 TAC §745.37(4)~~]

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 May 3, 2006.

TRD-200602455
Gerry Williams
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Earliest possible date of adoption: June 18, 2006
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SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION
DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §745.117

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC, §42.042.

§745.117. Which programs of limited duration are exempt from Licensing regulation?

The following programs of limited-duration are exempt from our regulation:
Figure: 40 TAC §745.117

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 May 3, 2006.

TRD-200602456
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Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER H. RESIDENTIAL CHILD-CARE MINIMUM STANDARDS
DIVISION 1. IMMUNIZATIONS

40 TAC §745.4001, §745.4003

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

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§745.4001. What immunizations are children in my care required to have?

§745.4003. Where can I find this information?

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 May 3, 2006.

TRD-200602457
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Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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DIVISION 2. CHILD-PLACING AGENCY STANDARDS FOR CONDUCTING A FOSTER HOME SCREENING, PRE-ADOPTIVE HOME SCREENING, AND POST-PLACEMENT ADOPTIVE REPORT

40 TAC §§745.4021, 745.4023, 745.4027, 745.4029

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

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042 and Family Code, §107.0511 and 107.052.

§745.4021. What is a foster home screening?

§745.4023. What is a pre-adoptive home screening?

§745.4027. What qualifications must I meet to review and approve a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?

§745.4029. May someone who does not meet minimum qualifications help level 1 child-placing staff conduct a foster home screening, a pre-adoptive home screening, or a post-placement adoptive report?

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

Filed with the Office of the Secretary of State on May 3, 2006.

TRD-200602458
Gerry Williams
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Earliest possible date of adoption: June 18, 2006
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DIVISION 3. ADDITIONAL CHILD-PLACING AGENCY STANDARDS FOR CONDUCTING A PRE-ADOPTIVE HOME SCREENING

40 TAC §§745.4061, 745.4069, 745.4071, 745.4073, 745.4077, 745.4079

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

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall

adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042 and Family Code, §107.0511 and 107.052.

§745.4061. What information must the pre-adoptive home screening include?

§745.4069. What if a child is not placed with the prospective adoptive parents within six months of the completion of the pre-adoptive home screening?

§745.4071. What information must the pre-adoptive home screening update include?

§745.4073. Must I complete a pre-adoptive home screening update if the prospective adoptive parents plan to adopt another child?

§745.4077. Must an agency that previously verified a foster home or approved an adoptive home release background information to an agency currently conducting a pre-adoptive home screening?

§745.4079. What must I do with the background information that I receive from the agency that previously verified the foster home or approved the adoptive home?

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 May 3, 2006.

TRD-200602459
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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DIVISION 4. ADDITIONAL CHILD-PLACING AGENCY STANDARDS FOR FOSTER HOMES AND FOR CONDUCTING FOSTER HOME SCREENINGS

40 TAC §§745.4091, 745.4093, 745.4095, 745.4097, 745.4099, 745.4101, 745.4103

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

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, §42.042.

§745.4091. Must an agency that previously verified a foster home or approved an adoptive home release background information to an agency currently conducting a foster home screening?

§745.4093. What must I do to verify a home that has never been previously licensed or verified as a foster home?

§745.4095. What must I do to verify a foster home that another child-placing agency has previously verified?

§745.4097. Must I conduct a foster home screening on an agency foster home that does not have foster parents but is otherwise fully staffed?

§745.4099. What can I do if no local fire authority will inspect the agency foster home?

§745.4101. What can I do if no local health authority will inspect the agency foster home?

§745.4103. How long are health and fire inspection reports current?

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 May 3, 2006.

TRD-200602460
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER H. RESIDENTIAL CHILD CARE: DRUG TESTING AND LAW ENFORCEMENT ADMISSIONS
DIVISION 6. DRUG TESTING

40 TAC §745.4151

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC, §42.042 and §42.057.

§745.4151. What drug testing policy must my residential child-care operation have?

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

(c) The mandatory criteria for the Model Drug Testing Policy For Residential Child-Care Operations include:

(1) (No change.)

(2) Scope. This policy applies to all employees of residential child-care operations, including child-placing agencies, that directly care for or has access to a child in care, and applicants for such

employment. With respect to allegations of drug abuse (See paragraph (4)(D) of this subsection), this policy applies to any person who works under the auspices of a residential child-care operation and directly cares for or has access to a child in care. [~~have direct contact with children in care. It also applies to all contract employees that have direct contact with children in care and volunteers that frequently and regularly have direct contact with children. This policy does not apply to foster parents that are verified by child-placing agencies.~~]

(3) Definitions. The following definitions apply to this section.

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

(C) Employee--A person is an employee of your operation if you pay the person a wage or salary and direct or have the right to direct his work. For the purposes of this definition:

(i) Directing a person's work includes having control over when, where, and how the person conducts his work and providing the person with training that is necessary for the person to conduct his work;

(ii) Controlling when a person works includes setting the person's work hours;

(iii) Controlling how a person works includes assigning the person the task(s) that he must accomplish and exercising responsibility for the means and details by which the person accomplishes the task(s); and

(iv) A person is not an "employee" of a child-placing agency merely because the agency verifies him as a foster parent.

(D) [~~(C)~~] Random drug testing--A testing cycle that varies the frequency and intervals that specimens are collected for testing and selects employees in a random manner that does not eliminate already tested employees from future testing. The testing should ensure all employees are subject to random testing on a continuing basis.

(E) [~~(D)~~] Good cause to believe the person [~~employee~~] may be abusing drugs--A reasonable belief based on facts sufficient to lead a prudent person to conclude that the person who works under the auspices of the residential child-care operation [~~employee~~] may be abusing drugs. Sufficient facts may include direct observations of the person [~~employee~~] using or possessing drugs, or exhibiting physical symptoms, including but not limited to slurred speech or difficulty in maintaining balance; erratic or marked changes in behavior, including a decrease in the quality or quantity of the person's [~~employee's~~] productivity, judgment, reasoning, and concentration and psychomotor control, accidents, and deviations from safe working practices; or any other reliable information.

(F) Person who works under the auspices of the residential child-care operation--A person who meets the definition in §745.8553 of this title (relating to Who works "under the auspices of an operation"?).

(4) Mandatory drug testing.

(A) - (C) (No change.)

(D) Any person alleged to be abusing drugs may be tested within 24 hours, if the person:

(i) Works under the auspices of the residential child-care operation;

(ii) Directly cares for or has access to a child in care; and

(iii) [~~employee who is alleged to be abusing drugs must be tested within 24 hours, if there~~] There is "good cause to believe the person [~~employee~~] may be abusing drugs."

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

(7) Appeal. An applicant or employee whose drug test is positive may, at the applicant or employee's expense:

(A) - (C) (No change.)

(8) Documentation.

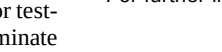
(A) (No change.)

(B) All drug test results of employees will be kept for one year after an employee's last work day with the residential child-care operation, or until any investigation involving the person is resolved, whichever is later. All other drug test results required by this rule will be kept for one year from the date the drug test was administered. The results must be available for review by Licensing Division within 24 hours of the request.

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

Filed with the Office of the Secretary of State on May 3, 2006.

TRD-200602461
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437



SUBCHAPTER N. CHILD-CARE ADMINISTRATOR'S LICENSING
DIVISION 1. OVERVIEW OF CHILD-CARE ADMINISTRATOR'S LICENSING

40 TAC §§745.8903, 745.8905, 745.8907, 745.8909, 745.8911, 745.8913

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

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC Chapter 43, as amended and added by S.B. 6.

§745.8903. Must I have a child-care administrator's license (CCAL)?

§745.8905. In what circumstances do I not need a CCAL to be a child-care administrator for an emergency shelter in a county with a population of less than 40,000?

§745.8907. Can Licensing put any conditions or limits on the exemption allowing an emergency shelter to operate without a licensed child-care administrator?

§745.8909. Can I use my valid license from another state to serve as a child-care administrator?

§745.8911. Do I qualify for a CCAL?

§745.8913. What qualifies as one year of experience in management or supervision of residential child-care personnel and programs?

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 May 3, 2006.

TRD-200602463
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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DIVISION 3. LICENSING'S REVIEW OF YOUR APPLICATION

40 TAC §745.8953

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

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC, Chapter 43, as amended and added by S.B. 6.

§745.8953. What if I do not qualify to take the CCAL examination?

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 May 3, 2006.

TRD-200602466
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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DIVISION 4. RENEWING YOUR CCAL

40 TAC §745.9009, 745.9011, 745.9013

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

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, Chapter 43, as amended and added by S.B. 6.

§745.9009. Will Licensing return my renewal fee if I am not eligible for renewal?

§745.9011. How do I get an additional copy of my current CCAL?

§745.9013. What happens if I do not renew my CCAL?

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 May 3, 2006.

TRD-200602468
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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DIVISION 5. REMEDIAL ACTIONS

40 TAC §§745.9035, 745.9037, 745.9039, 745.9041

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

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, Chapter 43, as amended and added by S.B. 6.

§745.9035. Why would Licensing suspend my CCAL rather than revoke it?

§745.9037. Can any authority besides Licensing suspend my CCAL?

§745.9039. If I never violate any laws governing my CCAL, under what other circumstances will Licensing still revoke it?

§745.9041. What can I do if I disagree with an action that Licensing takes against my CCAL?

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 May 3, 2006.

TRD-200602470
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER N. ADMINISTRATOR LICENSING

DIVISION 1. OVERVIEW OF CHILD-CARE ADMINISTRATOR'S LICENSING

40 TAC §§745.8901, 745.8903, 745.8905, 745.8907, 745.8909, 745.8911, 745.8913, 745.8915, 745.8917, 745.8919, 745.8921

The amendment and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new sections implement HRC, Chapter 43, as amended and added by S.B. 6.

§745.8901. What is a child-care administrator?

A child-care administrator is a person who:

(1) Supervises and exercises direct control over a general residential child- care operation or a residential treatment center [~~that has a permit to serve seven or more children~~]; and

(2) Is responsible for the operation's program(s) [~~program~~] and personnel, regardless of whether the person [~~he~~] has an ownership interest in the operation or shares [~~his~~] duties with anyone.

§745.8903. What is a child-placing agency administrator?

A child-placing agency administrator is a person who:

(1) Supervises and exercises direct control over a child-placing agency, as defined in §745.37(3)(F) of this title (relating to What specific types of operations does Licensing regulate?); and

(2) Is responsible for the agency's program(s) and personnel, regardless of whether the person has an ownership interest in the agency or shares duties with anyone.

§745.8905. What is a licensed administrator?

A licensed administrator is either a licensed child-care administrator or a licensed child- placing agency administrator.

§745.8907. When must I have a Child-Care Administrator's License (CCAL)?

You must have a CCAL to serve as an administrator for a residential treatment center or a general residential operation, except for certain general residential operations that only provide emergency care services (See §745.8911 of this title (relating to For general residential operations that only provide emergency care services, in what circumstances do I not need a CCAL to be a child-care administrator?)).

§745.8909. When must I have a Child-Placing Agency Administrator's License (CPAAL)?

You must have a CPAAL to serve as a child-placing agency administrator. You do not need this license to serve as the administrator for an independent foster family or group home.

§745.8911. For general residential operations that only provide emergency care services, in what circumstances do I not need a CCAL to be a child-care administrator?

You do not need a CCAL if we exempt the general residential operation that only provides emergency care services from needing a licensed child-care administrator. To qualify for exemption, the governing body or designee of the emergency shelter must send to the Assistant Commissioner for Child-Care Licensing a letter that includes the following:

(1) The name of the county where the operation is located;

(2) The date that the operation's governing body adopted a resolution certifying that the operation made a reasonable attempt to hire a licensed child-care administrator but was unable to do so;

(3) A statement that the governing body adopted the resolution by a majority vote;

(4) The name of the unlicensed administrator hired; and

(5) A statement of the administrator's qualifications, including any areas where the person's qualifications do not meet the requirements for a CCAL.

§745.8913. Can I use my valid license from another state to serve as a licensed child-care administrator?

(a) We may waive any prerequisite for you to get a child-care administrator's license from us if the other state's license requirements are substantially equivalent to those in Texas, or if there is a reciprocity agreement between Texas and the other state.

(b) We may issue a provisional license to you once you apply for a license from us. See Human Resources Code, §43.0081, for the provisional license qualifications.

§745.8915. Do I qualify for a CCAL?

You qualify for a CCAL if you:

(1) Pass an examination, which is offered by DFPS, that demonstrates competence in the field of child-care administration;

(2) Undergo a criminal history and central registry background check and do not have a criminal history or central registry history that would prohibit you from working in a residential child-care operation, as specified in Subchapter F of this chapter (relating to Background Checks);

(3) Have one year of full-time experience in management or supervision of personnel and programs as specified in §745.8919 of this title (relating to What qualifies as one year of experience in management or supervision of personnel and programs?); and

(4) Have one of the following qualifications:

(A) A master's or doctor of philosophy degree in social work or other area of study; or

(B) A bachelor's degree and two years' full-time experience in residential child care or a closely related field.

§745.8917. Do I qualify for a CPAAL?

You qualify for a CPAAL if you:

(1) Pass an examination, which is offered by DFPS, that demonstrates competence in the field of child-placing administration;

(2) Undergo a criminal history and central registry background check and do not have a criminal history or central registry history that would prohibit you from working in a residential child-care operation, as specified in Subchapter F of this chapter (relating to Background Checks);

(3) Have one year of full-time experience in management or supervision of personnel and programs as specified in §745.8919 of this title (relating to What qualifies as one year of experience in management or supervision of personnel and programs?); and

(4) Have one of the following qualifications:

(A) A master's or doctor of philosophy degree in social work or other area of study; or

(B) A bachelor's degree and two years' full-time experience in residential child care or a closely related field.

§745.8919. What qualifies as one year of experience in management or supervision of personnel and programs?

(a) To qualify for a CCAL, you must substantiate through an employer reference that:

(1) You have completed the one year of full-time experience in management or supervision of residential child-care personnel and programs within the past 10 years;

(2) Your experience was at a general residential operation, residential treatment center, or in a comparable residential operation in which you worked primarily with children;

(3) If you were not solely responsible for implementing the operation's child-care program, that you shared in that responsibility; and

(4) You supervised at least one member of the child-care personnel and your supervision responsibilities included assigning duties, hiring, disciplining, rewarding, approving leave requests, and conducting formal employee evaluations.

(b) To qualify for a CPAAL, you must substantiate through an employer reference that:

(1) You have completed the one year of full-time experience in management or supervision of child-placing personnel and programs within the past 10 years;

(2) Your experience was at a child-placing agency;

(3) If you were not solely responsible for implementing the agency's child-placing program, that you shared in that responsibility; and

(4) You supervised at least one member of the child-placing agency personnel and your supervision responsibilities included assigning duties, hiring, disciplining, rewarding, approving leave requests, and conducting formal employee evaluations.

(c) Experience as a foster parent, adoptive parent, or any other type of caregiver or staff person in an agency home does not meet the requirements of subsections (a) or (b) of this section.

(d) The Assistant Commissioner for Child-Care Licensing, or his designee, may grant exceptions to this rule on a case-by-case basis, if an applicant is able to provide compelling justification that his experience qualifies him to act as a licensed administrator.

§745.8921. Who are "child-placing personnel"?

(a) "Child-placing personnel" are persons, who, under the auspices of a child-placing agency, plan for the placement of or place a child in a residential child-care operation, agency foster home, or adoptive home.

(b) For the purposes of this section, planning for placement or placing a child includes any of the following activities:

(1) Developing a child's admission assessment or service plan for a child in the care of a child-placing agency;

(2) Performing case management activities for a child in the care of a child-placing agency;

(3) Conducting a home study;

(4) Conducting foster home verification activities; and/or

(5) Developing corrective or adverse actions for agency foster homes.

(c) Planning for placement or placing a child does not include serving as a foster parent or a caregiver for the child.

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 May 3, 2006.

TRD-200602462
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

40 TAC §§745.8931, 745.8933, 745.8935

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement HRC, Chapter 43, as amended and added by S.B. 6.

§745.8931. How do I apply to become a licensed administrator [~~for a CCAL~~?

To apply to become a licensed administrator, [~~for a CCAL,~~] you must submit all required application materials and a $100 application fee to the address on the application form [~~, a $50 license fee, and a $25 examination fee. You may submit these nonrefundable fees to us in a single $75 payment. Submit all required information to: Child-Care Administrator's Licensing, Texas Department of Protective and Regulatory Services, Mail Code E-550, P.O. Box 149030, Austin, Texas 78714-9030~~]. The application fee is nonrefundable.

§745.8933. What does a complete application to become a licensed administrator [~~for a CCAL~~] include?

(a) A complete application to become a licensed administrator [~~for CCAL~~] includes:

(1) A completed application form;

[~~(2) A medical information form completed by your physician;~~]

(2) [~~(3)~~] A transcript or letter of verification from the appropriate educational institution(s) to substantiate your educational qualifications;

(3) [~~(4)~~] Two professional [~~Three personal~~] references that verify [~~experience~~] your professional skills, [~~and~~] character, and if applicable, two years of full-time work experience;

(4) [~~(5)~~] An employer reference that documents your one year of supervisory experience (see §745.8919 of this title (relating to What qualifies as one year of experience in management or supervision of personnel and programs?));

(5) [~~(6)~~] An application fee of $100 [~~A fee of $75~~];

(6) [~~(7)~~] A notarized affidavit documenting background information on a form provided by DFPS; and

(7) [~~(8)~~] A completed background check request form and background check fee.

(b) Your application is incomplete if you fail to complete any part of subsection (a) of this section, including inadequate documentation of your qualifications.

§745.8935. How do I apply for both a Child-Care Administrator's License and a Child-Placing Agency Administrator's License?

(a) To apply for both licenses simultaneously, you must submit:

(1) An application fee for each license; and

(2) All application materials required by §745.8933 of this title (relating to What does a complete application to become a licensed administrator include?), except that you must have two employee references, one verifying your supervisory experience in a general residential operation or a residential treatment center, and the other verifying your supervisory experience in a child-placing agency.

(b) To apply for one of the license types after you already have the other type of license, you must submit an:

(1) Application fee;

(2) Updated complete application form; and

(3) Employee reference verifying your required supervisory experience related to the license for which you are applying (see §745.8919 of this title (relating to What qualifies as one year of experience in management or supervision of personnel and programs?)).

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 May 3, 2006.

TRD-200602464
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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DIVISION 3. LICENSING'S REVIEW OF YOUR APPLICATION

40 TAC §§745.8951, 745.8955, 745.8957, 745.8959, 745.8961, 745.8963, 745.8965, 745.8967, 745.8969

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC, Chapter 43, as amended and added by S.B. 6.

§745.8951. What happens after Licensing receives my application materials and fees?

We have 21 days to notify you in writing of one of the following:

(1) We have received a complete set of application materials and fees and determined that you meet the initial qualifications and are eligible to take the licensing examination;

(2) We have received a complete set of application materials and fees and determined that you do not meet the initial qualifications and are not eligible to take the licensing examination; or

(3) Your application is pending because it is incomplete and/or the materials submitted do not show compliance with relevant statutes and rules. The notification letter will explain what is needed to complete the application and/or why your materials do not show compliance. If your application remains pending, you will receive reminder letters regarding the status of your application at three months and six months after the first notification letter is sent. If your application remains pending for 12 months from the date we first receive any part of your application, then your application will expire. If your application expires, then you may not apply again for one year from the date your application expired. [~~We will determine your eligibility to take the licensing examination within 21 days after we receive your complete application materials and fees. If you are eligible, we will send you written approval to take the examination.~~]

§745.8955. What if I disagree with Licensing's determination [~~decision~~] that I do [~~am~~] not meet the initial qualifications required [~~qualified~~] to take the licensing examination [~~the CCAL exam~~]?

If you disagree with the determination [~~decision~~], you may request an administrative review and/or a due process hearing as set forth in Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

§745.8957. What if I fail the licensing [~~CCAL~~] examination or do not take the examination?

(a) You may take a licensing examination up to three times within 24 months of the date that we receive your application. We cannot issue you a license [~~CCAL~~] until you pass the examination with a score of 70% [~~80%~~] or higher during that time period. [~~If you are eligible to take the examination, you may do so up to three times before you are disqualified from taking it again for one year.~~]

(b) If you fail the examination three times within 24 months after we receive your application, you may submit a new application one year after the date you fail your third examination. [~~This one-year period begins on the date that you take the third failed examination. After the one-year period, we will determine your eligibility after you submit to us a new application, including the $75 application fee.~~]

(c) If you take the examination less than three times within 24 months after we receive your application and do not pass the examination, your application will be void. You will have to reapply in order to pursue an administrator's license.

§745.8959. Must I pay an [~~a $25~~] examination fee each time I take a licensing [~~the CCAL~~] examination?

Yes. You must pay the nonrefundable examination fee of $50 each time before taking a licensing [~~the CCAL~~] examination.

§745.8961. What happens after I take a licensing [~~the CCAL~~] examination?

(a) We will send you the [~~CCAL examination~~] results of your examination within 14 [~~15~~] days after we receive them from the testing organization.

(b) We will [~~decide whether to~~] issue or deny you a license [~~CCAL~~] within 14 [~~15~~] days after we have your examination results [~~, all required application materials,~~] and the results of your criminal history [~~background~~] and central registry checks, [~~check~~] including the results of any risk evaluation required based on your criminal history or central registry history. [~~If your application is still incomplete 60 days after we receive your examination results, we will notify you in writing of the deficiency and the information necessary to complete the application process.~~]

§745.8963. What if my criminal history background check or central registry check results in a positive match?

If your background check results in a positive match, we will take action [~~against your license or application~~] in accordance with Subchapter F of this chapter (relating to Background Checks).

§745.8965. What if Licensing does not process my application within the appropriate timeframes?

If you believe that we did not process your application within the appropriate timeframes, you may request that the Assistant Commissioner for Child-Care Licensing [~~the Director of Licensing to~~] review the situation. You must submit your written request for the review within 30 days after our time limit expires [~~90 days from the day you submitted your original application~~]. You must send your request to: Assistant Commissioner for Child-Care Licensing [~~Director of Licensing~~], Mail Code E-550, Texas Department of Family and Protective [~~and Regulatory~~] Services, P.O. Box 149030, Austin, Texas 78714-9030. Your request must include a specific complaint and any supporting documentation.

§745.8967. What happens after the Assistant Commissioner for Child-Care[~~Director of~~] Licensing receives my request for review?

After receiving your request, the Assistant Commissioner [~~Director~~] will decide if [~~whether~~] we processed your application within the appropriate timeframes. If the Assistant Commissioner [~~Director~~] decides that we did not, he/she [~~she~~] will decide if we had good cause to exceed the timeframes. We will reimburse your application fee [~~all filing fees~~] to you if the Assistant Commissioner [~~Director~~] determines that we exceeded the time limits without good cause. The Assistant Commissioner [~~Director~~] will notify you of his/her [~~her~~] decision within 30 days after receiving your request.

§745.8969. When does Licensing have good cause for not processing my application within the established time period?

We have good cause for exceeding the timeframes if:

(1) While we are processing your application, we are processing at least 15% more applications than we did [~~had~~] during the same quarter of the previous calendar year;

(2) Another public or private entity that we rely on to process all or part of the applications causes the delay; [~~or~~]

(3) You are the subject of a pending investigation; or

(4) [~~(3)~~] Any other conditions exist that give us good cause for exceeding the time period.

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

Filed with the Office of the Secretary of State on May 3, 2006.

TRD-200602465
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

40 TAC §§745.8991, 745.8993, 745.8995, 745.8997, 745.8999, 745.9001, 745.9003, 745.9005, 745.9007, 745.9009, 745.9011, 745.9013, 745.9015, 745.9017, 745.9019, 745.9021, 745.9023

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement HRC, Chapter 43, as amended and added by S.B. 6.

§745.8991. Can my administrator's license [~~CCAL~~] remain valid for an indefinite period of time?

No, an administrator's license is valid for two years, so you must renew your license [~~CCAL~~] every two years.

§745.8993. Am I [~~automatically~~] eligible to renew my administrator's license [~~CCAL~~]?

To be eligible to renew your administrator's license, [~~No,~~] you must:

(1) (No change.)

(2) Have completed 15 clock hours of continuing education each year during the two-year period before renewal;

(3) - (4) (No change.)

§745.8995. When do I request renewal of my administrator's license [renew my CCAL]?

To continue operating as a licensed [child-care] administrator, you must request your administrator's license [CCAL] renewal [within 15 days] before your license expires. We may not renew your administrator's license [CCAL] after it has been expired for more than one year.

§745.8997. How do I request renewal of my administrator's license [renew my CCAL]?

To request an administrator's license [a CCAL] renewal, you must send us:

(1) Evidence that you have completed [fulfilled the requirement to obtain] 15 clock hours of continuing education each year during the two-year period before renewal;

(2) A completed [child-care administrator's license] renewal form;

(3) (No change.)

(4) A completed background check form and fee.

§745.8999. If I want to maintain my administrator's license [CCAL] even though I am not working as an [a child-care] administrator, must I satisfy the continuing education requirements?

No, you may place your administrator's license on [renew your CCAL under an] inactive status if you are not working as an [a child-care] administrator. You are not required to obtain [do not have to maintain] continuing education while your license is on inactive status [requirements in order to renew your CCAL as inactive].

§745.9001. Must I undergo a background check in order to renew my administrator's license [CCAL] as inactive?

No, you are not required [do not need] to undergo a background check in order to renew your administrator's license [CCAL] as inactive.

§745.9003. How much is the renewal fee?

(a) The amount of the renewal fee varies depending on when we receive it:
Figure: 40 TAC §745.9003(a)
[Figure: 40 TAC §745.9003]

(b) Failure to receive notice from us of your license's expiration or impending expiration does not waive the increase of the fee for late renewals.

§745.9005. How much is the renewal fee if I am requesting inactive status?

(a) The renewal fee for inactive status is half the amount of the regular renewal fee:
Figure: 40 TAC §745.9005(a)
[Figure: 40 TAC §745.9005]

(b) Failure to receive notice from us of your license's expiration or impending expiration does not waive the increase of the fee for late renewals.

§745.9007. How do I change my administrator's license status from [renew an] inactive to [CCAL as] active?

(a) To renew your inactive administrator's license [CCAL] as active, you must submit to us a:

(1) Completed [CCAL] renewal form;

(2) $50 renewal fee; and

(3) Completed background check [background-check] form and fee.

(b) To change your status to active in the middle of a renewal period, you must submit to us a:

(1) Written request to change your status;

(2) $25 fee; and

(3) Completed background check form and fee.

§745.9009. What are the renewal requirements if I have both a CCAL and a CPAAL?

(a) You must pay the appropriate renewal fee for each license.

(b) You must complete the renewal form for each license.

(c) You must submit a completed background check form and fee every two years, or present evidence every two years of your cleared criminal history and central registry checks as required in Subchapter F of this chapter (relating to Background Checks).

(d) You must submit evidence that you have completed 15 clock hours of continuing education each year during the two-year renewal period for each license. The same training hours may be counted toward both licenses only if the training appropriately applies to both license types. (For example, training on adoption law would count toward renewal of a Child-Placing Agency Administrator's License but not a Child Care Administrator's License, whereas training on federal equal employment opportunity hiring requirements and guidelines would count toward renewal of both licenses.)

§745.9011. What happens if I do not renew my administrator's license?

(a) If you fail to renew your administrator's license before the expiration date of the license, you must cease acting as or representing yourself as a licensed administrator.

(b) If you do not renew your administrator's license within one year after its expiration date, the license is considered lapsed and is no longer eligible for renewal.

(c) If you would like to be a licensed administrator after your license has lapsed, you must reapply as if you had never been licensed. You must return the expired license certificate to us before we can accept a new application from you.

§745.9013. How does a remedial action that is pending against my administrator's license affect renewal requirements for that license?

(a) A remedial action that is pending against your administrator's license has no effect on renewal requirements for that license. You must still submit timely and complete renewal documentation and fees.

(b) If the pending remedial action results in the revocation or refusal to renew your license, any renewal fees paid during the time the remedial action was pending will be refunded upon our receipt of a written request from you.

§745.9015. What happens if I am not able to renew my administrator's license due to active military duty?

(a) If you are on active duty with the armed forces of the United States and are serving outside of Texas at the time that your license expires, you are exempt from the renewal requirements.

(b) Within one year of your return to Texas or release from active duty, whichever occurs first, you may request reinstatement of your license. We will renew your license upon receipt of your request

for reinstatement, documentation of your active duty status at the time your license expired, and the renewal fee.

(c) No continuing education will be required prior to reinstatement, and no extra fees for an untimely renewal will be charged for reinstatement.

§745.9017. Will Licensing return my renewal fee if I am not eligible for renewal?

Yes, upon your written request, we will refund your renewal fee if we determine that you are not eligible for renewal.

§745.9019. How do I get an additional copy of my current administrator's license?

You must send us your request in writing along with a $5 fee for each replacement copy of your administrator's license. Your request must include a statement detailing the loss or destruction of your original license or be accompanied by your damaged license. Fraud or deceit related to any such request may result in remedial action per §745.9037 of this title (relating to Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?).

§745.9021. What information must I report to DFPS?

(a) You must make written reports of the following to us within 30 days:

(1) A change of your mailing address, place of employment, or business or home phone number;

(2) A change in your legal name;

(3) The filing of a criminal case against you;

(4) A criminal conviction against you, other than a Class C misdemeanor traffic offense;

(5) The filing of a civil lawsuit against you that relates to your role as a licensed administrator;

(6) The settlement of or judgment rendered in a civil lawsuit filed against you which relates to your role as a licensed administrator; and

(7) Complaints against, investigations involving, or actions against you related to abuse or neglect or another licensing or certification body regarding health, mental health, or child care services, when known by you.

(b) We may use the information received under this section when deciding to issue a license or take a remedial action.

§745.9023. What will happen if I do not make a report as required by §745.9021 of this title (relating to What information must I report to DFPS?)?

If you fail to make a report that is required by §745.9021 of this title, we may take remedial action against your administrator's license, up to and including revocation of your 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 May 3, 2006.

TRD-200602467
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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DIVISION 5. REMEDIAL ACTIONS

40 TAC §§745.9031, 745.9035, 745.9037, 745.9039

The amendment and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new sections implement HRC, Chapter 43, as amended and added by S.B. 6.

§745.9031. What remedial actions can Licensing take against my administrator's license [~~will happen if I violate a law governing my CCAL~~]?

We may take the following actions against your administrator's license [~~if you violate a law governing your CCAL~~]:
Figure: 40 TAC §745.9031

§745.9035. Can any authority besides Licensing suspend my administrator's license?

A court or Title IV-D agency may suspend your administrator's license if you fail to pay child support. As set forth in Texas Family Code, §232.011, we must follow an order suspending your administrator's license.

§745.9037. Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?

(a) We may take remedial action against your administrator's license or administrator's license application if you:

(1) Violate Chapter 43 of the Human Resources Code or a rule of DFPS;

(2) Circumvent or attempt to circumvent the requirements of Chapter 43 of the Human Resources Code or a Licensing rule;

(3) Engage in fraud or deceit related to the requirements of Chapter 43 of the Human Resources Code or a Licensing rule;

(4) Provide false or misleading information to us during the application or renewal process for your own or someone else's application or license;

(5) Make a statement about a material fact during the license application or renewal process that you know or should know is false;

(6) Have a criminal history or central registry record that would prohibit you from working in a child-care facility as specified in Subchapter F of this chapter (relating to Background Checks);

(7) Use or abuse drugs or alcohol in a manner that jeopardizes your ability to function as an administrator; or

(8) Perform your duties as a licensed administrator in a negligent manner.

(b) If we revoke your administrator's license, you are not eligible to apply for another administrator's license for five years after the date the license was revoked.

(c) If you have both a Child Care Administrator's License and a Child-Placing Agency Administrator's License, remedial action may be taken against both licenses. If we take remedial action against both of your licenses, you will be notified that the action applies to both licenses. In such a case, any administrative review and/or due process hearing for both licenses may be combined at our discretion.

(d) If we revoke or do not renew your license, you must return your license certificate to us.

§745.9039. What can I do if I disagree with a remedial action that Licensing takes against my administrator's license?

If you disagree with a remedial action that we take against your administrator's license, you may request an administrative review. You may also request a due process hearing of our decision to deny, revoke, suspend, or refuse to renew your administrator's license. See Subchapter M of this chapter (relating to Administrative Reviews and Due Process Hearings).

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 May 3, 2006.

TRD-200602469
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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SUBCHAPTER O. INDEPENDENT PRE-ADOPTIVE HOME SCREENING AND INDEPENDENT POST-PLACEMENT ADOPTIVE REPORT

40 TAC §§745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071

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

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC, Chapter 43, as amended and added by S.B. 6.

§745.9061. What qualifications must I meet to review and approve an independent pre-adoptive home screening or an independent post-placement adoptive report?

§745.9063. Are there requirements in addition to meeting the qualifications listed in §745.4027 of this title (relating to What qualifications must I meet to review and approve a foster home screening, a pre-adoptive home screenings or a post-placement adoptive report?)?

§745.9065. May someone who does not meet minimum qualifications help me conduct a pre-adoptive home screening or a post-placement adoptive report?

§745.9067. How do I obtain information about the birth parents?

§745.9069. How do I obtain a criminal history or central registry background check for an independent pre-adoptive home screening or independent post-placement adoptive report?

§745.9071. Whom must I contact with a complaint about how an independent pre-adoptive home screening or independent post-placement adoptive report was conducted?

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 May 3, 2006.

TRD-200602471
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

♦ ♦ ♦

40 TAC §§745.9061, 745.9063, 745.9065, 745.9067, 745.9069, 745.9071,745.9073, 745.9075, 745.9077, 745.9079, 745.9081, 745.9083, 745.9085, 745.9087, 745.9089, 745.9091, 745.9093, 745.9095, 745.9097, 745.9099, 745.9100

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC, §42.042 and Family Code, §107.0511 and §107.052.

§745.9061. What is a pre-adoptive home screening?

A pre-adoptive home screening is conducted for a child who is being adopted. The screening contains documentation of the following:

(1) Interviews with adoption applicants, their families, and collateral contacts as necessary;

(2) Information obtained through review of documents, reports, and inspections;

(3) Assessment of the information obtained to determine whether applicants meet the requirements for approval as adoptive families;

(4) Evaluation of the information obtained in order to make recommendations about the family's capacity for adoption, including the age, number, sex, and special needs of the children the family has the capacity to parent; and

(5) Assessment of basic care and safety issues, including safety of the environment of the adoptive home.

§745.9063. What is a post-placement adoptive report?

A post-placement adoptive report is required after the placement of the child. It is a written summary of all of the information and assessments regarding the child and the family, including the pre-adoptive home screening, and a written evaluation regarding the:

(1) Child;

(2) Prospective adoptive parent(s);

(3) Family of the prospective adoptive parent(s);

(4) Environment of the prospective adoptive parent(s) and their family; and

(5) Adjustment of all individuals to the placement.

§745.9065. What qualifications must I meet to evaluate and approve a finalized independent pre-adoptive home screening or independent post-placement adoptive report?

Each person evaluating and/or approving any portion of an independent pre-adoptive home screening or post-placement adoptive report must have qualifications that meet one of the following options:

Figure: 40 TAC §745.9065

§745.9067. May someone who does not meet minimum qualifications help me conduct a pre-adoptive home screening or a post-placement adoptive report?

(a) If you are conducting an independent pre-adoptive home screening or an independent post-placement adoptive report, a person with a bachelor's degree from an accredited college or university may help you.

(b) All persons involved in interviewing, studying, reviewing, or approving a screening or report must have or be provided all relevant information regarding the screening or report.

(c) A person meeting the qualifications required in §745.9065 of this title (relating to What qualifications must I meet to evaluate and approve a finalized independent pre- adoptive home screening or independent post-placement adoptive report?) must complete the evaluation, approve the finalized home screening or adoptive report by signing it, and be accountable for it.

§745.9069. What information must be included in the pre-adoptive home screening?

You must obtain, document, and assess the following information about a prospective adoptive home:

Figure: 40 TAC §745.9069

§745.9071. How do I obtain a criminal history or central registry background check for an independent pre-adoptive home screening or independent post-placement adoptive report?

(a) You obtain a criminal history check from the Texas Department of Public Safety and, if appropriate, the Federal Bureau of Investigation (FBI).

(b) You obtain a central registry background check from us; contact our local branch office.

§745.9073. Whom must I interview when conducting a pre-adoptive home screening or a post-placement adoptive report?

Interviews for an adoptive home screening must include at least one:

(1) Individual interview with each prospective adoptive parent;

(2) Individual interview with each child three years or older living in the home either full or part time;

(3) Individual interview with any other person living full or part time with the family;

(4) Joint interview with the adoptive applicants;

(5) Family group interview with family members living in the home; and

(6) Interview, by telephone, in person or by letter, with any minor child 12 years old or older or adult child of the adoptive applicants not living in the home. If you cannot reach an adult child to interview, you must document your diligent efforts.

§745.9075. What must I document regarding interviews that I conduct for a pre-adoptive home screening or a post-placement adoptive report?

You must document all interviews and attempts to complete interviews. The documentation must be part of the adoptive home record and include:

(1) The dates and methods used to contact the required persons;

(2) The dates of the interviews;

(3) Who was present at the interviews and their relationship to the adoptive applicants; and

(4) A summary of the interviews.

§745.9077. What are the requirements for visiting the home during a pre-adoptive home screening or a post-placement adoptive report?

(a) You must visit the home at least once.

(b) All members of the household must be present for the visit, unless the foster care family that is providing foster care to the child prior to the consummation of the adoption is the family that is adopting the child.

(c) You must document in the record the date, persons present, their relationship to the prospective adoptive family, and observations made during the visit.

§745.9079. What are the additional requirements for a pre-adoptive home screening if adoptive applicants previously adopted a child from a child-placing agency or were previously foster parents for a child-placing agency?

(a) You must request information related to the parents' experience and performance as foster and/or adoptive parents from the child-placing agency and any background information regarding the foster home as described in §749.2447(22) of this title (relating to What information must I obtain for the foster home screening?).

(b) If provided, you must evaluate the information as part of your screening and placement decisions regarding the home. You must use the information to evaluate the family's ability to work with specific kinds of behaviors and backgrounds.

§745.9081. Must the pre-adoptive home screening include information about birth parents?

You must obtain the following information about the birth parents:

(1) Their expectations for adoptive placement, if they chose placement; and

(2) The degree and type of involvement they desire with the adoptive family.

§745.9083. How do I obtain information about the birth parents?

If you are conducting an independent pre-adoptive home screening, you must make a diligent effort to obtain the information from the birth parents unless their parental rights have been terminated. Document in the pre-adoptive home screening all your efforts to obtain the information.

If appropriate, include reasons why you could not obtain the information.

§745.9085. What happens if a child is not placed with the adoptive applicants within six months after the pre-adoptive home screening has been completed?

For a child not placed with the adoptive applicants within six months after the completion of the adoptive screening, it is recommended that an updated screening be completed within the 30-day period before a child is placed in the home. The court that is hearing the adoption suit should make the final decision on whether an update is required.

§745.9087. Must I complete a pre-adoptive home screening update if the prospective adoptive parents plan to adopt another child?

Yes. If prospective adoptive parents plan to adopt another child, either in addition to or instead of the child for whom the screening was done, you must complete a written pre-adoptive home screening update.

§745.9089. What information must an update of the pre-adoptive home screening include?

It must include:

(1) A review and any necessary updating of each category of information in the pre- adoptive home screening (See §745.9069 of this title (relating to What information must be included in the pre-adoptive home screening?)); and

(2) Documentation of at least one visit to the adoptive home, including who was present during the visit. This visit should be within the 30-day period before a child is placed in the home.

§745.9091. When must I conduct a post-placement adoptive report?

You must conduct the interviews for a post-placement adoptive report after the child has resided with the prospective adoptive parent or conservator for at least five months, unless otherwise directed by the court. However, you may start the post-placement adoptive report, such as the gathering of written information, after the placement of the child.

§745.9093. What are the requirements for registration regarding a post-placement adoptive report?

Unless the Department of Family and Protective Services (DFPS) is a party to the case, you must complete and notarize a DFPS Post-Placement Adoptive Report Registration form and file this form with the appropriate court(s).

§745.9095. What issues must an interview for a post-placement adoptive report address?

Each interview must focus on the adjustment of the family and the child following the placement of the child. You must also address any items required by §745.9061 of this title (relating to What is a pre-adoptive home screening?) and §745.9069 of this title (relating to What information must be included in the pre-adoptive home screening?) that have not been adequately addressed.

§749.9097. What information must the post-placement adoptive report include?

(a) It must include the following documented information:

(1) A summary of all assessments and available information about the child who is the subject of a petition for adoption, including:

(A) Health history, social history, educational history, genetic and family history, and other information required by the Texas Family Code, §162.005 and §162.007;

(B) History of physical, sexual, or emotional abuse experienced by the child;

(C) History of any previous placements, including the date and reasons for placement;

(D) The child's understanding of adoptive placement or conservatorship; and

(E) The child's legal status;

(2) A summary of all assessments, interviews, and available information about the prospective adoptive parents including:

(A) The pre-adoptive home screening (see §745.9061 of this title (relating to What is a pre-adoptive home screening?) and §745.9069 of this title (relating to What information must be included in the pre-adoptive home screening?));

(B) The birth parents' expectations for adoptive placement and further involvement (see §745.9081 of this title (relating to Must the pre-adoptive home screening include information about birth parents?));

(C) Individual strengths and weaknesses of the adoptive parents;

(D) Observations made relative to the family's interactions with each other;

(E) Interviews of persons specified in §745.9073 of this title (relating to Whom must I interview when conducting a pre-adoptive home screening or a post-placement adoptive report?); and

(F) A visit to the home (see §745.9077 of this title (relating to What are the requirements for visiting the home during a pre-adoptive home screening or a post- placement adoptive report?));

(3) An evaluation of the child's present or prospective physical, intellectual, social, and psychological functioning and needs, and whether the environment will meet those needs;

(4) A summary of the adjustment of the family and child in the home during the six- month placement period, if appropriate;

(5) Sources of information and verification, to the extent possible, of all statements of fact pertinent to the report;

(6) The basis for your conclusions or recommendations; and

(7) The names and the qualifications of all persons involved in the preparation and evaluation of the report.

(b) All persons involved in the preparation and evaluation of the study must sign the report.

§745.9099. What ethical requirements must I follow when conducting a pre-adoptive home screening, or a post-placement adoptive report?

(a) You must not have a conflict of interest with any party in a disputed suit. You must not allow any previous knowledge of any party that was not exclusively obtained through a home screening or adoptive report to bias you. You must disqualify yourself if a conflict or bias exists. You must present any issues or concerns relating to such a conflict or bias to the court before you accept an appointment. However, unless the court finds you biased, you may conduct subsequent reports in a case you have previously screened.

(b) You must report to us any foster or adoptive placement that appears to have been made by someone other than the child's parents or a child-placing agency.

(c) If you have investigated only one side of a disputed case, you may state whether the party you investigated appears to be suitable for custody. You must refrain from making a custody recommendation, unless otherwise directed by the court.

(d) You must include telephone numbers for entities where it is appropriate for the subject of the report to file complaints about how the post-adoptive placement report was conducted (see §745.9100 of this title (relating to Whom must I contact with a complaint about how an independent pre-adoptive home screening or independent post-placement adoptive report was conducted?)).

§745.9100. Whom must I contact with a complaint about how an independent pre-adoptive home screening or independent post-placement adoptive report was conducted?

You, or if applicable your attorney, must contact the court that ordered the pre-adoptive home screening or post-placement adoptive report. You may also contact the board that licenses the person who conducted the home screening or adoptive report, and/or us. Before conducting the pre-adoptive home screening or post-placement adoptive report, the person must give you telephone numbers for other entities where it is appropriate to file complaints, which must also be included in the pre-adoptive home screening and post-placement adoptive report.

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

Filed with the Office of the Secretary of State on May 3, 2006.

TRD-200602472
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 18, 2006
For further information, please call: (512) 438-3437

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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 the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

CHAPTER 183. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT GOVERNING BOARD INVESTMENT POLICY

10 TAC §§183.1 - 183.9

The Office of the Governor, Economic Development and Tourism Division (Office), formerly the Texas Department of Economic Development (Department), adopts the repeal of Chapter 183, §§183.1 - 183.9, setting forth rules of the Texas Department of Economic Development Governing Board Investment Policy. The repeal is adopted without changes to the proposal as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2779).

The rules are being repealed because Senate Bill 275 of the 78th Legislature abolished the Department and transferred its functions to the Office. New rules will be adopted. New rules are needed because the administration of the Texas Small Business Industrial Development Corporation (TSBIDC) and the Texas Public Facilities Capital Access Program (TEXCAP) (collectively the "Program") transferred from the Department to the Office and bond proceeds can be invested under the Program.

No comments were received regarding the proposed repeal.

The repeal is adopted under the Texas Government Code, §481.005(d), which authorizes the executive director of the Office to adopt rules for programs administered by the Office, and the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies. Texas Government Code, Chapter 481, creating the Office, Texas Government Code, Chapter 489, creating the Economic Development Bank within the Office, and Vernon's Texas Civil Statutes, Article 5190.6 are affected by the repeal.

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 May 2, 2006.

TRD-200602435

Tracye McDaniel
Executive Director
Office of the Governor, Economic Development and Tourism Division
Effective date: May 24, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 936-0501

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CHAPTER 183. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION INVESTMENT POLICY

10 TAC §§183.1 - 183.10

The Office of the Governor, Economic Development and Tourism Division (Office), formerly the Texas Department of Economic Development (Department), adopts new Chapter 183, §§183.1 - 183.10, setting forth rules of the Office of the Governor, Economic Development and Tourism Division Investment Policy. The rules are adopted without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2780).

The new rules are being adopted because Senate Bill 275 of the 78th Legislature abolished the Department and transferred its functions to the Office of the Governor. The rules are needed because the administration of the Texas Small Business Industrial Development Corporation (TSBIDC) and the Texas Public Facilities Capital Access Program (TEXCAP) (collectively the "Program") transferred from the Department to the Office and bond proceeds can be invested under the Program.

Section 183.1 sets forth the statutory authority for the rules.

Section 183.2 sets forth the policy and priorities for investments under the Program.

Section 183.3 sets forth the scope of the rules.

Section 183.4 sets forth the prudent person standard for investments.

Section 183.5 sets forth limitations and objectives for investments and a strategy for ensuring that there will be adequate funds for a self-supporting program.

Section 183.6 delegates the authority to invest Program funds to the Economic Development Bank and to the investment officer.

Section 183.7 sets forth training requirements for board members and the investment officer.

Section 183.8 provides for investment of funds through authorized dealers.

Section 183.9 provides that the investments authorized by statute and by the trust indenture governing the bond issue are eligible investments under the Program.

Section 183.10 provides that the Economic Development Bank and the investment officer will establish investment procedures.

No comments were received regarding the proposed rules.

The rules are adopted under the Texas Government Code, §481.005(d), which authorizes the executive director of the Office to adopt rules for programs administered by the Office, and the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies. Texas Government Code, Chapter 481, creating the Office, Texas Government Code, Chapter 489, creating the Economic Development Bank within the Office, and Vernon's Texas Civil Statutes, Article 5190.6 are affected by the rules.

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 May 4, 2006.

TRD-200602502
Tracye McDaniel
Executive Director
Office of the Governor, Economic Development and Tourism Division
Effective date: May 24, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 936-0501

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

19 TAC §101.25

The State Board of Education (SBOE) adopts an amendment to §101.25, concerning student assessment. The amendment is adopted without changes to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1583) and will not be republished. Section 101.25 addresses scheduling the administration of tests. The adopted amendment prohibits participation in University Interscholastic League (UIL) activities during the primary administration of statewide assessments.

Senate Bill 658 passed by the 79th Texas Legislature, 2005, added Texas Education Code (TEC), §33.0812, which requires the SBOE by rule to prohibit participation in a UIL area, regional, or state competition during the school week in which the primary administration of assessment instruments under TEC, §39.023(a), (c), or (l) occurs. Currently, 19 TAC §101.25 establishes provisions relating to scheduling and administering tests. The adopted amendment to 19 TAC §101.25 adds subsection (d) relating to prohibition of participation in UIL activities to comply with this legislation.

Senate Bill 658 also requires the commissioner of education to adopt rules to provide the UIL with a periodic calendar of dates reserved for testing for their planning purposes. The commissioner has adopted rules to provide this periodic calendar of dates at least every three years on or before May 1 of the year preceding the three-year cycle. The commissioner has also, as required by this legislation, adopted rules to determine the school week during the school year in which the primary administration of assessment instruments will occur; establish procedures for changing, in exceptional circumstances, testing dates reserved under the testing calendar; and establish criteria for determining whether a UIL competition must be canceled if the event conflicts with a changed testing date.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than September 1, 2006, in order to implement the latest policy in a timely manner. The effective date of the adopted amendment is 20 days after filing as adopted.

The following comment was received regarding adoption of the amendment.

Comment. The superintendent of the Sinton Independent School District inquired whether the proposed amendment would apply to FFA, FHA, and/or 4-H participation in livestock shows.

Response. The SBOE took action to adopt the amendment as published as proposed. Senate Bill 658 only prohibits participation in UIL area, regional, or state competitions during the week of testing and therefore does not prohibit participation in FFA, FHA, or 4-H events.

The amendment is adopted under the Texas Education Code, §33.0812, which requires the SBOE by rule to prohibit participation in a UIL area, regional, or state competition during the school week in which the primary administration of assessment instruments occurs.

The amendment implements the Texas Education Code, §33.0812.

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 May 8, 2006.

TRD-200602540
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: May 28, 2006
Proposal publication date: March 10, 2006
For further information, please call: (512) 475-1497

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CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER A. GRANTS

19 TAC §102.1

The State Board of Education (SBOE) adopts new §102.1, concerning the State Engineering and Science Recruitment Fund (SENSR) grant program. The new section is adopted without changes to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1584) and will not be republished. The adopted new section establishes provisions for

the SENSR grant program relating to administration, allocation, application, use and audit of funds, and evaluation. Texas Education Code (TEC), §51.603 and §51.605, authorizes the SBOE to adopt rules establishing procedures by which an entity must apply for funding and account for any funds received. The TEC also requires the commissioner of education to administer and allocate the fund in accordance with SBOE rules.

The State Engineering and Science Recruitment Fund was created by the 70th Texas Legislature, 1987, through the TEC, Title 3, Higher Education, Chapter 51, Provisions Generally Applicable to Higher Education, Subchapter M, Engineering and Science Recruitment Fund. The SENSR grant has been administered by the Texas Education Agency (TEA), in collaboration with the Texas Higher Education Coordinating Board, through a request for application (RFA) for several years. Statute requires the SBOE to adopt rules for administration of the grant.

The adopted action establishes in SBOE rule the procedures by which an entity must apply for funding and account for any funds received. The adopted new rule establishes provisions relating to administration, allocation, application, use and audit of funds, and evaluation. The adopted new rule reflects the process that has been used to administer the SENSR grant program.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of more than two-thirds of its members to specify an effective date earlier than September 1, 2006, in order for the new rule to be in effect during the 2005-2006 school year. The effective date of the adopted amendment is 20 days after filing as adopted.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Education Code, §51.603, which authorizes the SBOE to adopt rules for the administration of the engineering and science recruitment fund and the TEC, §51.605, which authorizes the SBOE to adopt rules establishing procedures by which an entity must apply for funding and account for any funds received. The TEC also requires the commissioner of education to administer and allocate the fund in accordance with SBOE rules.

The new section implements the Texas Education Code, §§51.601 - 51.606, and 51.608.

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 May 8, 2006.

TRD-200602541
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: May 28, 2006
Proposal publication date: March 10, 2006
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.64

The Texas Real Estate Commission (TREC) adopts amendments to §535.64 concerning Accreditation of Schools and Approval of Courses and Instructors without changes to the proposed text and form as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1404) and will not be republished. Section 535.64(g)(7) adopts by reference Form Ed 7-1 Instructor Manual Guidelines For Core Real Estate And Real Estate Related Courses. The amendments add to the rule a cite to the TREC website to download the form, and change the cites in the form to the relevant statutory provisions of Chapter 1101, Texas Occupations Code.

The reasoned justification for the amendments is to update the Instructor Manual for style and clarity and to remove obsolete sections.

No comments were received regarding the rule as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2006.

TRD-200602499
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: May 24, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 465-3900

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SUBCHAPTER I. LICENSES

22 TAC §535.91, §535.92

The Texas Real Estate Commission (TREC) adopts amendments to §535.91 concerning Renewal Notices and §535.92 concerning Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements without changes to the proposed text as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1404) and will not be republished. The amendments to §535.91 change the name of the "renewal application form" to "renewal notice" to make it clear that the commission will be notifying real estate salespersons and brokers of renewal requirements with a notice rather than with a form. The amendments to §535.91 also delete the subsec-

tion that adopts by reference the renewal application form as the form will no longer be used to renew a license. Before amendment, the rule required licensees to return the form to the commission with the required fee to renew a license. Once effective, the rule will require the commission to notify licensees about renewals with a postcard that contains substantially the same information that is currently on the renewal application form.

Under the revisions to §535.92, all licensees will be required to renew online at the commission website with an appropriate payment method. All information required of the licensee to renew the license may be entered online. Before amendment, licensees had the option of renewing online or by mail. According to the amendments, if a licensee is unable to renew online, they can obtain a renewal form by contacting the commission and a form will be mailed to them or they will be given directions on how to download a form from the TREC website.

The commission will continue to notify licensees of the renewal requirements three months before the expiration of the current license. The commission will also continue to notify licensees subject to Mandatory Continuing Education (MCE) of the hours the licensee has completed and the hours that are required for an active renewal.

The reasoned justification for the amendments is to save costs associated with mailing renewal notices and to meet statewide performance measures associated with online renewals required of all similarly situated licensing agencies.

No comments were received regarding the rule as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2006.

TRD-200602500
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: July 1, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 465-3910

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SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.144

The Texas Real Estate Commission (TREC) adopts amendments to §535.144 concerning When Acquiring or Disposing of Own Property without changes to the proposed text as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1406) and will not be republished. The amendments are adopted to implement revisions to Texas Occupations Code, Chapter 1101 enacted during the 79th Legislative Session, Regular Session, by Senate Bill 810 (2005).

In part, Senate Bill 810 revised §1101.652(a)(3), Texas Occupations Code, to authorize the commission to take disciplinary action against a licensee if the licensee engages in misrepresentation or fraud when selling, buying, trading, or leasing real property in the name of the license holder's spouse or a person related to the license holder within the first degree by consanguinity. Prior to September 1, 2005, §1101.652(a)(3) applied only when a license holder engaged in misrepresentation or fraud when acting in his or her own name. Before adoption of the amendments, §535.144, which is based on §1101.652(a)(3), required a licensee to disclose in writing that he or she is a real estate salesperson or broker acting on his or her own behalf. The amendments to §535.144 define "first degree of consanguinity" to mean a child or parent of the licensee; and require a similar written disclosure when a licensee buys, sells, trades, or leases real property in the name of the licensee's spouse, child or parent.

The reasoned justification for the amendments is to conform existing rules to recent statutory revisions.

No comments were received regarding the rule as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2006.

TRD-200602504
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: May 24, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 465-3900

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.210

The Texas Real Estate Commission (TREC) adopts an amendment to §535.210 concerning Fees without changes to the proposed text as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1406) and will not be republished. The amendment is adopted to implement revisions to Texas Occupations Code, Chapter 1102 enacted during the 79th Legislative Session, Regular Session (2005), by Senate Bill 810. Chapter 1102 was revised to require licensing and renewal of corpora-

tions and limited liability companies that engage in professional home inspecting for buyers and sellers in Texas.

The amendment to §535.210 adds a $5 fee to be charged to corporations and limited liability companies licensed as Texas professional inspectors for the annual renewal of the license. Given that the home inspector license renewal period will change to a 2-year cycle in July, 2006, the total amount due for each renewal is $10 to parallel an existing $10 application fee for those business entity licenses.

The reasoned justification for the amendment is to conform existing rules to recent statutory revisions.

No comments were received regarding the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by this adoption is Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 4, 2006.

TRD-200602503
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: May 24, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 465-3900

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CHAPTER 539. PROVISIONS OF THE RESIDENTIAL SERVICE COMPANY ACT

SUBCHAPTER H. MISCELLANEOUS FORMS

22 TAC §539.71

The Texas Real Estate Commission (TREC) adopts an amendment to §539.71 concerning Miscellaneous Forms with changes to the proposed text as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1407). The amendment changes the cites in Form RSC 2-3, Residential Service Company Bond to the relevant statutory provisions in Chapter 1303, Texas Occupations Code. House Bill 2813, 77th Legislature (2001), added Chapter 1303, a nonsubstantive codification of The Residential Service Company Act, and repealed Article 6573b, Texas Civil Statutes effective June 1, 2003. The rule as adopted is different from the proposed rule in that it deletes a reference to a specific date of adoption.

The revision to the rule as adopted does not change the nature or scope so much that it could be deemed a different rule. The rule as adopted does not affect individuals other than those contemplated by the rule as proposed. The rule as adopted does not impose more onerous requirements than the proposed version and does not materially alter the issues raised in the proposed rule.

The reasoned justification for the amendment is to conform existing rules to recent statutory revisions.

No comments were received regarding the rule as proposed.

The amendment is adopted under Texas Occupations Code, §1303.051, which authorizes the Texas Real Estate Commission to adopt and enforce rules and regulations necessary to implement Chapter 1303.

The statute affected by this adoption is Texas Occupations Code, Chapter 1303. No other statute, code or article is affected by the adopted amendment.

§539.71. Miscellaneous Forms.

The Texas Real Estate Commission adopts by reference the following forms approved by the commission. These forms are published and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(1) Residential Service Company Bond, Form RSC 2-3; and

(2) Application to Approve Evidence of Coverage/Schedule of Charges, Form RSC 3-1.

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 May 4, 2006.

TRD-200602505
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: May 24, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. TEXAS BOARD OF HEALTH

SUBCHAPTER A. PROCEDURES AND POLICIES

25 TAC §§1.1, 1.3 - 1.8

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) adopts the repeal of §§1.1 and 1.3 - 1.8, concerning procedures and policies of the Texas Board of Health (board) without changes to the proposed text that was published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1408), and the sections will not be published.

BACKGROUND AND PURPOSE

The repeal is necessary to comply with Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §1.18 and §1.26, which abolished the Texas Department of Health and the

board, effective September 1, 2004. Repeal of these sections is necessary to align the department's rules more accurately with House Bill 2292.

The rules and this Proposed Preamble were previously published as proposed in the *Texas Register* but expired on November 10, 2005 before final adoption and publication occurred. The department reproposed the repeals for publication, and the Executive Commissioner of the Health and Human Services Commission approved the reproposal on February 14, 2006. The reproposal was published in the March 3, 2006, issue of the *Texas Register* for a 30-day comment period.

SECTION-BY-SECTION SUMMARY

The repeal of §§1.1 and 1.3 - 1.8 is necessary to align the department's rules with the requirements of House Bill 2292 now that the board no longer exists. As part of the repeal of those sections, §1.7(b)(4), concerning the commissioner of health's (now the commissioner of the department, pursuant to House Bill 2292) authority to execute contracts and delegate execution of contracts of greater than $1 million, is unnecessary as a rule because contract execution authority is now under the department's policies and is not required to be stated in a rule.

COMMENTS

The department, on behalf of the Health and Human Services Commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted repeals are authorized by Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §1.18 and §1.26, which abolished the Texas Department of Health and its governing board, the Texas Board of Health, effective September 1, 2004; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies reasonably necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 May 8, 2006.

TRD-200602523
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: May 28, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 458-7111 x6972

CHAPTER 38. CHILDREN WITH SPECIAL HEALTH CARE NEEDS SERVICES PROGRAM

25 TAC §§38.1 - 38.14, 38.16

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts amendments to §§38.1 - 38.14 and 38.16, concerning the Children with Special Health Care Needs Services Program (CSHCN Services Program). The amendments to §§38.2, 38.4, 38.6, and 38.16 are adopted with changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 55). Sections §§38.1, 38.3, 38.5, and 38.7 - 38.14 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 38.1-38.14 and 38.16 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

The amendments are made in compliance with the Government Code, §2001.039, and they clarify language, correct factual errors, make changes to grammar or syntax, and improve consistency in the rules.

SECTION-BY-SECTION SUMMARY

For uniformity and simplicity, the name of the Children with Special Health Care Needs Services Program has been changed to "CSHCN Services Program" in §§38.1 - 38.14 and 38.16. References to the department's name have been changed from "Texas Department of Health" to "Department of State Health Services," and references to the Board of Health have been deleted. Since the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) and the Civilian Health and Medical Program of the Veterans Administration (CHAMPVA) are no longer identified by these acronyms, these programs will be identified only as "United States Department of Defense or Department of Veterans Affairs benefit plans."

The identification of the CSHCN Services Program Division Director has been changed to "the manager of the department unit having responsibility for oversight of the CSHCN Services Program." The professional designation for "master social worker-advanced clinical practitioner" has been corrected to the current nomenclature, "licensed clinical social worker (LCSW)." The CSHCN Services Program mailing address has been corrected. Minor punctuation, grammar, syntax, and/or spelling changes have also been made.

In addition to the name and other changes, amendments to §38.2 include deletion of the definitions for "advisory committee" and "board" because those entities no longer exist. The definition for "newborn screening" has been deleted, because the term is no longer used in the chapter. A definition for "commission" has been added to identify the Texas Health and Human Services Commission. The definitions have been renumbered to reflect these additions and deletions.

The definition for "applicant" has been amended to be more comprehensive by including individuals who are seeking to establish initial or continuing eligibility as well as to re-establish lapsed eligibility.

The definition for "effective date of eligibility for applicants with spenddown" at §38.2(23)(D) has been amended to clarify that medical bills qualifying to meet "spenddown" requirements must have dates of service 12 months prior to the date of receipt of the application or within 6 months after the date eligibility was previously denied. This change complies with a statutory amendment shortening the financial eligibility period from 12 to 6 months.

The definition of "medical home" has been amended to update the definition and incorporate elements recommended by the American Academy of Pediatrics and the Medical Home Work Group of the CSHCN Services Program. In the definition of "natural home" at §38.2(34), "the eligible person" has been changed to "a person." Eligibility for the CSHCN Services Program has no bearing on this definition.

The definition of "other benefit" at §38.2(36) has been amended to clarify that the intended costs of services are those "included in the scope of coverage of" the CSHCN Services Program. The phrase "but not limited to" has been incorporated in the introductory sentence before the listing of some types of "other benefits." At new §38.2(34)(B), home, auto, and other liability insurance have been added as "other benefits" and subsequent subparagraphs have been renumbered.

The definition for "specialty center" has been amended to clarify that the centers are designated for use "by CSHCN Services Program clients" as part of comprehensive services for a specific medical condition.

In addition to name and other changes identified previously, §38.3 has been amended to change the title of the section from "Eligibility for CSHCN Program Services" to "Eligibility for Services." Section 38.3(a)(1) has been amended to clarify the requirements for a dentist or physician who certifies that a person meets the medical criteria for certification as a "child with special health care needs." The medical criteria certification must be made at least annually and must be based upon a physical examination conducted within the 12 months immediately preceding the date of certification. The certifying physician or dentist must provide not only the diagnosis code, but also the descriptor, and the section has been amended to clarify that the requirement applies to each of the person's medical conditions. These changes are consistent with current CSHCN Services Program instructions for completion of the form that supplies this documentation.

Section 38.3(a)(1) also has been amended to authorize the CSHCN Services Program Medical Director to accept written documentation of medical certification criteria from a physician or dentist licensed to practice in a state or jurisdiction of the United States other than Texas. The individual for whom the subparagraph describes medical criteria eligibility has been changed from "child/applicant" or "applicant" to "person" throughout. Section 38.3(a)(1) also has been amended to clarify that the CSHCN Services Program may not reimburse physicians or dentists for providing written documentation of medical criteria certification, and to reaffirm that only a physician or dentist who is a CSHCN Services Program participating provider may be reimbursed for services.

At §38.3(a)(2), in accordance with requirements of the 79th Texas Legislature in Regular Session (2005), Appropriations Act, DSHS Rider 63, paragraph d, compliance with financial eligibility criteria must be determined "every six months, or as directed by statutory requirements" rather than "annually." Section 38.3(2) also has been amended to delete explanations concerning net income and insurance premium payments in connection with the Children's Health Insurance Program, as they are now both inaccurate and superfluous.

Section 38.3(a)(2)(A) has been amended to make provisions concerning documentation of a family's income and relating to the length of time that financial criteria must be determined consistent with the amendments to §38.3(a)(2).

Section 38.3(a)(2)(B)(i) has been amended to clarify that the subparagraph applies to "an ongoing" client "currently not eligible for Medicaid," to delete "medical condition" as a factor relevant to whether a client must apply to Medicaid, and to replace the reference to "Medicaid, specifically including the Medically Needy program" with "any applicable Medicaid programs."

Section 38.3(a)(2)(B)(ii) has been amended to clarify that its provisions apply to "an ongoing" client.

At §38.3(a)(3)(B), concerning health insurance coverage, the subparagraph has been amended to clarify that both Medicaid and the Children's Health Insurance Program (CHIP) are among the types of health insurance coverage for which an applicant/client must apply and remain eligible, if not exempt from such coverage. Concerning when the program may extend the deadline, the phrase "and/or continue CSHCN program coverage" has been deleted, because it is not relevant to this deadline extension. The subparagraph also has been amended to state that, if the applicant/client is eligible for "any other health insurance" the applicant/client must be enrolled. The subparagraph formerly specified only that the eligible applicant/client must be enrolled in the CHIP.

At §38.3(a)(3)(C), the paragraph has been amended to clarify that its provisions apply to "ongoing clients" and to delete the statement that a family support services plan may not be implemented until the determination of program eligibility is complete. The statement is not relevant to the determination of program eligibility requirements.

Section 38.3(a)(7)(C) has been amended to state more clearly that applicants or clients who are financially eligible for Medicaid, CHIP, or other programs with eligibility income guidelines that meet the CSHCN Services Program's income eligibility guidelines, and who also meet the CSHCN Services Program's age and residency requirements, will be considered financially eligible for the CSHCN Services Program.

Section 38.3(a)(8) has been amended to distinguish between the lengths of time for which financial and medical eligibility may be reestablished. As required by the 79th Texas Legislature in Regular Session (2005), Appropriations Act, SB1, DSHS Rider 63, paragraph (d), financial eligibility must be reestablished "every six months, or as directed by statutory requirements" rather than "at least annually." The determination of medical criteria for eligibility continues to be at least annually. Requirements concerning notification and deadlines for determination of continuing eligibility have been amended, by deleting "annual" so that they are applicable to both financial and medical criteria.

In addition to name and other general changes identified previously, §38.4 has been amended by deleting the phrase "with a chronic physical or developmental condition as specified in §38.3(a)(1) of this title (relating to Eligibility for CSHCN Program Services)" at §38.4(b)(3), because the term "client" is defined in §38.2 of this title (relating to Definitions).

At §38.4(b)(3)(B), the phrase "in a calendar year" has been added to specify the time period within which no more than 30 outpatient mental health service encounters may be provided.

At §38.4(b)(3)(E)(i)(II), regarding inpatient psychiatric care, the phrase "Texas Department of Mental Health and Mental Retardation programs or other" has been deleted and replaced with "public or private mental health program" as a referral resource. In addition, although the requirement that all admissions be prior authorized remains, the five-day limitation on care has been deleted.

Although coverage of medical foods is not a new benefit, coverage for medical foods previously described only in program policy has been added at new §38.4(b)(3)(J). Subsequent subparagraphs have been re-alphabetized.

At §38.4(b)(3)(L)(ii), the benefit limitation of one eye examination with refraction has been clarified by stating that the benefit shall be available during "a calendar" year, rather than during "the state fiscal" year. The same limitation for one pair of non-prosthetic eyewear per year has been applied per "calendar" year at §38.4(b)(3)(L)(iii).

Also, for consistency and clarification, the home health services benefit limitations have been changed from hours per year to hours per "calendar" year at §38.4(b)(3)(Q).

Section 38.4(b)(5)(A)(i), concerning eligibility for family support services, has been deleted as redundant, and subsequent subparagraphs have been renumbered.

At §38.4(b)(5)(A)(ii), a reference to family support programs received through the Texas Department of Human Services or the Texas Department of Mental Health and Mental Retardation has been deleted and replaced with references to the Primary Home Care Program and the Medically Dependent Children's Program, as examples of other family support services programs.

At §38.4(b)(5)(A)(iii), the reference to family "support services plan" has been replaced by a family "assessment and service" plan to describe more accurately the plan that is actually developed.

Also relating to family support services, §38.4(b)(5)(B)(i) concerning the processing and evaluation of requests for family support services has been amended by adding "of clients" to describe the families to which the subparagraph applies, and by deleting the time limit within which a family must indicate in writing the need for family support services. Families of clients now may request family support services at any time.

At §38.4(b)(5)(B)(iv), the descriptor for §38.16 of this title "(relating to Procedures to Address CSHCN Services Program Budget Alignment)" has been added.

Section 38.4(b)(5)(C)(i) and §38.4(b)(5)(C)(vi) also have been amended to replace "written family support services" plan with "family assessment and service" plan.

Section 38.4(b)(5)(C)(ii)(II) and §38.4(b)(5)(C)(iii) have been amended by adding "calendar" to clarify the time period in which the service plan and cost allowance limitations apply.

Section 38.4(b)(5)(C)(iv)(II) has been amended to further define the term "vendor" by adding the descriptor, "enrolled as a CSHCN Services Program provider."

Section 38.4(b)(5)(D)(iii)(V) has been amended by replacing "the Texas Rehabilitation Commission" with "the Department of Assistive and Rehabilitative Services (DARS)."

Section 38.4(b)(5)(E)(ix), concerning unallowable services, has been amended to clarify that costs for allowable services must be incurred before the "requested family support service is prior authorized" rather than before the "written service plan is approved."

At §38.4(b)(5)(F)(iii), the descriptor for §38.16 of this title "(relating to Procedures to Address CSHCN Services Program Budget Alignment)" has been added, and at §38.4(b)(5)(F)(ix), the "written family support services" plan has been changed to the "family assessment and service" plan.

Section 38.4(b)(6)(B), concerning the CSHCN Services Program transportation benefit, has been amended to clarify that the benefit may include transportation "to" as well as "from" the nearest medically appropriate facility. Further description of the facility and benefit has been added by the phrase, "(in Texas or in the United States 50 or fewer miles from the Texas border) to obtain medically necessary and appropriate health care services that are within the scope of the coverage of the CSHCN Services Program and are provided by a CSHCN Services Program enrolled provider." The section also has been clarified by adding that transportation to services available more than 50 miles from the Texas border will not be approved, except as specified in §38.6(e) of this title (relating to Providers).

At §38.4(b)(6)(C), new language clarifies that the benefit for meals and lodging must be directly related to medically necessary treatment for the client "that is provided by program enrolled providers and covered by the program." New language also provides that coverage for meals and lodging associated with travel more than 50 miles from the Texas border will not be approved, except as specified in §38.6(e) of this title (relating to Providers).

Regarding transportation of the remains of a deceased client, §38.4(b)(6)(D)(i) has been amended, by replacing "while receiving CSHCN program services" with "while receiving CSHCN Services Program health care benefits" to describe the applicable circumstances more accurately. The scope of this benefit also has been clarified by adding that such transportation is, "from the facility to the place of burial in Texas that is designated by the parent or other person legally responsible for interment."

Section 38.4(b)(6)(E), concerning payment of insurance premiums, coinsurance, co-payments, and/or deductibles, has been amended by inserting phrases to improve the specifications for payment of coinsurance and deductible amounts when the total amount paid "(including all payers)" to the provider does not exceed the maximum allowed "by the CSHCN Services Program" for the covered service.

Section 38.4(c)(5) has been amended to clarify that, although pregnancy prevention in general is not a covered service, an exception exists for the specific treatment of "a condition meeting the parameters of the "child with special health care needs" definition."

Section 38.4(c)(6) has been amended to define more specifically the scope of the exclusion of "maternity care" as a covered service by addition of the description, "services specific to routine pregnancy care, labor and delivery, and maternal post-partum care."

Section 38.4(c)(7) has been amended to clarify that infertility treatment or other reproductive services are covered, if directly related to "a condition meeting the parameters of the "child with special health care needs" definition."

Section 38.4(d)(2) has been amended to clarify that requests for authorization of certain services must be submitted prior to the date of service.

Section 38.4(d)(4) has been deleted as repetitive, and the subsequent subparagraph has been renumbered.

At §38.4(d)(5), the reference to "ineligible recipients" has been changed to "ineligible persons," and application of the term "denied authorization requests" to those "clients who do not qualify for the health care benefit requested" has been clarified.

In addition to the CSHCN Services Program name change identified previously, §38.5 has been amended at §38.5(a)(4) to include representatives of "the commission or" the department among those whom a parent/foster parent/guardian/managing conservator or the adult client may refuse entry into the home.

Section 38.6(a)(3) has been amended to clarify that providers must agree to accept the CSHCN Services Program "allowed amount of" payment "(regardless of payer)" as payment in full for services "provided to CSHCN Services Program clients." The following sentence also has been added concerning payment for services: "Providers may not request or accept payment from the client or client's family for completing any CSHCN Services Program forms."

Section 38.6(a)(4) has been amended to identify more specifically all other "public or private" benefits available to the client, including "but not limited to" Medicaid or Medicaid waiver programs, CHIP, or Medicare, and "casualty or liability coverage" prior to requesting payment from the CSHCN Services Program, which is the payer of last resort.

Section 38.6(e)(1) has been amended by adding the following phrases to clarify the scope of out-of-state coverage: 50 "or fewer" miles "from the Texas state border" and "the CSHCN Services Program may cover services that are within the scope of the program and provided by health care providers" in New Mexico, Oklahoma, Arkansas, or Louisiana located "50 or fewer miles from" the Texas state border. The last sentence of the current section has been moved and re-designated as new subparagraph 38.6(e)(4).

At §38.6(e)(2), pertaining to travel "more than" 50 miles from the Texas border, the manager of the department unit having responsibility for oversight of the CSHCN Services Program, instead of the commissioner of health, has been authorized to approve payment to out-of-state providers, and coverage has been limited to "services that are within the scope of the CSHCN Services Program and provided by health care providers located within the United States and more than 50 miles from the Texas border." The current §38.6(e)(3) has been deleted and re-designated as new §38.6(e)(2)(B) stating, "the medical literature indicates that the out-of-state treatment is accepted medical practice and is anticipated to improve the client's quality of life" and subsequent subparagraphs have been renumbered.

New §38.6(e)(3) states that the out-of-state limitations do not apply to coverage or payment for selected products or devices including, but not limited to, medical foods or hearing amplification devices, which either are less costly and/or may be available only from out-of-state sources.

Section 38.6(e)(5) has been restated to more clearly and comprehensively describe the coverage for costs of transportation and associated meals and lodging for a client and, if necessary, a responsible adult for travel to and from the location of approved out-of-state services.

Changes to §38.7, relating to Ambulatory Surgical Care Facilities, include only changes to the CSHCN Services Program previously identified.

Section 38.8, relating to Inpatient Rehabilitation Centers, includes only name and minor grammatical changes identified previously, except for the amendment to §38.8(b)(8) stating that a center serving pediatric clients shall have at least one recreational area or playroom "that is bed and wheelchair accessible."

Section 38.9 (relating to Cleft/Craniofacial Center Teams) has been amended only to change the name of the CSHCN Services Program and to make minor grammatical changes. In addition to name and other changes identified previously, §38.10 (relating to Payment of Services) has been amended by adding the following sentence to the introductory paragraph of §38.10: "Providers may not request or accept payment from the client or the client's family for completing any CSHCN Services Program forms."

At §38.10(1)(B), the reference to ineligible "recipients" has been changed to ineligible "persons." The definition of "denied claims" has been expanded by adding "and/or are for clients who do not qualify for the health care benefit claimed."

Section 38.10(2), concerning claims involving health insurance coverage, CHIP or Medicaid, has been amended by stating that the CSHCN Services Program may pay covered health care benefits during a CHIP or other health insurance enrollment waiting period, and that during such periods, providers may file claims directly with the CSHCN Services Program without evidence of denial by the other insurer.

At §38.10(3)(C), "recipient" has been changed to "client."

Section 38.10(6) concerning CSHCN Services Program fee schedules, has been amended by adding, simplifying, or correcting reimbursement or pricing methodologies to reflect current practice. The amendments do not represent increases or decreases in reimbursement to individual provider types. In many instances, the phrase "the lower of the billed amount or the maximum amount allowed by the Texas Medicaid Program" replaces more detailed language that describes the way(s) in which the Medicaid maximum reimbursement amounts were derived.

New §38.10(6)(G) has been added to include a pricing methodology for medical foods. Subsequent subparagraphs have been re-alphabetized throughout the section.

At §38.10(6)(H), the reimbursement methodology for expendable medical supplies has been changed to the lower of the billed amount or the maximum amount allowed by the Texas Medicaid program.

At §38.10(6)(I), current language has been deleted and new language concerning the reimbursement methodology for durable medical equipment has been added to improve accuracy and to reflect current program practice. The penalty for delayed delivery has been deleted.

The reimbursement methodology for orthotics and prosthetics, formerly §38.10(6)(I)(iii), has been re-designated as §38.10(6)(K), and subsequent subparagraphs have been re-alphabetized.

At new §38.10(6)(M), the limitation for home health nursing services has been clarified by stating the maximum allowable number of hours per "calendar" year.

At new §38.10(6)(O), the state reimbursement methodology for audiological testing and amplification devices has been changed to the lower of the billed amount or the amount allowed by the Program for Amplification for Children of Texas (PACT).

At new §38.10(6)(U), "Centers for Medicare and Medicaid Services" has been substituted for the abbreviation "CMS."

At new §38.10(6)(X), the reimbursement methodology for independent laboratory services has been changed to the lower of the billed amount or the maximum allowed by the Texas Medicaid program.

At new §38.10(6)(AA), the reimbursement methodology for vision services has been amended to add an exception for high-powered lenses.

Section 38.11 of this title (relating to Contracts, Written Agreements, and Donations) includes no amendments other than name and general grammatical changes described previously.

Section 38.12 of this title (relating to Denial/Modification/Suspension/ Termination of Eligibility for Health Care Benefits and/or Health Care Benefits) includes no amendments other than name or general grammatical changes described previously.

In addition to name and other general changes described previously, §38.13 of this title (relating to Right of Appeal) has been amended at §38.13(a)(1)(A) to correct citations to other sections. At §38.13(a)(1)(D), the reference to "the department" as the entity that establishes by rule provider reimbursement and the program's budget alignment methodologies has been updated to refer to "the commission." The terms "reimbursement" or "reimbursement methodologies" have been included, replacing "fee schedules" at §38.13(a)(1)(D) because fee schedules are more detailed, frequently-updated lists that evolve from stated reimbursement methodologies.

There are no additional amendments to §38.14 of this title (relating to Development and Improvement of Standards and Services) other than name or general grammatical changes described previously.

Section 38.16(c)(3) has been amended to clarify that provision of "health care benefits" may "or may not include "coverage" rather than "payment" of outstanding bills in all cases.

At §38.16(c)(4), the process for providing limited health care benefits and/or payment of outstanding bills for health care benefits to as many clients with urgent need for health care benefits as possible who are on the waiting list and remain on the waiting list has been amended by adding the requirement that if family support services are included among limited health care benefits provided for clients with urgent need for health care benefits who are on the waiting list and remain on the waiting list, the coverage of family support services must be limited according to the parameters set forth in §38.16(b)(2)(C)(i). Those parameters require that family support services be provided to ongoing clients only to continue services already being provided, when the specific services are required to prevent out-of-home placement of the client, and/or when the provision of such services is cost-effective for the program.

At §38.16(d), the phrase "as described in subsection (a)(2) of this section" concerning funding analysis, has been deleted.

Section 38.16(d)(1)(A)(iii) and §38.16(d)(1)(A)(iv), concerning the order in which groups of clients shall be taken off the waiting list, have been deleted because they present administrative obstacles to implementation of §38.16(d) as a whole, and deletion causes neither favorable or adverse consequences for clients to whom the sections were applicable. Sections 38.16(d)(1)(A)(v) and 38.16(d)(1)(A)(vi) have been renumbered as §38.16(d)(1)(A)(iii) and §38.16(d)(1)(A)(iv).

Section 38.16(d)(1)(B)(i) and §38.16(d)(1)(B)(ii), concerning providing health care benefits for clients taken off the waiting list, have been deleted as superfluous because §38.16(d)(1)(B) also has been amended by addition of the phrase "as long as program unobligated funds are available" and the rule addressed at §38.16(d)(1)(B)(ii) repeats §38.16(c)(3)(B).

Section 38.16(d)(1)(C) has been amended to authorize payment of limited health care benefits for "clients who are on the waiting list and remain on the waiting list;" payment of outstanding bills for health care benefits for clients who are on the waiting list and remain on the waiting list; and/or "payment of outstanding bills for health care benefits for clients who have been taken off the waiting list." Consistent with changes to §38.16(c)(4), coverage of family support services must be limited according to the parameters set forth in §38.16(b)(2)(C)(i), if family support services are included among limited health care benefits. The requirement that clients on the waiting list be served in the same order as in paragraph (1) of the subsection and the limitation that only clients on the waiting list may be served by this provision have been deleted, and the reference to paragraphs (1) - (2) has been corrected.

Section 38.16(d)(1) has been amended to enable the program to expend unobligated funds after or while removing clients from the waiting list and providing them with health care benefits; only when projected unobligated funds are insufficient to take clients off the waiting list and also to maintain continuous program health care benefits, or when projected unobligated funds may lapse if not expended by the end of the fiscal year; only as long as program unobligated funds are available; and only if the outstanding bills for health care benefits are for dates of service that are within the time period that program unobligated funds are available and provided that the client is eligible for health care benefits at the time of the dates of service. The new language improves administrative efficiency and permits needed flexibility to expend unobligated funds near the end of a budget term.

At §38.16(d)(2)(B), the parenthetical phrase describing health care benefits has been amended by clarifying that "coverage" rather than "payment" of outstanding bills for health care benefits may "or may not" be included. "Or" at the end of §38.16(d)(2)(B) has been deleted as grammatically unnecessary.

Section 38.16(d)(2)(C) has been amended to be consistent with §38.16(d)(1)(C), as amended, and to provide limited health care benefits to clients "identified in subsection (d)(2)(A)(i) and (ii) who are on the waiting list and remain on the waiting list;" and/or "payment of outstanding bills for health care benefits for clients who have been taken off the waiting list." Section 38.16(d)(2)(C) has also been amended by the addition of a sentence providing that the coverage of family support services must be limited according to the parameters set forth in §38.16(b)(2)(C)(i) if family support services are included among limited health care benefits.

Consistent with the requirements of §38.16(d)(1)(C), as amended, §38.16(d)(2)(C) has been amended by deletion of the requirement that clients on the waiting list be served in the same order as in paragraph (2)(A) of the subsection and the limitation that only clients on the waiting list may be served. These amendments make §38.16(d)(2) consistent with other

sections, as amended, and increase the efficiency and flexibility with which the program may expend unobligated funds resulting from program cost savings near the end of a budget term.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was the President of the Texas Pediatric Society, representing the members and on behalf of the Committee on Children with Disabilities. The commenter was not against the rules in their entirety; however, the commenter suggested recommendations for change as discussed in the summary of comments.

Comment: The Texas Pediatric Society (Society) recommended several changes to §38.14, concerning Development and Improvement of Standards and Services. In the section introduction paragraph and at paragraphs §38.14(1)(A) - (C), (3), and (6), the Society recommended changing the verbs from "may" to "shall." Generally, these paragraphs address a system of program evaluation, and specifically include monitoring for quality, medical necessity and effectiveness of services; developing standards and guidelines for services; conducting reviews for client care services and quality assurance reviews for provider services; establishing a task force to advise the CSHCN Services Program; and conducting population-based systems development activities.

Concerning §38.14(1), the Society recommended an additional sentence to require that the system of monitoring, "be done annually and results and analysis made generally available."

Concerning §38.14(3), the Society recommended that the task force advise the CSHCN Services Program about its quality assurance program, including its elements, data collection methodology, and data analysis, and make recommendations for consequent programmatic change. The Society further recommended that the task force include representation from stakeholder groups, including clients/families and providers, and that other task forces be established as appropriate.

Response: The commission finds merit in and appreciates the intent of the recommendations made by the Society, but the commission respectfully disagrees that the changes are needed. The current rule permits implementation of the activities proposed by the recommended changes. The department conducts activities for the development and improvement of standards and services consistent with state and federal law. No changes were made as a result of the recommendations.

The department staff on behalf of the commission provided comments, and the commission has reviewed and accepted the following changes that improve accuracy of the sections.

Change: Concerning §38.2(30), in the definition of a health insurance/health benefits plan, the words "publicly supported" have been added to modify "medical school", to make the definition parallel with the language in §38.2(34)(G) that defines "other benefits."

Change: Concerning §38.2(34)(G), in the definition of other benefit, "a county indigent health care program," has been added to make the definition parallel with the language in §38.2(30) that defines a health insurance/health benefits plan.

Change: Concerning §38.2(46), a grammatical error was corrected by making "meets" plural.

Change: Concerning §38.4(b)(3)(C), in order to reflect long-standing program policy, the words "must be prior authorized and" have been added concerning the provision of orthodontic care. Also, the term "dentofacial abnormalities" has been added to describe more fully diagnoses for which orthodontic care may be provided.

Change: Concerning §38.4(b)(6)(D)(i), the word "participating" has been changed to "approved" to describe a facility in which a CSHCN Services Program client expires in order to make the subparagraph consistent with the statute.

Change: Concerning §38.4(c)(6), the word "and" at the end of the paragraph has been deleted to accommodate the addition of new paragraphs (8) and (9) of this section.

Change: Concerning §38.4(c)(7), punctuation has been changed, and the words "or other reproductive services, unless directly related to a condition meeting the parameters of the "child with special health care needs" definition" have been deleted.

Change: Concerning §38.4(c), new paragraph (8), "services provided by a nursing home/facility; and" has been added to incorporate current program policy into rule.

Change: Concerning §38.4(c), new paragraph (9), "services provided while the client is in the custody of or incarcerated by any municipal, county, state, or federal governmental entity. Case management or prior approved family support services not provided by the governmental entity, that are needed during the time when a client is transitioning from custody or incarceration into a community living setting, may be covered" also has been added to incorporate program policy into rule.

Change: Concerning §38.4(d)(1), the deadline for submitting an authorization request has been changed from "90" to "95" days, in order to make it consistent with other deadlines.

Change: Concerning §38.6(e)(5), the first sentence has been corrected, replacing "above" with "in this subsection" to conform with *Texas Register* format.

Change: Concerning §38.16(d)(1)(C), the reference to "paragraph (b)(2)(C)(i)" in the second full sentence has been changed to "subsection (b)(2)(C)(i)" to conform with *Texas Register* format.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies" legal authority.

STATUTORY AUTHORITY

The amendments are adopted under the Health and Safety Code, §§35.003, 35.004, 35.0041, 35.005, 35.006, 35.007, 35.009, and 12.001, which authorize the executive commissioner of the Health and Human Services Commission to adopt rules for the performance of every duty imposed by law on the department and the commissioner of health; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the executive commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§38.2. Definitions.

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

(1) Act--The Children with Special Health Care Needs Services Act, Health and Safety Code, Chapter 35.

(2) Advanced practice nurse--A registered nurse approved by the Texas Board of Nurse Examiners to practice as an advanced practice nurse, including but not limited to a nurse practitioner, nurse anesthetist, or clinical nurse specialist.

(3) Applicant--A person making an initial application or re-application for CSHCN Services Program services.

(4) Bona fide resident--A person who:

(A) is physically present within the geographic boundaries of the state;

(B) has an intent to remain within the state;

(C) maintains an abode within the state (i.e., house or apartment, not merely a post office box);

(D) has not come to Texas from another country for the purpose of obtaining medical care, with the intent to return to the person's native country;

(E) does not claim residency in any other state or country; and

(i) is a minor child residing in Texas whose parent(s), managing conservator, guardian of the child's person, or caretaker (with whom the child consistently resides and plans to continue to reside) is a bona fide resident;

(ii) is a person residing in Texas who is the legally dependent spouse of a bona fide resident; or

(iii) is an adult residing in Texas, including an adult whose parent(s), managing conservator, guardian of the adult's person, or caretaker (with whom the adult consistently resides and plans to continue to reside) is a bona fide resident or who is his/her own guardian.

(5) Case management services--Case management services include, but are not limited to:

(A) planning, accessing, and coordinating needed health care and related services for children with special health care needs and their families. Case management services are performed in partnership with the child, the child's family, providers, and others involved in the care of the child and are performed as needed to help improve the well-being of the child and the child's family; and

(B) counseling for the child and the child's family about measures to prevent the transmission of AIDS or HIV and the availability in the geographic area of any appropriate health care services, such as mental health care, psychological health care, and social and support services.

(6) Child with special health care needs--A person who:

(A) is younger than 21 years of age and who has a chronic physical or developmental condition; or

(B) has cystic fibrosis, regardless of the person's age; and

(C) may have a behavioral or emotional condition that accompanies the person's physical or developmental condition. The term does not include a person who has behavioral or emotional condition without having an accompanying physical or developmental condition.

(7) CHIP--The Children's Health Insurance Program administered by the Texas Health and Human Services Commission under Title XXI of the Social Security Act.

(8) Chronic developmental condition--A disability manifested during the developmental period for a child with special health care needs which results in impaired intellectual functioning or deficiencies in essential skills, which is expected to continue for a period longer than one year, and which causes a person to need assistance in the major activities of daily living and/or in meeting personal care needs. For the purpose of this chapter, a chronic developmental condition must include physical manifestations and may not be solely a delay in intellectual, mental, behavioral and/or emotional development.

(9) Chronic physical condition--A disease or disabling condition of the body, of a bodily tissue or of an organ which will last or is expected to last for at least 12 months; that results, or without treatment, may result in limits to one or more major life activities; and that requires health and related services of a type or amount beyond those required by children generally. Such a condition may exist with accompanying developmental, mental, behavioral, or emotional conditions, but is not solely a delay in intellectual development or solely a mental, behavioral and/or emotional condition.

(10) Claim form--The document approved by the CSHCN Services Program for submitting the unpaid claim for processing and payment.

(11) Client--A person who has applied for program services and who meets all CSHCN Services Program eligibility requirements and is determined to be eligible for program services.

(A) New client:

(i) a person who has applied to the program for the first time and who is determined to be eligible for program services; or

(ii) a person who has re-applied to the program (after a lapse in eligibility) and who is determined to be eligible for program services.

(B) Ongoing client--A client who currently is not on the program's waiting list.

(C) Waiting list client--A client who currently is on the program's waiting list.

(12) Commission--The Texas Health and Human Services Commission.

(13) Commissioner--The Commissioner of Health.

(14) Co-insurance--A cost-sharing arrangement in which a covered person pays a specified percentage of the charge for a covered service. The covered person may be responsible for payment at the time the health care service is provided.

(15) Co-pay/Co-payment--A cost-sharing arrangement in which a client pays a specified charge for a specified service. The client is usually responsible for payment at the time the health care service is provided.

(16) CSHCN Services Program --The services program for children with special health care needs described in §38.1 of this title (relating to Purpose and Common Name).

(17) Date of service (DOS)--The date a service is provided.

(18) Deductible--A cost-sharing arrangement in which a client is responsible for paying a specific amount annually for covered services before an insurance carrier or plan begins to pay for covered services.

(19) Dentist--An individual licensed by the State Board of Dental Examiners to practice dentistry in the State of Texas.

(20) Department--The Department of State Health Services.

(21) Diagnosis and evaluation services--The process of performing specialized examinations, tests, and/or procedures to determine whether a CSHCN Services Program applicant for health care benefits has a chronic physical or developmental condition as determined by a physician or dentist participating in the CSHCN Services Program and/or to help determine whether a waiting list client has an "urgent need for health care benefits", according to the criteria and protocol described in §38.16(e) of this title (relating to Procedures to Address CSHCN Services Program Budget Alignment).

(22) Eligibility date for the CSHCN Services Program health care benefits--The effective date of eligibility for the CSHCN Services Program health care benefits is 15 days prior to the date of receipt of the application, except in the following circumstances.

(A) The effective date of eligibility for newborns who are not born prematurely will be the date of birth. Newborn means a child 30 days old or younger.

(B) The effective date of eligibility following traumatic injury will be the day after the acute phase of treatment ends, but no earlier than 15 days prior to the date of receipt of the application.

(C) The effective date of eligibility for an applicant that is born prematurely will be the day after the applicant has been out of the hospital for 14 consecutive days, but no earlier than 15 days prior to the date of receipt of the application.

(D) The effective date of eligibility for applicants with spenddown is the day after the earliest DOS on which the cumulative bills are sufficient to meet the spenddown amount, but no earlier than 15 days prior to the date of receipt of the application. Only medical bills having a DOS within 12 months prior to the date of receipt of the application, or a DOS within 6 months after the financial eligibility denial date may be included to satisfy spenddown requirements. Medical bills for any member of the household for which the applicant, parent(s), guardian or managing conservator of the CSHCN Services Program applicant is responsible may be included. Medical bills used to meet spenddown cannot be paid by the CSHCN Services Program.

(E) Excluding applications for clients who are known to be ineligible for Medicaid and/or the CHIP due to age, citizenship status or insurance coverage, all applications must include a determination of eligibility from Medicaid and/or the CHIP. If the CSHCN Services Program application is received without a Medicaid determination, a CHIP determination, or other data/documents needed to process the application, it will be considered incomplete. The applicant will be notified that the application is incomplete and given 60 days to submit the Medicaid determination, CHIP denial or enrollment, or other missing data/documents to the CSHCN Services Program. If the application is made complete within the 60-day time limit, the client's eligibility effective date will be established as 15 days prior to the date the CSHCN Services Program application was first received. If the application is made complete more than 60 days after initial receipt, the eligibility effective date will be established as 15 days prior to the date the application was made complete.

(23) Emergency--A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent person with average knowledge of health and medicine could reasonably expect that the absence of immediate medical care could result in:

(A) placing the person's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(24) Emotional or behavioral condition--Behavior which varies significantly from normal, that is chronic and does not quickly disappear, and that is unacceptable because of social or cultural expectations. Emotional or behavioral responses which are so different from those of the generally accepted, age-appropriate norms of people with the same ethnic or cultural background as to result in significant impairment in social relationships, self-care, educational progress, or classroom behavior. Examples include but are not limited to the following:

(A) an inability to build or maintain satisfactory age-appropriate interpersonal relationships with peers or adults;

(B) dangerously aggressive, self-destructive, severely withdrawn, or noncommunicative behaviors;

(C) a pervasive mood of unhappiness or depression; or

(D) evidence of excessive anxiety or fears.

(25) Facility--A hospital, psychiatric hospital, rehabilitation hospital or center, ambulatory surgical center, renal dialysis center, specialty center and/or outpatient clinic.

(26) Family--For the purpose of this chapter, the family includes the following persons who live in the same residence:

(A) the applicant;

(B) those related to the applicant as a parent, step-parent or spouse who have a legal responsibility to support the applicant or guardians/managing conservators who have a duty to provide food, shelter, education, and medical care for the applicant;

(C) children of the applicant; and

(D) children of a parent, step-parent or spouse.

(27) Family support services--Disability-related support, resources, or other assistance provided to the family of a child with special health care needs. The term may include services described by Part A of the Individuals with Disabilities Education Act (20 U.S.C. §1400 *et seq.*), as amended, and permanency planning, as that term is defined by Government Code, §531.151.

(28) Financial independence--A person who currently files his or her own personal U.S. income tax return and is not claimed as a dependent by any other person on his or her U.S. income tax return.

(29) Health care benefits--CSHCN Services Program benefits consisting of diagnosis and evaluation services, rehabilitation services, medical home care management services, family support services, transportation related services, and insurance premium payment services.

(30) Health insurance/health benefits plan--A policy or plan, either individual, group, or government-sponsored, that an individual purchases or in which an individual participates that provides benefits when medical and/or dental costs are or would be incurred. Sources of health insurance include, but are not limited to, health insurance policies, health maintenance organizations, preferred provider organizations, employee health welfare plans, union health welfare plans, medical expense reimbursement plans, United States Department of Defense or Department of Veterans Affairs benefit plans, Medicaid, the Children's Health Insurance Program (CHIP), and Medicare. Benefits may be in any form, including, but not limited to, reimbursement based upon cost, cash payment based upon a schedule,

or access without charge or at minimal charge to providers of medical and/or dental care. Benefits from a municipal or county hospital, joint municipal-county hospital, county hospital authority, hospital district, county indigent health care programs, or the facilities of a publicly supported medical school shall not constitute health insurance for purposes of this chapter.

(31) Household--The living unit in which the applicant resides and which also may include one or more of the following:

(A) mother;

(B) father;

(C) stepparent;

(D) spouse;

(E) foster parent(s), managing conservator, or guardian;

(F) grandparent(s);

(G) sibling(s);

(H) stepbrother(s); or

(I) stepsister(s).

(32) Medical home--A respectful partnership between a client, the client's family as appropriate, and the client's primary health care setting. A medical home is family centered health care that is accessible, continuous, comprehensive, coordinated, compassionate, and culturally competent. A medical home includes a licensed medical professional who accepts responsibility for the provision and/or coordination of primary, preventive, and/or specialty care for a client, and coordination of care with other community services providers.

(33) Natural home--The home in which a person lives that is either the residence of his/her parent(s), foster parent(s) or guardian(s), or extended family member(s), or the home in the community where the person has chosen to live, alone or with other persons. A natural home may utilize natural support systems such as family, friends, co-workers, and services available to the general population as they are available.

(34) Other benefit--A benefit, other than a benefit provided under this chapter, to which a person is entitled for payment of the costs of services included in the scope of coverage of the CSHCN Services Program including, but not limited to, benefits available from:

(A) an insurance policy, group health plan, health maintenance organization, or prepaid medical or dental care plan;

(B) home, auto, or other liability insurance;

(C) Title XVIII, Title XIX, or Title XXI of the Social Security Act (42 U.S.C. §§1395 *et seq*., 1396 *et seq.*, and 1397aa *et seq.*), as amended;

(D) the United States Department of Veterans Affairs;

(E) the United States Department of Defense;

(F) workers' compensation or any other compulsory employers' insurance program;

(G) a public program created by federal or state law or under the authority of a municipality or other political subdivision of the state, excluding benefits created by the establishment of a municipal or county hospital, a joint municipal-county hospital, a county hospital authority, a hospital district, a county indigent health care program, or the facilities of a publicly supported medical school; or

(H) a cause of action for the cost of care, including medical care, dental care, facility care, and medical supplies, required for a person applying for or receiving services from the department, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided under this chapter.

(35) Permanency planning--A planning process undertaken for children with chronic illness or developmental disabilities who reside in institutions or are at risk of institutional placement, with the explicit goal of securing a permanent living arrangement that enhances the child's growth and development, which is based on the philosophy that all children belong in families and need permanent family relationships. Permanency planning is directed toward securing: a consistent, nurturing environment; an enduring, positive adult relationship(s); and a specific person who will be an advocate for the child throughout the child's life. Permanency planning provides supports to enable families to nurture their children; to reunite with their children when they have been placed outside the home; and to place their children in family environments.

(36) Person--An individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(37) Physician--A person licensed by the Texas State Board of Medical Examiners to practice medicine in this state.

(38) Prematurity/born prematurely--A child born at less than 36 weeks gestational age and hospitalized since birth.

(39) Program--The services program for Children with Special Health Care Needs (CSHCN).

(40) Provider--A person and/or facility as defined in §38.6 of this title (relating to Providers) that delivers services purchased by the CSHCN Services Program for the purpose of implementing the Act.

(41) Rehabilitation services--The process of the physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury which includes the following acute and chronic/rehabilitative services:

(A) facility care, medical and dental care, and occupational, speech, and physical therapies;

(B) the provision of medications, braces, orthotic and prosthetic devices, durable medical equipment, and other medical supplies; and

(C) other services specified in this chapter.

(42) Respite care--A service provided on a short-term basis for the purpose of relief to the primary care giver in providing care to individuals with disabilities. Respite services can be provided in either in-home or out-of-home settings on a planned basis or in response to a crisis in the family where a temporary caregiver is needed.

(43) Routine child care--Child care for a child who needs supervision while the parent/guardian is at work, in school, or in job training.

(44) Services--The care, activities, and supplies provided under the Act, including but not limited to both acute and chronic/rehabilitative medical care, dental care, facility care, medications, durable medical equipment, medical supplies, occupational, physical, and speech therapies, family support services, case management services, and other care specified by program rules.

(45) Social service organization--For purposes of this chapter, a for-profit or nonprofit corporation or other entity, not including individual persons, that provides funds for travel, meal, lodging, and family supports expenses in advance to enable CSHCN Services Program clients to obtain program services.

(46) Specialty center--A facility and staff that meet the CSHCN Services Program minimum standards established in this chapter and are designated for use by CSHCN Services Program clients as part of the comprehensive services for a specific medical condition.

(47) Spenddown--Financial eligibility achieved when household income exceeds 200% of the federal poverty level, if the applicant's family can document its responsibility for household medical bills that are equal to or greater than the amount in excess of the 200% level.

(48) State--The State of Texas.

(49) Supplemental Security Income Program (SSI)--Title XVI of the Social Security Act which provides for payments to individuals (including children under age 18) who are disabled and have limited income and resources.

(50) Support--The contribution of money or services necessary for a person's maintenance, including, but not limited to, food, clothing, shelter, transportation, and health care.

(51) Treatment plan--The plan of care for the client (time and treatment specific) as certified by and implemented under the supervision of a physician or other practitioner participating in the CSHCN Services Program.

(52) United States Public Health Service (USPHS) price--The average manufacturer price for a drug in the preceding calendar quarter under Title XIX of the Social Security Act, reduced by the rebate percentage, as authorized by the Veterans Health Care Act of 1992 (P.L. 102-585, November 4, 1992).

(53) Urgent need for health care benefits--A client need that fits the criteria and protocol described in §38.16(e) of this title.

§38.4. Covered Services.

(a) Introduction. The CSHCN Services Program provides no direct medical services, but reimburses for services rendered by CSHCN Services Program participating providers and/or contractors. Clients must receive services as close to their home communities as possible, unless CSHCN Services Program contracts or policies require treatment at specific facilities or specialty centers and/or the clients' conditions require specific specialty care.

(b) Types of service.

(1) Early identification. The CSHCN Services Program may conduct outreach activities to identify children for program enrollment, increase their access to care, and help them use services appropriately. Outreach services may include, but are not limited to:

(A) CSHCN Services Program promotion to the general public, or targeted to potential clients and providers;

(B) development and distribution of educational materials to assist applicants and clients in the access and use of program services;

(C) development and distribution of population-based educational materials concerning children with special health care needs;

(D) integration with programs which screen for or provide treatment of newborn congenital anomalies and/or other specialty care; and

(E) links with community, regional, and/or school-based clinics to identify, assess needs, and provide appropriate resources for children with special health care needs.

(2) Diagnosis and evaluation services. May be covered for the purpose of determining whether a CSHCN Services Program applicant for health care benefits meets the CSHCN Services Program definition of a child with special health care needs. Diagnosis and evaluation services must be prior authorized and coverage is limited in duration. If a physician or dentist requests coverage of diagnosis and evaluation services to determine if the child/applicant meets the definition of a "child with special health care needs," and the applicant meets all other eligibility criteria, then the applicant may be given up to 60 days of program coverage for diagnosis and evaluation services only. The program medical director or other designated medical staff may prior authorize limited coverage of diagnosis and evaluation services for waiting list clients if needed to help determine "urgent need for health care benefits" as described in §38.16(e) of this title (relating to Procedures to Address CSHCN Services Program Budget Alignment). Only CSHCN Services Program participating providers may be reimbursed for diagnosis and evaluation services.

(3) Rehabilitation services. Rehabilitation services means a process of physical restoration, improvement, or maintenance of a body function destroyed or impaired by congenital defect, disease, or injury which includes the following acute and chronic/rehabilitative services: facility care, medical and dental care, occupational, speech, and physical therapies, the provision of medications, braces, orthotic and prosthetic devices, durable medical equipment, other medical supplies, and other services specified in this chapter. To be eligible for CSHCN Services Program reimbursement, treatment must be for a client and must have been prescribed by a provider in compliance with all applicable laws and regulations of the State of Texas. Services may be limited, and the availability of certain services described in the following subparagraphs is contingent upon implementation of automation procedures and systems.

(A) Medical assessment and treatment. Physicians must provide medical assessment and treatment services, including medically necessary laboratory and radiology studies, and other practitioners licensed by the State of Texas, enrolled as participating providers in the CSHCN Services Program, and within the scope of their respective licenses or registrations.

(B) Outpatient mental health services. Outpatient mental health services are limited to no more than 30 encounters in a calendar year by all professionals licensed to provide mental/behavioral health services, including psychiatrists, psychologists, licensed clinical social workers (LCSW), licensed marriage and family therapists, and licensed professional counselors, per eligible client per calendar year. Coverage includes, but is not limited to psychological or neuropsychological testing, psychotherapy, psychoanalysis, counseling, and narcosynthesis.

(C) Preventive and therapeutic dental services (including oral/maxillofacial surgery). Preventive and therapeutic dental services must be provided by licensed dentists enrolled to participate in the CSHCN Services Program. Coverage for therapeutic dental services, including prosthetics and oral/maxillofacial surgery, follows the Texas Medicaid program guidelines. Orthodontic care must be prior authorized and may be provided only for CSHCN eligible clients with diagnoses of cleft/craniofacial abnormalities, dentofacial abnormalities, and/or late effects of fractures of the skull and face bones.

(D) Podiatric services. Podiatric services must be provided by licensed podiatrists enrolled to participate in the CSHCN Services Program. Coverage is limited to the medically necessary treatment of foot and ankle conditions and follows the Texas Medicaid program guidelines. Supportive devices, such as molds, inlays, shoes, or supports, must comply with coverage limitations for foot orthoses.

(E) Treatment in CSHCN Services Program participating facilities. Non-emergency hospital care must be provided in facilities that are enrolled as CSHCN Services Program participating providers. The length of stay is limited according to diagnosis, procedures required, and the client's condition.

(i) Inpatient hospital care and inpatient psychiatric care.

(I) Inpatient hospital care. Coverage is limited to 60 days per calendar year for medically necessary care, and excludes the following:

(-a-) maternity care, newborn care, infertility treatment, or other reproductive services unless directly related to a covered chronic physical or developmental condition;

(-b-) personal comfort items, such as television or newspaper delivery; and

(-c-) private duty nursing/attendant care.

(II) Inpatient psychiatric care. Coverage is limited to inpatient assessment and crisis stabilization and is to be followed by referral to an appropriate public or private mental health program. Admission must be prior authorized. Services include those medically necessary and furnished by a Medicaid psychiatric hospital/facility under the direction of a psychiatrist.

(ii) Inpatient rehabilitation care. Medically necessary inpatient rehabilitation care is limited to an initial admission not to exceed 30 days, based on the functional status and potential of the client as certified by a physician participating in the CSHCN Services Program. Services beyond the initial 30 days may be approved by the CSHCN Services Program based upon the client's medical condition, plan of treatment, and progress. Payment for inpatient rehabilitation care is limited to 90 days during a calendar year.

(iii) Ambulatory surgical care. Ambulatory surgical care is limited to the medically necessary treatment of a client and may be performed only in CSHCN Services Program approved ambulatory surgical centers as defined in §38.7 of this title (relating to Ambulatory Surgical Care Facilities).

(iv) Emergency care. Care including, but not limited to hospital emergency departments, ancillary, and physician services, is limited to medical conditions manifested by acute symptoms of sufficient severity (including severe pain) such that a prudent person with average knowledge of health and medicine could reasonably expect that the absence of immediate medical care could result in placing the client's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. If a client is admitted to a non-participating CSHCN Services Program hospital provider following care in that provider's emergency room, and the admitting facility declines to enroll or does not qualify as a CSHCN Services Program provider, the client must be discharged or transferred to a participating CSHCN Services Program provider as soon as the client's medical condition permits. All providers must enroll in order to receive reimbursement.

(v) Care for renal disease. Renal dialysis is limited to the treatment of acute renal disease or chronic (end stage) renal disease through a renal dialysis facility and includes, but is not limited to dialysis, laboratory services, drugs and supplies, declotting shunts, on-site physician services, and appropriate access surgery. Renal transplants may be covered in approved renal transplant centers if the projected cost of the transplant and follow-up care is less than that of continuing renal dialysis. Renal transplants must be prior authorized.

(F) Orthotic and prosthetic devices. Orthotic and prosthetic devices must be prescribed by a practitioner licensed to do so and supplied by an orthotist or prosthetist licensed by the State of Texas.

(G) Medications. Outpatient medications available through pharmacy providers, including over-the-counter products, must be prescribed by practitioners licensed to do so. Payment shall be made only after delivery of the medications.

(H) Nutrition services and nutritional products, excluding hyperalimentation/total parenteral nutrition (TPN).

(i) Nutrition services. Nutrition services must be prescribed by a practitioner licensed to do so.

(ii) Nutritional products. Nutritional products, including over-the-counter products, are limited to those covered by the CSHCN Services Program and prescribed by a practitioner licensed to do so, for the treatment of an identified metabolic disorder or other medical condition and serving as a medically necessary therapeutic agent for life and health, or when part or all nutritional intake is through a tube.

(I) Hyperalimentation/Total Parenteral Nutrition (TPN). A package of medically necessary services provided on a daily basis when oral intake cannot maintain adequate nutrition. TPN services include, but are not limited to solutions and additives, supplies and equipment, customary and routine laboratory work, enteral supplies, and nursing visits. Covered services must be reasonable, medically necessary, appropriate and prescribed by a practitioner licensed to do so.

(J) Medical foods. Coverage for medical foods is limited to the treatment of inborn metabolic disorders. Treatment for any other condition with medical foods requires documentation of medical necessity and prior authorization. Medical foods are approved products listed in enrolled providers' catalogs and are lacking in the compounds that cause complications of a covered metabolic disorder.

(K) Durable medical equipment. All equipment must be prescribed by a practitioner licensed to do so. Some equipment may be supplied on a contract basis, and therefore, shall be ordered from a specific supplier.

(L) Medical supplies. Supplies must be medically necessary for the treatment of an eligible client.

(M) Professional vision services. Vision services medically necessary for the treatment of a client include, but are not limited to:

(i) medically necessary eye examinations with refraction for diagnoses of refractive error, aphakia, diseases of the eye, or eye surgery;

(ii) one eye examination with refraction for the purpose of obtaining eyewear during a calendar year; and

(iii) one pair of non-prosthetic eye wear per calendar year prescribed by a practitioner licensed to do so.

(N) Speech-language pathology/audiology. Speech-language pathology and audiology services medically necessary for the treatment of a client must be prescribed by a practitioner licensed to do so and provided by a speech-language pathologist or audiologist licensed by the State of Texas. CSHCN Services Program coverage of speech-language pathology and audiology services may be limited to certain conditions, by type of service, by age, by the client's medical status, and whether the client is eligible for services for which a school district is legally responsible.

(O) Audiological testing, hearing exams, and amplification devices. Services for clients under 21 years of age are coordinated through the Program for Amplification for Children of Texas (PACT). For clients 21 years of age and older and those ineligible for the PACT, covered services are the same as those available through the PACT.

(P) Occupational and physical therapy. Occupational and physical therapy medically necessary for the treatment of a client must be prescribed by a practitioner licensed to do so and provided by a therapist licensed by the State of Texas. CSHCN Services Program coverage of physical and occupational therapy may be limited to certain conditions, by type of service, by age, by the client's medical status, and whether the child is eligible for services for which a school district is legally responsible.

(Q) Certified respiratory care practitioner services. Respiratory therapy medically necessary for the treatment of a client must be prescribed by a practitioner licensed to do so and provided by a certified respiratory care practitioner. CSHCN Services Program coverage of respiratory therapy may be limited to certain conditions, by type of service, by age, by the client's medical status, and whether the child is eligible for services for which a school district is legally responsible.

(R) Home health nursing services. Home health nursing services must be medically necessary, be prescribed by a physician, and be provided only by a licensed and certified home and community support services agency participating in the CSHCN Services Program. Home health nursing services are limited to 200 hours per client per calendar year. Up to 200 additional hours of service per client per calendar year may be approved with documented justification of need and cost effectiveness.

(S) Hospice care. Hospice care includes palliative care for clients with a presumed life expectancy of six months or less during the last weeks and months before death. Services apply to care for the hospice terminal diagnosis condition or illnesses. Treatment for conditions unrelated to the terminal condition or illnesses is unaffected. Hospice care must be prescribed by a practitioner licensed to do so who also is enrolled as a CSHCN Services Program provider.

(4) Care management.

(A) Medical home. Each CSHCN Services Program client should receive care in the context of a medical home.

(i) Comprehensive coordinated health care of infants, children, and adolescents should encompass the following services:

(I) provision of preventive care, including but not limited to, immunizations; growth and development assessments; appropriate screening health care supervision; client and parental counseling about health care supervision; and client and parental counseling about health and psychological issues;

(II) assurance of ambulatory and inpatient care for acute illness, 24 hours a day, seven days a week (including after hours and weekends);

(III) provision of care over an extended period of time to enhance continuity;

(IV) identification of the need for sub-specialty consultation and referrals, provision of medical information about the client to the consultant, evaluation of the consultant's recommendations, implementation of recommendations that are indicated and appropriate, and interpretation of the consultant's recommendations for the family;

(V) interaction with school and community agencies to assure that the special health needs of the client are addressed; and

(VI) maintenance of a central record and database containing all pertinent medical information about the client, including information about hospitalizations.

(ii) The CSHCN Services Program may require periodic reports from the medical home.

(B) Case management. Case management services may be made available to program clients through public health regional offices or other resources to assist clients and their families in obtaining adequate and appropriate services to meet the client's health and related services needs. The program will make available case management as needed/ desired to all clients who are eligible for health care benefits (includes clients who are on the waiting list for health care benefits). The program also may make available case management services to clients who are not eligible for the program's health care benefits.

(5) Family support services. Family support services include disability-related support, resources, or other assistance and may be provided to the family of a client with special health care needs.

(A) Eligibility. A client is eligible to receive family support services if:

(i) the client is not receiving services from a Medicaid home and community-based waiver program, and the requested service does not duplicate services received from other family support programs, such as the In-Home and Family Support program, the Primary Home Care Program, or the Medically Dependent Children's Program; and

(ii) the client's family collaborates with the assigned case manager to identify and pursue other sources of support and to develop a family assessment and service plan.

(B) Processing and evaluation of requests.

(i) Families of clients indicate their need for family support services.

(ii) In each public health region or other designated subdivision of the state, requests for family support services are processed in chronological order by the date of the request.

(iii) All requests for family support services must be prior authorized (approved by the CSHCN Services Program prior to delivery).

(iv) While there is a waiting list for health care benefits, limitations in reimbursement and/or prior authorization may be instituted as provided in §38.16 of this title.

(v) Some services or items may require a written statement from a physician, physical therapist, occupational therapist, and/or other healthcare professional to establish the disability-related nature of the request.

(vi) Some services or items may require written bids.

(vii) Persons requesting assistance are responsible for collaborating with their case managers as necessary so that an accurate determination can be made in a timely manner.

(viii) Families shall be notified in writing of the outcome of their requests.

(ix) Families have the right to appeal a decision as described in §38.13 of this title (relating to Right of Appeal).

(C) Service plan and cost allowances.

(i) In order to obtain prior authorization for family support services, the case manager and the client/family must develop a family assessment and service plan.

(ii) The CSHCN Services Program may establish annual cost allowances based upon the client's/family's level of assessed need for family support services, not to exceed:

(I) one-time assistance of up to $3,600 per eligible client for minor home remodeling; and

(II) assistance of up to $3,600 per calendar year per eligible client to purchase other allowable services. This limit may increase to no more than $7,200 for the purchase of vehicle lifts and modifications;

(iii) Service plan cost allowances may be prorated for plans that cover less than one calendar year.

(iv) Disbursement of assistance:

(I) may be in a lump sum or on a periodic basis;

(II) may be made to the family or to the vendor enrolled as a CSHCN Services Program provider; and

(III) may be reduced by the amount of a cost-sharing requirement, if applicable.

(v) Reimbursement rates for providers are established by the client/family and the selected provider in collaboration with the case manager.

(vi) The annual family assessment and service plan may be amended at any time, but will be reevaluated by the client/family and case manager at least annually to coincide with the client's reapplication for the CSHCN Services Program.

(D) Allowable services.

(i) Family support services for CSHCN Services Program clients and their families include those allowable services and items that:

(I) are above and beyond the scope of usual needs (i.e., basic clothing, food, shelter, medical care, and education);

(II) are necessitated by the client's medical condition or disability; and

(III) directly support the client's living in his/her natural home and participating in family life and community activities.

(ii) Family support services may not be used to supplant services available through other public or private programs, but may be used to supplement services provided by other programs.

(iii) Allowable services include:

(I) respite care;

(II) specialized child care costs for a client in excess of the prevailing rate for routine child care, including specialized training for the child care provider;

(III) counseling or training programs or services that assist the client/family, including parent or family stipends to attend education or training conferences;

(IV) minor home remodeling, limited to the purchase and installation of ramps, widening of doorways, the modification of bathroom facilities, kitchen modifications, and other modifications to increase accessibility and safety;

(V) vehicle lifts and modifications consistent with those available through the Department of Assistive and Rehabilitative Services (DARS), limited to lifts, wheelchair tie-downs, occupant restraints, accessories/modifications such as raising roofs or doors if necessary for lift installation or usage, hand controls, and repairs of covered modifications not related to inappropriate handling or misuse of equipment and not covered by other resources;

(VI) specialized equipment, including porch/stair lifts, air purification systems or air conditioners, positioning equipment, bath aids, supplies prescribed by licensed practitioners that are not covered through other systems, and other non-medical disability-related equipment that assists with family activities, promotes the client's self-reliance, or otherwise supports the family;

(VII) other disability-related services that support permanency planning, independence, and/or participation in family life and integrated/inclusive community activities.

(E) Unallowable services. Family support funds may not be used to provide those services that do not relate to the client's disability and do not directly support the client's living in his/her natural home and participating in family life and integrated/inclusive community activities. Examples of unallowable services include, but are not limited to:

(i) items for which a less expensive alternative of comparable quality is available;

(ii) purchase or lease of vehicles, or vehicle maintenance and repair;

(iii) home mortgage or rent expenses, or basic home maintenance and repair;

(iv) income taxes;

(v) medical services;

(vi) services in segregated settings other than respite facilities or camps;

(vii) insurance premiums;

(viii) death benefits, burial policies, and funeral expenses;

(ix) costs for allowable services incurred before the requested family support service is prior authorized;

(x) non-medical foods, routine shelter, routine utilities, routine home repairs, routine home appliances, routine furnishings, fences, and yard work;

(xi) medical benefit items or services paid for or reimbursed by private insurance, Medicaid, Medicare, CHIP, the CSHCN Services Program or other health insurance programs for which the client is eligible;

(xii) services, equipment, or supplies that have been denied by Medicaid, CHIP, or the CSHCN Services Program because a claim was received after the filing deadline, insufficient information was submitted, or because an item was considered inappropriate or experimental;

(xiii) over-the-counter or prescription medications;

(xiv) architectural modifications to a public facility;

(xv) school tuition or fees, or equipment/items/services that should be provided through the public school system;

(xvi) items that could endanger the health and safety of the client;

(xvii) routine child care;

(xviii) computers and software, unless for use as an assistive technology device or necessary to perform a critical or essential function such as environmental control, or written or oral communication, which the client is unable to perform without the computer;

(xix) services provided by an individual under the age of 18 years or by the client's parent(s)/guardian(s) or other member of the client's household;

(xx) services exclusively to support the care of siblings or other members of the client's household, but which are not necessary to meet the medical needs of the client;

(F) Reduction/termination of services. Reasons for terminating or reducing family support services may include, but are not limited to:

(i) the client no longer meets the eligibility criteria for the CSHCN Services Program;

(ii) services available through the program are discontinued due to budget restrictions;

(iii) While there is a waiting list for health care benefits, limitations in reimbursement and/or prior authorization may be instituted as provided in §38.16 of this title;

(iv) the client's family indicates that the need for family support services no longer exists;

(v) the client moves out of Texas;

(vi) the client is placed in a nursing facility or other institutional setting for an indefinite period of time;

(vii) the client dies;

(viii) the client's designated case manager is unable to locate the client/family; or

(ix) the family knowingly does not comply with the family assessment and service plan, in which case the family may also be liable for restitution.

(6) Other types of services. The following services also are available through the CSHCN Services Program.

(A) Ambulance services. Emergency ground, non-emergency ground and air ambulance services are covered for the medically necessary transportation of a client. Non-emergency ambulance transport is covered if the client cannot be transported by any other means without endangering the health or safety of the client, and when there is a scheduled medical appointment for medically necessary care at the nearest appropriate facility. Transportation by air ambulance is limited to instances when the client's pickup point is inaccessible by land, or when great distance interferes with immediate admission to the nearest appropriate medical treatment facility. Transports to out-of-locality providers are covered if a local facility is not adequately equipped to treat the client. Out-of-locality refers to one-way transfers 50 miles or more from point of pickup to point of destination.

(B) Transportation. The CSHCN Services Program may provide transportation for a client and, if needed, a responsible adult, to and from the nearest medically appropriate facility (in Texas or in the United States 50 or fewer miles from the Texas border) to obtain medically necessary and appropriate health care services that are within the scope of coverage of the CSHCN Services Program and are provided by a CSHCN Services Program enrolled provider. The lowest-cost appropriate conveyance should be used. The CSHCN Services Program shall not assist if transportation is the responsibility of the client's school district or can be obtained through Medicaid. Transportation to out-of-state services located more than 50 miles from the Texas border will not be approved, except as specified in §38.6(e) of this title (relating to Providers).

(C) Meals and lodging. The CSHCN Services Program may provide meals and lodging to enable a parent, guardian, or their designee to obtain inpatient or outpatient care for a client at a facility located away from their home. The reason for the inpatient or outpatient visit must be directly related to medically necessary treatment for the client that is provided by program enrolled providers and covered by the program. Meals and lodging associated with travel to services that are provided more than 50 miles from the Texas border will not be approved, except as specified in §38.6(e) of this title.

(D) Transportation of deceased. The CSHCN Services Program may provide the following services:

(i) transportation cost for the remains of a client who expires in a CSHCN Services Program approved facility while receiving CSHCN Services Program health care benefits, if the client was not in the family's city of residence in Texas, and the transportation cost of a parent or other person accompanying the remains, from the facility to the place of burial in Texas that is designated by the parent or other person legally responsible for interment;

(ii) embalming of the deceased, if required by law for transportation;

(iii) a coffin meeting minimum requirements, if required by law for transportation; and

(iv) any other necessary expenses directly related to the care and return of the client's remains.

(E) Payment of insurance premiums, coinsurance, co-payments, and/or deductibles. The CSHCN Services Program may pay public or private health insurance premiums to maintain or acquire a health benefit plan or other third party coverage for the client, if the parent/foster parent/guardian/managing conservator is financially unable to do so, and if paying for such health insurance can reasonably be expected to be cost effective for the CSHCN Services Program. The CSHCN Services Program may pay for coinsurance and deductible amounts when the total amount paid (including all payers) to the provider does not exceed the maximum allowed by the CSHCN Services Program for the covered service. The CSHCN Services Program may reimburse clients for co-payments paid for covered services. The CSHCN Services Program may not pay premiums, deductibles, coinsurance or co-payments for clients enrolled in CHIP.

(c) Services not covered. Services which are not covered by the CSHCN Services Program even though they may be medically necessary for and provided to a client include, but are not limited to:

(1) treatments which are considered experimental or investigational;

(2) chiropractic services;

(3) care for premature infants;

(4) care for alcohol or substance abuse;

(5) pregnancy prevention, except when medically necessary for the specific treatment of a condition meeting the parameters of the "child with special health care needs" definition;

(6) maternity care services specific to routine pregnancy care, labor and delivery, and maternal post-partum care;

(7) infertility treatment;

(8) services provided by a nursing home/facility; and

(9) services provided while the client is in the custody of or incarcerated by any municipal, county, state, or federal governmental entity. Case management or prior approved family support services not provided by the governmental entity, that are needed during the time when a client is transitioning from custody or incarceration into a community living setting, may be covered.

(d) Service authorization. The CSHCN Services Program may require authorization (including prior authorization) of reimbursement for selected services for clients.

(1) Provider's responsibility. A CSHCN Services Program provider must request services in specific terms on department-prepared forms so that an authorization may be issued and sufficient monies encumbered to cover the cost of the service. If a service is authorized, payment may be made to the provider as long as the service is not covered by a third party resource, and all billing requirements are met. Program authorization should not be considered an absolute guarantee of payment. Once a service is delivered and if the service requires authorization for payment, the authorization request for that service must be submitted within 95 days of the date of service.

(2) Required prior authorization for selected services. At the CSHCN Services Program's option, selected services may require authorization prior to the delivery of services in order for payment to be made. Prior authorization requests must be submitted prior to the date of service.

(3) While there is a waiting list for health care benefits, limitations in reimbursement and/or prior authorization may be instituted as provided in §38.16 of this title.

(4) Denied authorization requests are authorization requests which are incomplete, submitted on the wrong form, lack necessary documentation, contain inaccurate information, fail to meet authorization request submission deadlines, and/or are for ineligible persons, services, or providers, and/or are for clients who do not qualify for the health care benefit requested. Denied authorization requests may be corrected and resubmitted for reconsideration. However, authorization requests must meet authorization request submission deadlines. If the results of the reconsideration process are unsatisfactory, denied authorization requests may be appealed according to §38.13 of this title (relating to Right of Appeal).

(e) Pilot projects. The CSHCN Services Program may initiate and participate in pilot projects to determine the fiscal impact of changes in eligibility criteria and the types of services provided. New projects are possible only if funds are available in the current fiscal year. All pilot projects are limited to no more than 10% of the fiscal year appropriation.

§38.6. Providers.

(a) General requirements for participation. The Children with Special Health Care Needs Services (CSHCN) Act, Health and Safety Code, §35.004, authorizes the approval of physicians, dentists, podiatrists, dietitians, facilities, specialty centers, and other providers to participate in the CSHCN Services Program according to its criteria and procedures.

(1) Providers seeking approval for CSHCN Services Program participation must submit a completed application to the CSHCN Services Program or its designee, including a signed provider agreement and all documents requested on the application.

(2) All approved CSHCN Services Program providers must agree to abide by CSHCN Services Program rules and regulations, and not to discriminate against clients based on source of payment.

(3) All CSHCN Service Program providers must agree to accept the CSHCN Services Program allowed amount of payment (regardless of payer) as payment in full for services provided to CSHCN Services Program clients. Providers may collect allowable insurance or health maintenance organization co-payments in accordance with those plan provisions. Providers may not request or accept payment from the client or client's family for completing any CSHCN Services Program forms.

(4) The CSHCN Services Program is the payer of last resort, and CSHCN Services Program providers must agree to utilize all other public or private benefits available to the client, including but not limited to Medicaid or Medicaid waiver programs, CHIP, or Medicare, and casualty or liability coverage prior to requesting payment from the CSHCN Services Program. Providers must agree to attempt to collect payment from the payer of other benefits. The CSHCN Services Program may pay for certain services for which other benefits may be available but have not been definitively determined. If other benefits become available after the CSHCN Services Program has paid for the services, the CSHCN Services Program shall recover its costs directly from the payer of other benefits or shall request the provider of services to collect payment and reimburse the CSHCN Services Program.

(5) Overpayments made on behalf of clients to CSHCN Services Program participating providers must be reimbursed to the CSHCN Services Program refund account by lump sum payment or, at the discretion of the department, in monthly installments or out of current claims due to be paid the provider. All providers must consent to on-site visits and/or audits by CSHCN Services Program staff or its designees.

(6) All CSHCN Services Program providers of services also covered by Medicaid must enroll and remain enrolled as Title XIX Medicaid providers. In order to be reimbursed by Medicaid as the primary payer, a provider must be enrolled on the date of service. The CSHCN Services Program will not reimburse an enrolled provider for any service covered under Medicaid that was provided to a CSHCN Services Program client eligible for Medicaid at the time of service. If a service covered by the CSHCN Services Program is not covered by Medicaid, the provider of that service is not required to enroll as a Medicaid provider. Any provider excluded by Medicaid for any reason shall be excluded by the CSHCN Services Program.

(7) If a license or certification is required by law to practice in the State of Texas, the provider must maintain the required license or certification.

(8) All providers shall be responsible for the actions of members of their staffs who provide CSHCN Services Program services.

(9) Any provider may withdraw from CSHCN Services Program participation at any time by so notifying the CSHCN Services Program in writing.

(b) Denial, modification, suspension, and termination of provider approval.

(1) The CSHCN Services Program may deny, modify, suspend, or terminate a provider's approval to participate for the following reasons:

(A) submitting false or fraudulent claims;

(B) failing to provide and maintain quality services or medically acceptable standards;

(C) not adhering to the provider agreement signed at the time of application or renewal for CSHCN Services Program participation;

(D) disenrollment as a Medicaid provider; or

(E) violation of the standards of this chapter.

(2) The CSHCN Services Program may deny or suspend approved provider status based on the CSHCN Services Program's knowledge of disciplinary action taken against the provider by the licensing authority under which the provider practices in the State of Texas or by the Texas Medicaid Program.

(3) Prior to taking an action to deny, modify, suspend, or terminate the approval of a provider, the CSHCN Services Program shall give the provider written notice of an opportunity of appeal in accordance with §38.13 of this title (relating to Right of Appeal). In addition, a fair hearing is available to any provider for the resolution of conflict between the CSHCN Services Program and the provider.

(c) Provider types. Approved providers include, but are not limited to:

(1) physicians;

(2) dentists;

(3) advanced practice nurses;

(4) mental/behavioral health professionals, including psychiatrists, licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, and licensed professional counselors;

(5) podiatrists;

(6) hospitals;

(7) inpatient rehabilitation centers;

(8) ambulatory surgical centers;

(9) renal dialysis centers;

(10) orthotists and prosthetists;

(11) pharmacies;

(12) dietitians;

(13) medical supply and/or equipment companies;

(14) optometrists and opticians;

(15) licensed speech-language pathologists and audiologists;

(16) hearing aid professionals (limited to physicians and those audiologists who are fitters and dispensers and enrolled as Program for Amplification for Children of Texas providers);

(17) occupational therapists and physical therapists;

(18) certified respiratory care practitioners;

(19) certified home and community support services agencies;

(20) hospice care providers;

(21) ambulance providers;

(22) transportation companies or providers;

(23) meal and lodging facilities; and

(24) funeral homes.

(d) Requirements for specialty centers.

(1) The CSHCN Services Program may accept as participating providers diagnostically specific specialty centers, such as bone marrow or other transplant centers, approved under the credentialing and/or approval standards and processes of the Texas Medicaid Program, if such specialty centers also submit a CSHCN Services Program provider enrollment application.

(2) Other specialty center standards. The CSHCN Services Program may establish standards to insure quality of care for children with special health care needs in the comprehensive diagnosis and treatment of specific medical conditions for specialty centers with Texas Medicaid Program separate credentialing standards as well as other specialty centers for which the Texas Medicaid Program has not established separate credentialing or approval standards for providers.

(e) Out-of-state coverage.

(1) Fifty or fewer miles from the Texas state border. For clients who would otherwise experience financial hardship or be subject to clear medical risk, the CSHCN Services Program may cover services that are within the scope of the program and provided by health care providers in New Mexico, Oklahoma, Arkansas, or Louisiana located 50 or fewer miles from the Texas state border.

(2) More than 50 miles from the Texas state border. The manager of the department unit having responsibility for oversight of the CSHCN Services Program may approve coverage of services that are within the scope of the CSHCN Services Program and provided by health care providers located within the United States and more than 50 miles from the Texas border in unique circumstances in which the CSHCN Services Program participating physician(s), the client, parent or guardian, and the CSHCN Services Program medical director agree that:

(A) an out-of-state provider is the provider of choice for quality care;

(B) the medical literature indicates that the out-of-state treatment is accepted medical practice and is anticipated to improve the client's quality of life;

(C) the same treatment or another treatment of equal benefit or cost is not available from Texas CSHCN Services Program providers; and

(D) the out-of-state treatment should result in a decrease in the total projected CSHCN Services Program cost of the client's treatment.

(3) The limitations of this paragraph do not apply to coverage for or payment to CSHCN Services Program providers of selected products or devices including, but not limited to, medical foods or hearing amplification devices, which either are always less costly and/or are only available, from out-of-state sources.

(4) For CSHCN Services Program reimbursement, all program policies and procedures will apply, including the requirement that all providers be CSHCN Services Program participating providers, as defined by this section.

(5) The CSHCN Services Program may cover costs of transportation and associated meals and lodging for a client and, if necessary, a responsible adult for travel to and from the location of out-of-state services that meet the program approval parameters in this subsection. Travel costs will be negotiated, with approval of specific travel options based on overall cost effectiveness.

§38.16. Procedures to Address CSHCN Services Program Budget Alignment.

(a) The department shall analyze actuarial cost projections concerning CSHCN Services Program administrative and client services to estimate the amount of funds needed in the fiscal year by the program to serve CSHCN Services Program clients and shall monitor such program cost projections and funding analyses at least monthly to determine whether the estimated amount of funds needed by the program will:

(1) exceed the program's appropriated funds and other available resources for the fiscal year; or

(2) be less than the program's appropriated funds and other available resources for the fiscal year.

(b) When the CSHCN Services Program projects that the estimated amount of funds needed in the fiscal year by the program to serve CSHCN Services Program clients will exceed the program's appropriated funds and other available resources for the fiscal year, the program shall use the following methodology to reduce/ limit the amount of funds to be expended by the program:

(1) give clients and providers who will be directly affected written notice of any reductions or limitations of services, coverage, and/or reimbursements;

(2) take the following actions in the order listed only until the projected amount of funds to be expended by the program approximately equals, but does not exceed, the program's appropriated funds and other available resources:

(A) implement administrative efficiencies, while avoiding changes which may jeopardize the quality and integrity of CSHCN Services Program service delivery;

(B) establish and administer a waiting list for health care benefits according to the procedures in this section;

(C) at the same time the waiting list is established:

(i) provide only limited prior authorization for family support services for ongoing clients, as determined by the medical director or other designated medical staff, only in order to continue services already being provided at the time the waiting list is established, and/or when the specific services are required to prevent out-of-home placement of the client (as documented by the CSHCN Services Program regional case management staff/ contractors), and/or when the provision of such services is cost effective for the program;

(ii) disallow prior authorization (coverage) of diagnosis and evaluation services for applicants who qualify for up to 60 days of program coverage for diagnosis and evaluation services only and refer such applicants to case management services; and

(iii) allow limited prior authorization of diagnosis and evaluation services on a short-term basis, only when such information is needed to assess whether clients on the waiting list have "urgent need for health care benefits" as described in subsection (e) of this section and only with prior authorization and approval by the medical director or other designated medical staff.

(D) place new applicants or re-applicants with lapsed eligibility who are determined eligible for program health care benefits (new clients for health care benefits) on the waiting list. These clients will be ordered on the waiting list according to the date/time the client is determined eligible for program health care benefits;

(E) reduce/limit reimbursements for contractual service providers, while avoiding changes which may jeopardize the integrity of the contractor base and thereby decrease client access to services;

(F) place clients who are eligible to receive CSHCN Services Program health care benefits and who currently are not on the waiting list (ongoing clients for health care benefits) on the waiting list. These clients will be ordered on the waiting list according to the original date/time that starts the client's latest uninterrupted sequence of eligibility for program health care benefits, and in the following order of movement to the waiting list:

(i) ongoing clients for health care benefits who have one or more sources of substantial health insurance coverage (such as Medicaid/ CHIP/ or other private health insurance similar in scope) in addition to the CSHCN Services Program (not including those ongoing clients for whom the CSHCN Services Program pays the insurance premiums);

(ii) ongoing clients for health care benefits in the following order by age groups: 21 years of age or older; 20 years of age; 19 years of age; 18 years of age; and

(iii) all other ongoing clients for health care benefits who do not have an urgent need for health care benefits;

(G) employ additional measures to reduce/ limit the amount of funds to be expended by the program as directed by rule.

(c) If the procedures described in subsection (b)(2)(A) - (F) of this section enable the program to project that the estimated amount of funds to be expended by the program in the fiscal year approximately equals, but does not exceed, the program's appropriated funds and other available resources, the program shall take the following additional steps in order to provide health care benefits to as many clients with urgent need for health care benefits as possible who are currently on the waiting list.

(1) generate cost savings by taking the following steps in the order listed:

(A) give clients and providers who will be directly affected written notice of any reductions or limitations of services, coverage, and/or reimbursements;

(B) reduce/limit reimbursements for contractual service providers, while avoiding changes which may jeopardize the integrity of the contractor base and thereby decrease client access to services;

(C) employ additional measures to generate cost savings as directed by rule.

(2) utilize cost savings generated to remove as many clients with urgent need for health care benefits as possible from the waiting list and provide health care benefits to those clients. Clients with urgent need for health care benefits shall be removed from the waiting list according to the original date/time that starts the client's latest uninterrupted sequence of eligibility for program health care benefits and in the following group order:

(A) clients who are less than 21 years old and who have an urgent need for health care benefits, as described in subsection (e) of this section;

(B) clients who are 21 years of age or older and who have an urgent need for health care benefits, as described in subsection (e) of this section;

(3) provide health care benefits (which may or may not include coverage of outstanding bills for health care benefits) for clients with urgent need for health care benefits who are removed from the waiting list;

(A) as long as program cost savings funds are available; and

(B) if the outstanding bills for health care benefits are for dates of service that are within the time period that program cost savings funds are available and provided the client was eligible for program health care benefits at the time of the dates of service;

(4) provide limited health care benefits and/or payment of outstanding bills for health care benefits for clients with urgent need for health care benefits who are on the waiting list and remain on the waiting list. The program's coverage of such health care benefits may be limited in scope, amount, and duration and is not intended to be sustained over time. If limited health care benefits coverage includes coverage of family support services, the coverage of family support services must be limited according to the parameters set forth in subsection (b)(2)(C)(i) of this section. Clients with urgent need for health care benefits who are on the waiting list will be served in the same order used in paragraph (2) of this subsection to remove clients with urgent need for health care benefits from the waiting list. This coverage may be provided to clients with urgent need on the waiting list prior to or at any point during activities described by paragraphs (2) - (3) of this subsection only:

(A) when projected cost savings funds are projected to be insufficient to remove clients with urgent need for health care benefits (or additional clients with urgent need for health care benefits) from the waiting list and maintain continuous program health care benefits coverage for those clients or when projected cost savings funds may lapse if not expended in this manner;

(B) as long as program cost savings funds are available; and

(C) if the outstanding bills for health care benefits are for dates of service that are within the time period that program cost savings funds are available and provided the client was eligible for program health care benefits at the time of the dates of service.

(d) When the CSHCN Services Program projects that the estimated amount of funds to be expended by the program in the fiscal year is less than the program's appropriated funds and other available resources due to the cost reduction, limitation, or deferral procedures implemented according to subsections (b) or (c) of this section, or the program's receipt of additional funding, or funding analysis resulting in a projected amount of unobligated funds, the program shall increase the amount of funds to be expended by the program.

(1) In an effort to expend unobligated funds (except for unobligated funds resulting from program actions taken according to subsection (c) of this section) the program shall utilize the following steps in the order listed only until the program projects that the estimated amount of unobligated funds will be expended by the program during the fiscal year:

(A) take clients off the waiting list according to the original date/time that starts the client's latest uninterrupted sequence of eligibility for program health care benefits and in the following group order:

(i) clients who are less than 21 years old and who have an urgent need for health care benefits, as described in subsection (e) of this section;

(ii) clients who are 21 years of age or older and who have an urgent need for health care benefits, as described in subsection (e) of this section;

(iii) all other clients who are less than 21 years old who do not have an urgent need for health care benefits; and

(iv) all other clients who are 21 years of age or older who do not have an urgent need for health care benefits;

(B) provide health care benefits for clients taken off the waiting list as long as program unobligated funds are available;

(C) provide limited health care benefits for clients who are on the waiting list and remain on the waiting list; and/or payment of outstanding bills for health care benefits for clients who are on the waiting list and remain on the waiting list; and/or payment of outstanding bills for health care benefits for clients who have been taken off the waiting list. The program's coverage of such health care benefits may be limited in scope, amount, and duration and is not intended to be sustained over time. If limited health care benefits coverage includes coverage of family support services, the coverage of family support services must be limited according to the parameters set forth in subsection (b)(2)(C)(i) of this section. This coverage may be provided at any point during activities described by subparagraphs (A) and (B) of this paragraph only:

(i) when projected unobligated funds are projected to be insufficient to take clients (or additional clients) off the waiting list and maintain continuous program health care benefits coverage for those clients or when projected unobligated funds may lapse if not expended in this manner;

(ii) as long as program unobligated funds are available; and

(iii) if the outstanding bills for health care benefits are for dates of service that are within the time period that program unobligated funds are available and provided the client was eligible for program health care benefits at the time of the dates of service;

(D) if the CSHCN Services Program projects that the amount of funds to be expended by the program in the fiscal year will be less than the program's appropriated funds and other available resources after no clients eligible for CSHCN Services Program health care benefits remain on the waiting list, the program may take the following actions in the following order:

(i) eliminate limitations on prior authorization for family support services;

(ii) provide prior authorized coverage of diagnosis and evaluation services for applicants who qualify for up to 60 days of program coverage for diagnosis and evaluation services only;

(iii) remove any of the additional measures taken to reduce/ limit the amount of funds to be expended by the program as directed by rule;

(iv) remove any reductions/ limitations to contractor reimbursements that have been implemented; and

(v) expand program services.

(2) In an effort to expend unobligated funds resulting from program actions taken according to subsection (c) of this section (unobligated cost savings funds that remain after all clients with urgent need for health care benefits have been removed from the waiting list and provided health care benefits) the program shall utilize the following steps in the order listed only until the program projects that the estimated amount of unobligated funds will be expended by the program during the fiscal year:

(A) take additional clients off the waiting list according to the original date/time that starts the client's latest uninterrupted sequence of eligibility for program health care benefits and in the following group order:

(i) clients who are less than 21 years old who do not have an urgent need for health care benefits and who are clients who

were placed on the waiting list when they were ongoing clients and who have had no lapse in eligibility while on the waiting list;

(ii) clients who are 21 years of age or older who do not have an urgent need for health care benefits and who are clients who were placed on the waiting list when they were ongoing clients and who have had no lapse in eligibility while on the waiting list;

(B) provide health care benefits (which may or may not include coverage of outstanding bills for health care benefits) as stipulated in paragraph (1)(B) of this subsection for these clients taken off the waiting list;

(C) provide limited health care benefits for clients identified in subparagraph (A)(i) and (ii) of this paragraph who are on the waiting list and remain on the waiting list; and/or payment of outstanding bills for health care benefits for clients identified in subparagraph (A)(i) and (ii) of this paragraph who are on the waiting list and remain on the waiting list; and/or payment of outstanding bills for health care benefits for clients who have been taken off the waiting list. The program's coverage of such health care benefits may be limited in scope, amount, and duration and is not intended to be sustained over time. If limited health care benefits coverage includes coverage of family support services, the coverage of family support services must be limited according to the parameters set forth in subsection (b)(2)(C)(i) of this section. This coverage may be provided at any point during activities described by subparagraphs (A) and (B) of this paragraph and only as stipulated in paragraph (1)(C)(i) - (iii) of this subsection;

(D) remove any of the additional measures taken to generate cost savings by rule according to subsection (c)(1)(C) of this section; and

(E) remove any reductions/ limitations to contractor reimbursements that have been implemented.

(e) The program shall establish a protocol to be used by the medical director or other designated medical staff to determine whether a client has an "urgent need for health care benefits" by considering criteria including, but not limited to, the following:

(1) the physician or dentist who signs the client's application and/or the treating physician/dentist attests and/or documents the physician/dentist's determination that delay in receiving health care benefits could result in loss of life, permanent increase in disability, or intense pain/suffering;

(2) the client/family states that no other source of health insurance coverage is available to the client;

(3) information on the application for health care benefits indicates the complexity of the client's condition and/or need for care;

(4) information received from CSHCN Services Program regional case management staff/contractors supports other information gathered and/or indicates that a delay in health care benefits could reasonably be expected to result in an out-of-home placement/ institutionalization of the client because the family cannot continue to care for the client; and

(5) information obtained from diagnosis and evaluation services as prior authorized by the program medical director or other designated medical staff.

(f) The CSHCN Services Program central office may establish and administer the waiting list for health care benefits to address a budget shortfall.

(1) In order to facilitate contacting clients on the waiting list, the CSHCN Services Program shall collect information including, but not limited to the following:

(A) the client's name, address, and telephone number;

(B) the name, address, and telephone number of a contact person other than the client;

(C) the date of the client's earliest application for health care benefits;

(D) the date on which the client became eligible for health care benefits;

(E) the client's functional limitations or needs;

(F) the range of services needed by the client; and

(G) a date on which the client is scheduled for reassessment.

(2) The waiting list is maintained continually from one fiscal year to the next. Clients must maintain eligibility for health care benefits to remain on the waiting list. A lapse of eligibility for health care benefits constitutes loss of position on the waiting list.

(3) The program shall refer clients on the waiting list to other possible sources of services, and shall contact waiting list clients periodically to confirm their continuing need for CSHCN Services Program services.

(4) The program will offer case management services as needed/desired to all clients who are eligible for health care benefits, including those on the waiting list for health care benefits.

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 May 8, 2006.

TRD-200602547
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: May 28, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 458-7111 x6972

CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM

SUBCHAPTER A. TEXAS PRIMARY HEALTH CARE SERVICES ACT PROGRAM RULES

25 TAC §§39.1 - 39.22

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts the repeal of §§39.1-39.22 and new §§39.1-39.11, concerning the provision of primary health care services in this state without changes to the proposed text as published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1165) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeal and new sections are necessary to comply with Health and Safety Code, Chapter 31, which directs the department to establish a program to provide primary health care services to eligible individuals. The Primary Health Care Ser-

vices Program provides access to basic health care services for individuals whose incomes do not exceed 150% of the Federal Poverty Level residing in Texas who are unable to access the same care through other funding sources or programs.

Since legal, policy, and operational issues have changed significantly since the rules were adopted in 1986, the department determined that review and revision of the subchapter could be accomplished most effectively by proposing the repeal of the existing sections in the subchapter and proposing new language to remove outdated information and replace it with current information in a better-organized manner.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 39.1-39.22 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Section 39.1 introduces the subchapter and states a purpose and mission for the provision of primary health care services as prescribed by Health and Safety Code, Chapter 31.

Health and Safety Code, §31.002, authorizes the department to define terms as necessary to administer the chapter. Section 39.2 defines specific terms used throughout the subchapter that pertain to the delivery of primary health care services by the department.

Health and Safety Code, §31.003 and §31.005, direct the department to adopt rules to guide the effective and efficient provision of services. Section 39.3 includes general requirements for the provision of primary health care services and a prioritization of the types of services that, at a minimum, must be provided to recipients because the department faces budgetary limitations. These fundamental services consist of diagnosis and treatment, emergency services, family planning services, preventive health services, health education, and diagnostic services. The requirements also include criteria, such as geographic area, socioeconomic status and available community resources, to guide where and to whom services should be provided, based upon unmet needs. If the department determines that existing community resources are unavailable or unable to meet the primary health care needs of the population in need, the department may deliver services directly to eligible individuals. Section 39.3 also clarifies that recipients eligible for Medicare Part D must receive prescription drug benefits according to Medicare regulations if the provider offers supplemental prescription drug benefits as part of the department's primary health care program.

As required by Health and Safety Code, §31.004 and §31.006, §39.4 outlines the process and requirements for the provision of contracts to providers that deliver primary health care services. Services may be delivered through a network of providers, directly by the department, or by a combination of both to ensure recipients are able to receive necessary services. The department must contract for services using a Request for Proposals process in accordance with state law and department policy. The department may deny, modify, suspend or terminate provider contracts for cause, and an applicant or current contractor that is aggrieved in relation to the award of a contract may file a protest in accordance with department policy.

Section 39.5 delineates the circumstance in which the department is obligated to reimburse providers for contracted services rendered and the timeframe in which providers can expect to receive payment.

Health and Safety Code, §§31.007-31.008, require the department to adopt rules relating to application procedures and eligibility criteria for potential program recipients. Section 39.6 states an individual must be in financial need and be a Texas resident in order to be eligible for program services. Individuals found ineligible for services may reapply at any time. The section also states that providers are required to assist applicants in completing the application process, provide coverage if the applicant meets eligibility criteria, determine if the applicant is eligible for Medicare Part D coverage, and provide services to potentially-eligible individuals with immediate medical needs. Although providers may collect co-payments from eligible individuals receiving services, no one shall be denied services based on an inability to pay, and pre-treatment deposits and/or payments are prohibited. The section explains that providers that offer supplemental prescription drug coverage as part of their primary health care program may reimburse eligible recipients for co-payments made for medications under Medicare Part D upon availability of funds.

Section 39.7 outlines the criteria necessary to maintain eligibility for program services. Recipients must continue to be in financial need and reside in Texas. Recipients are required to inform their providers of changes in address, health insurance coverage, employment, income, and family composition to ensure continued eligibility for services.

Health and Safety Code, Chapter 31, requires that primary health care services must be provided, to the greatest extent possible, to low-income individuals who are not eligible for similar services through other publicly-funded programs and who do not have another source of support. In order to assure that the department is the payer of last resort, §39.8 mandates coordination of benefits between the department, providers of other benefits programs, and person(s) who have a legal obligation to financially support the recipient.

Section 39.9 describes the terms under which services to recipients and applicants may be denied, modified, suspended, or terminated as required by Health and Safety Code, §31.009. Applicants who intentionally provide false or incomplete information, recipients that are no longer eligible for services, and recipients or other persons who have a legal obligation to support a recipient that do not reimburse the department for services will receive written notice of the denial, modification, suspension, or termination of services and an opportunity for a fair hearing.

Section 39.10 establishes the process by which an appeal requested by a recipient or applicant aggrieved by a program decision to deny, modify, suspend, or terminate participation in program services will be conducted.

According to Health and Safety Code, §31.015, the department is required to adopt rules relating to the information a provider shall report to the department. Section 39.11 states that program review activities will be conducted to ensure the delivery of appropriate services and evaluate the continued need for services. The department will require providers to report on the number of recipients served, demographic information about recipients, fiscal and expenditure information, program accomplishments, and coordination of benefits with other providers.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was Fort Bend Family Health Center, Inc., an organization that contracts with the department to provide primary health care services. The commenter was not against the rules in their entirety; however, the commenter expressed a concern as discussed in the summary of comments.

Comment: Concerning §39.6(g), the commenter expressed concern that the rule language would prohibit an agency from collecting co-payments from clients before services are performed.

Response: The commission disagrees and has determined that the language prohibiting required pre-treatment payments and deposits does not refer to co-payments, and therefore does not prohibit a contractor from requesting pre-treatment co-payments from individuals eligible for program services or persons legally responsible for them. No change was made as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The repeals are adopted under the Health and Safety Code, §31.004(a), which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to administer Health and Safety Code, Chapter 31; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 May 8, 2006.

TRD-200602545
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: May 28, 2006
Proposal publication date: February 24, 2006
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER A. PRIMARY HEALTH CARE SERVICES PROGRAM

25 TAC §§39.1 - 39.11

The new sections are adopted under the Health and Safety Code, §31.004(a), which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to administer Health and Safety Code, Chapter 31; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 May 8, 2006.

TRD-200602546
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: May 28, 2006
Proposal publication date: February 24, 2006
For further information, please call: (512) 458-7111 x6972

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CHAPTER 460. MISCELLANEOUS
SUBCHAPTER A. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION
DIVISION 1. TDMHMR RULEMAKING

25 TAC §§460.1 - 460.8

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts the repeal of §§460.1 - 460.8, concerning rulemaking by the Texas Department of Mental Health and Mental Retardation (TDMHMR) without changes to the proposed text that was published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1413), and the sections will not be published.

BACKGROUND AND PURPOSE

The repeal is necessary to comply with Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §1.18 and §1.26, which abolished the TDMHMR, one of the department's legacy agencies, and transferred its rulemaking authority to the Executive Commissioner of the Health and Human Services Commission effective September 1, 2004. Repeal of these sections is necessary to align the department's rules more accurately with House Bill 2292.

The rules and this Proposed Preamble were previously published as proposed in the *Texas Register* but expired on November 10, 2005, before final adoption and publication occurred. The department reproposed the repeals for publication, and the Executive Commissioner of the Health and Human Services Commission approved the reproposal on February 14, 2006. The reproposal was published in the March 3, 2006, issue of the *Texas Register* for a 30-day comment period.

SECTION-BY-SECTION SUMMARY

The repeal of §§460.1 - 460.8 is necessary to align the department's rules with the requirements of House Bill 2292 concerning the transfer of rulemaking authority from the TDMHMR to the Executive Commissioner of the Health and Human Services Commission.

COMMENTS

The department, on behalf of the Health and Human Services Commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules(s), as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The adopted repeal is authorized by Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292), §1.18 and §1.26, which abolished the Texas Department of Mental Health and Mental Retardation and transferred its rulemaking authority to the Executive Commissioner of the Health and Human Services Commission; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies reasonably necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 May 8, 2006.

TRD-200602550
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: May 28, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 458-7111 x6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 1. EXECUTIVE ADMINISTRATION
SUBCHAPTER C. PROCEDURE FOR PATENTING LAND

31 TAC §1.29, §1.30

The Texas General Land Office (GLO) adopts amendments to 31 TAC, Part 1, Chapter 1 relating to Executive Administration, Subchapter C, relating to Procedure For Patenting Land, §1.29, relating to Patent Fees, and §1.30, relating to Scrivener's Error. The adopted amendments reference 31 TAC, Part 1, Chapter 3, for fees relating to Patents and eliminate duplication of agency fees.

The amendments are adopted without changes to the proposed text published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2826) and will not be republished. The adopted amendments provide a reference for fees relating to Procedures for Patenting Lands currently in §1.29 and §1.30. The GLO recently organized all the fees and costs the agency charges under 31 TAC, Part 1, Chapter 3. The GLO organized the fees and costs under one rule in order to facilitate the public's use of the agency rules, and the public's understanding of the fees and costs associated with doing business with the GLO. Upon review of its rules, the GLO found that the patent fees in 31 TAC §1.29 and §1.30 were redundant of those found in Chapter 3. In a continued effort to maintain and organize its rules that facilitate the public's ease in access and use of its rules, the GLO adopts the amendments of 31 TAC §1.29 and §1.30.

No comments were received regarding any of the adopted amendments to Chapter 1.

The amendments are adopted under §§31.051, 31.064, 51.174 and 52.324 of the Texas Natural Resources Code, which provides the GLO with authorization to promulgate rules and to set and collect certain fees.

Texas Government Code, Chapter 552, and Texas Natural Resources Code, Chapters 31, 32, 33, 51 and 52 are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2006.

TRD-200602511
Trace Finley
Policy Director
General Land Office
Effective date: May 25, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 475-1859

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CHAPTER 3. GENERAL PROVISIONS
SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The Texas General Land Office (GLO) adopts amendments to 31 TAC, Part 1, Chapter 3, relating to General Provisions, Subchapter C, relating to Services and Products, §3.31, relating to Fees. The amendments are adopted without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2827) and will not be republished.

The adopted amendments will update, revise and include mailing fees for Certified and Registered Mail to reflect current United States Postal Service (USPS) rates. The GLO recently organized all the fees and costs the agency charges under 31 TAC, Part 1, Chapter 3. The GLO organized the fees and costs under one rule in order to facilitate the public's use of the agency rules, and the public's understanding of the fees and costs associated with doing business with the GLO. Upon review of its rules, the GLO found that the fees for Registered Mail were old and outdated and did not include fees for Certified Mail. In an effort to eliminate changing the rules to keep abreast of anticipated USPS rate increases in the future, the GLO amended §3.31(b)(11) to convey current rates for Certified and Registered Mail. In a continued effort to maintain and organize its rules that facilitate the public's ease in access and use of its rules, the GLO adopts the amendments of 31 TAC §3.31(b)(11).

No comments were received regarding the adopted amendments to §3.31.

The amendments are adopted under §§31.051, 31.064, 51.174 and 52.324 of the Texas Natural Resources Code, which provides the GLO with authorization to promulgate rules and to set and collect certain fees.

Texas Government Code, Chapter 552, and Texas Natural Resources Code, Chapters 31, 32, 33, 51 and 52 are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 5, 2006.

TRD-200602513
Trace Finley
Policy Director
General Land Office
Effective date: May 25, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 475-1859

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.14

The Texas Parks and Wildlife Commission adopts an amendment to §53.14, concerning Deer Management and Removal Permits, without changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8626).

The amendment increases the fees for scientific breeder's permits and renewals of scientific breeder's permits. The current fee for a scientific breeder's permit is $180; the current fee for a renewal is also $180. The amendment increases the respective fees to $400. The amendment also eliminates the fees for purchase and transport permits, which have been eliminated.

The past five years have seen explosive growth in the number of scientific breeder permits issued by the department. In 2000, the department issued 385 scientific breeder permits. By 2005, the numbers had mushroomed to 821 breeder permits. At the current time there are over 950 permitted scientific breeder facilities in the state. The growth of the program has introduced new levels of complexity and expense in administering the program, because keeping track of inventories, transactions, movements, and records is time-consuming and laborious. At the same time, the emergence of Chronic Wasting Disease (CWD) as a threat to native free-ranging deer populations has assumed national proportions. Within the next five years, the U.S. Department of Agriculture is expected to impose mandatory identification and tracking protocols for captive cervids. Anticipating eventual federal actions, the Texas Animal Health Commission has published proposed rules to implement the National Animal Identification System These developments point to the need for the department to develop and implement effective methods for quickly and efficiently gathering, collating, storing, and retrieving the large and growing amounts of data generated by the industry.

In another rulemaking published elsewhere in this issue, the department adopts rules implementing disease monitoring protocols, not only in anticipation of federal requirements, but to ensure the viability of the deer-breeding industry in this state for the future. The fee increases, along with the elimination of the fees for transport and purchase permits, are intended to increase efficiency, but are also necessary to shift the full cost of administering the program from the department to the regulated community. Since the inception of the scientific breeder program, the fees paid by permittees have not generated revenue sufficient to fund the administrative expenses of the program. Thus, the program has been subsidized by revenues obtained from sources other than program participants. Parks and Wildlife Code, §43.355(c), gives the Texas Parks and Wildlife Commission (Commission) discretion to set fees for scientific breeder permits. The Commission has directed that the scientific breeder program be administered by the department according to a 'user-benefit/user-pay' model. Therefore, the department has determined that the fee for a scientific breeder permit (or renewal) should be set at $400. This value was obtained by taking the estimated cost to the department of administering and enforcing the provisions of this subchapter and relevant provisions of the Parks and Wildlife Code ($297,000, including the development and implementation of the automated identification and tracking protocols discussed previously) and dividing that value by the number of scientific breeder permits issued in 2005 (821). The resultant figure ($361.75) was then adjusted upward to account for the annual revenue lost by the elimination of the transport and purchase permits ($64,800) and rounded to $400.

The expected results of the rulemaking are increased program efficiency, more efficient and less time-consuming customer service, increased opportunity for the use of automation in the scientific breeder program, and the creation of a mechanism to produce coherent data for a number of useful purposes, such as disease monitoring.

The amendment to §53.14 will function by establishing a fee of $400 for the issuance of a scientific breeder's permit or permit renewal.

The department received three comments opposing adoption of the proposed amendment.

One commenter opposed adoption of the proposed amendment and stated that the $400 fee would stop a lot of people from obtaining a permit and suggested a fee of $250. The department disagrees with the comment and responds that the commission has directed that the scientific breeder permit program be operated on a user-benefit/user-pay basis. Therefore the cost of administering the program must be borne by program participants. The department has estimated that the per-permittee cost of administering the program is approximately $400. No changes made were made as a result of the comment.

Two commenters opposed adoption of the proposed amendment and stated that the proposed fee increase was too small. The department disagrees with the comments and responds that the commission has directed that the scientific breeder permit program be operated on a user-benefit/user-pay basis. Therefore the cost of administering the program must be borne by program

participants. The department has estimated that the per-permittee cost of administering the program is approximately $400. No changes made were made as a result of the comments.

The department received 13 comments supporting adoption of the proposed rule.

The Texas Wildlife Association supported adoption of the proposed rule.

The amendment is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to establish the fees for scientific breeder permits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2006.

TRD-200602492
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: May 23, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.107, §65.109

The Texas Parks and Wildlife Commission adopts amendments to §65.107 and §65.109, concerning Permits to Trap, Transport, and Transplant Game Animals and Game Birds. Section 65.109, concerning Issuance of Permit, is adopted with changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8630). Section 65.107 is adopted without changes and will not be republished.

The changes to §65.109, concerning Issuance of Permit, affect the provisions governing the circumstances and conditions under which the department may deny or delay permit issuance or renewal. The change substitutes the indefinite article 'a' for the indefinite pronoun 'any' as the first word in subsection (b)(1) and (2). The change is nonsubstantive. Discussions with the White-tailed Deer Advisory Committee (WTDAC) have resulted in changes to subsection (c) that affect the length of time that persons could be prohibited from obtaining a permit on the basis of the violations specified within the proposed section. The department was persuaded that rather than the proposed mandatory five-year period of ineligibility, there should be provision for lesser periods of ineligibility commensurate with the degree of severity of the violation. The change therefore alters subsection (c) to provide that the department may deny permit issuance for *up to* five years for any person convicted of an offense listed in subsection (b). Proposed subsection (d) provided that the department could deny or delay permit issuance or permit renewal to any person who was a defendant in a criminal prosecution for a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony. In discussions with the WTDAC, the department was persuaded by the argument that pending charges of violations not involving the possession of live animals should not affect permit processing. Therefore, the department has chosen to adopt a modified standard that would allow the department to delay permit issuance or renewal for any person who is a defendant in a criminal prosecution for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, or Parks and Wildlife Code, §63.002, but deletes the reference to other violations of the Parks and Wildlife Code that are Class A or B misdemeanors or felonies. The change to §65.109 also alters proposed subsection (d) to eliminate the provision allowing for permit denial on the basis of an applicant's status as a defendant in a criminal prosecution for certain offenses. The intent of the department was to prevent persons in the process of potentially becoming ineligible for permit issuance from obtaining a permit that would otherwise have authorized continued activities for the period of validity of that permit. The department believes that simply delaying issuance until the status of the applicant has been finally decided is acceptable. Therefore, the provision for denial is being removed from the rule as adopted. Proposed subsection (e) provided that the department may refuse to grant a permit to a person the department "has reason to believe" is acting as a surrogate for another person who is prohibited from obtaining a permit. The change alters proposed subsection (e) to replace the phrase "has reason to believe" with the phrase "has evidence." The change was recommended by the WTDAC. The department believes that either wording is sufficient to convey the meaning and intent of the rule.

The amendment to §65.107, concerning Permit Applications and Processing, widens the applicability of the current review process for permit denials to include decisions by the department to delay processing of an application if the applicant is a defendant in a criminal prosecution for specified violations of the Parks and Wildlife Code or department regulations. The amendment is necessary because the proposed amendment to §65.109 would allow the department to deny permit issuance on the basis of an applicant's history of convictions or violations of certain Parks and Wildlife Code provisions.

The amendment to §65.109, concerning Issuance of Permit, modifies the criteria used by the department to delay permit processing or issuance to persons on the basis of past convictions or violations of certain Parks and Wildlife Code provisions or department regulations. The proposed amendment would allow the department to refuse permit issuance to any person who applies for a permit to trap, transport, and transplant game animals and game birds ("Triple T" permit) within five years of being finally convicted of or receiving deferred adjudication for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, or Parks and Wildlife Code, §63.002.

Under current rules, the department does not issue Triple T permits to applicants who have been finally convicted, during the two-year period immediately preceding the date of application, of any violation of the provisions governing the use of Triple T permits. The amendment eliminates the current automatic prohibition and allows permits to be issued at the department's discretion; however, the current two-year period of applicability has been expanded to five years, the provisions of the subsection also apply to deferred adjudication in addition to convictions, and the subsection apply to a wider range of offenses, including offenses involving any permit authorizing the possession of live animals.

The amendment also allows the department to refuse to issue a permit to any person the department has evidence showing that the person is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities. In some cases, persons who have been prohibited from obtaining certain types of permits have attempted to continue their activities by using proxies to obtain a permit. The department's intent is to ensure that persons the department intends to prevent from engaging in certain activities are in fact prevented from doing so. The amendment applies identical standards to agents. In many cases, permit activities are conducted by other persons in addition to the permittee. The department believes in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense which could result in permit denial from assisting in activities involving live animals.

The amendment also would authorize the department to delay the processing of a Triple T application if the applicant is a defendant in a prosecution for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, or Parks and Wildlife Code, §63.002.

The amendment is part of an overall effort to create uniform criteria for the denial of special permits or permit processing to persons who have been proven to exhibit disregard for statutes governing the taking or possessing wildlife, including under department permits for the possession of live wildlife issued pursuant to Parks and Wildlife Code, Chapter 43 (scientific, educational, and zoological permits, Triple T permits, scientific breeder's permits, and deer management permits), as well as more serious Parks and Wildlife Code offenses.

However, the department does not intend for a prosecution, conviction or deferred adjudication to be an automatic bar to obtaining a permit. The department intends to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to delay or deny a permit based on a conviction or deferred adjudication would include, but not be limited to, the seriousness of the offence, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

The amendment to §65.107 will function by expanding the current review process to include the review of department decisions to delay processing of permit applications on the that the applicant is a defendant in a criminal prosecution for specified violations of the Parks and Wildlife Code or department regulations.

The amendment to §65.109 will function by establishing specific criteria under which the department may choose to deny or delay permit issuance or renewal and by establishing specific criteria under which the department may prohibit persons from acting as agents in permitted activities, and by allowing the department to deny permit issuance to an applicant who is determined to be acting as a surrogate for a person who is prohibited from possessing a permit or engaging in permitted activities.

The department received two comments opposing adoption of the proposed rules. Neither commenter offered a specific reason or rationale for opposition.

The department received 12 comments supporting adoption of the proposed rules.

The Texas Wildlife Association commented in support of the rules as adopted.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which requires the commission to adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds.

§65.109. Issuance of Permit.

(a) Permits authorized under this subchapter:

(1) will be issued, with the exception of permits to trap, transport, and process surplus white-tailed deer, only if the activities identified in the application are determined by the department to be in accordance with the department's stocking policy;

(2) will be issued only if the application and any associated materials are approved by a Wildlife Division technician or biologist assigned to write wildlife management plans;

(3) do not exempt an applicant from the requirements of §§55.142 - 55.152 of this title (relating to Aerial Management of Wildlife and Exotic Animals).

(b) The department may refuse permit issuance or renewal to any person who within five years of applying for a Triple T permit has been finally convicted of or received deferred adjudication for:

(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) a violation of Parks and Wildlife Code that is a Class A misdemeanor, a Class B misdemeanor, or felony; or

(3) a violation of Parks and Wildlife Code, §63.002.

(c) The department may prohibit any person for a period of up to five years from acting as an agent of any permittee if the person has been convicted of or received deferred adjudication for an offense listed in subsection (b) of this section.

(d) The department may delay the processing of a permit or renewal application if the applicant is a defendant in a criminal prosecution for:

(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R; or

(2) a violation of Parks and Wildlife Code, §63.002. an offense listed in subsection (b) of this section.

(e) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

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 May 3, 2006.

TRD-200602491

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: May 23, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 389-4775

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SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §§65.131, 65.132, 65.138

The Texas Parks and Wildlife Commission adopts amendments to §§65.131, 65.132, and 65.138, concerning Deer Management Permits (DMP). Section 65.132, concerning Permit Application, is adopted with changes to proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8632). Sections 65.131 and 65.138 are adopted without changes and will not be republished.

The changes to §65.132, concerning Permit Application, affect the provisions governing the circumstances and conditions under which the department may deny or delay permit issuance or renewal. The change substitutes the indefinite article 'a' for the indefinite pronoun 'any' as the first word in subsection (d)(1) and (2) and inserts the word 'or' between paragraphs (2) and (3). The change is nonsubstantive. Proposed subsection (e) provided that the department could prohibit a person from acting as an agent if the person was a defendant in a criminal prosecution for a violation of certain provisions of the Parks and Wildlife Code or regulations of the commission. The proposed language was intended to mirror similar provisions in proposed rules governing scientific breeder permits and permits to trap, transport, and transplant game animals and game birds. To accomplish this, the change replaces the condition that the person must be a defendant in a criminal prosecution with the condition that the person must have been convicted of or received deferred adjudication for a listed violation. The change is necessary to maintain parallelism with similar provisions in other rules governing permits allowing the possession of live white-tailed deer. Similarly, discussions with the White-tailed Deer Advisory Committee (WTDAC) also led to changes affecting the length of time that persons could be prohibited from obtaining a permit on the basis of the violations specified within the proposed section. The department was persuaded that rather than the proposed mandatory five-year period of ineligibility, there should be provision for lesser periods of ineligibility to accommodate the degree of severity of the violation. Therefore, the change also provided that the department may deny permit issuance for *up to* five years for any person convicted of or receiving deferred adjudication for a violation of a listed offense.

As proposed, subsection (f) provided that the department could deny or delay permit issuance or renewal to any person who was a defendant in a prosecution for a violation of Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, or R; a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony; or a violation of Parks and Wildlife Code, §63.002. In discussions with the White-tailed Deer Advisory Committee (WTDAC), the department was persuaded by the argument that pending criminal charges of violations not involving the possession of live animals should not affect permit processing. Therefore, the department has chosen to adopt a modified standard that would allow the department to delay permit issuance or renewal for any person who is a defendant in a criminal prosecution for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, or Parks and Wildlife Code, §63.002, but deletes the reference to other violations of the Parks and Wildlife Code that are Class A or B misdemeanors or felonies. The change also alters proposed subsection (f) to eliminate the provision for permit denial on the basis of an applicant's status as a defendant in a criminal prosecution. The intent of the department was to prevent persons in the process of potentially becoming ineligible for permit issuance from obtaining a permit that would otherwise authorize continued activities for the period of validity of that permit. The department believes that simply delaying issuance until the status of the applicant has been finally decided is acceptable. Therefore, the provision for denial is being removed from the rule as adopted.

Proposed subsection (g) provided that the department may refuse to grant a permit to a person the department "has reason to believe" is acting as a surrogate for another person who is prohibited from obtaining a permit. The change alters proposed subsection (g) to replace the phrase "has reason to believe" with the phrase "has evidence." The change was recommended by the WTDAC. The department believes that either wording is sufficient to convey the meaning and intent of the rule.

The amendment to §65.131, concerning Deer Management Permit, provides that an approved deer management plan may be changed to comply with regulatory or statutory actions without being considered as a new application. Under current rule, any changes to a plan constitute a new plan and therefore the $1,000 fee for a new permit is applicable, rather than the renewal fee of $600. The amendment is necessary because the department wishes to make clear that changes necessitated by commission or legislative action do not constitute a new application.

The amendment to §65.131(e) clarifies that the review process may be invoked to review a decision by the department to delay processing a permit or to deny a permit renewal, in addition to a decision to deny a new permit. The amendment is necessary to provide consistency with the amendments to §65.132 and §65.138, which clarify the agency's authority to deny or delay issuing a permit or renewal. Although a review procedure is not required, the department wishes to avail itself of the opportunity to review and correct decisions that may have made in error. In addition, the department wishes to allow persons whose permit applications or renewals are denied or delayed the opportunity to discuss this matter with appropriate department personnel.

The amendments to §65.132, concerning Permit Application, and §65.138, concerning Violations and Penalties, clarify the criteria used by the department to deny permit issuance to or prohibit participation in permitted activities by persons on the basis of past convictions or pending prosecutions for certain types of violations of the Parks and Wildlife Code or department regulations. The Parks and Wildlife Code states that deer managed under a DMP "remain the property of the people of the state of Texas and the holder of the permit is considered to be managing the population on behalf of the state." Tex. Parks & Wild. §43.601. Permit activities are a privilege granted by the department under the assumption and expectation that the permittee will abide by permit provisions and applicable laws.

The amendments eliminate the current provisions regarding convictions and deferred adjudications in §65.138(b) and (c). Those provisions have been modified and moved to §65.132(c) - (e). Under current rules, the department may decline to issue a DMP to an applicant who has been finally convicted or has received

deferred adjudication for any violation of the Parks and Wildlife Code within three years preceding the application for a DMP. The adopted rule expands the current three-year period of applicability to five years. Also, the types of offenses which could prevent a person from obtaining a DMP have been modified to refer to offenses involving, the possession of wildlife, a permit authorizing the possession of live animals (i.e., scientific, educational, and zoological permits, Triple T permits, scientific breeder's permits, and deer management permits) and serious offenses involving violations of the Parks and Wildlife Code (i.e., offenses that are more serious than the more common violations such as bag limits, possession limits, etc).

Under the amendment to §65.132, the department may refuse to issue a permit to any person who applies for a DMP within five years of being finally convicted of or receiving deferred adjudication for any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony, or a violation of Parks and Wildlife Code, §63.002.

The amendment to §65.132 also clarifies that the department may delay the processing of an application for a DMP if the applicant is a defendant in a prosecution for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, and R, or a violation of Parks and Wildlife Code, §63.002. When persons have been charged with a serious violation of certain provisions of the Parks and Wildlife Code or department regulations, it is reasonable for the department to reserve the right to suspend the processing of a permit application because of the danger of further violations and the danger of harm to the resource.

The amendment to §65.132 also provides that the department may refuse to issue a permit to any person the department has evidence showing that the person is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities. In some cases, persons who have been prohibited from obtaining a permit have attempted to continue their activities by using proxies to obtain a permit. The department's intent is to ensure that persons the department intends to prevent from engaging in certain activities are in fact prevented from doing so.

The amendment as adopted also applies the same standards to agents. In many cases, permit activities are conducted by other persons in addition to the permittee. The department believes in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense which could result in permit denial from assisting in activities involving live animals.

The department does not intend for a pending prosecution, conviction or deferred adjudication to be an automatic bar to obtaining a DMP. The department intends to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to deny a DMP based on a conviction, deferred adjudication or pending charges would include, but are not limited to, the seriousness of the offense, the number of offenses, the existence or absence of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

The amendment also preserves, but moves from §65.138(c) to §65.132(d), the provision that completely bars a person from obtaining a DMP for three years after being convicted or receiving deferred adjudication for a violation of §65.136 of the department's regulations (relating to Release).

The amendment to §65.132 rewords the final sentence of subsection (a) to clarify the department's interpretation of the provision. The current provision states that "A DMP will be issued following the approval of the applicant's deer management plan by a Wildlife Division technician or biologist assigned to write wildlife management plans." As reflected in the record of the original adoption of this section in August 2001, this provision was not intended to be a stand-alone criterion for permit issuance, but as an explanatory note to indicate that a deer management plan must be approved in order for a permit to be issued. Obviously, other provisions must be satisfied (payment of fees, completion of application materials, etc.) by an applicant before a permit is issued. The amendment states that a DMP will not be issued unless the applicant's deer management plan has been approved by a Wildlife Division technician or biologist assigned to write wildlife management plans. The amendment is necessary to avoid confusion about the intent of the provision.

The amendment to §65.138 eliminates the provisions of subsections (b) and (c). Subsection (b) is no longer necessary, as it has been supplanted by proposed §65.132(c). Section 65.138(c) has been relocated without change to §65.132(d).

The amendments are part of an overall effort to create uniform criteria for the denial of permits to persons who have been proven to exhibit disregard for statutes and regulations governing the taking or possessing wildlife, including under department permits for the possession of live wildlife issued pursuant to Parks and Wildlife Code, Chapter 43 (scientific, educational, and zoological permits, Triple T permits, scientific breeder's permits, and deer management permits), as well as more serious Parks and Wildlife Code offenses.

The department received six comments opposing adoption of the proposed rules.

One commenter opposed adoption and stated that all violators should be permanently banned from holding a deer management permit. The department disagrees and responds that the proposed maximum of five years is believed to be both a sufficient punishment and deterrent. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rules and stated that when deer are held and used, they are no longer wild. The department disagrees with the comment and responds that deer held under a DMP maintain their legal status as wild deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the management of confined deer should be regulated by the Department of Agriculture. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, the possession of white-tailed or mule deer is regulated by the Texas Parks and Wildlife Commission. This is a statutory provision and cannot be modified or eliminated by the commission. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rules and stated that hunting and fishing regulations had become too complicated. The department disagrees with the comment and responds that the rules in question do not affect and are not affected by hunting and fishing regulations. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the department was catering to big business and wealthy landowners. The department disagrees with the comment and responds that the rules as adopted do not condition permit issuance or use on the size of a business enterprise or the monetary means of an applicant. No changes were made as a result of the comment.

The department received 12 comments supporting adoption of the proposed rules.

The Texas Wildlife Association commented in support of the rules as adopted.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which authorizes the commission to issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer, subject to conditions established by the commission.

§65.132. Permit Application.

(a) Applicants for a DMP shall complete and submit an application on a form supplied by the department. Applications for a DMP shall be accompanied by a deer management plan containing the information stipulated by the application form and the nonrefundable fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees). Incomplete applications will be returned to the applicant and will not be processed until complete. A DMP will not be issued unless the applicant's deer management plan has been approved by a Wildlife Division technician or biologist assigned to write wildlife management plans.

(b) A permit under this subchapter is valid from September 1 of one year through August 31 of the immediately following year.

(c) A person who receives deferred adjudication for or is finally convicted of a violation involving §65.136 of this title (relating to Release) is prohibited from obtaining a DMP for a period of three years from the date the conviction is obtained or deferred adjudication was received.

(d) The department may refuse to issue a permit or permit renewal to any person who within five years of applying for a permit has been convicted of or received deferred adjudication for:

(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) a violation of Parks and Wildlife Code that is a Class A misdemeanor, a Class B misdemeanor, or felony; or

(3) a violation of Parks and Wildlife Code, §63.002.

(e) The department may prohibit a person for a period of up to five years from acting as an agent for any permittee if the person has been convicted of or received deferred adjudication for an offense listed in subsection (d) of this subsection.

(f) The department may delay the processing of a permit or renewal application if the applicant is a defendant in a prosecution for:

(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R; or

(2) a violation of Parks and Wildlife Code, §63.002.

(g) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

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 May 3, 2006.

TRD-200602490
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: May 23, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 389-4775

SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

The Texas Parks and Wildlife Commission adopts the repeal of §65.609 and §65.610; amendments to §§65.601 - 65.603, 65.607, and 65.608; and new §65.604 and §65.610, concerning Scientific Breeder's Permits. Sections 65.603, 65.604, and 65.610 are adopted with changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (31 TexReg 8634). The repeal of §65.609 and §65.610 and the amendments to §§65.601, 65.602, 65.607, and 65.608 are adopted without changes and will not be republished.

The changes to §65.603, concerning Application and Permit Issuance, affects the provisions governing the circumstances and conditions under which the department may deny or delay permit issuance or renewal. The change makes a nonsubstantive alteration to subsection (g)(1) and (2) to substitute the indefinite article 'a' for the indefinite pronoun 'any' as the first word. Proposed subsection (h) provided that the department could prohibit a person from acting as an agent for five years if the person had been convicted of or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 43, Subchapter C, E, L, or R; a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony; or a violation of Parks and Wildlife Code, §63.002. As a result of discussions with the department's White-tailed Deer Advisory Committee (WTDAC), a change was made affecting the length of time that persons could be prohibited from obtaining a permit on the basis of the violations specified within the proposed section. The department was persuaded that rather than the proposed mandatory five-year period of ineligibility, there should be provision for lesser periods of ineligibility to accommodate the degree of severity of the violation. Therefore, the change provided that the department may deny permit issuance for *up to* five years for any person convicted of a violation of a listed offense.

Proposed subsection (i) provided that the department may refuse to grant a permit to a person the department "has reason to believe" is acting as a surrogate for another person who is prohibited from obtaining a permit. The change to proposed §65.603(i) replaces the phrase "has reason to believe" with the phrase "has evidence." The change was recommended by the WTDAC. The department believes that either wording is sufficient to convey the meaning and intent of the rule, which is to enable the department to prohibit participation in permitted activities by persons the department has determined are functioning as administrative stand-ins for other persons who are not eligible to do so under the standards established in the subchapter.

The change to proposed §65.603(j) corrects an inaccurate reference to the title of one of the members of the review panel articulated in subsection (j). The proposed text identifies the 'assistant executive director for operations.' The actual title is 'deputy executive director for operations.'

The change to §65.604, concerning Disease Monitoring, consists of several components. Section 65.604 as proposed specified an effective date of April 1, 2007 for the provisions of subsections (b) - (d) and (g), which condition the movement of deer from, into, and between scientific breeder facilities on compliance with disease-testing requirements imposed by the section as a whole. The proposed rules envisioned April 1, 2006 as the starting point for scientific breeders to begin documenting their compliance with disease-testing standards that will eventually take effect in April of 2007. The department's interest was in providing a substantial timeframe for permittees to prepare for the imposition of disease-testing requirements. However, in January 2006, the commission deferred action on the proposal until the April 5 - 6 commission meeting, rendering the contemplated starting date of April 1 impossible. Accordingly, the change removes references to the April 1, 2006 starting date in subsections (e) and (f) and instead makes the provisions of those subsections effective as of the effective date of the rule. The change also reorders the provisions of subsection (e)(1) - (4). As proposed, the subsection provided for movement-qualified status if: 1) certification by TAHC at Level A exists *and/or* less than five eligible mortalities have occurred, 2) no 'detected results have been obtained, *and* 3) 'not detected' results have been returned on at least 20% of eligible mortalities. Discussions with the TAHC and the department's Chronic Wasting Disease Task Force revealed that the 'and/or' stipulation for the provisions of paragraphs (1) and (2) was problematic. The proposed language assumed that the two provisions were equivalent (i.e., that a facility with a Level A status would by definition have met the 20% 'not detected' test requirement. The department learned that on occasion, TAHC will "suspend the advancement" in status from A to B. Thus it is possible that a facility could be at Level A status and yet not meet the 20% rule. Accordingly, the change removes 'and/or' and replaces it with 'or.' The change also clarifies confusion concerning the hierarchy of the provisions and which may be substituted for which in order to attain movement-qualified status. The intent of the department is that *no* facility be movement qualified if a test result of 'detected' has been returned on a mortality from that facility. Beyond this absolute restriction, a permittee may attain movement-qualified status by: 1) certification by TAHC at Level A,*or* 2) having less than five eligible mortalities, *or* 3) receiving 'not detected' results on at least 20% of eligible mortalities. The change therefore restructures paragraphs (1) - (4) to make it clear.

The change to proposed §65.610, concerning Transfer of Deer, provides an exception for the transfer of deer to a licensed veterinarian, with the provisos that the transport occurs by the most feasibly direct route, the deer are not removed from the means of transportation at any point between the permitted facility and the veterinary facility, and the deer do not leave this state. The change is necessary to accommodate the scenario in which a serious veterinary medical emergency requiring immediate transport makes compliance with notification requirements impossible or impractical. Rather than stipulate that the exception exists only in case of emergency, the department has chosen to simply create a categorical exemption for veterinary purposes.

The repeals, amendments, and new rules as adopted are a comprehensive revision of the department's rules governing the scientific breeder permit program. The intent of the rulemaking is to restructure the administrative process of the program to make it consistent with the anticipated federal requirements for cervid disease-monitoring and to improve program delivery and customer service.

The past five years have seen explosive growth in the number of scientific breeder permits issued by the department. In 2000, the department issued 385 scientific breeder permits and 947 purchase permits. By 2005, the numbers had mushroomed to 821 breeder permits and 2,084 purchase permits. At the current time, there are over 950 permitted breeder facilities in the state.

At the same time, the emergence of Chronic Wasting Disease (CWD) as a potential threat to native free-ranging deer populations has assumed national proportions; the U.S. Department of Agriculture is expected to impose mandatory identification and tracking protocols for captive cervids within the next five to ten years to address issues related to numerous animal diseases. Anticipating eventual federal actions, the Texas Animal Health Commission has published proposed rules to implement the National Animal Identification System. These developments indicate a need for the department to develop and implement effective methods for quickly and efficiently gathering, collating, storing, and retrieving the large and growing amounts of data generated by the industry. In addition, CWD has also been identified in captive deer herds in other states.

In a related rule adoption published elsewhere in this issue, the department proposes to increase the fees for scientific breeder permits and renewals. These changes are intended to increase the efficiency in the administration and delivery of the scientific breeder program. The expected results are increased program efficiency; the provision of more efficient and less time-consuming customer service; and the generation of coherent data for a number of useful purposes, such as disease monitoring.

The repeal of §65.609, concerning Purchase of Deer and Purchase Permit, is necessary because the purchase and transfer permits have been eliminated and replaced with a single transfer permit, defined in §65.601(12).

The repeal of §65.610, concerning Transport of Deer and Transport Permit, is necessary because the transport permit has been eliminated.

The amendment to §65.601, concerning Definitions, corrects a misspelling of the scientific name for mule deer in §65.601(4), adds new definitions for the terms 'movement qualified,' 'release,' and 'transfer permit,' and alters definitions for the terms 'serial number' and 'unique number.'

The definition of 'movement qualified' in §65.601(6) is necessary because new §65.604, concerning Disease Monitoring, conditions the movement of scientific breeder deer on the maintenance and results of disease-testing protocols. The definition establishes the department's understanding of the meaning of the term, defining a mandatory status for the introduction of deer to or removal of deer from a scientific breeder facility.

The definition of 'release' in §65.601(8) specifies what the department considers to be the termination of possession of a scientific breeder deer. The definition is necessary to create an obvious point at which deer can no longer be considered in the possession of a scientific breeder.

The amendment to the definition of 'serial number' in §65.601(11) clarifies that a serial number consists of the prefix "TX" followed by a four-digit number. The amendment is

necessary to firmly establish what the department intends with respect to certain provisions involving serial numbers.

The definition of 'transfer permit' in §65.601(12) is necessary in order to establish that the transfer permit, although a multi-use permit, satisfies the requirements of Parks and Wildlife Code, §43.361 and §43.362, which require a person to possess a permit issued by the department to purchase, ship, or transport deer.

The amendment of the definition of 'unique number' in §65.601(13) eliminates the option for permittees to employ user-generated numbering conventions for deer held under a scientific breeder permit, thus having the effect of requiring all deer held under scientific breeder permits to be identified with a department-supplied unique number. The amendment is necessary because of confusing and misleading identification conventions that interfere with the department's attempts to maintain accurate records and inventories. The amendment also clarifies the purpose of the unique number, which is the identification of specific deer held under a scientific breeder permit. The amendment is necessary to accurately reflect the actual function of the unique numbering system.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges deletes former subsection (b)(1), which was duplicative of former subsection (b)(2), which is being renumbered as subsection (b)(1). The amendment to §65.602 also adds a new subsection (b)(2) to clearly state that a scientific breeder may purchase or accept deer from another scientific breeder. The provision is a nonsubstantive addition for purposes of clarification. Scientific breeders are allowed to obtain deer from other scientific breeders. The amendment simply acknowledges this. The amendment also adds the term 'transfer' to the provisions of subsection (b)(3). Since other provisions of this rulemaking eliminate the transport and purchase permits, replacing them with the transfer permit, the amendment is necessary to add the function of the transfer permit to the list of activities authorized by a permit.

The amendment to §65.602 also imposes an expiration date of March 31, 2007, for the provisions of subsection (c), regarding requirements for the release of deer into the wild from a scientific breeder facility. Under current rule, scientific breeder deer may not be released unless they originate from a herd enrolled in a valid herd health plan approved by the Texas Animal Health Commission (TAHC). The rule was originally promulgated as part of a joint effort between the department and TAHC to reduce the potential spread of Chronic Wasting Disease (CWD) from deer imported to scientific breeder facilities from outside the state. New requirements for release of scientific breeder deer are included in the disease monitoring provisions of §65.604. The department seeks to allow a reasonable amount of time for permittees to comply with the disease monitoring provisions of new §65.604, concerning Disease Monitoring. The rule as adopted establishes April 1, 2007 as the effective date of provisions restricting deer releases to 'movement qualified' facilities only; therefore, it is necessary to continue the effectiveness of current §65.602(c) until that time. The amendment also restructures §65.602(b)(6) to reflect the addition of the transfer permit and the elimination of the purchase and transport permits.

The amendment to §65.602 is also in part necessary because of new §65.604, which establishes provisions governing the movement and release of scientific breeder deer that allow a scientific breeder to establish a status ('movement qualified'), over time, that qualifies the scientific breeder to accept deer into or move deer out of a facility for purposes of sale or release, provided the scientific breeder continues to perform disease testing at a certain rate (also provided there are no test results of 'detected'). In order to allow for a seamless transition and to give scientific breeders the opportunity to attain movement qualified status for the remainder of the current permit-year (i.e., until March 31, 2007), the department will delay the effectiveness of requirements within §65.604(b) - (c) and (g) regarding movement into or out of a facility and the loss and reestablishment of movement qualified status. As noted previously, in the interim, the provisions regarding release of permitted deer into the wild in current §65.602(c) will continue in effect. The amendment is necessary to implement a better and more effective protocol for preventing captive native cervids from becoming a disease vector.

The amendment to §65.603, concerning Application and Permit Issuance, requires an affirmation from a certified biologist that a prospective facility physically exists and contains no deer prior to the time of application; changes the permit year to run from July 1 to June 30 instead of from April 1 to March 31, consolidates all provisions governing the effect of criminal prosecutions on permit issuance in one place, and provides for a review of department decisions to refuse issuance of permits or renewals.

The department has discovered that in some cases persons have acquired scientific breeder deer and placed them within a facility before applying for a scientific breeder permit, then added deer at later dates. Another practice noticed by the department was the certification of plans by a certifying biologist even though the facility had not been built yet. This has caused significant discrepancies and difficulties for the department in identifying, tracking, and inventorying deer and transactions among scientific breeders. As a result, the department feels it is necessary, as a part of the application process detailed in §65.603, to require the certifying biologist to affirm that the prospective facility physically exists and that no deer are being held in the facility. The amendment to §65.603(a) is necessary to ensure that the department is able to maintain an accurate record of the number of deer within scientific breeder facilities.

The current permit-year (April 1 - March 31) has proven to be problematic for both permittees and the department. Given the tremendous growth of the program, department staff has found it difficult to process the large number of renewal applications, causing inconvenient delays for permittees. The amendment to §65.603(c), creating a new permit-year and reporting period, is necessary to provide additional buffer time between the end of the reporting period (March 31) and the beginning of the following permit year (July 1) to enable the department sufficient time to process reports and issue permit renewals prior to the start of the permit year. Thus, the reporting period will be from April 1 of one year to March 31 of the next year, with a May 15 deadline for submission to the department.

Prior to this rulemaking, the department, at its discretion, could refuse to issue a scientific breeder's permit or permit renewal to any person finally convicted of any violation of Parks and Wildlife Code, Chapter 43. In reviewing similar provisions in other regulations governing the possession of live animals, the department determined that a more uniform approach to situations involving the criminal history (with respect to the Parks and Wildlife Code) of permit applicants is appropriate. Therefore, the department elsewhere in this issue is also adopting changes to similar provisions affecting deer management permits and permits for the trapping, transporting, and transplanting game animals and game birds.

As a result of the review, the department determined that the decision to issue or renew a permit should take into account the applicant's history of violations involving the possession of live animals and major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies). The department reasons that it is appropriate to deny the privilege of possessing live animals to persons who exhibit a demonstrable disregard for the regulations governing the possession of live animals. Similarly, it is appropriate to deny the privilege of possessing live animals to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

Therefore, §65.603(g) - (i) specify that the department may refuse permit or renewal issuance to persons who have been finally convicted of or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R (which govern specialized permits for the possession of live animals), violations of the Parks and Wildlife Code that are Class B misdemeanors, Class A misdemeanors, or felonies, and violations of Parks and Wildlife Code, §63.002 (which although a Class C misdemeanor, specifically addresses the unlawful possession of live game animals).

The department also notes that the rule in effect prior to this rulemaking was open-ended; theoretically, a person convicted of a violation of Parks and Wildlife Code, Chapter 43, could have been prevented from *ever* obtaining a permit following a conviction. The department has determined that it is appropriate for the department to consider only those convictions or deferred adjudications that have occurred within five years prior to an application for a permit or renewal, reasoning that a potential five-year period of permit denial will act as a sufficient deterrent to intentional violations. The department also stresses that the intent of the rulemaking is to give the department a credible response to persons with a history of blatant disregard for the rules. However, the department does not intend for a conviction or deferred adjudication to be an automatic bar to obtaining a permit. The department intends to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to refuse to issue a permit or permit renewal based on a conviction or deferred adjudication would include, but not be limited to, the seriousness of the offense, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

Adopted §65.603(h) applies similar standards to agents. In many cases, permit activities are conducted by persons in addition to or in lieu of the permittee. The department believes in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense which could result in permit denial from assisting in activities involving live animals.

Adopted §65.603(i) allows the department to refuse permit issuance to persons who, in the judgment of the department, are acting as surrogates for persons who are prohibited from obtaining a permit. In light of the five-year period of time during which the department could choose to refuse permit issuance to persons convicted of the offenses listed in §65.603(g), it is reasonable to assume that persons might attempt to circumvent the intent of the department (i.e., that they not engage in the business of possessing, breeding and selling deer) by using another person to obtain a permit with the objective of continuing to do business as usual in the name of the shadow permittee. It is therefore necessary to address the possibility, which is accomplished by the adoption of §65.604(i).

As adopted, §65.603(j) creates a review process for department decisions concerning the issuance of permits and renewals. The amendment is necessary to create a process to allow persons who have been denied issuance of permits or permit renewals to have the decision reviewed by a panel of senior department managers. The process as adopted allows the department to reverse such decisions upon further review, and requires the department to report annually to the White-tailed Deer Advisory Committee on the number and disposition of reviews.

As adopted, new §65.604, concerning Disease Monitoring, establishes new protocols for the testing of scientific breeder deer for chronic wasting disease (CWD). The rule currently in effect prohibits the release of deer from any facility that is not enrolled in a valid herd health plan for cervidae approved by the TAHC. The current rule was promulgated in 2003 in response to concerns about the emergence of CWD in both captive and free-ranging deer populations in other states, which represents a potential threat to wild deer populations in Texas.

The biological and epidemiological nature of CWD is not well understood and has not been extensively studied, but it is known to be communicable, incurable, and invariably fatal. The department has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD to native wildlife and livestock, and to determine the appropriate level of response. The department believes that vigilance and early detection are crucial to minimizing the severity of biological and economic impacts in the event that an outbreak occurs in Texas, and that the implementation of reasonable rules to detect the disease is necessary.

As adopted, new §65.604 allows a scientific breeder to release deer to the wild, provided the facility from which the deer are released is 'movement qualified.' Movement-qualified status is obtained by testing eligible deer mortalities and receiving no 'detected' results from the Texas Veterinary Medical Diagnostic Laboratories, provided that at least one of the following is true: the facility has a herd-status level of at least "A" with the TAHC, less than five eligible deer mortalities have occurred within the facility, or the testing of eligible deer mortalities occurring within the facility has resulted in test results of 'not detected' from a minimum of 20% of all eligible mortalities.' Status is maintained by continuing to test at the minimum level, but is lost if deer from a facility that is not movement qualified are introduced. If status is lost as a result of the acceptance of deer from a facility that is not movement qualified, movement of deer from the facility is automatically prohibited for a minimum of one year and the facility must reestablish movement-qualified status. The new rule is necessary to provide an effective and scientifically valid mechanism for reasonably ensuring that deer held under a scientific breeder permit are free of communicable diseases. This is most efficiently accomplished by creating a testing protocol and allowing only those deer originating from 'clean' facilities to be released or moved to other facilities.

The amendment to §65.607, concerning Marking of Deer, clarifies that the unique number required to be tattooed in a deer's ear must be a unique number assigned to the scientific breeder who possessed the deer when the deer was born or who law-

fully obtained the deer from an out-of-state source. By rule, a deer may not leave a facility unless it has been tattooed with a unique number. This means that when a deer leaves the facility in which it was born (or to which it was introduced, if it was lawfully obtained from an out-of-state source when such acquisition was lawful), the deer must be tattooed with a legible unique number identifying that facility. For purposes of clarification, the amendment adds language to make the requirements of the section clearer, and to stipulate that deer also may not be knowingly accepted into a scientific breeder facility unless the deer have been tattooed in accordance with the provisions of the subchapter.

The amendment to §65.607 is necessary to ensure that the history of possession and movement of all deer held under scientific breeder permits is traceable for purposes of disease control and law enforcement. A tattoo can be an effective permanent marking if done correctly; however, poorly done tattoos can become illegible over time, which makes reliable identification problematic. To account for cases in which it is unpractical or impossible to identify deer by means of tattooing (e.g., there is no more room in the ear for an additional tattoo), the amendment also allows the department to prescribe alternative methods for permanent identification on a case-by-case basis.

The amendment to §65.608, concerning Annual Reports and Records, imposes a new reporting deadline for annual reports in order to comport the requirements of the section with changes that imposed a new permit-year, addressed earlier in the discussion of the adopted amendments to §65.603. The amendment also removes references to documentation such as purchase permits and invoices for temporary possession, which are no longer necessary because they have been eliminated. The amendment also requires that reports and records be maintained in a legible condition, which is necessary to ensure that the department is able to accurately interpret information required to be kept by permittees.

New §65.610, concerning Transfer of Deer, creates a single permit for the movement of deer from a scientific facility to any other place for any other purpose. Under current rules deer may be moved under the scientific breeder's permit, a purchase permit, a transport permit, or a temporary invoice, each of which invokes different reporting and documentation standards, creating a problematic recordkeeping burden for the department and the regulated community. This system was workable when the number of scientific breeders and persons patronizing scientific breeders were few; however, given the growth of the industry, a new approach is necessary. In concert with other provisions of this rulemaking, the new rule eliminates all permits other than the scientific breeders permit and replaces the eliminated permits with a single permit that will be required to move deer to any destination for any purpose other than veterinary care. In the adoption of an amendment to §53.14 published elsewhere in this issue, the department addresses the elimination of the fees for the transport and purchase permits.

New §65.610(e) establishes the transfer permit, specifies the period of validity, sets forth the circumstances and manner in which it is required to be used, and prescribes the recordkeeping and reporting requirements incidental to permit use. Under current rules, a transfer or purchase permit costs $30 and is valid for 30 days from the time it is activated (i.e., when the user of the permit notifies the department of pending activities for which the permit would be required). The rule as adopted creates a new permit for which there is no fee and imposes a 48-hour period of validity. The 30-day period of validity for the transfer permit proved problematic for enforcement and recordkeeping purposes, since 30 days is simply too great a time span within which to monitor or verify permit activities, and recordkeeping and reporting errors tend to be multiplied if permittees do not keep up with records in real time but instead wait until the end of the period of validity. The department believes that the 48-hour period of validity, coupled with the 48-hour mandatory reporting window following the completion of each act of transfer, will improve program efficiency, facilitate compliance by the regulated community, and make enforcement less problematic. Additionally, the requirement to report all deer movements, temporary or otherwise, within 48 hours, will greatly enhance the department's ability to quickly track animals for the purpose of epidemiological investigation in the unfortunate event of certain disease detection.

The repeal of §65.609 will function by eliminating an obsolete and unnecessary rule.

The repeal of §65.610 also will function by eliminating an obsolete and unnecessary rule.

The amendment to §65.601 will function by establishing the meaning of certain words, terms, and phrases that have unique significance within the context of the rules and are necessary to administer and enforce the provisions of the subchapter in an unambiguous manner.

The amendment to §65.602 will function by clarifying that a scientific breeder may purchase or accept deer from another scientific breeder, making the provisions of the section compatible with changes made in other sections, and setting an expiration date for provisions in anticipation of the effective date of provisions of other sections.

The amendment to §65.603 will function by requiring an affirmation from a certified biologist that a prospective facility physically exists and contains no deer prior to the time of application, altering the permit year, consolidating all provisions governing the effect of criminal prosecutions, and providing for a review of department decisions to refuse issuance of permits or renewals.

New §65.604 will function by establishing protocols for the testing of scientific breeder deer for chronic wasting disease (CWD) for purposes of allowing releases and movements of deer as part of a system for disease tracking and response.

The amendment to §65.607 will function by clarifying provisions governing identification of scientific breeder deer and the conditions under which deer may be accepted by a permitted facility, in order to buttress the department's capability to monitor and track disease outbreaks if they occur.

The amendment to §65.608 will function by altering reporting deadlines in order to comport the requirements of the section with changes to the permit year, by removing obsolete and unnecessary references to permits that no longer exist, and by requiring that reports and records be maintained in a legible condition.

New §65.610 will function by creating a single permit for the movement of deer from a scientific breeder facility and prescribing the method and manner in which the permit is to be used.

The department received six comments opposing adoption of the proposed rules. Those comments and the department's response are as follows.

One commenter opposed adoption of the rules and stated that deer should not be kept in captivity and/or transported because

the chance of disease transmission is too great. The agency disagrees with the comment and responds that under Parks and Wildlife Code, §43.352, the department is authorized to issue a permit to a qualified person to possess white-tailed or mule deer for propagation, management, and scientific purposes. The commission does not have the authority to modify or eliminate this statutory provision. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department's regulations prohibited the hunting of deer held pursuant to the subchapter. The commenter also stated that because scientific breeder deer are kept in fenced enclosures and provided feed, they are tame deer and therefore the scientific breeder has a moral obligation to treat the deer in a moral fashion. The commenter stated that the rules should require that released scientific breeder deer be protected from hunting until they become wild again. The department disagrees with the comment and responds that department regulations (as well Parks and Wildlife Code, §43.365) prohibit the hunting of deer held in captivity under a permit. The department further notes that there are no statutory restrictions on the erection of fences on private property as stated in Texas Parks and Wildlife Code §1.013. Similarly, there is no statutory prohibition against feeding deer. Therefore, it would be inconsistent to require scientific breeders to meet a standard that is not required of anyone else. In addition, Parks and Wildlife Code §43.363 already prohibits the release of scientific breeder deer less than 10 days before the opening of hunting season unless the deer's antlers are removed. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed amendment to §65.601 that altered the definition of 'unique number.' The department does not agree that a change is necessary. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rules and stated that the unique number and the elimination of transfer and transport permits was an attempt by the department to gain ownership of scientific breeder deer. The commenter also stated that deferred adjudication should not be used retroactively as a standard for denying permit issuance, and that to do so would constitute a denial of due process. The commenter also stated that the department does not follow its own rules. The department disagrees with the comments and responds that the ownership of scientific deer is not an issue addressed by the rulemaking and therefore the comment is not germane to the rulemaking. Furthermore, ownership is irrelevant to the issuance of unique numbers. The department further responds that the use of deferred adjudication as a standard in determining whether or not to issue a permit is appropriate. The intent of the department is to prevent persons who have demonstrated disregard for rules and statutes governing the possession of live wildlife from engaging in permitted activities. A person who has received deferred adjudication must fulfill conditions and terms dictated by the court in order to avoid a final conviction. Therefore the department has included deferred adjudication as a standard in order to ensure that persons who have demonstrated a disregard for rules and statutes regarding the possession of live wildlife are not able to obtain a scientific breeder permit. The department also responds that it does not believe that due process rights are affected by the rules as adopted. Parks and Wildlife Code §43.357 refers to the permit is a privilege rather than a right. Parks and Wildlife Code, Chapter 43, gives the commission the authority to establish the qualifications of persons who may obtain a scientific breeder permit. Lastly, the department is not a scientific breeder. However, Parks and Wildlife Code §12.013 expressly authorizes the department to take, posses and engage in scientific studies involving wildlife. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that the state does not own deer held under a scientific breeder deer. The commenter also stated that mortalities resulting from causes other than disease should be exempt from disease testing requirements. The department disagrees with the comment and responds that the ownership of scientific deer is not an issue addressed by the rulemaking and therefore the comment is not germane to the rulemaking. The department also responds that all mortalities should be tested because the etiology of mortalities is not always obvious. For instance, what appears to be a simple case of an apparently healthy deer colliding with a fence and suffering a broken neck could actually be the result of neuropathic effects of disease. No changes were made as a result of the comment.

One commenter opposed adoption of the rules and stated that there were discrepancies between the department's disease monitoring tracking protocols and those proposed by the Texas Animal Health Commission (TAHC), which impose a burden on scientific breeders of having to comply with two separate systems. The commenter also stated that the hunting of scientific breeder deer is canned hunting and that the department should prohibit the hunting of released scientific breeder deer for a period of six months following release. The department disagrees with the comment and responds that the department has worked very carefully with the TAHC in crafting the rules as adopted, and that the rules as adopted are compatible with the animal identification system envisioned by TAHC. The department further responds that it is impossible to distinguish a scientific breeder deer from any other deer in the wild; therefore it would be impossible to enforce a provision requiring scientific breeder not to be hunted following release. As noted above, §43.363 essentially places some restrictions on the hunting of recently released scientific breeder deer. No changes were made as a result of the comment.

The department received ten comments supporting adoption of the proposed rules.

The Texas Wildlife Association commented in support of the rules as adopted.

31 TAC §§65.601 - 65.604, 65.607, 65.608, 65.610

The amendments and new rules are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the commission with authority to promulgate regulations governing the possession of white-tailed deer and mule deer for scientific, management, and propagation purposes.

§65.603. Application and Permit Issuance.

(a) An applicant for an initial scientific breeder's permit shall submit the following to the department:

(1) a completed notarized application on a form supplied by the department;

(2) a breeding plan which identifies:

(A) the activities proposed to be conducted; and

(B) the purpose(s) for proposed activities;

(3) a letter of endorsement by a certified wildlife biologist which states that:

(A) the certified wildlife biologist has reviewed the breeding plan;

(B) the activities identified in the breeding plan are adequate to accomplish the purposes for which the permit is sought;

(C) the biologist has conducted an inspection of the facility identified in the application and affirms that:

(i) the facility identified in the application:

(I) physically exists; and

(II) is adequate to conduct the proposed activities; and

(ii) no deer are present within the facility;

(4) a diagram of the physical layout of the facility;

(5) the application processing fee specified in Chapter 53, Subchapter A, of this title (relating to Fees); and

(6) any additional information that the department determines is necessary to process the application.

(b) A scientific breeder's permit may be issued when:

(1) the application and associated materials have been approved by the department; and

(2) the department has received the fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(c) A scientific breeder's permit shall be valid from the date of issuance until the immediately following July 1.

(d) Except as provided in subsection (g) of this section, a scientific breeder's permit may be renewed annually, provided that the applicant:

(1) is in compliance with the provisions of this subchapter;

(2) has submitted a notarized application for renewal;

(3) has filed the annual report in a timely fashion, as required by §65.608 of this title (relating to Annual Reports and Records); and

(4) has paid the permit renewal fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(e) An authorized agent may be added to or deleted from a permit at any time by faxing or mailing an agent amendment form to the department. No person added to a permit under this subsection shall participate in any activity governed by a permit until the department has received the agent amendment form.

(f) If a scientific breeder facility is enlarged or added to, the permittee shall submit an accurate diagram of the facility, including the additions or enlargements, to the department. No person shall introduce or cause the introduction of deer to a pen that has been added or enlarged unless the diagram required by this subsection is on file at the department's Austin headquarters.

(g) The department may refuse permit issuance or renewal to any person who within five years of applying for a scientific breeder's permit has been finally convicted of or received deferred adjudication for:

(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony; or

(3) a violation of Parks and Wildlife Code, §63.002.

(h) The department may prohibit any person for a period of up to five years from acting as an agent of any permittee if the person has been convicted of or received deferred adjudication for an offense listed in subsection (g) of this section.

(i) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

(j) An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Operations (or his or her designee);

(B) the Director of the Wildlife Division; and

(C) the Big Game Program Director.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

§65.604. Disease Monitoring.

(a) The provisions of subsections (b) - (d) and (g) of this section take effect April 1, 2007.

(b) No person shall remove, or authorize or cause the removal of a live deer from a facility permitted under this subchapter unless:

(1) the facility is designated by the department as movement qualified; or

(2) the removal is specifically authorized by the department.

(c) No person shall knowingly or intentionally allow the introduction of a live deer from a facility that is not movement qualified into a facility permitted under this subchapter.

(d) The department may authorize the transfer of deer from a facility that is not movement qualified and for which there is no valid scientific breeder permit to a facility permitted under this subchapter; however, the receiving facility shall not allow any deer to be moved from the facility for a period of one year from the date the transfer occurs.

(e) A facility permitted under this subchapter is movement qualified if no CWD test results of 'detected' have been returned from the Texas Veterinary Medical Diagnostic Laboratories for deer submitted from the facility and at least one of the following criteria is satisfied:

(1) the facility is certified by the Texas Animal Health Commission (TAHC) as having a CWD Monitored Herd Status of Level A or higher;

(2) less than five eligible deer mortalities have occurred within the facility as of the effective date of this subsection; or

(3) CWD test results of 'not detected' have been returned from the Texas Veterinary Medical Diagnostic Laboratories on a minimum of 20% of all eligible deer mortalities occurring within the facility as of the effective date of this subsection.

(f) An eligible mortality is any lawfully possessed deer aged 16 months or older that has died within a facility after the effective date of this subsection.

(g) A facility is no longer movement qualified if it cannot meet the requirements of subsection (e) of this section as of March 31 of any year; however, a facility may reestablish movement qualified status at any time by meeting the requirements of subsection (e) of this section.

(h) If a person receives or accepts into a facility that is movement qualified a deer from a facility that is known by the person not to be a movement qualified facility, the receiving facility immediately and automatically loses movement qualified status for a period of one year from the date the transfer occurred, as determined by the department.

(i) Except as provided in this subsection, no person shall introduce into or remove deer from or allow or authorize deer to be introduced into or removed from any facility for which a test result of 'detected' has been obtained by the Texas Veterinary Medical Diagnostic Laboratories. The provisions of this subsection take effect immediately upon the posting of notice by the department at the facility that a 'detected' result has been obtained and continue in effect until:

(1) the facility meets the requirements of subsection (e) of this section; and

(2) the department specifically authorizes the resumption of permitted activities at the facility.

§65.610. Transfer of Deer.

(a) General requirement. No person may remove deer from or accept deer into a permitted facility unless a valid transfer permit on a form provided by the department has been activated as provided in this section.

(b) Transfer by scientific breeder. The holder of a valid scientific breeder's permit may transfer legally possessed deer:

(1) to or from another scientific breeder as a result of sale, purchase or other arrangement;

(2) to or from another scientific breeder on a temporary basis for breeding or nursing purposes;

(3) to an individual who purchases or otherwise lawfully obtains the deer for purposes of release but does not possess a scientific breeder's permit;

(4) to an individual for the purpose of obtaining medical attention, provided the deer do not leave this state; and

(5) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis.

(c) Transfer by person other than scientific breeder. An individual who does not possess a scientific breeder's permit may possess deer under a transfer permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from a scientific breeder for purposes of release.

(d) Release.

(1) The department may authorize the release of deer for stocking purposes if the department determines that the release of deer will not detrimentally affect existing populations or systems.

(2) Deer lawfully purchased, possessed, or obtained for stocking purposes may be held in captivity for no more than 30 days:

(A) to acclimate the deer to habitat conditions at the release site;

(B) when specifically authorized by the department;

(C) if they are not hunted prior to release; and

(D) if the temporary holding facility is physically separate from any scientific breeder facility and the deer being temporarily held are not commingled with deer being held in a scientific breeder facility. Deer removed from a scientific breeder facility to a temporary holding facility shall not be returned to any scientific breeder facility. No deer shall be released from a temporary holding facility during an open season or within ten days of an open season unless the antlers immediately above the pedicel have been removed.

(3) An individual who does not possess a scientific breeder's permit may possess deer under a transfer permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from a scientific breeder for purposes of release.

(e) Transfer permit.

(1) A transfer permit is valid for 48 consecutive hours from the time of activation.

(2) A transfer permit authorizes the transfer of deer to one and only one receiver.

(3) A transfer permit is activated only by:

(A) notifying the Law Enforcement Communications Center in Austin prior to the transport of any deer; or

(B) utilizing the department's web-based activation mechanism prior to the transport of any deer.

(4) A person in possession of live deer at any place other than within a permitted facility shall also possess on their person a department-issued transfer permit legibly indicating, at a minimum:

(A) the species, sex, and unique number of each deer in possession;

(B) the source and destination facilities, or, if applicable, the specific release location for each deer in possession;

(C) the date and time that the permit was activated.

(5) Not later than 48 hours following the completion of all activities under a transfer permit, the permit shall be:

(A) legibly completed and faxed to the Wildlife Division in Austin by the person designated on the permit as the party responsible for notification of the department; or

(B) completed and submitted using the department's web-based permit-completion mechanism.

(6) A scientific breeder may transport deer without a transfer permit from a permitted facility to a licensed veterinarian, provided:

(A) the transport occurs by the most feasible direct route;

(B) the deer are not removed from the means of transportation at any point between the permitted facility and the veterinary facility; and

(C) the deer do not leave this state.

(f) Marking of vehicles and trailers. No person may possess, transport, or cause the transportation of deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a scientific breeder, the inscription shall be "TXD". If the person is a scientific breeder, the inscription shall be the scientific breeder serial number issued to the person.

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 May 3, 2006.

TRD-200602489
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: May 23, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 389-4775

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31 TAC §65.609, §65.610

The repeals are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to establish the fees for scientific breeder permits.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 3, 2006.

TRD-200602488
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: May 23, 2006
Proposal publication date: December 23, 2005
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.10

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") adopts amendments to §41.10 relating to eligibility to enroll in the health benefits program (TRS-Care) under the Texas Public School Retired Employees Group Benefits Act. The amended section is adopted without changes to the text of the proposed rule as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 3013).

The adopted amendments correct a clerical error in the inadvertent omission of paragraphs (1) through (6) under subsection (b) of §41.10 from the *Texas Administrative Code*. The restored paragraphs specify the types of service credit that service retirees who retired before September 1, 2004 can use to qualify for enrollment eligibility in TRS-Care. In December 2005, the Board adopted substantive amendments to §41.10 that became effective February 9, 2006. Those earlier adopted amendments did not change subsection (b) of §41.10 or any of the inadvertently omitted paragraphs under that subsection. As reflected in the Board's December 2005 order adopting the earlier amendments, the Board did not intend to delete the paragraphs now ministerially restored for publication of the correct rule in the *Texas Administrative Code*.

TRS received no public comments regarding the proposed amendments.

Statutory Authority: §1575.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the TRS-Care program.

Cross-reference to Statute: Chapter 1575, Insurance Code, which provides for the establishment and administration of the retirees' health benefits program (TRS-Care) and §38 of SB 1691, which amends §1575.004, Insurance Code, relating to the definition of a retiree.

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 May 8, 2006.

TRD-200602524
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: May 28, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 542-6438

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 7. DADS ADMINISTRATIVE RESPONSIBILITIES

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§7.1, 7.6, and 7.7; new §7.3; and the repeal of §§7.2 - 7.4 in Chapter 7, DADS Administrative Responsibilities, without changes to the proposed text as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1418).

The amendments are adopted to update rules governing management of agency vehicles to comply with the State Vehicle Fleet Management Plan, as required by Government Code, §2171.1045. The amendments are also adopted to correct agency names, delete obsolete terms, and reflect new procedures and organizational structures resulting from the consolidation of health and human services agencies in compliance with Acts 2003, 78th Legislature, Regular Session, Chapter 198 (House Bill 2292).

The new section is adopted to establish a definitions section that contains words and terms currently appearing in the subchapter and to update the definitions of those terms to reflect current procedures and organizational structures.

The repeal is adopted to delete unnecessary or duplicative sections in the subchapter.

DADS received no comments regarding adoption of the amendments, new section, and repeal.

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

40 TAC §§7.1, 7.3, 7.6, 7.7

The amendments and new section are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS, and §2171.1045, which directs state agencies to adopt rules consistent with the management plan adopted under Texas Government Code, §2171.104, relating to the assignment and use of agency vehicles; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 May 4, 2006.

TRD-200602493
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Effective date: June 1, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 438-3734

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CHAPTER 7. TDMHMR AND FACILITY RESPONSIBILITIES

SUBCHAPTER A. STANDARD OPERATING PROCEDURES

40 TAC §§7.2 - 7.4

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS, and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 May 4, 2006.

TRD-200602494
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Effective date: June 1, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 438-3734

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CHAPTER 30. MEDICAID HOSPICE PROGRAM

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§30.32, 30.62, 30.82, and 30.100; adopts new §§30.2, 30.30, 30.34, and 30.36; and adopts the repeal of §§30.2, 30.30, 30.34, and 30.36 in Chapter 30, governing the Medicaid Hospice Program. New §30.30 is adopted with changes to the proposed text published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1426). The amendments to §§30.32, 30.62, 30.82, and 30.100; new §§30.2, 30.34, and 30.36; and the repeal of §§30.2, 30.30, 30.34, and 30.36 are adopted without changes to the proposed text.

The amendments, new sections, and repeal are adopted to require hospice providers to follow additional requirements in the Contracting for Community Care Services chapter, clarify current hospice rules, and add a new rule covering voluntary termination of a Medicaid contract. The adopted rules clarify that a hospice must have a Medicaid contract with DADS before billing for Medicaid services and identify the requirements for general contracting, disclosure, contract termination, processing claims, and sanctions.

New §30.2 is adopted to establish the purpose of the Medicaid Hospice Program chapter, which contains both the contracting requirements for a Medicaid hospice provider and the eligibility requirements for an individual electing into the Medicaid Hospice Program.

The repeal of §§30.2, 30.30, 30.34, and 30.36 is adopted to delete requirements and contracting procedures that have been moved to the Contracting for Community Care Services chapter or reorganized within the Medicaid Hospice Program chapter.

New §30.30 is adopted to require a hospice to meet federal and state regulations in order to be approved for participation in the Medicaid Hospice Program. The new section clarifies that DADS does not pay for hospice services provided before the date the hospice has a Medicaid hospice contract with DADS, the individual makes a valid election into the Medicaid Hospice Program, and the hospice has a contract with the nursing facility or inter-

mediate care facility for persons with mental retardation or related conditions in which the individual resides, if applicable. The new section also clarifies that the valid Medicaid hospice election must be dated on or after the date the hospice has contracted with DADS and the facility, if a contract with a facility is required. The amendment to §30.32 moved material on sanctions and requesting a hearing to §30.82. New §30.34 is adopted to require a hospice to notify DADS in writing at least 10 days before the hospice terminates its contract. The new section also states the steps a hospice must follow to ensure the needs of individuals served by the hospice are met if the hospice terminates its contract. New §30.36 is adopted to define acceptable methods for submitting written information to DADS.

The amendment to §30.62 is adopted to require a Medicaid hospice provider to have a contract with DADS and to submit a complete and accurate claim. The amendment also adds that DADS will deny claims for hospice services and for room and board provided to an individual before the effective date of the Medicaid hospice contract.

The amendment to §30.82 is adopted to remove the details of sanctions DADS may take against a hospice and instead, adds a cross-reference to the rule governing sanctions in the Contracting for Community Care Services chapter. The amendment also updates the procedures for requesting a hearing. The amendment to §30.100 is adopted to require a hospice to document hospice services provided to an individual within the clinical or client record and to remove a cross-reference to the solicitation rule in the Contracting for Community Services chapter because a hospice must comply with the solicitation requirements in this chapter instead.

A minor editorial change was made to the text of §30.30 to clarify and improve the accuracy of the section.

DADS received one written comment from the Texas Association for Home Care in support of the amendments, new sections, and repeal.

SUBCHAPTER A. INTRODUCTION

40 TAC §30.2

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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 May 3, 2006.

TRD-200602481

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Effective date: June 1, 2006

Proposal publication date: March 3, 2006

For further information, please call: (512) 438-3734

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40 TAC §30.2

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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 May 3, 2006.

TRD-200602482

Marianne Reat

Interim General Counsel

Department of Aging and Disability Services

Effective date: June 1, 2006

Proposal publication date: March 3, 2006

For further information, please call: (512) 438-3734

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SUBCHAPTER C. PROVIDER REQUIREMENTS FOR ENTRANCE INTO THE TEXAS MEDICAID HOSPICE PROGRAM; DISCLOSURE REQUIREMENTS

40 TAC §§30.30, 30.34, 30.36

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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 May 3, 2006.

TRD-200602483
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Effective date: June 1, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 438-3734

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SUBCHAPTER C. CONTRACTING AND DISCLOSURE REQUIREMENTS

40 TAC §§30.30, 30.32, 30.34, 30.36

The new sections and amendment are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

§30.30. General Contracting Requirements.

(a) A hospice participating in the Medicaid Hospice Program must comply with the requirements in this chapter and with all federal and state regulations that govern the Medicaid Hospice Program, including the federal regulations in 42 Code of Federal Regulations Part 418 (Hospice Care).

(b) To be approved by the Department of Aging and Disability Services (DADS) for participation in the Medicaid Hospice Program and be awarded a contract, a hospice must:

(1) meet the provisions described in Chapter 49 of this title (relating to Contracting for Community Care Services), except for:

(A) §49.13(b) and (f)(1) of this title (relating to General Contractual Requirements);

(B) §49.14 of this title (relating to Provisional Contracts);

(C) §49.15(d)(2)(B) of this title (relating to Contract Assignment);

(D) §49.31(e) of this title (relating to Record Requirements);

(E) §49.41(c)(1) and (12) of this title (relating to Billings and Claims Payment);

(F) §49.42 of this title (relating to Method of Payment);

(G) §49.43 of this title (relating to Expedited Payments System);

(H) §49.61(a)(4) and (11) of this title (relating to Sanctions); and

(I) §49.63(a), (c), and (d) of this title (relating to Recontracting);

(2) be licensed in Texas as a home and community support services agency to provide hospice services; and

(3) maintain Medicare certification to provide hospice services through the Centers for Medicare and Medicaid Services.

(c) A hospice participating in the Medicaid Hospice Program must not have restrictive policies or practices, including:

(1) requiring an individual to execute a will with the hospice named as legatee or devisee;

(2) assigning an individual's life insurance to the hospice;

(3) transferring an individual's property to the hospice;

(4) requiring an individual to pay a lump sum or make any other payment or concession to the hospice beyond the recognized Medicaid rate;

(5) controlling or restricting an individual or legal representative in using the individual's personal needs allowance while in a nursing facility or an intermediate care facility for persons with mental retardation or related conditions (ICF/MR-RC);

(6) restricting an individual from transferring or withdrawing from the Medicaid Hospice Program at will, except as provided by state law;

(7) denying appropriate hospice care to an individual on the basis of the individual's race, religion, color, national origin, sex, age, disability, marital status, or source of payment; and

(8) preventing or requiring the execution of written or unwritten directives to reject life- sustaining procedures by an adult individual.

(d) If a hospice provides services to a resident of a nursing facility or an ICF/MR-RC, the hospice must have a written contract for the provision of services with the nursing facility or ICF/MR-RC.

(e) DADS does not pay for hospice services provided before the date:

(1) the hospice has a Medicaid hospice contract with DADS;

(2) the individual makes a valid election of the Medicaid hospice benefit as provided under subsection (f) of this section; and

(3) the hospice has a contract with a nursing facility or an ICF/MR-RC if hospice services are provided in a nursing facility or an ICF/MR-RC.

(f) For purposes of subsection (e)(2) of this section, a valid Medicaid hospice election must be dated on or after the requirements listed in subsection (e)(1) and (3) of this section have been met.

(g) If a hospice assigns its contract, it must be assigned in accordance with §49.15 of this title and the hospice to which the contract has been assigned must submit an updated Texas Medicaid Hospice Program Recipient Election/Cancellation/Discharge Notice form for each individual receiving Medicaid hospice services from the hospice.

(h) A hospice must allow legal representatives of DADS, the Texas Attorney General's Medicaid Fraud Control Unit, and the Texas Health and Human Services Commission to enter the premises at any time to make inspections or privately interview the individuals receiving Medicaid hospice services.

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 May 3, 2006.

TRD-200602484
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Effective date: June 1, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 438-3734

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SUBCHAPTER F. REIMBURSEMENT

40 TAC §30.62

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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 May 3, 2006.

TRD-200602485
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Effective date: June 1, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 438-3734

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SUBCHAPTER H. ENFORCEMENT

40 TAC §30.82

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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 May 3, 2006.

TRD-200602486
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Effective date: June 1, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 438-3734

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SUBCHAPTER J. MISCELLANEOUS

40 TAC §30.100

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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 May 3, 2006.

TRD-200602487
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Effective date: June 1, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 438-3734

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CHAPTER 68. BUSINESS SERVICES

SUBCHAPTER E. FLEET MANAGEMENT

40 TAC §68.501

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of Chapter 68, Business Services, consisting of §68.501, without changes to the proposal as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1431).

The repeal is adopted to delete a rule that is duplicative and, therefore, is no longer necessary. The consolidation of health and human services agencies in September 2004 and the resulting transfer of certain rules from Title 25 to Title 40 of the Texas Administrative Code (TAC) left DADS with two rules governing the assignment of vehicles. Texas Government Code, §2171.1045, requires a state agency to promulgate rules relating to the assignment and use of the agency's vehicles. The remaining section governing assignment of vehicles is found at

40 TAC §7.6. An amendment to 40 TAC §7.6 is adopted elsewhere in this issue of the *Texas Register*.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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 May 4, 2006.

TRD-200602495
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Effective date: June 1, 2006
Proposal publication date: March 3, 2006
For further information, please call: (512) 438-3734

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

Texas State Library and Archives Commission

Title 13, Part 1

Rule Review Plan at http://www.sos.state.tx.us/texreg/review/2006/index.shtml

TRD-200602477
Filed: May 3, 2006

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Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) and the Texas Education Agency (TEA) propose the review of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, pursuant to the Texas Government Code, §2001.039. The rules being reviewed in 19 TAC Chapter 109 are organized under the following subchapters: Subchapter A, Budgeting, Accounting, Financial Reporting, and Auditing for School Districts; Subchapter B, Texas Education Agency Audit Functions; Subchapter C, Adoptions By Reference; Subchapter D, Uniform Bank Bid and Depository Contract; and Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System.

As required by the Texas Government Code, §2001.039, the SBOE and the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 109 continue to exist.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200602544
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 8, 2006

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Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission proposes to review Chapters 531 and 533 in accordance with the Texas Government Code, §2001.039. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reason for adopting each of these sections continues to exist. Any questions pertaining to this notice of intention to review should be directed to Loretta R. DeHay, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

TRD-200602507
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Filed: May 4, 2006

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 74, Curriculum Requirements, pursuant to the Texas Government Code, §2001.039. The rules reviewed in 19 TAC Chapter 74 are organized under the following subchapters: Subchapter A, Required Curriculum; Subchapter B, Graduation Requirements; Subchapter C, Other Provisions; Subchapter D, Graduation Requirements, Beginning with School Year 2001-2002; Subchapter E, Graduation Requirements, Beginning with School Year 2004-2005; and Subchapter F, Graduation Requirements, Beginning with School Year 2007-2008. The SBOE proposed the review of 19 TAC Chapter 74 in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1737).

The SBOE finds that the reasons for adopting 19 TAC Chapter 74, Subchapters A-F, continue to exist. The SBOE received no comments related to the rule review requirement.

The SBOE is proposing amendments and a new rule in 19 TAC Chapter 74 that would incorporate changes to reflect legislation passed in 2005; an additional science course option; and technical corrections. The proposed amendments and new rule may be found in the Proposed Rules section of this *Texas Register* issue.

This concludes the review of 19 TAC Chapter 74.

TRD-200602542
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 8, 2006

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The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter A, Gifted/Talented Education; Subchapter B, Adult Basic and Secondary Education; Subchapter C, General Educational Development; and Subchapter D, Special Education Services and Settings, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 89 in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1737).

The SBOE finds that the reasons for adopting 19 TAC Chapter 89, Subchapters A-D, continue to exist.

No changes are necessary to rules in 19 TAC Chapter 89, Subchapter A; therefore, the SBOE is proposing no amendments to these rules at this time.

Changes to rules in 19 TAC Chapter 89, Subchapter B, to reflect existing statute and regulations and agency responsibilities will be proposed in a future issue.

Changes to rules in 19 TAC Chapter 89, Subchapter C, to incorporate provisions relating to legislation passed during the 79th Texas Legislature, 2005, that provides Corp members of the Seaborne ChalleNGe Corps who are 16 years of age to be administered the GED examination will be considered by the SBOE in the future. Another proposed amendment to provide clarification to the certification requirements of counselors serving as chief examiners will also be considered.

Changes to rules in 19 TAC Chapter 89, Subchapter D, to align the rules with federal regulations associated with the reauthorization of the Individuals with Disabilities Education Act (IDEA 2004) will be proposed in a future issue. Once federal regulations have been issued, the SBOE will propose amendments to incorporate any required technical edits, additions, and deletions. Technical edits concerning state agency names will be addressed at that time also.

One comment relating to the rule review of 19 TAC Chapter 89, Subchapter A, was received.

Comment. The Texas Association for the Gifted and Talented expressed strong support for rules relating to gifted and talented education and urged the SBOE to retain all of the current rules in Subchapter A.

Response. The SBOE agreed and took action to adopt the review of 19 TAC Chapter 89, Subchapter A.

The SBOE received no comments relating to the rule review for 19 TAC Chapter 89, Subchapters B-D.

TRD-200602543
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: May 8, 2006

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 40 TAC §745.37(3)

Residential Child-Care Operations	Description	Type of Permit
(A) Foster Family Home (Independent)	An operation that provides care for six or fewer children up to the age of 18 years.	License
(B) Foster Group Home (Independent)	An operation that provides care for seven to 12 children up to the age of 18 years.	License
(C) General Residential Operation	An operation that provides child care for 13 or more children up to the age of 18 years. The care may include treatment services.	License
(D) Residential Treatment Center	An operation that exclusively provides care and treatment services for emotional disorders for 13 or more children up to the age of 18 years.	License
(E) Child-Placing Agency (CPA)	A person, agency, or organization other than a parent who places or plans for the placement of a child in an adoptive home or other residential care setting.	License
(F) Maternity Home	An operation that provides care for four or more minor and/or adult women and her children during pregnancy and/or during the six-week postpartum period.	License
(G) Child-Placing Agency Foster Family Home	An operation that provides care for six or fewer children, up to the age of 18 years, under the regulation of a child-placing agency.	Verification (The CPA issues this. A CPA regulates its own foster family homes.)
(H) Child-Placing Agency Foster Group Home	An operation that provides care for seven to 12 children, up to the age of 18 years, under the regulation of a child-placing agency.	Verification (The CPA issues this. A CPA regulates its own foster group homes.)

Figure: 40 TAC §745.117

Program of Limited Duration	Criteria for Exemption
(1) Parents on the Premises	(A) The program operates in association with a shopping center, business, or religious organization; (B) The parent or person responsible for the child attends or engages in some elective activity nearby, not including employment or education pursued in order to obtain a degree; (C) A child may only be in care: (i) For up to four and one half hours per day; and (ii) For up to 12 hours per week; and (D) The parent or person responsible for the child can be contacted at all times.
(2) Skills Program	(A) The program teaches a talent, ability, expertise, or proficiency; (B) It is not a part of a school, child day-care or after-school day care operation; and (C) Each child attends less than two hours a day.
(3) Parents Day Out Program	(A) The program operates no more than two days a week; (B) It operates for less than 24 hours a day; and (C) It is not a part of an operation subject to our regulation.
(4) Short-Term Program	(A) The program operates no more than 11 weeks during the year; (B) It only provides care for children who are at least five years and under 14 years; and (C) It is not a part of an operation subject to our regulation.
(5) Religious Program	(A) It is a program of religious instruction such as Sunday school or weekly catechism; or (B) It is a religious program that lasts two weeks or less.
(6) Respite Care Program	(A) The program provides residential child care on the weekend or for a short term; (B) The care is planned; (C) The program does not provide care for more than 40 days per year; and (D) It is not a part of an operation subject to our regulation.
(7) Foreign Exchange/ Sponsorship Program	(A) Unrelated children live in the person's home; (B) The children are in the United States on a time-limited visa; and (C) The children are under the sponsorship of the person with whom they are living or the sponsorship of some organization.
(8) Arrangement Between Friends	(A) It is an arrangement between friends for temporary residential child care for one child or a sibling group; and (B) The care does not exceed 40 continuous days or 150 days in a calendar year.

Figure: 40 TAC §745.9003(a)

If we receive the renewal fee...	Then your renewal fee amount will be...
(1) On or before the expiration date,	$50.
(2) Within 90 days after the expiration date,	$75.
(3) More than 90 days but less than one year after the expiration date,	$100.

Figure: 40 TAC §745.9005(a)

If we receive the renewal fee...	Then your renewal fee amount will be...
(1) On or before the expiration date,	$25.
(2) Within 90 days after the expiration date,	$37.50.
(3) More than 90 days but less than one year after the expiration date,	$50.

Figure: 40 TAC §745.9031

Remedial Action	Description of Action
(1) Reprimand	We send you a letter of reprimand by certified mail. Further disciplinary actions may result from future violations.
(2) Probation	We put you on probation for a specific period of time. We may impose conditions on your probation. As part of the probation, we may require you to report to us regularly on the conditions of your probation and to continue or renew professional education that is related to the conditions we impose. We may also limit your areas of practice during the probation period. We may place you on probation only once during the two-year term of your administrator's license. We may suspend or revoke your administrator's license if you do not meet the conditions of your probation.
(3) Refusal to Renew License	Even if you otherwise qualify for renewal, we refuse to renew your administrator's license if you are not in compliance with the laws or rules governing it.
(4) Suspension	We suspend your administrator's license for a specified period of time. We may require corrective actions during your suspension period. We may revoke your administrator's license if you do not complete the suspension's required corrective actions.
(5) Revocation	We revoke your administrator's license.
(6) License Denial	We deny you an administrator's license.

Figure: 40 TAC §745.9065

Options for qualifications:	Educational qualifications:	Professional qualifications:
Option 1	(1) (A) A master's degree from an accredited college or university in social work or other human services field; and (B) Nine credit hours in graduate level courses that focus on family and individual function and interaction.	One year of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The one-year of experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 2	(2) A master's degree from an accredited college or university.	Two years of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The one-year of experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 3	(3) A bachelor's degree from an accredited college or university in social work or other human services field.	Two years of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The one-year of experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities.
Option 4	(4) A bachelor's degree from an accredited college or university.	(A) Three years of documented full-time work experience in a child-placing agency under the direct supervision of a person fully qualified to conduct child placement management activities. The one-year of experience may include a maximum of 350 hours of formal, supervised field placement or practicum in child-placing activities; or (B) Direct supervision from a person fully qualified to conduct child-placement management activities. The direct supervision must consist of 10 documented, monthly, face-to-face, individual, case-related conferences with the child-placement staff. The direct supervision must continue until the employee's previous experience and directly supervised experience totals three years.

Figure: 40 TAC §745.9069

Required Information	Description of Discussion, Assessment, and Documentation Requirements
(1) The age of the adoptive applicants.	All adoptive applicants must be at least 21 years or older. You must include documentation verifying their age.
(2) The marital status of the adoptive applicants including any previous marriages.	If the adoptive applicants are married, you must review and document the marriage license or declaration of marriage record. You must document information about any previous marriages, divorces, or deaths of former spouses.
(3) A history of the adoptive applicants' residence and their citizenship status.	You must document the: (A) Length of time spent at each residence for the past 10 years (street address, city, state); and (B) Citizenship of the adoptive applicants and whether they are legal or illegal immigrants.
(4) The financial status of the adoptive applicants.	Adoptive applicants must be able to meet the child's basic material needs. You must include the family's ability to support a child, employment history, income, expenses, and ability to manage money. You must verify income and insurance coverage.
(5) The results of the criminal history and central registry background checks conducted on the adoptive applicants and any non-client person 14 years of age or older who regularly or frequently stays or works in the home.	Persons applying to adopt children through a child-placing agency, and any non-client person 14 years of age or older who will regularly or frequently be staying or be present at the home while children are being provided care, must obtain a criminal history and central registry background check (See Chapter 745, Subchapter F, of this title (relating to Background Checks)). The results of those checks must be documented in the adoptive home record and the home study.
(6) Health status of the adoptive applicants.	Document information about the physical, mental, and emotional status (including substance abuse history) of all persons living in the home in relation to the family's ability to adopt a child and to assume parenting responsibilities. You must observe these persons for any indication of problems and follow up, where indicated, with a professional evaluation. Document the information obtained through your observations or through a physician's statement. Consideration must be given to the health and age of the adoptive applicants. There must be a plan in place to ensure the child will be raised in a stable and consistent environment to adulthood.
(7) Any disabilities of the adoptive applicants.	A person must not be prohibited from adopting a child solely based on a disability. You must evaluate individuals who are disabled in relation to their adjustment to the disability and any limits the disability imposes on the adoptive applicants' ability to care for a child. This evaluation must be documented in the home study.

(8) The adoptive applicants' motivation for adoption.	Discuss and assess the adoptive applicants' motivation for adoption. You must assess the applicants' motivation and its effect on their ability to accept and parent an adopted child.
(9) The fertility of the adoptive applicants.	Discuss and assess information about the couple's fertility. The applicants' fertility is important only in relation to unresolved feelings about their infertility and their ability to accept and parent a child not born to them.
(10) The quality of the adoptive applicants' marital and family relationships.	Describe the quality of marital and family relationships in relation to the family's ability to adopt and parent a child. You must assess the stability of a couple's relationship, the strengths and problems of the relationship, and how those issues will relate to an adopted child. You must assess the quality of the relationships between the parents and their biological children, living in or out of the home, strengths and problems of those relationships, and how those issues will relate to an adopted child.
(11) The adoptive applicants' feelings about their childhood and parents.	Discuss and assess adoptive applicants' feelings about their childhoods and parents, including any history of abuse or neglect and their resolution of the experiences.
(12) The adoptive applicants' attitude about an adopted child's religion.	Evaluate adoptive applicants on: (A) Their willingness to respect and encourage a child's religious affiliation, if any; (B) Their willingness to provide a child opportunity for religious and spiritual development, if desired; and (C) The health protection they plan to give a child if their religious beliefs prohibit certain medical treatment.
(13) The adoptive applicants' values, feelings, and practices in regard to child care and discipline.	Discuss and assess the applicants' knowledge of child development and their child-care experience. Discuss and assess the ways the applicants were disciplined as children and their reactions to the discipline they received. Discuss and assess the prospective adoptive parents' discipline styles, techniques, and their ability to recognize and respect differences in children and use discipline methods that suit the individual child. If their current discipline methods are different than those that you approve, discuss and assess how they would change their child care practices to conform with your approved methods.

(14) The adoptive applicants' sensitivity to and feelings about children who may have been subjected to abuse and neglect if the agency may place such children with the adoptive parents.	Discuss and assess the adoptive applicants' understanding of the dynamics of child abuse and neglect. Discuss and assess their understanding of how these issues and experiences affect them, their families, and the children they may adopt. Assess the adoptive family applicants' ability to help children who have been abused or neglected. If the adoptive applicants experienced abuse or neglect as a child, assess the handling of those experiences and assess the impact of those experiences on the applicant's ability to help children deal with their own experiences. Evaluate the availability of family and community resources to meet the needs of the children adopted by the family.
(15) The adoptive applicants' sensitivity to, and feelings for children's experiences of separation from, and the loss of, their biological families.	Discuss and assess the adoptive applicants' understanding of the dynamics of separation and loss and the effects of these experiences on children. Discuss and assess their personal experiences with separation and loss and their processing of those experiences. Assess the applicants' acceptance of the process of grief and loss for children and assess their ability to help children through the grieving process.
(16) The adoptive applicants' sensitivity to, and feelings about, a child's biological family.	Discuss the adoptive applicants' feelings about the child's parents, including those parents who abused or neglected the child. Assess their sensitivity and reactions to the birth parents. Discuss and assess their sensitivity to and acceptance of a child's feelings about his parents and assess their ability to help the child deal with those feelings. Discuss and assess the applicants' sensitivity to and acceptance of the child's relationships with his siblings. Discuss and assess their reactions to the possibility of contacts between the child and his biological family in the future.
(17) The attitude of other family and household members regarding adoption.	Discuss and assess the attitudes of other family and household members toward the plan of adoption. Discuss and assess their involvement in the care of children, their attitudes toward the children, and their acceptance of the adoption plan.
(18) The attitude of the adoptive applicants' extended family regarding adoption.	Discuss the extended family's attitude toward adoption and the involvement the family will have with the adopted children. Discuss and assess their involvement in the care of the children, their attitudes toward adoption, and adopted children.
(19) Support systems available to adoptive applicants and adopted children.	Discuss and assess the support systems available to the adoptive family and the support they may receive from these resources.

(20) The adoptive applicants' expectations of and plans for adoptive children.	Discuss and assess the prospective adoptive parent's expectations of the child and the flexibility of their expectations in relation to the child's actual needs and abilities. Assess their capacities to recognize and emphasize the strengths and achievements of the child and their capacities to adjust their expectations according to the abilities of the child.
(21) Adoptive applicants' ability to work with specific kinds of behaviors and backgrounds.	Discuss and assess the adoptive applicants' ability to work with and/or willingness to accept specific behaviors, backgrounds, special needs and/or disabilities and other characteristics of children.

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.

Department of Aging and Disability Services

Notice of Public Hearing

The Department of Aging and Disability Services (DADS) is updating the "State Mental Retardation Facilities Report for Fiscal Years 2006-2007," as required by the Texas Health and Safety Code, §533.032, "Long-Range Planning." In accordance with the requirements of this section, DADS has scheduled a public hearing on June 6, 2006, in the Winters Building, Public Hearing Room, 701 W. 51st Street, Austin, Texas 78751. This hearing is scheduled to begin at 9:00 a.m.

At this public hearing, interested persons will have the opportunity to provide comment on the content of this draft report. Each speaker will be given three minutes to present comments. Persons requiring an interpreter for the deaf or hearing impaired should contact Nellie Nixon at least 72 hours prior to the hearing at (512) 438-5634 or TDD at (512) 424-3250.

The draft report may be downloaded at: http://www.dads.state.tx.us/phr/smrf_report/index.cfm.

To request a copy of the draft report, please contact Nellie Nixon at (512) 438-5634.

Comments on the content of the report may also be submitted in writing to:

Ron Gernsbacher, Manager

Program Improvement and Integration

Department of Aging and Disability Services

P.O. Box 149030, W235

Austin, Texas 78714

Fax (512) 451-8199

ron.gernsbacher@dads.state.tx.us

Written comments must be received by June 6, 2006, at 5:00 p.m. for consideration.

TRD-200602519
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Filed: May 5, 2006

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Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-6-11241. TBPC seeks a five (5) year lease of approximately 2,906 square feet of office space in the County of Liberty, Texas.

The deadline for questions is May 19, 2006 and the deadline for proposals is May 26, 2006 at 3:00 P.M. The award date is July 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=64324.

TRD-200602496
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: May 4, 2006

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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, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/15/06 - 05/21/06 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/15/06 - 05/21/06 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-200602560
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 9, 2006

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Texas Commission on Environmental Quality

Notice of District Petition

Notices mailed May 9, 2006

TCEQ Internal Control No. 01232006-D01; HWY 66 Partners, Ltd. (Petitioner) filed a petition for creation of Galveston County Municipal Utility District No. 66 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 310.0 acres located within Galveston County, Texas; and (3) the proposed District is within the corporate

limits of the City of Texas City, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. There are two lien holders, Frost National Bank, N.A. and Hibernia National Bank, N. A., on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with the certificate evidencing their consent to the creation of the proposed District. By Resolution No. 06-08, effective January 18, 2006, the City of Texas City, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. The petition also states that the proposed District may: (1) finance one or more facilities designed or utilized to perform fire- fighting services; and (2) purchase interests in land and construct, acquire, improve, extend, maintain, and operate works, and improvements for the purpose of providing parks and recreational facilities. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $16,295,000.

TCEQ Internal Control No. 03102006-D09; AroPartners (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 458 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 556.83 acres located within Harris County, Texas; and (4) the proposed District is within the corporate limits or extraterritorial jurisdiction of the City of Houston, Texas. By Ordinance No. 2005-830, effective July 5, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) design, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) design, construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) design, construct, acquire, improve, maintain, and operate any additional facilities, systems, plants and enterprises consistent with the purposes for which the District is created. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $39,700,000.

TCEQ Internal Control No. 02162006-D02; Hannover Estates, Ltd., and James T. Cox, Trustee (Petitioners) filed a petition for the creation of Montgomery County Municipal Utility District No. 96 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 285.543 acres located in Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2005-1326, effective December 13, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, improve, extend, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created and permitted under State law. The petition also states that the proposed District may: (1) finance one or more facilities designed or utilized to perform fire-fighting services; and (2) purchase interests in land and construct, acquire, improve, extend, maintain, and operate works, and improvements for the purpose of providing parks and recreational facilities. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $33,950,000.

TCEQ Internal Control No. 12212005-D03; Prairie Oaks, LTD. (Petitioner) filed a petition for creation of Oak Point Water Control and Improvement District No. 4 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 51 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, Texans Commercial Capital L.L.C. and Newmark Homes, L.P., on the property to be included in the proposed District; (3) the proposed District will contain approximately 213.355 acres located in Denton County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Oak Point, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2005-06-4R, effective June 20, 2005, the City of Oak Point, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the

cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately $14,030,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200602592

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 10, 2006

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Notice of Meeting on June 29, 2006, in Houston, Harris County, Texas, Concerning the Former Aluminum Finishing Company Facility

The purpose of the meeting is to obtain public input and information concerning proposal of the facility to the state registry of Superfund sites, the identification of potentially responsible parties, and the proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the April 7, 2006 issue of the *Texas Register* (31 TexReg 3078).

Pursuant to the Act, §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. With this publication, the commission hereby gives notice of a facility that the executive director has determined eligible for listing, and which the executive director proposes to list on the state registry. By this publication, the commission also gives notice pursuant to the Act, §361.1855, that it proposes a land use other than residential as appropriate for the facility identified. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the facility. The commission is proposing a land use designation of commercial/industrial based on the existing land use of the property, as is prescribed in the Texas Risk Reduction Program rule at 30 TAC §350.53.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this facility was also published on May 19, 2006, in the *Houston Chronicle*.

The facility proposed for listing is the former Aluminum Finishing Company, located at 6006 Ardmore Street, in Houston, Harris County, Texas. The geographic coordinates of the site are Latitude 29 degrees 42 minutes 31 seconds North and Longitude 95 degrees 22 minutes 30 seconds West. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

The facility, formerly known as Aluminum Finishing Company, is located in a mainly residential area on a corner lot at 6006 Ardmore, Houston, Harris County, Texas. The description of the facility is based on information available in 1997 when the site was evaluated with the Hazard Ranking System (HRS). The site has two buildings on site. One is a single story small office building, the other is a large corrugated metal storage building. The site is bound on all sides by either a chain link fence or privacy wooden fence. The site is currently utilized as a kitchen and bath woodworking and remodeling company.

Aluminum Finishing Company operated approximately from March 1981 through June 1993 as an electroplating facility, where nuts and bolts were electroplated with cadmium and coated with chromium. The cleaning solution was sodium cyanide, which was neutralized with sulfuric acid. The plating sludge was stored on-site in metal tanks.

Elevated levels of cadmium, chromium, lead, arsenic, and cyanide were detected in soils samples collected on-site in February 1992, November 1994, and January 1997. The elevated metals and cyanide concentrations are attributed to the former electroplating operations at this facility.

In July 1998, Mr. Leo Montgomery, current owner of the property and doing business as Riverside Kitchen and Bath Company, LLC, applied for and was accepted into the Voluntary Cleanup Program (VCP) to clean up the site. The VCP agreement with the owner was terminated on June 2005 due to inadequate progress.

A public meeting will be held June 29, 2006, at 7:00 p.m., at the DeBakey High School for Health Professions, located at 3100 Shenandoah, Houston, Harris County, Texas. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the site that is the subject of this notice is located. The public meeting is not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., June 28, 2006, and should be sent in writing to Alan Henderson, Project Manager, TCEQ, Remediation Division, MC 136, P. O. Box 13087, Austin, Texas 78711-3087 or facsimile at (512) 239-2303. The public comment period for this action will end at the close of the public meeting on June 29, 2006.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Young Branch Library, 5260 Griggs Road, Palm Center, Houston, Texas 77021 (832) 393-2140, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, 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 is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program on the TCEQ Web site located at *www.tceq.state.tx.us/remediation/superfund/index.html*.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (800) 633-9363. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Crystal Taylor, TCEQ Community Relations Coordinator, at (800) 633-9363.

TRD-200602576

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: May 9, 2006

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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. 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 **June 19, 2006**. 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 a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or 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. 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 June 19, 2006**. 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, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: BASN Corporation dba Swif T Store 21; DOCKET NUMBER: 2005-0950-PST-E; TCEQ ID NUMBER: RN102044344; LOCATION: 3710 Live Oak Street, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct the required annual and triennial testing to verify proper operation of Stage II equipment; 30 TAC §115.246(1) and (5), and THSC, §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review; 30 TAC §115.243(3)(A) and THSC, §382.085(b), by failing to maintain all components of the Stage II vapor recovery system in proper operating condition as specified by the manufacturer or any applicable California Air Resources Board Executive Orders, and free of defects that would impair the effectiveness of the system; PENALTY: $4,950; STAFF ATTORNEY: Robert Mosley, Litigation Division MC 175, (512) 239-0627; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Candido Amaya dba La Hacienda Station and Consuelo Amaya dba La Hacienda Station; DOCKET NUMBER: 2005-1513-PST-E; TCEQ ID NUMBER: RN102957610; LOCATION: the intersection of East United States 281 and Farm-to-Market Road 1015, Progresso, Cameron County, Texas; TYPE OF FACILITY: underground storage tanks (USTs); RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: $2,100; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Carol Watson dba Cobblestone Smokehouse; DOCKET NUMBER: 2005-1603-PWS-E; TCEQ ID NUMBER: RN102321163; LOCATION: 26098 United States Highway 281 North, Bexar County, Texas; TYPE OF FACILITY: restaurant with a public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to perform monthly bacteriological sampling of the public drinking water supply and by failing to provide public notification of the failure to conduct monthly bacteriological sampling during the months of September 2004 - March 2005 and May 2005; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay all Fiscal Year 2005 public health service late fees and all Fiscal Year 2006 public health service annual and late fees; PENALTY: $2,800; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Centergas, Inc. dba Dean's One Stop; DOCKET NUMBER: 2005-1469-PST-E; TCEQ ID NUMBERS: 109171 and RN102450384; LOCATION: seven miles north of Highway 136 on Fritch Highway, Amarillo, Potter County, Texas; TYPE OF FA-

CILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §§334.78(a), 334.77(b), and 334.80(a)(3) and (4) and TWC, §26.121(a), by failing to prevent an unauthorized discharge of hydrocarbons into or adjacent to waters in the state and to implement the required investigations and corrective action; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Financial Account Number 0004027U for Fiscal Year 2005; PENALTY: $27,500; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: Jim Kelso dba Kelso Water System Inc. 1, dba Kelso Water System Inc. 2, and dba Kelso Water System Inc. 3; DOCKET NUMBER: 2005-1054-MLM-E; TCEQ ID NUMBERS: 1520224, 1520148, 1520080, RN102817038, RN101232403, and RN101264372; LOCATION: facility 1, 1082 United States Highway 82, Ralls; facility 2, 4813 Idalou Road, Lubbock; facility 3, south side of United States Highway 62/82, Ralls, Lubbock County, Texas; TYPE OF FACILITIES: public water systems; RULES VIOLATED: at facility 1, 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect and submit routine monitoring samples and by failing to notify the public of the noncompliance during the months of May, June, and November 2003, and May, November, and December 2004, and January 2005; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect and submit repeat samples following a total coliform-positive sample result and by failing to notify the public of noncompliance during the months of August and September 2004; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect and submit the required distribution samples following a total coliform-positive sample result and by failing to notify the public of noncompliance during the months of September and October 2004; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay the required public health services fees for Financial Administration Account Number 91520224; at facility 2, 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect and submit routine monitoring samples and by failing to notify the public of the noncompliance during the months of April - June and November 2003, and January - March, May, November, and December 2004, and January 2005; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect and submit repeat sample following a total coliform-positive sample result and by failing to notify the public of the noncompliance during the month of September 2004; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect and submit the required distribution samples following a total coliform-positive sample result and by failing to notify the public of the noncompliance during the month of October 2004; 30 TAC §290.110(b)(2), by failing to provide at least 0.2 milligrams per liter (mg/L) of chlorine residual throughout the public water supply's distribution system; 30 TAC §290.46(j), by failing to complete customer service inspection certificates prior to providing continuous water service to any existing service when the water purveyor had reason to believe unacceptable practices exist; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to employ a certified water works operator to operate facility 2; 30 TAC §290.41(c)(3)(K) and THSC, §341.036, by failing to properly seal the wellhead and to properly install the well casing vent; 30 TAC §290.46(v), by failing to securely install all water system electrical wiring in compliance with a local or national electric code; 30 TAC §290.41(c)(3)(N), by failing to install a master well meter as required; 30 TAC §290.41(c)(3)(O) and §290.43(e), by failing to provide an intruder-resistant fence around the water system's well house and by failing to provide a gate on the opening in the fence surrounding the pressure tank; 30 TAC §290.121(a), by failing to design and provide a sampling plan for facility 2; 30 TAC §290.43(d)(3), by failing to provide an air-water volume indicator on the pressure tank; 30 TAC §290.46(n)(2), by failing to provide a distribution map of the water system; 30 TAC §288.20, by failing to provide a drought contingency plan for the water system; 30 TAC §290.46(q)(1), by failing to issue a boil water notification to customers within 24 hours of discovering no chlorine residual in the water supply on or about April 18, 2005; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay the required public health service fees for Financial Administration Account Number 91520148; at facility 3, 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect and submit routine monitoring samples and by failing to notify the public of the noncompliance during the months of May, June, September and November 2003, May, November, and December 2004, and January 2005; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect and submit repeat samples following a total coliform-positive sample result and by failing to notify the public of noncompliance during the months of August and September 2004; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect and submit the required distribution samples following a total coliform-positive sample result and by failing to notify the public of noncompliance during the months of September and October 2004; 30 TAC §290.110(b)(2), by failing to provide at least 0.2 mg/L of chlorine residual throughout facility 3's distribution system; 30 TAC §290.46(j), by failing to complete customer service inspection certificates prior to providing continuous water service to any existing service when the water purveyor had reason to believe unacceptable practices exist; 30 TAC §290.46(e) and THSC, §341.033(a), by failing to employ a certified water works operator to operate facility 3; 30 TAC §290.41(c)(3)(B) and THSC, §341.036, by failing to provide well number three with casing that was 18 inches above ground level; 30 TAC §290.46(v), by failing to securely install all water system electrical wiring in compliance with a local or national electric code on well numbers two, three, four, six, and seven; 30 TAC §290.41(c)(3)(O), by failing to provide gates on all wells; 30 TAC §290.121(a), by failing to design and provide a sampling plan for facility 3; 30 TAC §290.46(n)(2), by failing to provide a distribution map of the water system; 30 TAC §290.46(t), by failing to provide legible signs at the wells and pressure tanks; 30 TAC §290.43(d)(2), by failing to provide accurate pressure gauges on all the pressure tanks at facility 3; 30 TAC §290.43(d)(7), by failing to repair leaks on the pressure tanks at wells two and seven; 30 TAC §288.20, by failing to provide a drought contingency plan for the water system; 30 TAC §290.46(q)(1), by failing to issue a boil water notification to customers within 24 hours of discovering no chlorine residual in the water supply on or about April 18, 2005; 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay the required public health service fees for Financial Administration Account Number 91520080; 30 TAC §290.106(b) and THSC, §341.031(a), by exceeding the ten mg/L maximum contaminant level for nitrates during December 2004; PENALTY: $31,576; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(6) COMPANY: Jogesh Amin dba Sema Texaco; DOCKET NUMBER: 2005-1522-PST-E; TCEQ ID NUMBER: RN101434314; LOCATION: 8580 North MacArthur Boulevard, Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records on site during business hours; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to have the Stage II equipment tested to determine the vapor recovery efficiency; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training and instruction in the operation and maintenance of Stage II vapor recovery systems; 30 TAC §115.242(3)(E) and TWC, §382.085(b),

by failing to maintain the Stage II vapor recovery system in proper operating condition; 30 TAC §334.72, by failing to report to the agency within 24 hours, the results from a petroleum storage tank release detection method that indicated a release had occurred; 30 TAC §334.50(b)(1)(A) and (d)(4)(A)(ii) and TWC, §26.3475(c), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c), by failing to conduct inventory control for all USTs involved in the retail sale of petroleum substances used as motor fuel; 30 TAC §334.54(c)(3), by failing to ensure that the temporarily out of service UST system was properly returned to service; 30 TAC §334.74, by failing to investigate a potential release suspected on June 18, 2005, from dispenser 7/8 within 30 days and subsequently file a Release Determination Report form within 45 days; PENALTY: $24,200; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Mohammad Salman dba Jeff's Grocery; DOCKET NUMBER: 2003-1154-PST-E; TCEQ ID NUMBERS: 38836 and RN102457785; LOCATION: 12111 Farm-to-Market Road 3083, Conroe, Montgomery County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b)(1)(B), by failing to maintain inventory control records on the premises of the facility and immediately accessible and available for inspection; 30 TAC §37.815(a) and (b), by failing to maintain the required 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 the USTs; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c), by failing to implement release detection sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; PENALTY: $11,500; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Osama Azzam dba Super Stop 3; DOCKET NUMBER: 2005-1581-AIR-R; TCEQ ID NUMBER: RN102022241; LOCATION: 2725 North Mesa Street, El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by allowing the transfer of gasoline which may ultimately be used in a motor vehicle in the El Paso area with a Reid vapor pressure greater than 7.0 pounds per square inch from a motor vehicle fuel dispensing facility; PENALTY: $920; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(9) COMPANY: SESE L.L.C. dba Pic N Go; DOCKET NUMBER: 2005-0437-PST-E; TCEQ ID NUMBER: RN102428505; LOCATION: 3443 West Campbell Road, Garland, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: $3,150; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Tsuo-Min Chi and Malek Koocher dba A-Sunny's; DOCKET NUMBER: 2004-1224-PST-E; TCEQ ID NUMBERS: 43969 and RN102281268; LOCATION: 6240 Synott Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $4,200; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Western Trails Water Supply Corporation; DOCKET NUMBER: 2005-1335-MWD-E; TCEQ ID NUMBER: RN102096526; LOCATION: approximately 0.5 mile north of United States Highway 181 and approximately 3.5 miles northwest of the intersection of United States Highway 181 and Farm-to-Market Road 1518, Bexar County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.42(a) and TWC, §26.121(a), by failing to submit its permit application for the continued operation of the facility after its permit expired on March 1, 2005; 30 TAC §30.350(j), by failing to employ a wastewater treatment plant operator holding a Class D license or higher; PENALTY: $25,500; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200602585
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: May 9, 2006

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 19, 2006**. 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 the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within 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. 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 June 19, 2006**. 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 should be submitted to the commission in **writing**.

(1) COMPANY: Adrian Astello dba Astello Stone; DOCKET NUMBER: 2004-1152-WQ-E; TCEQ ID NUMBER: RN102409596; LOCATION: 82525 Interstate 20, Santo, Palo Pinto County, Texas; TYPE OF FACILITY: sandstone mine; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to water in the state through an individual permit or the Multi Sector General Permit; PENALTY: $6,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Arkema Inc. FKA Atonfina Chemicals Inc.; DOCKET NUMBER: 2004-1702-AIR-E; TCEQ ID NUMBERS: JE0074L and RN100216373; LOCATION: 2810 Gulf States Road, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: industrial organic chemicals plant; RULES VIOLATED: 30 TAC §101.201(a)(2)(D) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit complete emission reports for events that occurred on January 15, 2003, August 1, 2003, and January 28, 2004; 30 TAC §116.115(b)(2)(F), Air Permit Number 865A/PSDTX1016, and THSC, §382.085(b), by failing to maintain the maximum allowable emission rate for sulfur dioxide, hydrogen dioxide, carbon disulfide, and methyl mercaptan from the flare and E-121 Exchanger during the following emission events: January 15, 2003, August 1, 2003, and January 28, 2004; PENALTY: $9,594; STAFF ATTORNEY: Rebecca Davis, Litigation Division, MC 175, (512) 239-5487; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Arnoldo Perez dba Perez Fuel Stop; DOCKET NUMBER: 2005-1601-PST-E; TCEQ ID NUMBER: RN101445310; LOCATION: 1.75 miles west of United States Highway 83, Mission, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.22(a) and Texas Water Code (TWC), §5.702, by failing to pay UST late fees associated with Financial Administration Account Number 0057827U; PENALTY: $2,520; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: Brownsville Val-Marts, L.L.C. dba Val-Mart No. 2; DOCKET NUMBER: 2005-1464-PST-E; TCEQ ID NUMBERS: RN102470168; LOCATION: 344 Paredes Line Road, Brownsville, Cameron County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(a) and (c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground equipment; 30 TAC §334.48(c), by failing to conduct inventory control for all USTs involved in the retail sale of petroleum substances use as a motor fuel; 30 TAC §334.10(b), by failing to maintain all UST records at the facility and make those records immediately accessible to commission personnel upon request; 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to timely renew a previously issued delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; PENALTY: $9,000; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Center Point Supply, Inc. dba Children's Depot; DOCKET NUMBER: 2005-0931-PWS-E; TCEQ ID NUMBER: RN101179091; LOCATION: 133 Deer Forest Drive, Pipe Creek, Bandera County, Texas; TYPE OF FACILITY: day care facility with a non-transient, non-community public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and (g) and §290.122(c)(2)(B), and THSC, §341.033(d), by failing to collect and submit routine bacteriological samples once per month for the months of May 2003 - November 2004 and by failing to notify water system customers of this noncompliance during this time period; PENALTY: $9,595; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(6) COMPANY: City of China; DOCKET NUMBER: 2005-1089-MLM-E; TCEQ ID NUMBERS: RN101721686 and RN101276855; LOCATION: off Highway 90, west of Beaumont on North China Road; adjacent to South China Road and approximately 1.5 miles south of United States Highway 90, China, Jefferson County, Texas; TYPE OF FACILITY: public water system, wastewater treatment system; RULES VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level based on a running annual average of total trihalomethanes during the third quarter of 2004; 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System Permit Number 12104001, by failing to comply with permitted effluent limits during November and December 2004, and January, February, and March 2005; PENALTY: $5,023; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Curtis Hamlin dba H & S Quick Stop; DOCKET NUMBER: 2005-1321-PST-E; TCEQ ID NUMBERS: 35942 and RN101848489; LOCATION: Highway 7 West, Crockett, Houston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection within three to six months after installation and at a subsequent frequency of at least once every three years; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to monitor pressurized piping associated with the UST system in a manner designed to detect releases from any portion of the piping system; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to have the line leak detectors tested at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to reconcile inventory control records on a monthly basis; PENALTY: $5,400; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Frontera Materials, Inc.; DOCKET NUMBER: 2005-1373-AIR-E; TCEQ ID NUMBER: 26361 and RN102734779; LOCATION: north of the City of Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: portable rock crusher; RULES VIOLATED: 30 TAC

§116.110(a)(1) and THSC, §382.0518(a) and §382.085(b), by failing to obtain authorization prior to constructing and operating a portable rock crusher; PENALTY: $10,000; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(9) COMPANY: Kuang Phou dba Ken's Minit Market 3; DOCKET NUMBER: 2004-1603-PST-E; TCEQ ID NUMBERS: 27911 and RN101497071; LOCATION: 2500 South Street, Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number was permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube according to the UST registration and self-certification form; 30 TAC §334.8(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system at the facility; PENALTY: $3,500; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Lisanti Realty Corporation dba Lisanti Food Service; DOCKET NUMBER: 2005-0138-PST-E; TCEQ ID NUMBER: RN102047289; LOCATION: 9020 Sterling Street, Irving, Dallas County, Texas; TYPE OF FACILITY: food distributing company with an on-site petroleum storage tank; 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 its petroleum USTs; PENALTY: $950; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Osburn Sand Co.; DOCKET NUMBER: 2004-1062-WQ-E; TCEQ ID NUMBER: TXR05R718 and RN100846443; LOCATION: 24068 Pleasanton Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: sand mining operation; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26, by failing to obtain authorization to discharge storm water associated with industrial activity to waters in the state through an individual permit or the Multi-Sector General Permit; PENALTY: $6,000; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: Robert McAdams dba Crossroads Mercantile; DOCKET NUMBER: 2003-1035-PST-E; TCEQ ID NUMBER: RN102488780; LOCATION: 14758 Farm-to-Market Road 59 South, Athens, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous 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 the petroleum USTs; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees; PENALTY: $4,050; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(13) COMPANY: Ronny McAdams and Robert McAdams dba MCs Country Store and Café; DOCKET NUMBER: 2005-1850-PST-E; TCEQ ID NUMBER: RN102488780; LOCATION: 14758 Farm-to-Market Road 59, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide proper corrosion protection for all USTs; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to provide proper release detection for the UST system; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for TCEQ Financial Assurance Account Numbers 0055137A and 0055137U and associated late fees for Fiscal Years 2003 - 2005; PENALTY: $10,800; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(14) COMPANY: Sao Traders Inc., dba Stop N Drive 2; DOCKET NUMBER: 2005-1174-PST-E; TCEQ ID NUMBER: RN102471190; LOCATION: 7431 Highway 59 South, Shepherd, San Jacinto County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current TCEQ delivery certificate was posted at the facility; 30 TAC §334.45(c)(3)(A), by failing to install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve (shear or impact) in a piping system in which regulated substances were conveyed under pressure to an aboveground dispensing unit; 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to provide proper release detection for the UST system; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to conduct piping and tightness testing for releases; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once a year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to reconcile inventory records on a monthly basis; 30 TAC §334.50(d)(1)(B)(iii)(IV) and TWC, §26.3475(c)(1), by failing to gauge the tanks for the presence of water at least once a month; PENALTY: $8,550; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200602584
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: May 9, 2006

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Notice of Proposed Water Quality General Permit Renewal Authorizing the Discharge of Wastewater

The Texas Commission on Environmental Quality (TCEQ) proposes to renew a general permit (Texas Pollutant Discharge Elimination System Permit No. TXG340000) authorizing the discharge of facility wastewater, contact storm water, and storm water associated with industrial activities from petroleum bulk stations and terminals into or adjacent

to water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Section 26.040 of the Texas Water Code.

PROPOSED GENERAL PERMIT. The Executive Director has prepared a draft renewal of an existing general permit that authorizes the discharge of facility wastewater, contact storm water, and storm water associated with industrial activities from petroleum bulk stations and terminals. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The Executive Director proposes to require permittees to submit a Notice of Intent (NOI) to obtain authorization for discharges.

The Executive Director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's sixteen (16) regional offices and on the TCEQ website at http://www.tceq.state.tx.us/nav/permits/wq_general.html.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date this notice is published in the *Texas Register*.

APPROVAL PROCESS. After the comment period, the Executive Director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least 10 days before the scheduled Commission meeting when the Commission will consider approval of the general permit. The Commission will consider all public comment in making its decision and will either adopt the Executive Director's response or prepare its own response. This draft permit was previously noticed and the initial comment period ended on June 20, 2005. The comments received during the initial comment period will also be addressed in the response. The Commission will issue its written response on the general permit at the same time the Commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the Commissioner's action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the Commission's action on the proposed general permit and the text of its response to comments will be published in the Texas Register.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this permit application 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.

Further information may also be obtained by calling the TCEQ's Water Quality Division, Industrial Permits Team, at (512) 239-4671.

Si desea información en Español, puede llamar 1-800-687-4040.

TRD-200602508
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 5, 2006

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Notice of Public Hearing on Chapter 321

The Texas Commission on Environmental Quality will conduct a public hearing to receive comments concerning proposed revisions to 30 TAC Chapter 321, Control of Certain Activities by Rule, Subchapter B, Concentrated Animal Feeding Operations, §321.33, Applicability and Required Authorizations, under the requirements of Texas Health and Safety Code, §382.017 and §382.05195 and Texas Government Code, Subchapter B, Chapter 2001.

The proposed rulemaking would implement Senate Bill (SB) 1707, 79th Legislature, 2005, Regular Session, which changed the permitting requirements under Texas Water Code, Chapter 26 for dry litter poultry concentrated animal feeding operations (CAFOs) in sole-source surface drinking water protection zones. SB 1707 removes the requirement for dry litter poultry CAFOs located in a protection zone of a sole-source surface drinking water supply to obtain an individual permit. This allows these facilities the ability to apply for coverage under the CAFO general permit. The proposed rulemaking would also modify the permitting requirements for new source dry litter poultry CAFOs and expanding dry litter poultry animal feeding operations (AFOs) for consistency with regulations regarding existing dry litter poultry CAFOs.

A public hearing on the proposed revisions will be held in Austin on June 13, 2006, at 2:00 p.m., at the Texas Commission on Environmental Quality complex, Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2005-062-321-PR. Comments must be received by 5:00 p.m., June 19, 2006. Copies of the proposed rule can be obtained from the Texas Commission on Environmental Quality's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Beth Helms, Water Quality Division, at (512) 239-2526.

Persons who have special communication or other accommodation needs who are planning to attend the hearings should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

TRD-200602478
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: May 3, 2006

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Notice of Water Quality Applications

The following notices were issued during the period of May 4, 2006 through May 9, 2006.

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

Chevron Phillips Chemical Company LP, which operates the Orange Plant, a polyethylene manufacturing facility, has applied for a major amendment to TPDES Permit No. WQ0000359000 to increase the daily maximum effluent limitation for total suspended solids at Outfall 001 and reduce the monitoring frequencies for total copper, oil & grease, biochemical oxygen demand (5-day), and chemical oxygen demand at Outfall 001. The current permit authorizes the discharge of process wastewater, utility wastewater, storm water, and domestic wastewater at a daily average flow not to exceed 3,150,000 gallons per day via Outfall 001. The facility is located on the south side of Farm-to-Market Road 1006, approximately 1.7 miles east of the intersection of Farm-to-Market Road 1006 and State Highway 87, southwest of the City of Orange, Orange County, Texas.

City of Caddo Mills has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010425002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 375,000 gallons per day. The facility will be located approximately 2,100 feet west of the intersection of Farm-to-Market Road 36 and Farm-to-Market Road 1903 in Hunt County, Texas.

City of Ladonia has applied for a renewal of TPDES Industrial Permit No. 04300 and to convert the permit to TPDES Domestic Permit No. 14637-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 530,000 gallons per day. The facility is located approximately 900 feet west of State Highway 50 and approximately 700 feet south of the intersection of State Highway 50 and Farm-to-Market Road 2456 in Fannin County, Texas.

The Texas Commission on Environmental Quality (TCEQ) has initiated a minor modification of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to the City of Port Arthur, to incorporate a substantial modification to the approved pretreatment program and changes to the biomonitoring testing frequency. The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,200,000 gallons per day. The facility is located 6300 Proctor Street, approximately 0.2 miles east of the intersection of Proctor Street and Main Avenue, 3.3 miles northeast of the intersection of U.S. Highway 287/96/69 and State Highway 87 in Jefferson County, Texas in Jefferson County, Texas.

Clay/Peek 640, L.P. has applied for a major amendment to TPDES Permit No. WQ0014635001 to change the point of discharge. The current point of discharge is to an unnamed drainage ditch thence to Harris County Flood Control District (HCFCD) ditch U-109-09. The proposed point of discharge will be to HCFCD ditch U-101-09-00 (which will be constructed in conjunction with the proposed development). The facility will be located 1,500 feet west and 650 feet north of the intersection of Clay Road and Peek Road in Harris County, Texas.

Coil Tubing Services, L.L.C., which operates a truck washing and general maintenance facility for oil field trucks, has applied for a renewal of TPDES Permit No. 0004589000, which authorizes the discharge of treated truck wash water at a daily average flow not to exceed 1,000 gallons per day via Outfall 001. The facility is located approximately 1,000 feet east of Country Club Road and north of County Road No. 342, approximately 2 miles east of the City of Alice, Jim Wells County, Texas.

Fruitvale Independent School District has applied for a renewal of TPDES Permit No. 12369-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,400 gallons per day. The facility is located approximately 1,200 feet northeast of the intersection of U.S. Highway 80 and Farm-to-Market Road 1910 and approximately 2.1 miles east of the intersection of U.S. Highway 80 and State Highway 19 in Van Zandt County, Texas.

LANXESS Corporation, which operates a synthetic rubber manufacturing plant, has applied for a major amendment to reduce monitoring frequencies for biochemical oxygen demand (5-day), chemical oxygen demand, total suspended solids, and oil & grease at Outfall 001; remove effluent limitations and monitoring requirements for total zinc, toluene, total phenols, total mercury, cyclohexane, and total residual chlorine at Outfall 001 (or reduce the monitoring frequencies as an alternative); and increase the daily average permitted flow at Outfall 001 to 6,000,000 gallons per day. The current permit authorizes the discharge of process wastewater, utility wastewater, domestic wastewater, and storm water runoff at a daily average flow not to exceed 5,200,000 gallons per day via Outfall 001. The facility is located at 4647 Farm-to-Market Road 1006, approximately 2800 feet southeast of the intersection of Farm-to-Market Road 1006 and Foreman Road in the City of West Orange, Orange County, Texas.

Magellan Terminals Holdings, L.P., which operates the Corpus Christi Terminal, a bulk petroleum storage terminal, has applied for a renewal of TPDES Permit No. WQ0002070000, which authorizes the discharge of oily wastewater and storm water at a daily maximum dry weather flow not to exceed 350,000 gallons per day via Outfall 001. The facility is located at 1802 Poth Lane, approximately 250 feet northwest of the intersection of Interstate Highway 37 and Poth Lane in the City of Corpus Christi, Nueces County, Texas.

Timberwood Development Company, L.P. has applied for a new permit, Proposed Permit No. WQ0014670001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 18,000 gallons per day via non-public access subsurface low pressure drainfields with a minimum area of 180,000 square feet. The facility and disposal site are located 820 feet southeast of the intersection of Harmony Hills and Shady Acres and the disposal area is located 1,600 feet southeast of the intersection of Harmony Hills and Shady Acres in Bexar County, Texas in the drainage basin of Mustang Creek in Segment No. 1910 of the San Antonio River Basin.

TRD-200602591
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 10, 2006

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Notice of Water Rights Application

Notices issued May 1 through May 8, 2006:

APPLICATION NO. 5594A; Bradley B. Ware, 911 Gann Branch Road, Killeen, Texas 76549, applicant, has applied for an amendment to its existing Water Use Permit on the Lampasas River, Brazos River Basin, in Bell County to extend or delete the expiration date of November 7, 2007, add an additional 31 acres for irrigation, and to divert and use an additional 20 acre-feet of water. The application was received on November 17, 2005. Additional information and fees were received on February 8, 2006. The application was accepted for filing and declared administratively complete on March 20, 2006. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Application No. 12001; Reece Albert, Inc., 3001 Foster Road, San Angelo, Texas 76903, Applicant, has applied for a temporary water use permit for authorization to divert and use 24.5 acre- feet of water within a three year period from the Concho River, Colorado River Basin, for industrial purposes in Tom Green County. The application was received on January 3, 2006 and additional fees were received on March 1, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on March 13, 2006. The temporary permit, if issued, will be junior in priority to all existing water rights in the Colorado River Basin. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by May 30, 2006.

APPLICATION NO. 5928; High Point Lake Estates Property Owners Association, 19221 I-45 South, Suite 320, Conroe, Texas, 77385, Applicant, has applied for a Water Use Permit to construct and maintain four (4) dams and reservoirs on an unnamed tributary of Highpoint Creek, Trinity River Basin for in-place recreational purposes in Rockwall County. The application was received on November 30, 2005. Additional information and fees were received on February 10, 2006. The application was accepted for filing and declared administratively complete on March 21, 2006. Applicant indicates they will have a purchase agreement with RCH Water Supply Corporation to provide up to 85 acre-feet of make-up water. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

Application No. 12024; The North Texas Municipal Water District (NTMWD), P.O. Box 2408, Wylie, Texas 75098, Applicant, has applied for a temporary water use permit to divert and use not to exceed 16,859 acre-feet of water within a 3 year period from the East Fork Trinity River, Trinity River Basin, for agricultural purposes in Kaufman County to facilitate the development of a constructed wetland. The application and partial fees were received on February 21, 2006, and additional information was received on April 4, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 12, 2006. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by Monday, May 22, 2006.

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.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200602593
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 10, 2006

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on May 8, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Mohammad Reza Samadi dba Express Auto Service; SOAH Docket No. 582-06-1501; TCEQ Docket No. 2005-0318-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Mohammad Reza Samadi dba Express Auto Service on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200602594

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 10, 2006

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 19, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 19, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239- 2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Raymond Balderas; DOCKET NUMBER: 2005-1082-LII-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN104598842; LOCATION: Kendalia, Kendall County, Texas; TYPE OF FACILITY: landscape business; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), the Code, §37.003, and Texas Occupations Code, §1903.251, by failing to obtain an irrigator license; 30 TAC §334.58(b), by failing to refrain from using the license of someone else who is a licensed irrigator; and 30 TAC §344.73, by failing to properly connect an irrigation system to a public or private potable water supply using an approved backflow prevention method; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Trina Greico, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Rollins E. Bilby; DOCKET NUMBER: 2006-0069-MSW-E; IDENTIFIER: RN104781901; LOCATION: Lake Bridgeport, Wise County, Texas; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §330.5(c), by failing to dispose of municipal solid waste and brush at an authorized site; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588- 5800.

(3) COMPANY: Community Water Company dba Rolling Hills Water System; DOCKET NUMBER: 2006-0119-PWS-E; IDENTIFIER: RN102690310; LOCATION: Corsicana, Navarro County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(j), (l), and (r), by failing to keep on file and make available for review the customer inspection certificates, by failing to flush dead-end mains at monthly intervals, and by failing to provide a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.121(a), by failing to keep on file and make available for review an up-to-date chemical and microbiological monitoring plan for the water system; 30 TAC §290.42(j), by failing to use chemicals in the water supplied to the public; 30 TAC §290.43(c)(4) and (e), by failing to equip the ground storage tank with a liquid level indicator and by failing to enclose the pump house and storage tanks with an intruder-resistant fence with lockable gates or in a lockable building; and 30 TAC §290.110(b)(4), by failing to maintain a free chlorine residual of 0.2 milligrams per liter throughout the distribution system; PENALTY: $1,364; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118- 6951, (817) 588-5800.

(4) COMPANY: City of Dalworthington Gardens; DOCKET NUMBER: 2005-1894-MWD-E; IDENTIFIER: RN101390110; LOCATION: Dalworthington Gardens, Tarrant County, Texas; TYPE OF FACILITY: manhole and collection system; RULE VIOLATED: the Code, §26.121(a), by failing to prevent an unauthorized discharge of wastewater; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Delta Tubular International, L.P.; DOCKET NUMBER: 2006-0178-IWD-E; IDENTIFIER: RN100650621; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination (TPDES) Permit Number 0004690000, and the Code, §26.121(a), by failing to comply with permitted effluent limits for chemical oxygen demand, oil and grease, total copper, total silver, total zinc, and total residual chlorine; PENALTY: $3,276; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Flo Community Water Supply Corporation; DOCKET NUMBER: 2006-0113- PWS-E; IDENTIFIER: RN101440949; LOCATION: Buffalo, Leon County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i), (iii), and (iv) and THSC, §341.0315(c), by failing to meet the minimum total capacity requirement of 0.6 gallons per minute (gpm) per connection with two or more wells, by failing to provide two or more pumps that have a total service pump capacity of two gpm per connection, by failing to provide a pressure tank capacity of 20 gallons per connection, and by failing to provide an elevated storage capacity; 30 TAC §290.42(e)(4)(C), by failing to provide forced air ventilation fans in the gas chlorination rooms; 30 TAC §290.46(j), (n)(2), and (t), by failing to complete a customer service inspection certificate, by failing to maintain and make available an accurate and up-to-date map of the distribution system, and by failing to post a legible sign in plain view that includes the name of the water supply and a telephone number where a responsible official can be contacted; 30 TAC §290.41(c)(3)(M), by failing to provide a suitable sampling tap; 30 TAC §290.43(c)(8) and (e), by failing to properly maintain the exterior coating on the ground storage tank and by failing to provide an intruder-resistant fence; and 30 TAC §290.118(a) and (b), by failing to adhere to the secondary constituent maximum contaminant level for iron; PENALTY: $2,784; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Phillip M. Grisham, Sr.; DOCKET NUMBER: 2006-0317-OSI-E; IDENTIFIER: RN103337218; LOCATION: Hilltop Lakes, Leon County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.3(a) and THSC, §366.051(a), by failing to obtain the required permit prior to beginning the construction of an on- site sewage facility; PENALTY: $300; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: Gulf Bayport Chemicals L.P.; DOCKET NUMBER: 2006-0030-IHW-E; IDENTIFIER: RN100219096; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §305.64(g), 40 Code of Federal Regulations (CFR) §270.40(b), and THSC, §361.085, by failing to demonstrate compliance with the requirements of 30 TAC Chapter 37, Subchapter P within six months of the date of the change of ownership or operational control of the facility; PENALTY: $2,180; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: GWD Operating, Limited dba Vintage Car Wash; DOCKET NUMBER: 2006- 0060-PST-E; IDENTIFIER: RN101546299; LOCATION: Coppell, Dallas County, Texas; TYPE OF FACILITY: auto detail and car wash with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1) and (4) and THSC, §382.085(b), by failing to maintain Stage II records on site at the station and make them immediately available for inspection; 30 TAC §115.245(2) and (6) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment and by failing to submit the results of all Stage II tests to the appropriate regional office; 30 TAC §334.50(b)(2)(A)(i)(III) and (ii)(I) and the Code, §26.3475(a), by failing to test the line leak detectors and by failing to provide proper release detection; PENALTY: $3,840; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Randy L. Gardner dba Handy Randy's; DOCKET NUMBER: 2006-0444- PST-E; IDENTIFIER: RN101800530; LOCATION: Colmesneil, Tyler County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to have a valid delivery certificate; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Mike Hweide dba Hicks Country Store; DOCKET NUMBER: 2006-0443- PST-E; IDENTIFIER: RN101433712; LOCATION: Southlake, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide proper release detection; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Zulfigar K. Momin dba Hungerford Supermarket 344; DOCKET NUMBER: 2003-0972-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 27984; LOCATION: Hungerford, Wharton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486, (713) 767-3500.

(13) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2006-0107-AIR- E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: petrochemical production; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Permit Number 5952A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to properly notify the commission of a reportable emissions event; PENALTY: $15,798; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Innovene USA L.L.C.; DOCKET NUMBER: 2006-0149-AIR-E; IDENTIFIER: RN104579487; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 8978, and THSC, §382.085(b), by failing to prevent unauthorized emissions of ethylene; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Scott Barnett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Manh Le dba M & D Grocery; DOCKET NUMBER: 2006-0301-PST-E; IDENTIFIER: RN102714169; LOCATION: Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases and by failing to conduct reconciliation of detailed inventory control records; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Steven Mahr, (512) 239-6017; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: M. A. D. Property Management, L.P. dba J & H Exxon; DOCKET NUMBER: 2006-0198-PST-E; IDENTIFIER: RN102250081; LOCATION: Azle, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the commission; 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; and 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records and by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: $3,492; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2006-0152-MWD-E; IDENTIFIER: RN102287125; LOCATION: Eustace, Henderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number WQ0011506001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia nitrogen and by failing to submit discharge monitoring report data; PENALTY: $3,492; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(18) COMPANY: Wanda Morgan; DOCKET NUMBER: 2006-0464-PST-E; IDENTIFIER: RN104093596; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; and 30 TAC §334.49(a)(1), by failing to provide corrosion protection; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239- 1768;

REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655- 9479.

(19) COMPANY: NNN Amberoaks, L.L.C.; DOCKET NUMBER: 2006-0253-EAQ-E; IDENTIFIER: RN102133238; LOCATION: Cedar Park, Williamson County, Texas; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of an Edwards Aquifer protection plan; PENALTY: $2,880; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(20) COMPANY: Producers' Cooperative Elevator; DOCKET NUMBER: 2006-0463-PST-E; IDENTIFIER: RN102789062; LOCATION: Dougherty, Floyd County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to have a valid delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(21) COMPANY: South Tawakoni Water Supply Corporation; DOCKET NUMBER: 2005- 2023-PWS-E; IDENTIFIER: RN101459337; LOCATION: Edgewood, Van Zandt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: $313; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(22) COMPANY: Superior Stone Inc.; DOCKET NUMBER: 2006-0173-MLM-E; IDENTIFIER: RN104796594; LOCATION: Jarrell, Williamson County, Texas; TYPE OF FACILITY: stone cutting operation; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with stone cutting activities; 30 TAC §213.4(a)(1), by failing to submit an Edwards Aquifer Protection Plan for commission approval; and 30 TAC §335.4 and the Code, §26.121(c), by failing to prevent an unauthorized discharge of industrial waste; PENALTY: $9,600; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(23) COMPANY: Three Lakes Land Company, L.L.C.; DOCKET NUMBER: 2006-0151- MSW-E; IDENTIFIER: RN104801121; LOCATION: Harlingen, Cameron County, Texas; TYPE OF FACILITY: unauthorized waste disposal site; RULE VIOLATED: 30 TAC §330.5(a), by failing to prevent the disposal of municipal solid waste at an unauthorized disposal site; PENALTY: $577 ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(24) COMPANY: University of Texas Medical Branch at Galveston; DOCKET NUMBER: 2005-1973-AIR-E; IDENTIFIER: RN101921138; LOCATION: Galveston, Galveston County, Texas; TYPE OF FACILITY: hospital with incinerator and crematory stacks; RULE VIOLATED: 30 TAC §113.2072(a) and (b)(2), §116.115(c), Permit Number 18655, and THSC, §382.085(b), by failing to operate within the permitted limits for opacity and emission limits for particulate matter; 30 TAC §113.2075(a)(2)(B) and §116.115(c), Permit Number 18655, and THSC, §382.085(b), by failing to perform annual performance stack tests; PENALTY: $9,120; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200602572
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: May 9, 2006

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Texas Health and Human Services Commission

Notice Concerning Implementation Date for CHIP Eligibility for Unborn Children Rule at 1 TAC §370.401

The Texas Health and Human Services Commission (HHSC) adopted 1 TAC §370.401, Eligibility for Unborn Children, as published in the April 28, 2006, issue of the *Texas Register* (31 TexReg 3527), with an effective date of April 30, 2006. This Notice clarifies that HHSC does not intend to implement this rule until September 1, 2006.

TRD-200602586
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 9, 2006

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Notice of Adopted Medicaid Provider Payment Rates

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission adopts a new per diem payment rate for the Truman Smith Children's Care Center in the amount of $174.48. The payment rate is adopted to be effective January 1, 2006.

Methodology and Justification: The adopted rate was determined in accordance with the rate setting methodologies for the nursing facility/pediatric care facility special rate class at 1 TAC §§355.307(c) (relating to Reimbursement Setting Methodology), 355.101 (relating to Introduction), and 355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs).

TRD-200602512
Wendy Pellow
Assistant General Counsel
Texas Health and Human Services Commission
Filed: May 5, 2006

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Angleton	Isotherapeutics Group LLC	L05969	Angleton	00	04/20/06
El Paso	E+ PET Imaging XXIV LP	L05981	El Paso	00	04/17/06
Houston	BETABATT Inc	L05961	Houston	00	04/27/06
Houston	One Step Diagnostic Inc	L05990	Houston	00	04/21/06
Nacogdoches	The Heart Doctor Imaging Center	L05894	Nacogdoches	00	04/19/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	ARA Imaging	L05862	Austin	09	04/21/06
Austin	Austin Radiological Association	L00545	Austin	119	04/17/06
Austin	Daughters of Charity Health Services of Austin DBA Brackenridge Hospital	L00268	Austin	89	04/24/06
Austin	Columbia/St Davids Healthcare System LP DBA St Davids Medical Center	L00740	Austin	92	04/25/06
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Ctr	L04910	Austin	57	04/25/06
Baytown	ExxonMobil Refining and Supply Company	L01134	Baytown	59	04/17/06
Beaumont	BASF Corporation	L02016	Beaumont	27	04/17/06
Brownsville	The Heart Institute of Brownsville	L05261	Brownsville	05	04/19/06
Corpus Christi	Coastal Cardiology Association	L04754	Corpus Christi	22	04/20/06
Dallas	North Texas Heart Center PA	L04608	Dallas	29	04/24/06
Dallas	Baylor University Medical Center	L01290	Dallas	77	04/25/06
Dallas	Texas Hematology/Oncology Center PA DBA Patients Comprehensive Cancer Center	L05397	Dallas	14	03/14/06
Denton	Columbia Medical Center of Denton Subsidiary LP DBA Denton Regional Medical Center	L02764	Denton	58	04/27/06
Eagle Lake	Rice District Community Hospital DBA Rice Medical Center	L03408	Eagle Lake	14	04/19/06
Floresville	Wilson Memorial Hospital	L03471	Floresville	14	04/28/06
Fort Worth	Precision Energy Services Inc	L00747	Fort Worth	73	04/21/06
Fort Worth	Healthsouth of Texas Inc DBA Baylor All Saints Gamma Knife Center	L05473	Fort Worth	20	04/26/06
Fort Worth	Oncology Hematology Consultants PA DBA The Center for Cancer and Blood Disorders	L05919	Fort Worth	03	04/24/06
Houston	Advanced Cardiac Care Assoc	L04936	Houston	15	04/24/06
Houston	Houston Community College System	L03099	Houston	16	04/26/06
Houston	Methodist Health Centers DBA Methodist Willowbrook Hospital	L05472	Houston	22	04/24/06
Houston	Cardiac Medical Solutions DBA Heartscan of N W Houston LP	L05944	Houston	01	04/27/06
Houston	University of Texas MD Anderson Cancer Center	L00466	Houston	102	04/14/06
La Porte	Cardiorad Inc	L05755	La Porte	06	04/26/06
Lewisville	Cardiovascular Specialists PA	L05507	Lewisville	07	04/18/06
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	80	04/17/06
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	39	04/26/06

AMENDMENTS TO EXISTING LICENSES CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Mesquite	Baylor Medical Center - Mesquite DBA Baylor Diagnostic Imaging Center	L04914	Mesquite	18	04/25/06
Paris	Advanced Heart Care PA	L05290	Paris	14	04/25/06
Pasadena	Premier Heart Specialists PA	L05750	Pasadena	04	04/19/06
Pasadena	Microtech Services Inc	L04656	Pasadena	10	04/17/06
Plano	Presbyterian Hospital of Plano	L04467	Plano	39	04/26/06
Port Arthur	BASJ Fina Petrochemicals LP	L05914	Port Arthur	01	04/17/06
San Antonio	The University of Texas Health Science Center at San Antonio	L05217	San Antonio	07	04/26/06
San Antonio	PETNET Pharmaceuticals Inc DBA PETNET San Antonio	L05569	San Antonio	12	04/17/06
Sugar Land	Houston Veterinary Radiology Clinic PC DBA Sugar Land Veterinary Imaging	L05903	Sugar Land	01	04/28/06
Throughout Tx	XCEL Energy Southwestern Public Service DBA Utility Engineering Corp	L05238	Amarillo	07	04/19/06
Throughout Tx	Troxler Electronic Laboratories	L01296	Arlington	40	04/18/06
Throughout Tx	Applied Standards Inspection Inc	L03072	Beaumont	94	04/26/06
Throughout Tx	3M Company	L00918	Brownwood	38	04/17/06
Throughout Tx	Phoenix Non Destructive Testing Co Inc	L04454	Channelview	47	04/24/06
Throughout Tx	QC Laboratories Inc	L04750	Houston	16	04/18/06
Throughout Tx	D-Arrow Inspection Inc	L03816	Houston	79	04/24/06
Throughout Tx	IRISNDT Inc	L04769	Houston	27	04/17/06
Throughout Tx	Radiographic Specialists Inc	L02742	Houston	49	04/24/06
Throughout Tx	Goolsby Testing Laboratories Inc	L03115	Humble	79	04/18/06
Throughout Tx	Oceaneering International Inc Solus Schall Division	L04463	Ingleside	42	04/20/06
Throughout Tx	OSCS Inc	L05813	Keene	03	04/19/06
Throughout Tx	Master Industries Inc	L05872	Liberty	04	04/24/06
Throughout Tx	Western Anatec Inc	L04865	Nederland	68	04/27/06
Throughout Tx	Turner Specialty Services LLC	L05417	Nederland	20	04/26/06
Throughout Tx	Big State X-ray	L02693	Odessa	51	04/25/06
Throughout Tx	Big State X-ray	L02693	Odessa	50	04/24/06
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	13	04/24/06
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	63	04/18/06
Throughout Tx	Drash Consulting Engineers Inc	L04724	San Antonio	18	04/18/06
Throughout Tx	Isbell Engineering Group Inc	L05355	Sanger	12	04/18/06
Throughout Tx	GCT Inspection Inc	L02378	South Houston	92	04/26/06
Throughout Tx	Accurate Logging & Perforating Inc	L04221	Tyler	10	04/19/06
Throughout Tx	Gray Wireline Service Inc	L03541	Weatherford	17	04/17/06
Texarkana	Wadley Regional Medical Center	L02486	Texarkana	44	04/20/06
The Woodlands	St Lukes Community Medical Center The Woodlands	L05763	The Woodlands	05	04/19/06
Tyler	Trinity Mother Frances Health System	L01670	Tyler	121	04/26/06
Webster	CHCA Clear Lake LP DBA Clear Lake Regional Medical Center	L01680	Webster	69	04/19/06
Wichita Falls	Kell West Regional Hospital LLC	L05943	Wichita Falls	01	04/18/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
College Station	College Station Hospital LP DBA College Station Medical Center	L02559	College Station	62	04/19/06
Houston	Gulf Coast Regional Blood Center	L04755	Houston	05	04/20/06
Nederland	Western Anatec Inc	L04865	Nederland	67	04/18/06
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	58	04/27/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Corpus Christi	Spohn Health System Spohn Hospital	L02357	Corpus Christi	25	04/27/06
Irving	Metroplex Veterinary Centre	L05604	Irving	01	04/17/06
Throughout Tx	Solum Engineering Inc	L05770	Missouri City	04	04/19/06
Throughout Tx	TRI DAL Excavation	L05852	Southlake	01	04/17/06
Throughout Tx	Oxbow Carbon & Minerals LLC	L04051	Texas City	11	04/20/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200602597
Cathy Campbell
General Counsel
Department of State Health Services
Filed: May 10, 2006

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Notice of Amendment Number 40 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 40 authorizes the storage of waste, meeting the requirements of Condition 15.B of the license, in a US Department of Transportation Type B container, or a Dufrane Secure Environmental Container, or equivalent.

The department has determined that the amendment of the license and the terms of conditions provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of Texas Administrative Code (TAC), Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as set out in 25 TAC, §289.205(f). A "person affected" is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to a county, in which the radioactive material is or will be located; or (b) doing business or has a legal interest in land in the county or adjacent county.

A person affected may request a hearing by writing Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code Chapter 2001), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday - Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200602595
Cathy Campbell
General Counsel
Department of State Health Services
Filed: May 10, 2006

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Notice of Default Order

Notice is hereby given that the Department of State Health Services (department) issued a Default Order to the following registrant:

Plant and Pipeline Inspection (License #L05746-000) of Rockport. A total penalty of $4,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200602596
Cathy Campbell
General Counsel
Department of State Health Services
Filed: May 10, 2006

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Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by GLOBAL GUARDIAN INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in El Paso, Texas.

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-200602601
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 10, 2006

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Notice of Public Hearing

The Commissioner of Insurance (Commissioner) will hold a public hearing under Docket No. 2641, on June 6, 2006 at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the appointment of a local recording agent representative to the Board of Directors of the Texas Windstorm Insurance Association (TWIA). Garry P. Kaufman, of the Galveston Insurance Associates in Galveston, Texas, has been nominated by the Texas Department of Insurance staff for reappointment to a third three-year term as one of the two local recording agent members to serve on the TWIA Board.

The hearing is held pursuant to Texas Insurance Code, Article 21.49, §5A, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Texas Windstorm Insurance Association Act), including but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear and testify for or against the proposed appointment.

Texas Insurance Code, Article 21.49, §5(g), provides that the TWIA Board of Directors shall be composed of nine members. Article 21.49, §5(g)(3) provides that two of the TWIA board members shall be local recording agents licensed under the Insurance Code with demonstrated experience in the TWIA and who, as of the date of the appointment, have principal offices located in the catastrophe area. Article 21.49, §5(h) provides that members of the TWIA Board of Directors serve three-year staggered terms with the terms of three members expiring on the third Tuesday of March of each year.

Any questions concerning this matter should be addressed to Marilyn Hamilton, Associate Commissioner, Personal and Commercial Lines Division, MC 104-PC, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104.

TRD-200602571
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 9, 2006

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Texas Lottery Commission

Instant Game Number 672 "Sizzlin' Sevens"

1.0 Name and Style of Game.

A. The name of Instant Game No. 672 is "SIZZLIN' SEVENS". The play style for Game 1 is "three in a line". The play style for Game 2 is "match up". The play style for Game 3 is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 672 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 672.

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: $7.00, $14.00, $21.00, $35.00, $70.00, $350, $700, $7,000, $77,000, 1, 2, 3, 4, 5, 6, 8, 9, CACTUS SYMBOL, BRANDING IRON SYMBOL, BLAZING SUN SYMBOL, MAP SCROLL SYMBOL, STACK OF CASH SYMBOL, MONEY BAG SYMBOL, GOLD COIN SYMBOL, COVERED WAGON SYMBOL, SPURS SYMBOL, LASSO SYMBOL, COWBOY HAT SYMBOL and 7 SYMBOL.

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

Figure 1: GAME NO. 672 - 1.2D

PLAY SYMBOL	CAPTION
$7.00	SEVEN$
$14.00	FOURTEEN
$21.00	TWY ONE
$35.00	THY FIV
$70.00	SVTY
$350	THR FTY
$700	SVN HUN
$7,000	SVN THOU
$77,000	77 THOU
1	
2	
3	
4	
5	
6	
7 SYMBOL	
8	
9	
CACTUS SYMBOL	CACTUS
BRANDING IRON SYMBOL	IRON
BLAZING SUN SYMBOL	SUN
MAP SCROLL SYMBOL	MAP
STACK OF CASH SYMBOL	CASH
MONEY BAG SYMBOL	MNY BAG
GOLD COIN SYMBOL	COIN
COVERED WAGON SYMBOL	WAGON
SPURS SYMBOL	SPURS
LASSO SYMBOL	LASSO
COWBOY HAT SYMBOL	HAT

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. 672 - 1.2E

CODE	PRIZE
SVN	$7.00
FRN	$14.00
TWE	$21.00

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 $7.00, $14.00 or $21.00.

H. Mid-Tier Prize - A prize of $35.00, $70.00 or $350.

I. High-Tier Prize - A prize of $700, $7,000 or $77,000.

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 (672), 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: 672-0000001-001.

L. Pack - A pack of "SIZZLIN' SEVENS" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will be shown on the back of the pack.

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

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SIZZLIN' SEVENS" Instant Game No. 672 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 "SIZZLIN' SEVENS" Instant Game is determined once the latex on the ticket is scratched off to expose 28 (twenty-eight) Play Symbols. Game 1: If a player reveals three (3) "7" play symbols in any one row, column or diagonal, the player wins the prize shown. Game 2: If a player reveals three (3) identical prize amounts, the player wins that prize. Game 3: If a player matches any of YOUR SYMBOLS to either WINNING SYMBOL, the player wins the prize shown below that symbol. If a player reveals a "7" play symbol in any of YOUR SYMBOLS, the player wins the prize shown below that symbol 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 28 (twenty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 28 (twenty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 28 (twenty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 28 (twenty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

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

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

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

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

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Game 1: Players can win once in this play area.

C. Game1: No ticket will contain three (3) or more of a kind other than the "7" symbol.

D. Game1: The "7" symbol is the only symbol that can be used to make a winning line.

E. Game 1: On non-winning tickets, there will be at least one row, column or diagonal with a pair of "7"'s.

F. Game 1: Winning tickets will contain only one (1) winning combinations.

G.Game 1: Tickets will not contain four (4) "7" symbols in all 4 corners.

H. Game 2: Players can win once in this play area.

I. Game 2: There will never be more than one (1) set of three (3) like prize amounts on a single ticket.

J. Game 2: There will never be more than three (3) like prize amounts on a single ticket.

K. Game 3: Players can win up to ten (10) times in this play area.

L. No more than two (2) like non-winning prize symbols on a ticket.

M. Game 3: No more than two (2) like non-winning YOUR SYMBOLS on a ticket.

N. Game 3: Non-winning prize symbols will not match a winning prize symbol on a ticket.

O. Game 3: The "7" symbol will never appear more than once on a ticket.

P. Game 3: The "7" symbol will only appear on winning tickets.

Q.Game 3: The "7" symbol will never appear as one of the WINNING SYMBOLS.

R. Game 3: No duplicate WINNING SYMBOLS will appear on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "SIZZLIN' SEVENS" Instant Game prize of $7.00, $14.00, $21.00, $35.00, $70.00 or $350, 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 $35.00, $70.00 or $350 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 "SIZZLIN' SEVENS" Instant Game prize of $700, $7,000 or $77,000, 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 "SIZZLIN' SEVENS" 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 "SIZZLIN' SEVENS" 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 "SIZZLIN' SEVENS" 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 5,040,000 tickets in the Instant Game No. 672. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 672 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$7	739,200	6.82
$14	436,800	11.54
$21	201,600	25.00
$35	45,150	111.63
$70	53,928	93.46
$350	6,216	810.81
$700	336	15,000.00
$7,000	12	420,000.00
$77,000	8	630,000.00

*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 3.40. 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. 672 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. 672, 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-200602590
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 10, 2006

♦ ♦ ♦

Instant Game Number 726 "Mystery Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 726 is "MYSTERY MONEY". The play style is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 726 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 726.

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, $4.00, $5.00, $10.00, $12.00, $15.00, $20.00, $50.00, $100, $500, $1,000, $5,000, $10,000, SPOOL OF THREAD SYMBOL, SCARF SYMBOL, BOOT SYMBOL, NAIL SYMBOL, GLOVE SYMBOL, DIAMOND RING SYMBOL, TROPHY SYMBOL, HAIR BRUSH SYMBOL, BELL SYMBOL, ANCHOR SYMBOL, FRY PAN SYMBOL, FISHING HOOK SYMBOL, BOW TIE SYMBOL, CLOVER SYMBOL, TEA CUP SYMBOL, HUBCAP SYMBOL, COWBOY HAT SYMBOL, NECKLACE SYMBOL, KEY SYMBOL, HORSESHOE SYMBOL, APPLE SYMBOL, SAFETY PIN SYMBOL,

MATCH SYMBOL, PAIL SYMBOL, LEAF SYMBOL, PADDLE SYMBOL, SAW SYMBOL and THIMBLE SYMBOL.

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

Figure 1: GAME NO. 726 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$12.00	TWELVE
$15.00	FIFTEEN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUN
$500	FIV HUN
$1,000	ONE THOU
$5,000	FIV THOU
$10,000	10 THOU
SPOOL OF THREAD	THREAD
SCARF	SCARF
BOOT	BOOT
NAIL	NAIL
GLOVE	GLOVE
DIAMOND RING	RING
TROPHY	TROPHY
HAIR BRUSH	BRUSH
BELL	BELL
ANCHOR	ANCHOR
FRY PAN	FRYPAN
FISHING HOOK	HOOK
BOW TIE	BOW
CLOVER	CLOVER
TEA CUP	CUP
HUBCAP	HUBCAP
COWBOY HAT	HAT
NECKLACE	NECKLACE
KEY	KEY
HORSESHOE	HRSHOE
APPLE	APPLE
SAFETY PIN	PIN
MATCH	MATCH
PAIL	PAIL
LEAF	LEAF
PADDLE	PADDLE
SAW	SAW
THIMBLE	THIMBLE

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. 726 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

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

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

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $5,000 or $50,000.

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

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (726), 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: 726-0000001-001.

L. Pack - A pack of "MYSTERY MONEY" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 075 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 075 will shown on the back of the pack.

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

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MYSTERY MONEY" Instant Game No. 726 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 "MYSTERY MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 24 (twenty-four) Play Symbols. If a player matches any of YOUR ITEMS play symbols to any of the NEEDED ITEMS play symbols, the player wins the prize shown for that item. 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 24 (twenty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 24 (twenty-four) Play Symbols under the latex overprint on the front

portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 24 (twenty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 24 (twenty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

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

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

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

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

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Players can win up to twelve (12) times on a ticket.

C. No duplicate non-winning YOUR ITEMS on a ticket.

D. No duplicate NEEDED ITEMS on a ticket.

E. No duplicate non-winning prize symbols on a ticket.

F. A non-winning prize symbol will never be the same as a winning prize symbol.

G. The occurrence of a ticket winning all twelve (12) locations will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "MYSTERY MONEY" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MYSTERY MONEY" Instant Game prize of $1,000, $5,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MYSTERY MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

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

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

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

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

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

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

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

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MYS-

TERY MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "MYSTERY MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

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

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

3.0 Instant Ticket Ownership.

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

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

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 726. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 726 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	652,800	6.25
$10	299,200	13.64
$15	108,800	37.50
$20	81,600	50.00
$50	54,400	75.00
$100	7,208	566.04
$500	476	8,571.43
$1,000	306	13,333.33
$5,000	33	123,636.36
$50,000	4	1,020,000.00

*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 3.39. 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. 726 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. 726, 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-200602574
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 9, 2006

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North Central Texas Council of Governments

Request for Proposals for the Development of the North Central Texas Regional Public Transportation Coordination Plan

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms to assist in the development of the North Central Texas Regional Public Transportation Coordination Plan. The general project scope calls for a consultant to conduct survey(s), research, collect and compile supporting data, and assist in the development of a plan for coordinated public transportation services in the urban and rural areas of the 16-county North Central Texas region. The Plan will meet the requirements of Chapter 461 of the Texas Transportation Code, including the identification of short- and long-term strategies that can be implemented in the North Central Texas region to achieve a more coordinated and efficient transportation system. The project will be funded through the 2005-2007 Unified Planning Work Program for Regional Transportation Planning. No engineering services will be required on this project.

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, June 9, 2006, to Michelle Bloomer, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200602598
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: May 10, 2006

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 2, 2006, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Cable San Antonio, L.P. to Amend its State-Issued Certificate of Franchise Authority, Project Number 32673 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32673.

TRD-200602528
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2006

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Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 2, 2006, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Southwestern Bell Telephone, L.P., doing business as SBC Texas, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32675 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32675.

TRD-200602529
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 5, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001- 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of GTE Southwest Incorporated, doing business as Verizon Southwest, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32683 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32683.

TRD-200602579
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2006

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 5, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Marcus Cable Associates, L.L.C., doing business as Charter Communications, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32684 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32684.

TRD-200602580
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2006

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Notice of Application for an Amendment to the Designation as an Eligible Telecommunications Provider

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 2, 2006, to amend an eligible telecommunications provider (ETP) designation pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of PTCI for an Amendment to its Designation as an Eligible Telecommunications Provider (ETP). Docket Number 32676.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 8, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32676.

TRD-200602530
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2006

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Notice of Application for an Electric Service Area Exception in Kerr County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on May 5, 2006, for an amendment to certificated service area boundaries within Kerr County, Texas.

Docket Style and Number: Joint Application of Kerrville Public Utility Board and Bandera Electric Cooperative, Incorporated for a Certificate of Convenience and Necessity for a Service Area Exception within Kerr County. Docket Number 32687.

The Application: Kerrville Public Utility Board requests a service area exception to serve Phase 10 of the Comanche Trace Subdivision. Bandera Electric Cooperative, Incorporated is in full agreement with the territory amendment and agrees to relinquish its right to serve Phase 10 of the Comanche Trace Subdivision.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 26, 2006, 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 32687.

TRD-200602582
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2006

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Notice of Application for Approval of a Nodal Market Implementation Surcharge and Request for Interim Relief

On May 5, 2006, the Electric Reliability Council of Texas, Incorporated (ERCOT) filed with the Public Utility Commission of Texas (commission) its Application for Approval of a Nodal Market Implementation Surcharge and Request for Interim Relief.

ERCOT filed this application to initiate the process of establishing a funding mechanism for the implementation of a Nodal Market within ERCOT. ERCOT states the surcharge is necessary in order to provide funds to acquire the personnel, software, equipment, training, and services necessary to develop and implement a reliable Nodal Market. An interim Nodal Surcharge of $0.0663 per MWh to be effective in June 2006 is requested, and ERCOT proposes the Nodal Surcharge initially be assessed to all market participants. The effective date for the permanent Nodal Surcharge is upon approval by the commission. ERCOT proposes that the commission establish a procedural framework that would facilitate changes in the amount of the Nodal Surcharge.

Persons who wish to intervene or comment should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments and interventions should reference Docket Number 32686.

ERCOT has posted notice and a copy of its application on its website at http://www.ercot.com/about/governance/legal_notices.html. Interested parties may also access ERCOT's application through the Public Utility Commission's web site at http://www.puc.state.tx.us under Docket Number 32686 - *Application of the Electric Reliability Council of Texas for Approval of a Nodal Market Implementation Surcharge and Request for Interim Relief.*

TRD-200602581

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2006

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on May 1, 2006, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§14.101, 36.001, and 37.154 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Joint Application of AEP Texas North Company (AEP North), Mutual Energy SWEPCO, LP (ME SPP), and Southwestern Electric Power Company (SWEPCO) (collectively, Applicants) for Approval to Transfer Facilities and Customer Service Obligation; and for Approval of Tariffs, Docket Number 32672.

The Application: This transaction involves the transfer of all of AEP North's transmission, distribution, and general plant facilities located in the Southwest Power Pool (SPP) area to SWEPCO. The transaction will result in the transfer of approximately 7,000 customers currently served by ME SPP to SWEPCO, includes the transfer to SWEPCO of AEP North's certificated service area that contains those customers, or the transfer of all rights and obligations to serve current and future customers therein. The service area is located in all or parts of Childress, Collingsworth, Donley, Hall, and Wheeler Counties.

Applicants propose continuation of the existing ME SPP base rates in a new SWEPCO tariff, implementation of a new rider in SWEPCO's tariff to allow for recovery of all costs arising from the proposed transfer, revision of the Net Merger Savings and Rate Reduction riders approved in 2000, and implementation of a fuel recovery plan. All customers and classes of customers of ME SPP will be affected by the approval of this application.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection 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 (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 32672.

TRD-200602527
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2006

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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(f)(2) by Thursday, June 1, 2006:

(A) The current tariffed rate for originating and terminating common carrier line (CCL).

(B) The current tariffed rate for originating and terminating local switching (LS).

(C) The current tariffed rate for originating and terminating transport (TR).

(D) The current tariffed rate for originating and terminating tandem switching (TS).

(E) The current average per minute rate for originating and terminating tandem switch transport (TST).

(F) The current originating and terminating tariffed rate(s) for any other usage sensitive intrastate switched access rate element(s).

(G) The total actual originating and terminating MOUs for the most recent 12-month period for each rate element in subparagraphs (A) - (F) of this paragraph. The most recent 12-month period is defined as the 12 months ending March 31, 2006.

SWBT, Verizon, and Sprint Centel/United compliance filings should also include the originating and terminating revenues and minutes of use from direct transport and entrance facilities for the most recent 12-month period. The most recent 12-month period is defined as the 12 months ending March 31, 2006.

CCN holders' compliance filings should be filed in Project Number 32679 no later than June 1, 2006.

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-200602533
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2006

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Public Notice of Informational Workshop Regarding Data Request for the Report to the 80th Legislature on the Scope of Competition in the Telecommunications Market

The Public Utility Commission of Texas (commission) will hold a workshop regarding the second data request for the Report to the 80th Legislature on the Scope of Competition in the Telecommunications Market on Tuesday, June 20, 2006 at 9:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project number 32529 has been assigned to this proceeding. At this workshop, commission staff will discuss the filing requirements for all certificated telecommunication utilities (CTUs), review the various forms to be filed, answer questions regarding the proper completion of the data request forms, explain the filing of confidential documents pursuant to the commission's Procedural Rules, and discuss other relevant matters. The workshop is expected to conclude at noon.

This workshop is intended to be informational only. Commission staff will not discuss or entertain questions regarding any substantive changes or additions to the forms.

Questions concerning the workshop or this notice should be referred to Rick Talbot at (512) 936-7257 or Randy Klaus at (512) 936-7456.

Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200602532
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2006

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Public Notice of Proceeding to Determine the Information to be Included in the Transition to Competition Filing of Entergy Gulf States, Inc.

In accordance with Public Utility Regulatory Act (PURA) §39.452(g), Entergy Gulf States, Inc. (EGSI) must prepare a transition to competition plan and file it with the Public Utility Commission of Texas (commission) not later than the earlier of January 1, 2007 or the 90th day after the date the applicable power region is certified by the commission. Since no power region has been certified for EGSI, January 1, 2007 appears to be the deadline for EGSI's transition to competition plan filing. PURA §39.452(g)(3) specifies that EGSI's January 1, 2007 transition to competition plan must include "any other additional information or provisions that the commission may require." There are at least two nearby power regions that EGSI could seek to join; the Electric Reliability Council of Texas (ERCOT) or the Southwest Power Pool (SPP). Depending upon which options is chosen, the scope, timing, and cost of the transition to competition plan could vary considerably. To date, the commission has not been presented with sufficient information to enable it to determine whether ERCOT or SPP would present the better option for the development of customer choice in EGSI's service territory. In order to assure that the commission has sufficient information to evaluate the choice of power region and the stages and costs of EGSI's transition to competition plan, the commission has decided to seek additional input from other market participants, Texas ratepayers, and EGSI concerning the information that should be included as part of EGSI's January 2007 transition to competition filing.

The commission seeks comment on whether the following types of information would be relevant and could be developed:

* the cost and timeframe for necessary transmission infrastructure development;

* production cost comparisons between the SPP and ERCOT options;

* necessary protocol development in the SPP;

* regulatory filings that may be required in Texas or other jurisdictions;

* impact on the commission's jurisdiction; and/or

* impact on existing wholesale contracts with other Texas entities.

The commission invites public comment on this proposed list of information to be included with EGSI's filing under PURA §39.452(g), as well as suggestions on any items that should be deleted or added to this preliminary list. The commission requests that any comments identify the proposed information with specificity and provide an explanation for why such information would be relevant for evaluation of the transition to competition plan. If items are proposed for deletion, the comments should fully explain the reason for such deletion and identify any alternate sources of information that may be available to address the commission's concerns.

Written comments concerning the above-listed information and any other information requested should be filed by Friday, June 9, 2006. Interested persons should submit 16 copies of their comments to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All responses should reference Project Number 32217.

Questions concerning this notice should be referred to Patrick J. Sullivan, Staff Attorney, Legal Division, (512) 936-7125. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200602531
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 8, 2006

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The University of Texas System

Request for Information (RFI) (Outside Counsel - September 1, 2006 to August 31, 2008)

In accordance with the provisions of *Texas Government Code*, Chapter 2254, The University of Texas System (U.T. System) requests information from law firms interested in representing U.T. System and its institutions in the areas of law described below. U.T. System, located in Austin, governs six health institutions (located in Dallas, Galveston, Houston, San Antonio, and Tyler) and nine academic institutions (located in Arlington, Austin, Brownsville, Dallas, Edinburg, El Paso, Midland-Odessa, San Antonio, and Tyler). This RFI is issued to establish a referral list from which U.T. System, by and through its Office of General Counsel, will select appropriate counsel for representation of U.T. System and its institutions on specific matters as the need arises during the timeframe beginning September 1, 2006 to August 31, 2008. U.T. System invites responses to this RFI from qualified firms for the provision of legal services under the direction and supervision of the U. T. System's Office of General Counsel. Subject to approval by the Texas Attorney General, U.T. System will engage outside counsel with experience in the following areas of law:

Communications (FCC): Representation and advice regarding communications law, noncommercial broadcast issues, First Amendment, and broadcast journalism legal issues, including but not limited to preparing, filing, prosecuting, maintaining, and renewing various permits, licenses, and license applications with the Federal Communications Commission (FCC).

Corporate Law: Representation and advice regarding corporate and securities transactions and regulations, including but not limited to entity formation, such as corporations, joint ventures, limited partnerships, limited liability companies, 501(c)(3) corporations, and public-private partnerships; drafting and filing entity documents; filing for certificates of authority to transact business in other states; and private equity investing.

Employment Law: Representation and advice regarding complex employment law issues.

Federal ESEA: Representation and advice regarding implementation of the Elementary and Secondary Education Act (ESEA), including but not limited to assistance on U.T. System K-16 initiative; funding flows from ESEA; making appropriate contact with federal and state officials; presentations to U. T. System and institution personnel regarding the U.T. System initiative; and presentations to the Texas Legislature, foundations, Regents, and others concerning the legal and practical aspects of the K-16 initiative.

Health Law: Representation and advice regarding billing; clinical research contracting; Health Insurance Portability and Accountability

Act (HIPAA); regulatory compliance; and other general health law matters.

Immigration Law: Representation and advice regarding immigration law matters, including but not limited to petitioning for nonimmigrant visas (including H-1Bs); petitioning for employer sponsored permanent residence; representation before the Department of Labor, including labor condition applications, labor certifications, Program Electronic Review Management (PERM) complying with the Student and Exchange Visitor Information System (SEVIS) requirements; impact of homeland security issues on immigration law; and interaction with and representation before applicable U.S. governmental agencies, including the Department of Homeland Security and the Department of Labor, as well as the U. T. System Office of General Counsel, U. T. System institutions' international offices, and human resources offices. Outside counsel should be admitted to practice before all United States District Courts in Texas.

Intellectual Property (IP)Matters: Representation and advice regarding intellectual property matters, including but not limited to preparing, filing, prosecuting, and maintaining patent applications in the United States and other countries; securing copyright protection for computer software; preparing, filing, and prosecuting applications to register trademarks and service marks in the United States and other countries; complex licensing transactions; and all other related matters.

Litigation - General: Representation and advice regarding complex litigation matters, including but not limited to employment litigation, real estate litigation, wills and estate litigation, Texas Public Information Act litigation, and commercial and creditors' rights litigation.

Litigation - IP: Representation and advice regarding all intellectual property matters, including but not limited to pursuit of litigation against infringers of U. T. System intellectual property rights and defense of any intellectual property related claims.

Public School Law: Representation and advice to U.T. Austin regarding public school law issues regarding the University Charter School and The University of Texas Elementary School.

Radio, Television, and Film Matters: Represent and advise the College of Communication at U. T. Austin regarding the creation and operation of legal entities designed to support, enhance, finance, and otherwise contribute to the film program and to prepare and file appropriate documentation to evidence the legal affairs of such entities as well as other related matters.

Real Estate and Finance Transactions: Representation and advice regarding acquisitions, dispositions, eminent domain, financings, entity formation (joint ventures, limited partnerships, limited liability companies, real estate investment trusts, business trusts), securitization, leasing, construction contracting, and workouts and restructurings.

Real Estate and Oil & Gas Transactions Outside the State of Texas: Representation and advice regarding real estate and oil and gas transactions, including but not limited to litigation or hearings related to oil, gas, or other mineral interests that are located outside the State of Texas and that are either owned by or proposed to be given to U. T System or one of its institutions; and litigation or hearings related to real estate interests and trust, estate, and probate matters that are located outside the State of Texas and that are either owned by or proposed to be given to U.T. System or one of its institutions.

Tax-Exempt Bond Matters: Public, tax-exempt bond issuance is conducted under two major programs and is rated by three major rating agencies. Bonds are issued under authority granted the U. T. System in Article VII, §18 of the Texas Constitution (Permanent University Fund). A flexible rate note program is frequently used to raise new funds in support of the U.T. System's $4.3 billion Capital Improvement Program. The flexible rate note program is currently authorized up to a maximum of $400 million and has $100 million outstanding. During the 2007 fiscal year, one such note sale is anticipated in the approximate amount of $150 million. Fixed rate bond sales occur every two to three years in the amount of approximately $250 million to refund flexible rate notes. Advance refunding of Permanent University Fund bonds are conducted periodically based on potential savings opportunities. Under authority granted in Chapter 55, *Texas Education Code* and Chapters 1207 and 1371, *Texas Government Code*, and other applicable laws, the U.T. System issues revenue bonds for capital improvements. The U.T. System employs a revenue bond program that offers a combined pledge of all legally available revenues with certain exceptions (the "Revenue Financing System"). Commercial paper programs are generally used for interim financing with long-term bonds sold to provide more permanent financing. These long-term bonds, which may be either fixed rate or variable rate, may be combined with interest rate swap agreements pursuant to International Swaps and Derivatives Association, Inc. (ISDA) master swap agreements. The tax-exempt commercial paper program is presently authorized up to $750 million and has approximately $330 million outstanding. The taxable commercial paper program is presently authorized up to $50 million and has approximately $10 million outstanding. Advance refunding of bonds, interest rate swaps, and escrow restructures of previously defeased bonds, based on market conditions, may be expected. Federal tax related matters regarding bonds issued by the U.T. System, including strategies and management practices in the conduct of an exempt debt program requires a close working relationship with bond counsel. In addition, the U. T. System works with counsel regarding the preparation of the annual Securities and Exchange Commission filings. Contact is frequent, particularly regarding the Revenue Financing System program due to the frequency of debt issuance.

Tax Matters: Representation and advice regarding state taxes, state pension issues and plans available only to universities, and regarding federal income, estate, gift, employment, and excise taxes, including but not limited to matters regarding: taxation of any kind, including tax liens, tax garnishments, tax levies, tax assessments, tax valuations, as well as summonses, subpoenas, and discovery relating to tax matters; tax audits; appeals of tax issues; tax hearings before administrative law judges and magistrates; appeals to Internal Revenue Service (IRS) appeals officers, district court, U.S. Tax Court, U.S. District Court, U.S. Court of Claims, and other venues on tax matters; employee benefits such as Internal Revenue Code (I.R.C.) §125 cafeteria plans, the Texas Optional Retirement Program, *Internal Revenue Code*(I.R.C.) §§403(b), 415(m), and 457(a), 457(b), and 457(f) plans; income tax matters, including unrelated business income tax as it relates to universities; federal tax matters regarding compensation issues related to university hospitals and physicians; interaction with and representation before the IRS and other taxing authorities in any tax controversy; and charitable fundraising activities. Although outside counsel will not be required to prepare the System tax return, it will be required to give legal advice on issues relating to the filing of tax returns and the appropriate treatment of tax matters on such returns. Outside counsel should be admitted to practice before the Texas district courts, the U.S. Tax Court, the U.S. District Court, and the U.S. Court of Claims.

UTIMCO Oversight: Representation and advice to the U.T. System Board of Regents regarding the discharge of its fiduciary duties in managing the investment funds under its control by responding to the more complex legal questions that arise in investment management areas, including questions regarding compliance with the intent behind Sarbanes-Oxley duties and responsibilities; and to the Office of General Counsel and the Office of Finance in their provision of enhanced oversight over the University of Texas Investment Management Company.

Utility Matters: Representation and advice in utility matters, including but not limited to natural gas, electric, and telecommunications matters, including reviewing contracts, conducting research, rendering legal opinions, pursuing litigation, and handling other utility-related legal matters.

Responses: Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services, including the firm's prior experience in the specific area of law for which the firm is responding; (2) the expertise, including scientific or technical, of the attorneys that would be assigned to work on such matters; (3) the submission of fee information in the form of a range of hourly rates (not to exceed $500 per hour) for each billing class of personnel who may be assigned to perform services in relation to U.T. System's matter and/or a proposed flat fee or other fee arrangement directly related to the achievement of specific goals and cost controls; (4) a description of the efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and the specific areas of law in particular; (5) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the U.T. System or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); (6) the firm's agreement with the billing guidelines, which among other things sets forth the allowable billable expenses; and (7) confirmation of willingness to comply with policies, directives, and guidelines of the U.T. System and the Attorney General of the State of Texas. Responses will be reviewed by U. T. System and the UT System institutions. You will be contacted via e-mail if the U.T. System or a U.T. System institution chooses to contract with your firm for outside counsel services.

Format and Person to Contact: Responses are to be completed online at https://www.utsystem.edu/LegalRFIResponse. Please do not forward any materials directly to U.T. System. Questions should be addressed to Barry D. Burgdorf, Vice Chancellor and General Counsel, Office of General Counsel, The University of Texas System and sent to bhurst@utsystem.edu.

Deadline for Submission of Response: All responses must be completed and submitted to the Office of General Counsel of U. T. System through the website noted above no later than 11:59 p.m., Monday, June 19, 2006.

TRD-200602573
Francie A. Frederick
Counsel and Secretary to the Board of Regents
The University of Texas System
Filed: May 9, 2006

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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:

Wharton County, 1421 Wells Branch Parkway, Suite 104, Austin, Texas 78660, received February 1, 2006, application for financial assistance in the amount of $2,500,000 from the Texas Water Development Funds.

City of East Tawakoni, 288 Briggs Blvd., East Tawakoni, Texas 75472-7140, received March 31, 2006, application for financial assistance in the amount of $1,250,000 from the Drinking Water State Revolving Fund.

Brazos River Authority, Texas P.O. Box 7555, Waco, Texas 76714, received August 23, 2005, application for financial assistance in an amount not to exceed $3,230,000 from the State Participation Program.

City of La Joya, 100 West Highway 83, La Joya, Texas 78560, received January 6, 2006, application for financial assistance in the total amount of $6,720,000 from the Clean Water State Revolving Fund.

City of Dayton, 117 Cook Street, Dayton, Texas 77535, received March 28, 2006, application for financial assistance in the amount of $8,500,000 from the Clean Water State Revolving Fund.

City of Cockrell Hill, 4125 West Clarendon, Cockrell Hill, Texas 75211, received February 14, 2006, application for financial assistance in the amount of $1,875,000 from the Drinking Water State Revolving Fund.

Thornhill Group, Inc., 1104 South Mays Street, Suite 208, Round Rock, Texas 78664, received April 3, 2006, application for financial assistance for the Yegua-Jackson Aquifer from the Research and Planning Fund.

LBG-Guyton Associates, 1101 South Capital of Texas Highway, Suite B-220, Austin, Texas 78746, received April 3, 2006, application for financial assistance for the Yegua-Jackson Aquifer from the Research and Planning Fund.

INTERA, Incorporated, 9111-A Research Boulevard, Austin, Texas 78758, received April 3, 2006, application for financial assistance for the Yegua-Jackson Aquifer from the Research and Planning Fund.

Daniel B. Stephens and Associates, Inc., 6020 Academy NE, Suite 100, Albuquerque, New Mexico 87109, received April 3, 2006, application for financial assistance for the Yegua-Jackson Aquifer from the Research and Planning Fund.

Office of Sponsored Projects, Box 7726, University Station, Austin, Texas 78713, received April, 2006, application for financial assistance for the Yegua-Jackson Aquifer from the Research and Planning Fund.

MFG, Inc., 4087 Spicewood Springs Road, Building IV, First Floor, Austin, Texas 78759, received April 3, 2006, application for financial assistance for the Llano Uplift Aquifer from the Research and Planning Fund.

Daniel B. Stephens and Associates, Inc., 6020 Academy NE, Suite 100, Albuquerque, New Mexico 87109, received April 3, 2006, application for financial assistance for the Llano Uplift Aquifer from the Research and Planning Fund.

R.W. Harden & Associates, Inc., 3409 Executive Center Drive, Suite 226, Austin, Texas 78731, received April 3, 2006, application for financial assistance for the Trinity Aquifer from the Research and Planning Fund.

TRD-200602480
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: May 3, 2006

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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).