Texas Register

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

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

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

Secretary of State –
Roger Williams

Director - Dan Procter

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

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THE GOVERNOR

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

Appointments

Appointments for June 14, 2006

Appointed to the Texas Funeral Service Commission for a term to expire February 1, 2009, Sue Evenwel of Mt. Pleasant (replacing Martha Rhymes of White Oak whose term expired).

Appointed to the Texas Funeral Service Commission for a term to expire February 1, 2011, Doug Carmichael of Pampa (replacing Jim Wright of Wheeler whose term expired).

Appointed to the Texas Medical Board for a term to expire April 13, 2011, Irvin E. Zeitler, Jr., D.O. of San Angelo (replacing David Garza who resigned).

Appointed to the Texas Agricultural Finance Authority Board of Directors for a term to expire January 1, 2008, Victoria Salin, Ph.D. of College Station. Dr. Salin is being reappointed.

Appointed to the Texoma Regional Review Committee for a term to expire January 1, 2008, Bill Freeman of Gainesville (replacing Phil Young).

Appointed to the Texoma Regional Review Committee for a term to expire January 1, 2008, William J. Yoss of Leonard (replacing Karen Paul).

Appointed to the Texoma Regional Review Committee for a term to expire January 1, 2008, Mike Towery of Bonham (replacing William McEachern).

Appointed to the Texoma Regional Review Committee for a term to expire January 1, 2008, George T. Wilthers of Tom Bean (replacing David Johnson).

Appointed to the Lower Rio Grande Regional Review Committee for a term to expire January 1, 2008, A. J. Cantu of Raymondville (filling vacant position).

Appointed to the Lower Rio Grande Regional Review Committee for a term to expire January 1, 2008, Lois G. Shreve of Harlingen (replacing Darlene Topp).

Appointed to the East Texas Regional Review Committee for a term to expire January 1, 2008, Frank S. Parsons, II of Big Sandy (replacing Jerry Nowlin).

Appointed to the East Texas Regional Review Committee for a term to expire January 1, 2008, Bryan Jeanes of Quitman (replacing Jeff Fisher).

Appointed to the East Texas Regional Review Committee for a term to expire January 1, 2008, Chris Davis of Rusk (replacing Ken Durrett).

Appointed to the Central Texas Regional Review Committee for a term to expire January 1, 2008, Gayla Hawkins of San Saba (replacing Maxine Miffleton).

Appointed to the Central Texas Regional Review Committee for a term to expire January 1, 2008, Robert R. McCauley of Lampasas (replacing Jack Calvert).

Appointed to the Central Texas Regional Review Committee for a term to expire January 1, 2008, John C. Shoemake of Rockdale (replacing James Lafferty).

Appointed to the ARK-TEX Regional Review Committee for a term to expire January 1, 2007, J. C. Jennings of Daingerfield (replacing Kay Phillips).

Rick Perry, Governor

TRD-200603287

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-0498-GA

Requestor:

The Honorable Norma Chavez

Chair, Committee on Border and International Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of a district or county clerk to establish an online electronic database accessible to the public (Request No. 0498-GA)

Briefs requested by July 14, 2006

RQ-0499-GA

Requestor:

Mr. C. Tom Clowe, Jr., Chair

Texas Lottery Commission

Post Office Box 16630

Austin, Texas 78761-6630

Re: Whether a licensed bingo organization may provide health care insurance for its employees and their dependents (Request No. 0499-GA)

Briefs requested by July 14, 2006

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

TRD-200603387
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 20, 2006

Opinions

Opinion No. GA-0437

The Honorable Carole Keeton Strayhorn

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Maximum salary payable to a district judge under section 659.012 of the Government Code (RQ-0419-GA)

S U M M A R Y

Under section 659.012 of the Government Code, the maximum lawful amount payable to a state district judge is $140,000.

Opinion No. GA-0438

Mr. James R. Huffines

Chair, Board of Regents

The University of Texas System

201 West Seventh Street

Austin, Texas 78701-2902

Mr. John D. White

Chair, Board of Regents

The Texas A&M University System

Post Office Box C-1

College Station, Texas 77844-9021

Re: Whether The University of Texas System and The Texas A&M University System may promulgate rules setting a dollar amount under which the university systems may procure printing services without a competitive bidding process (RQ-0428-GA)

S U M M A R Y

The University of Texas System and The Texas A&M University System may "acquire goods or services as provided by" Government Code, chapter 2155 and rules of the Texas Building and Procurement Commission adopted thereunder. TEX. EDUC. CODE ANN., §51.9335(d) (Vernon Supp. 2005). In the alternative, the university systems may adopt a rule that sets a dollar amount under which the system may procure printing services using an open market purchase instead of a competitive procurement procedure. *See id.* §§51.9335(a)(5) (Vernon Supp. 2005), 65.31(c), 85.21(a) (Vernon 2002).

The phrase "under such regulations as shall be prescribed by law" in article XVI, section 21 of the Texas Constitution, which provides that all "printing . . . shall be performed under contract, to be given to the lowest responsible bidder . . . under such regulations as shall be prescribed by law," authorizes the legislature or a state agency, such as a university system, with appropriate rule-making authority to adopt a rule that establishes a dollar amount under which a university system may procure printing services without a competitive bidding process. TEX. CONST., art. XVI, §21.

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

TRD-200603375
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 20, 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 358. MEDICAID ELIGIBILITY

SUBCHAPTER D. RESOURCES

1 TAC §§358.431 - 358.433

Pursuant to the federal Deficit Reduction Act of 2005 (DRA), PL 109-362, the Texas Health and Human Services Commission (HHSC) proposes to add §§358.431 - 358.433 to Texas Administrative Code (TAC), Title 1, Subchapter D, Chapter 358, Resources: §358.431 Transfer of Assets on or after February 8, 2006, §358.432, Home Equity Treatment, and §358.433, Treatment of Entrance Fees for Individuals Residing in Continuing Care Retirement Communities. The purpose of the new rules is to incorporate the mandatory provisions under section 1917 of the Social Security Act (SSA) as amended by the Deficit Reduction Act of 2005.

Background and Justification

On February 8, 2006, the DRA was signed into law. The Act made changes to certain Medicaid eligibility provisions of the SSA, necessitating the change to the Texas rules. HHSC proposes to amend its Medicaid Eligibility chapter by adding three new rules to Title 1, Subchapter D to, Chapter 358 of the TAC.

Section-by-Section Summary

Section 358.431, Transfer of Assets on or after February 8, 2005 - Provides rules for treatment of asset transfers that occur on or after February 8, 2006 for those who are eligible for medical assistance with respect to nursing facility services or other long-term care services as described the Social Security Act (SSA) §1917(c)(1) (codified at 42 U.S.C 1396p(c)(1)). Highlights from this rule are as follows:

Look-Back Period - The look-back period is 60 months for all transfers (outright transfers as well as transfers to and from certain trusts). The look-back period is the period of time within which Medicaid reviews financial transactions of the applicant to determine whether any of those actions would result in Medicaid transfer of assets penalty. It begins with the date of application and goes backwards in time. The current law found in TAC §358.430(e) is a two element look-back period. For outright transfers, there is a 36-month look-back period. For transfers to a trust, there is a 60-month look-back period. The two element look-back period continues for transfers that occurred before February 8, 2006.

Change In Beginning Date For Period Of Ineligibility - For transfers of assets made on or after the date February 8, 2006, the beginning date of penalty is based on the latter of the (1) date of transfer or the (2) eligibility date for nursing facility or waiver services. For transfers before February 8, 2006, the beginning date of penalty is the month that the transfer occurred.

Availability of Hardship Waivers - This provision adds criteria for the application of the hardship waiver provisions. This section also includes notice requirements as to the possibility for a hardship waiver and the availability of a process by which an applicant for a hardship waiver may appeal an adverse determination of an application. It also allows the facility in which the institutionalized individual resides to file an application on behalf of the individual.

Disclosure and Treatment of Annuities - For purposes of being eligible for long term care services under Medicaid, the applicant or the applicant's spouse must disclose any interest in an annuity (or similar financial instrument). The application or recertification form will include a statement that the State becomes a remainder beneficiary under such annuity or similar financial instrument. The State is to notify the issuer of the annuity of the right of the State to be a preferred remainder beneficiary in the annuity.

State Named as Remainder Beneficiary - Current law only requires the State be named a remainder beneficiary when the annuitant is the client, not the community spouse. The DRA changes this to include annuities purchased for or by a person who is the community spouse on or after February 8, 2006.

Promissory note, loan, or mortgage - A transfer of assets penalty will be based on funds used to purchase a promissory note, loan, or mortgage, on or after April 1, 2006, unless such note, loan, or mortgage (1) has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); (2) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and (3) prohibits the cancellation of the balance upon the death of the lender.

Inclusion of Transfers to Purchase Life Estates - A transfer of assets penalty will be based on the purchase of a life estate interest in another individual's home made on or after April 1, 2006, unless the purchaser resides in the home for a period of at least one year after the date of the purchase.

Section 358.432, Home Equity Treatment - Home Equity Treatment for Applications Filed on or after January 1, 2006--provides rules for treatment of the home equity for those who apply on or after January 1, 2006 for medical assistance with respect to nursing facility services or other long-term care services as described the SSA §1917(c)(1) (codified at 42 U.S.C 1396p(c)(1)). Prior to the enactment of the DRA, there was no limit to the value of the homestead as it related to Medicaid eligibility. Highlights from this rule are as follows:

Disqualification for Long-Term Care Assistance for Individuals with Substantial Home Equity - The denial of benefits for an individual who has equity in a home that exceeds $500,000 would occur for those who apply for nursing facility services or other long-term care services as described the Social Security Act (SSA) §1917(c)(1) (codified at 42 U.S.C 1396p(c)(1)) on or after January 1, 2006.

The $500,000 limit may be increased annually, starting in 2011, based on a percentage increase in the consumer price index, urban consumers, rounded to the nearest $1,000.

Exceptions to the general rule apply if there is a spouse or child under twenty-one, blind or disabled is lawfully residing in the home.

Permits an individual to use a reverse annuity mortgage or home equity to reduce the total equity.

Secretary of the United States Department of Health and Human Services will establish a process to waive the treatment of the equity in cases of demonstrated hardship.

Section 358.433, Treatment of Entrance Fees - Treatment of Entrance Fees of Individuals Residing in Continuing Care Retirement Communities provides rules for treatment entrance fees as a resource if a resident (1) has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care; (2) is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and (3) the entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

Fiscal Note

Tom Suehs, Deputy Commissioner for Financial Services, has determined that during the first 5-year period the proposed rules are in effect, there will be a fiscal impact to state government. There will be costs due to automation and savings for Long Term Care services, but the State does not have sufficient data at this time to be able to estimate the overall impact. The proposed rules 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 proposal, 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 rules. There is no anticipated negative impact on local employment.

Public Benefit

Anne Heiligenstein, Deputy Executive Commissioner for Social Services, has determined that for each 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 of enforcing the proposed rules will be a reduction in Medicaid spending for long-term care.

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 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 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 proposal may be submitted to Dee Church at Mail Code 2090, P.O. Box 12668, Austin, TX 78711-2668, by fax to (512) 206-5211, or by e-mail to dee.church@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Public Hearing

A Public Hearing is scheduled for July 17, 2006 between 9:00 am and 11:00 am at 701 W. 51st, Austin, Texas, Winters Complex, Public Hearing Room. Persons requiring further information, special assistance, or accommodations should contact Kyna Belcher at (512) 491-1884.

Statutory Authority

The new rules 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 new rules 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.

§358.431. Transfer of Assets on or after February 8, 2006.

(a) Definitions--The Commission uses the definitions under the provisions of the Social Security Act (SSA) §1917(e) (codified at 42 U.S.C 1396p(h)).

(1) The term "assets", with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action--

(A) by the individual or such individual's spouse,

(B) by a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or such individual's spouse, or

(C) by any person, including any court or administrative body, acting at the direction or upon the request of the individual or such individual's spouse.

(2) The term "income" has the meaning given such term in section SSA §1612 (codified at 42 U.S.C. 1382a).

(3) The term "institutionalized individual" means an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based

on a level of care provided in a nursing facility, or who is described in SSA §1902(a)(10)(A)(ii)(VI) (codified at 42 U.S.C. 1396a).

(4) The term "noninstitutionalized individual" means an individual receiving home health care services, home and community care for functionally disabled elderly individuals, or personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are authorized for the individual by a physician in accordance with a plan of treatment or otherwise authorized for the individual in accordance with a service plan approved by the State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

(5) The term "resources" has the meaning given such term in SSA §1613 (codified at 42 U.S.C. 1382b), without regard (in the case of an institutionalized individual) to the exclusion of the home.

(b) Other definitions used in this section are client--"client" includes the individual himself, and as well as

(1) "client" is synonymous with "individual"

(2) the client's spouse;

(3) a person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or client's spouse; and

(4) any person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(c) The Commission is required to apply the penalty for transfers of assets under the provisions of the Social Security Act (SSA) §1917(c)(1) (codified at 42 U.S.C 1396p(c)(1)).

(1) For transfers made on or after February 8, 2006, the date of enactment of the Deficit Reduction Act of 2005

(A) If an institutionalized individual or the spouse of such an individual (or a noninstitutionalized individual or the spouse of such an individual) disposes of assets for less than fair market value on or after the look-back date specified in subparagraph (B) of this paragraph, the individual is ineligible for medical assistance for services described in subparagraph (C)(i) of this paragraph (or, in the case of a noninstitutionalized individual, for the services described in subparagraph (C)(ii) of this paragraph) during the period beginning on the date specified in subparagraph (D) of this paragraph and equal to the number of months specified in subparagraph (E) of this paragraph.

(B) Look-Back Period

(i) The look-back date specified in this subparagraph is a date that is 36 months (or, in the case of payments involving a trust or portions of a trust that are treated as assets disposed of by the individual pursuant to §358.430(e)(2) of this title or in the case of any other disposal of assets made on or after February 8, 2006, the date of enactment of the Deficit Reduction Act of 2005, 60 months) before the date specified in clause (ii).

(ii) The date specified in this clause, with respect to--

(I) an institutionalized individual is the first date as of which the individual both is an institutionalized individual and has applied for medical assistance under the State plan, or

(II) a noninstitutionalized individual is the date on which the individual applies for medical assistance under the State plan or, if later, the date on which the individual disposes of assets for less than fair market value.

(C) Ineligible for Medical Assistance for Services

(i) The services described in this subparagraph with respect to an institutionalized individual are the following:

(I) Nursing facility services.

(II) A level of care in any institution equivalent to that of nursing facility services.

(III) Home or community-based services furnished under a waiver granted under the Social Security Act §1917, subsection (c) or (d) as codified at 42 U.S.C 1396n (c) or (d).

(ii) The services described in this subparagraph with respect to a noninstitutionalized individual are services (not including any services described in clause (i)) that are described in paragraph (7), (22), or (24) of the Social Security Act §1905(a) as codified at 42 U.S.C. 1396d and, at the option of a State, other long-term care services for which medical assistance is otherwise available under the State plan to individuals requiring long-term care.

(D) Beginning Date of Penalty

(i) In the case of a transfer of asset made before February 8, 2006, the date of enactment of the Deficit Reduction Act of 2005, the beginning date of penalty; and specified in this subparagraph, is the first day of the first month during or after which assets have been transferred for less than fair market value and which does not occur in any other periods of ineligibility under this subsection.

(ii) In the case of a transfer of asset made on or after February 8, 2006, the date of enactment of the Deficit Reduction Act of 2005, the beginning date of penalty, specified in this subparagraph, is the first day of a month during or after which assets have been transferred for less than fair market value, or the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level of care described in subparagraph (C) of this paragraph based on an approved application for such care but for the application of the penalty period, whichever is later, and which does not occur during any other period of ineligibility under this subsection.

(E) Length of Ineligibility Period

(i) With respect to an institutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall be equal to--

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i) of this paragraph, divided by

(II) the average monthly cost to a private patient of nursing facility services in the State at the time of application.

(ii) With respect to a noninstitutionalized individual, the number of months of ineligibility under this subparagraph for an individual shall not be greater than a number equal to--

(I) the total, cumulative uncompensated value of all assets transferred by the individual (or individual's spouse) on or after the look-back date specified in subparagraph (B)(i) of this paragraph, divided by

(II) the average monthly cost to a private patient of nursing facility services in the State at the time of application.

(iii) The number of months of ineligibility otherwise determined under clauses (i) or (ii) of this subparagraph with respect to the disposal of an asset shall be reduced--

(I) in the case of periods of ineligibility determined under clause (i) of this subparagraph, by the number of months of ineligibility applicable to the individual under clause (ii) of this subparagraph as a result of such disposal, and

(II) in the case of periods of ineligibility determined under clause (ii) of this subparagraph, by the number of months of ineligibility applicable to the individual under clause (i) of this subparagraph as a result of such disposal.

(iv) The Commission shall not round down, or otherwise disregard any fractional period of ineligibility determined under clause (i) or (ii) of this subparagraph with respect to the disposal of assets.

(F) Annuity--The purchase of an annuity made on or after February 8, 2006, the date of enactment of the Deficit Reduction Act of 2005, shall be treated as the disposal of an asset for less than fair market value unless--

(i) the State is named as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant under this title; or

(ii) the State is named as such a beneficiary in the second position after the community spouse or minor or disabled child and is named in the first position if such spouse or a representative of such child disposes of any such remainder for less than fair market value.

(G) With respect to a transfer of assets, the term 'assets' includes an annuity purchased on or after February 8, 2006, the date of enactment of the Deficit Reduction Act of 2005, by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services under this title unless--

(i) the annuity is--

(I) an annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986; or

(II) purchased with proceeds from--

(-a-) an account or trust described in subsection (a), (c), or (p) of section 408 of such Code;

(-b-) a simplified employee pension (within the meaning of section 408(k) of such Code); or

(-c-) a Roth IRA described in section 408A of such Code; or

(ii) the annuity--

(I) is irrevocable and nonassignable;

(II) is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Department of Health and Human Services); and

(III) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(H) In the case of a promissory note, loan, or mortgage that does not satisfy the requirements of clauses (i) through (iii) of this subparagraph, the value of such note, loan, or mortgage shall be the outstanding balance due as of the date of the individual's application for medical assistance for services described in subparagraph (C) of this paragraph and this amount would be used to determine the length of ineligibility. For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes funds used to purchase, on or after April 1, 2006, a promissory note, loan, or mortgage unless such note, loan, or mortgage--

(i) has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration);

(ii) provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made; and

(iii) prohibits the cancellation of the balance upon the death of the lender.

(I) For purposes of this paragraph with respect to a transfer of assets, the term 'assets' includes the purchase of a life estate interest in another individual's home made on or after April 1, 2006, unless the purchaser resides in the home for a period of at least one year after the date of the purchase.

(2) The Commission allows exceptions to transfers of assets under the provisions of the Social Security Act (SSA) §1917(c)(2) (codified at 42 U.S.C 1396p(c)(2))--

(A) the assets transferred were a home and title to the home was transferred to--

(i) the spouse of such individual;

(ii) a child of such individual who

(I) is under age 21, or

(II) is blind or disabled as defined in SSA §1614 (codified at 42 U.S.C 1382c);

(iii) a sibling of such individual who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date the individual becomes an institutionalized individual; or

(iv) a son or daughter of such individual (other than a child described in clause (ii) of this subparagraph) who was residing in such individual's home for a period of at least two years immediately before the date the individual becomes an institutionalized individual, and who as determined by the State provided care to such individual which permitted such individual to reside at home rather than in such an institution or facility;

(B) the assets--

(i) were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse,

(ii) were transferred from the individual's spouse to another for the sole benefit of the individual's spouse,

(iii) were transferred to, or to a trust (including a trust described in §358.430(e)(2) of this title established solely for the benefit of, the individual's child described in subparagraph (A)(ii)(II) of this paragraph, or

(iv) were transferred to a trust (including a trust described in §358.430(e)(2) of this title established solely for the benefit of an individual under 65 years of age who is disabled as defined in SSA §1614(a)(3) (codified at 42 U.S.C 1382c(a)(3))

(C) a satisfactory showing is made to the State based on guidance from the United States Department of Health and Human Services that--

(i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration,

(ii) the assets were transferred exclusively for a purpose other than to qualify for medical assistance, or

(iii) all assets transferred for less than fair market value have been returned to the individual; or

(D) the Commission determines, that the denial of eligibility would work an undue hardship based on guidance of procedural standards and criteria from the United States Department of Health and Human Services

(i) under which an undue hardship exists when application of the transfer of assets provision would deprive the individual--

(I) of medical care such that the individual's health or life would be endangered; or

(II) of food, clothing, shelter, or other necessities of life; and

(ii) which provides for--

(I) notice to recipients that an undue hardship exception exists;

(II) a timely process for determining whether an undue hardship waiver will be granted; and

(III) a process under which an adverse determination can be appealed.

(E) The procedures established under subparagraph (D) of this paragraph shall permit the facility in which the institutionalized individual is residing to file an undue hardship waiver application on behalf of the individual with the consent of the individual or the personal representative of the individual.

(3) For purposes of this subsection effective on or after February 8, 2006, the date of enactment of the Deficit Reduction Act of 2005, in the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset (or the affected portion of such asset) shall be considered to be transferred by such individual when any action is taken, either by such individual or by any other person, that reduces or eliminates such individual's ownership or control of such asset.

(4) The Commission will not provide for any period of ineligibility for an individual due to transfer of resources for less than fair market value except in accordance with this subsection. In the case of a transfer by the spouse of an individual which results in a period of ineligibility for medical assistance for such individual, the Commission will apportion such period of ineligibility (or any portion of such period) among the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance.

(5) In this subsection, the term "resources" has the meaning given such term in SSA §1613 (codified in 42 U.S.C. 1382b), without regard to the exclusion described in subsection (a)(1) of this section thereof.

(d) In spousal situations, if assets are transferred to a third party before institutionalization or by the community spouse, the Commission does not include the uncompensated amount of the transfer in calculating the protected resource amount or countable resources upon application for Medicaid.

(e) Transfer of income--

(1) The individual may incur a transfer penalty by transferring income. Transfers of income include:

(A) waiving the right to receive an inheritance even in the month of receipt;

(B) giving away a lump sum payment even in the month of receipt; or

(C) irrevocably waiving all or part of federal, state, or private pensions or annuities.

(2) The date of transfer is the date of the actual change in income. Interspousal transfers of income are permitted (for example, obtaining a court order to have community property pension income paid to a community spouse).

(3) Because revocable waivers of pension benefits can be revoked and the benefits reinstated, no uncompensated value is developed, and no transfer of assets penalty is incurred. Such waivers are subject to the utilization of benefits policy, and the individual must apply for reinstatement of the full pension amount or he is ineligible for all Medicaid benefits.

(f) Disclosure and Treatment of Annuities--The Commission under the provisions of the Social Security Act (SSA) §1902(a)(18) (codified at 42 U.S.C 1396a(18)) requires as a condition for the provision of medical assistance for services described in subsection (c)(1)(C)(i) of this section (relating to long-term care services) for an individual--

(1) the application of the individual for such assistance (including any recertification of eligibility for such assistance) shall disclose a description of any interest the individual or community spouse has in an annuity (or similar financial instrument as directed by the United States Department of Health and Human Services), regardless of whether the annuity is irrevocable or is treated as an asset. Such application or recertification form shall include a statement that under paragraph (2) of this subsection the State becomes a remainder beneficiary under such an annuity or similar financial instrument by virtue of the provision of such medical assistance.

(2) In the case of disclosure concerning an annuity under subsection (c)(1)(F) of this section, the Commission shall notify the issuer of the annuity of the right of the State under such subsection as a preferred remainder beneficiary in the annuity for medical assistance furnished to the individual. Nothing in this paragraph shall be construed as preventing such an issuer from notifying persons with any other remainder interest of the State's remainder interest under such subsection.

(3) The Commission will establish categories of transactions that may be treated as a transfer of asset for less than fair market value as the United States Department of Health and Human Services provides guidance.

(4) Nothing in this subsection shall be construed as preventing the Commission from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity described in paragraph (1) of this subsection.

§358.432. Home Equity Treatment.

Home Equity and Eligibility for Medical Assistance with Respect to Services--The Commission is required under the provisions of the Social Security Act (SSA) §1917(f) (codified at 42 U.S.C 1396p(f))

(1) For individuals who are determined eligible for medical assistance with respect to nursing facility services or other long-term care services as described the Social Security Act (SSA) §1917(c)(1) (codified at 42 U.S.C 1396p(c)(1)) based on an application filed on or after January 1, 2006--

(A) Despite any other provision of the Social Security Act (SSA) §1917 (codified at 42 U.S.C 1396p), subject to subparagraph (B) of this paragraph and paragraph (2) of this subsection, the individual shall not be eligible for such assistance if the individual's equity interest in the individual's home exceeds $500,000.

(B) The dollar amounts specified in this paragraph shall be increased, beginning with 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000.

(2) Paragraph (1) of this subsection shall not apply with respect to an individual if--

(A) The spouse of such individual, or

(B) Such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in SSA §1614 (codified at 42 U.S.C 1382c), is lawfully residing in the individual's home.

(3) Nothing in this subsection shall be construed as preventing an individual from using a reverse mortgage or home equity loan to reduce the individual's total equity interest in the home.

(4) The Secretary of the United States Department of Health and Human Services shall establish a process whereby paragraph (1) of this subsection is waived in the case of a demonstrated hardship.

§358.433. Treatment of Entrance Fees of Individuals Residing in Continuing Care Retirement Communities.

Treatment of Entrance Fees of Individuals Residing in Continuing Care Retirement Communities--The Commission under the provisions of the Social Security Act (SSA) §1917(g) (codified at 42 U.S.C 1396p(g))

(1) IN GENERAL--For purposes of determining an individual's eligibility for, or amount of, benefits under the State plan, the rules specified in paragraph (2) of this section shall apply to individuals residing in continuing care retirement communities or life care communities that collect an entrance fee on admission from such individuals.

(2) TREATMENT OF ENTRANCE FEE--For purposes of this subsection, an individual's entrance fee in a continuing care retirement community or life care community shall be considered a resource available to the individual to the extent that--

(A) The individual has the ability to use the entrance fee, or the contract provides that the entrance fee may be used, to pay for care should other resources or income of the individual be insufficient to pay for such care;

(B) The individual is eligible for a refund of any remaining entrance fee when the individual dies or terminates the continuing care retirement community or life care community contract and leaves the community; and

(C) The entrance fee does not confer an ownership interest in the continuing care retirement community or life care community.

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 June 19, 2006.

TRD-200603357

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 424-6900

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TITLE 7. BANKING AND SECURITIES

PART 6. CREDIT UNION DEPARTMENT

CHAPTER 91. CHARTERING, OPERATIONS, MERGERS, LIQUIDATIONS

SUBCHAPTER G. LENDING POWERS

7 TAC §91.701

The Credit Union Commission proposes amendments to §91.701, concerning lending powers. The amendments add language to expand and clarify underwriting standards, liquidity guidelines and waiver request requirements.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be less confusion by credit unions regarding lending powers and requirements. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The specific section affected by the proposed amendments is Texas Finance Code, §124.001.

§91.701. Lending Powers.

(a) Authorization. A credit union may originate, invest in, sell, purchase, service, or participate in loans or otherwise extend credit in accordance with the Act, these Rules, and other applicable law.

(b) Written Policies. Each credit union, before engaging in any lending activity, shall establish written lending policies approved by its board of directors that establish prudent credit underwriting and documentation standards for each specific type of lending activity. The

lending policies shall contain a general outline of the manner in which loans are made, serviced, and collected. In addition the policies must:

(1) - (9) (No change.)

(c) Underwriting Standards. To be considered prudent, a [A] credit union's underwriting standards should reflect consideration of all credit evaluation factors relevant to the type of loan, including [union shall address specific lending procedures for determining and documenting the following, as applicable]:

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

(4) The level of equity invested in the collateral (loan-to-value ratio);

(5) The type of information and documentation necessary to approve new credit, renew credit, increase credit to existing borrowers, and change terms in previously approved credits [Loan-to-collateral value limits];

(6) A co-signer or other [Any] secondary source [sources] of repayment;

(7) (No change.)

(8) Maximum loan maturities that relate to the anticipated source of repayment, the purpose of the loan, and the useful life of any collateral [for each type of lending];

(9) Loan pricing that reflects the credit union's cost of funds, overhead, credit risk premium, and a reasonable return [Repayment terms and conditions];

(10) The need for collateral [Collateral] protection insurance; and

(11) Filing [Lien filing]/recordation standards to ensure a valid lien.

(d) Loan Maturity Limit. Except when a higher maturity date is provided for elsewhere in this chapter, the maturity of a loan to a member may not exceed 15 years [unless the purpose of the loan is to finance the purchase of a manufactured home and the loan is secured by a first lien, in which case the maturity may not exceed 20 years]. Open-end credit is not subject to a regulatory maturity limit. However, the amortization scheduling on a line of credit balance shall not exceed 15 years[, unless it is a home equity line of credit, in which case, the amortization scheduling on the balance shall not exceed 20 years].

(e) Liquidity. In addition to establishing controls for credit risks, credit unions shall establish procedures and guidelines to monitor and limit the total volume of loans outstanding, to ensure adequate liquidity. In setting such guidelines, the credit union shall consider various factors such as credit demand, the volatility of shares and deposits, and availability of alternative funding sources.

(f) [(e)] Waivers. The commissioner in the exercise of discretion may grant a waiver in writing of any [of the] lending requirement [requirements] described in this chapter. A decision to deny a [requested] waiver, however, is not subject to appeal. A wavier request must contain the following: [appealable.]

(1) The requirement to be waived, the higher limit or the ratio sought;

(2) An explanation of the need for the waiver or to raise the limit or ratio; and

(3) Documentation supporting the credit union's ability to manage the additional risk from this activity.

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 June 12, 2006.

TRD-200603207
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 837-9236

7 TAC §91.704

The Credit Union Commission proposes amendments to §91.704, concerning real estate lending. The amendments add definitions and clarify certain provisions pertaining to loan to value limits, excluded transactions and loans to 100% of value.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be less confusion by the credit unions regarding real estate lending requirements. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The specific section affected by the proposed amendments is Texas Finance Code, §124.001.

§91.704. Real Estate Lending.

(a) Definitions. For the purposes of this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) First lien means any mortgage that takes priority over any other lien or encumbrance on the same property and that must be satisfied before other liens or encumbrances may share in proceeds from the property's sale.

(2) Other acceptable collateral means any collateral in which the credit union has a perfected security interest, that has a

quantifiable value, and is accepted by the credit union in accordance with safe and sound lending practices.

(3) Owner-occupied means that the owner of the underlying real property occupies a dwelling unit of the real property as a principal residence.

(4) Readily marketable collateral means insured deposits, financial instruments, and bullion in which the credit union has a perfected interest. Financial instruments and bullion must be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market.

(b) [(a)] Written Procedures. A credit union, before engaging in any real estate lending activity, shall establish, in addition to the general requirements of §91.701[(c)] of this title (relating to Lending Powers), loan administration procedures that address the following, as applicable:

(1) Title insurance;

(2) Escrow administration;

(3) Loan payoffs;

(4) Collection and foreclosure; and

(5) Servicing and participation agreements.

(c) [(b)] Loan to Value Limitations.

(1) The board of directors shall establish their own internal loan-to-value limits for real estate loans based on type of loan. These internal limits, however, shall not exceed the following regulatory limits:

(A) Unimproved land held for investment/speculation--Loan to value limit 60%

(B) Construction and Development: commercial, multifamily, and other nonresidential--Loan to value limit 75%

(C) [(B)] Interim Construction: owner-occupied residential real estate--Loan to value limit 90%

(D) [(C)] First lien: owner [Owner]-occupied residential real estate (other than home equity)--Loan to value limit 95%

(E) First lien: other residential real estate such as a second or vacation home--Loan to value limit 90%

(F) [(D)] Home equity--Loan to value limit 80%

(G) [(E)] All Other--Loan to value limit 80%

(2) In determining the loan-to-value ratio [limit], a credit union shall include the total amount of outstanding debt secured by and other liens on [all loans secured by] the real [same] property securing or being improved by the loan [and the recourse obligation of any such loan sold with recourse].

(d) [(c)] Maximum Maturities. Notwithstanding the general 15-year maturity limit on lending transactions to members, the board of directors shall establish in written policy internal maximum maturities for real estate lending transactions. These maturities should not exceed the following regulatory limits:

(1) Improved residential real estate loans (owner-occupied, first lien)--40 years

(2) Improved residential real estate loans (not owner- [to be] occupied, first lien [by owner])--30 years

(3) Interim construction loans--18 months

(4) Manufactured home (first lien)--20 years

(5) Home equity loans--20 years (second lien)--30 years (first lien)

(6) Home improvement loans--20 years

(7) All other loans--15 years

(e) [(d)] Excluded Transactions. It is recognized that there are a number of lending situations in which other factors significantly outweigh the need to apply the regulatory loan-to-value limits. These include [Exceptions to subsections (b) and (c) of this section are permitted for the following]:

(1) Loans that are covered through appropriate credit enhancements in the form of readily marketable collateral or other acceptable collateral [subsequently become compliant with loan-to-value ratio limits due to reduction in principal amount, elimination of senior liens, or contribution of additional collateral or equity (e.g. improvements to the real property securing the loan)].

(2) Loans guaranteed or insured by the U.S. government or its agencies, provided that the amount of the guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

(3) Loans guaranteed, insured or otherwise backed by the full faith and credit of the state, a municipality, a county government, or an agency thereof, provided that the amount of the guaranty, insurance, or assurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit.

[(4) Loans guaranteed or insured by a private corporation, organization or other entity provided that the amount of guaranty or insurance is at least equal to the portion of the loan that exceeds the regulatory loan-to-value limit, and provided that the credit union has determined that the guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.]

(4) [(5)] Loans that are to be sold promptly after origination, without recourse, to a financially responsible third party.

(5) [(6)] Loans that are renewed, refinanced, or restructured without the advancement of new funds or an increase in the line of credit (except for reasonable closing costs) where consistent with safe and sound credit union practices and part of a clearly defined and well-documented program to achieve orderly liquidation of the debt, reduce risk of loss, or maximize recovery on the loan.

(6) Loans that facilitate the sale of real estate acquired by the credit union in the ordinary course of collecting a debt previously contracted in good faith.

(f) [(e)] Loans to 100% of Value. A credit union may make a loan in an amount up to 100% of the value of real property security if that part of the loan that exceeds the regulatory loan-to-value limit is guaranteed or insured by a private corporation, organization or other entity. [Exception loans granted in compliance with subsection (d) of this section shall be identified in the credit union's records and reported to the board of directors]. The board of directors must ensure that the credit union exercises appropriate due diligence to ensure that any such guarantor or insurer has the financial capacity and willingness to perform under the terms of the guaranty or insurance agreement.

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

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Harold E. Feeney
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7 TAC §91.708

The Credit Union Commission proposes amendments to §91.708, concerning real estate appraisals. The amendments clarify that the credit union must maintain policies and procedures for maintaining independent appraisals, and expand on appropriate evaluation of real property collateral for loans less than $250,000. In addition, the amendments add a section alerting credit unions that they may have to also comply with Part 722 of the National Credit Union Administration's Rules and Regulations if it is applicable.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be less confusion by the credit unions regarding real estate appraisal requirements. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The specific section affected by the proposed amendments is Texas Finance Code, §124.001.

§91.708. Real Estate Appraisals or Evaluations.

(a) Policies and Procedures. A credit union's board of directors is responsible for reviewing and adopting policies and procedures that establish and maintain an effective, independent real estate appraisal and evaluation program. A credit union's selection criteria for individuals who may perform appraisals or evaluations must provide for the independence of the individual performing the evaluation. That is, the individual has neither a direct nor indirect interest, financial or otherwise, in the property or transaction. The individual selected must also be competent to perform the assignment based upon the individual's qualifications, experience, and educational background. An individual may be an employee of a credit union if the individual qualifies under the conditions and requirements contained in Part 722 of the National Credit Union Administration Rules and Regulations.

(b) [~~(a)~~] Loans Over $250,000. For real estate loans in which the transaction value exceeds $250,000, the credit union shall obtain a professional appraisal report by a state certified or licensed appraiser. The appraisal report shall be in writing and conform to generally accepted appraisal standards as evidenced by the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation, in Washington, D.C.

(c) [~~(b)~~] Loans $250,000 or Less. For a real [~~Real~~] estate loans with a transaction value of [~~less than~~] $250,000 or less, the services of a state certified or licensed appraiser is not necessary; however, the credit union must obtain an appropriate evaluation of real property collateral shall be supported by a written estimate of market value either performed by a qualified individual who has demonstrated competency in performing evaluations [~~no direct interest in the property~~] or from tax appraisal data of a governmental entity.

(d) [~~(c)~~] Reappraisals may be required by the commissioner on real estate or other property or interests therein securing loans, at the expense of the credit union, when the commissioner has reasonable cause to believe the value of the security is overstated.

(e) [~~(d)~~] In the case of renewal of a loan where additional funds are advanced by the credit union, a written certification of current value by the original appraiser or an acceptable substitute shall satisfy this section.

(f) As applicable, a credit union shall also comply with the real estate appraisal requirements contained within Part 722 of the National Credit Union Administration Rules and Regulations.

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

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7 TAC §91.710

The Credit Union Commission proposes amendments to §91.710, concerning overdraft protection. The amendments clarify that the credit union must manage the risk associated with overdraft protection programs and ensure that marketing materials and other communications with members regarding the program are not misleading or encourage irresponsible member financial behavior.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be less

confusion by the credit unions and the public regarding overdraft program requirements. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §123.105, which authorizes credit unions to collect fees.

The specific section affected by the proposed amendments is Texas Finance Code, §123.105.

§91.710. Overdraft Protection.

(a) Written policy. A credit union may advance money to a member to cover an account deficit without having a credit application from the borrower on file if the credit union has [a] written policies and procedures adequate to address the credit, operational, and other risks associated with this type of program [overdraft policy]. The policy must:

(1) Set [set] a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses;

(2) Establish [establish] a time limit no later than 60 [not to exceed 45] calendar days from the date first overdrawn for a member to repay the overdraft balance, or obtain an approved loan from the credit union, otherwise the overdraft balance should be charged off [either deposit funds or obtain an approved loan from the credit union to cover each overdraft];

(3) Limit [limit] the dollar amount of overdrafts the credit union will honor per account [member]; [and]

(4) Institute prudent practices related to suspension of overdraft protection services; and

(5) Establish [establish] the fee, if any, the credit union will charge members for honoring overdrafts.

(b) Safety and Soundness Requirements. A credit union must manage the risks associated with an overdraft protection program in accordance with safe and sound credit union principles. Accordingly, a credit union must establish and maintain effective risk management and control processes over its program. Such processes include appropriate recognition, treatment, and financial reporting, in accordance with generally accepted accounting principles, of income, expenses, assets, liabilities, and all expected and unexpected losses associated with the program. A credit union also shall assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its overdraft protection program.

(c) Communications with Member. A credit union shall carefully review its overdraft protection program to ensure that marketing and other communications concerning the program do not mislead members to believe that the program is a traditional line of credit or that payment of overdrafts is guaranteed. In addition, a credit union shall take reasonable precautions to make sure members are not misled about the correct amount of their account balance, or the costs or scope of the overdraft protection offered, and that it does not encourage irresponsible member financial behavior that potentially may increase risk to the credit union.

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

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7 TAC §91.711

The Credit Union Commission proposes amendments to §91.711, concerning loan participations. The amendments more clearly outline loan participation policy requirements and add a provision requiring the credit union to monitor any third party servicer's performance.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be less confusion by the credit unions regarding loan participation requirements. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.351, which authorizes credit unions to invest in participation loans.

The specific section affected by the proposed amendments is Texas Finance Code, §124.351.

§91.711. Loan Participations.

(a) A credit union may purchase loan participations [participate] in any type of loan it is authorized to make from [loans jointly with] other credit unions, credit union organizations, corporations or other financial organizations pursuant to written policies established by the board of directors. Such policies shall: [Before the disbursement

of proceeds to the originating lender, each credit union shall perform its own due diligence of the loan(s).]

(1) Establish the standards for review;

(2) Set up the aggregate limits on the amount of loans participations purchased from any single outside source; and

(3) Require that all participations meet the underwriting, documentation, and compliance standards applied to loans of that type originated by the credit union. The credit union may also rely on the stated written underwriting standards of the originating lender, provided it performs a due diligence review of the loan(s) that, at a minimum, confirms compliance with this subsection.

(b) For regulatory purposes, a [A participating] credit union shall segregate and treat the purchase of a loan [a] participation as an investment in accordance with §91.805 of this title (relating to Loan Participation Investments), unless the participation is in a loan of a type that the credit union is authorized to make and the borrower is a member of the credit union or a member of another participating credit union.

(c) A credit union may sell to or purchase from any participant the servicing of any loan in which it owns a participation interest. If a party other than the credit union will be servicing the loan(s), the credit union shall ensure that all contracts require the servicer to administer the loan(s) in accordance with prudent industry standards, and provide for a possible change of the servicer if performance is inadequate.

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

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7 TAC §91.712

The Credit Union Commission proposes amendments to §91.712, concerning plastic cards. The amendments clarify annual program review requirements for plastic cards.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be less confusion by the credit unions regarding plastic card program review requirements. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001 which authorizes the Commission to adopt rules for loans to members and §124.051, which authorizes open-end credit plans for credit unions.

The specific sections affected by the proposed amendments are Texas Finance Code, §124.001 and §124.051.

§91.712. Plastic Cards.

(a) (No change.)

(b) Credit cards. A credit union may issue credit cards in accordance with the credit union's written policies, which shall include at a minimum:

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

(c) Program Review.

(1) A credit union shall review, on at least an annual basis, its plastic card program with particular emphasis on:

(A) The amount of losses [Losses] caused by theft and fraud;

(B) The loss [Loss] prevention measures (and their adequacy) currently employed by the credit union; [and]

(C) The availability and possible implementation [use] of other [appropriate] loss prevention measures such as [including] card activation, card security codes, neural networks, and other evolving technology; and[.]

(D) A cost benefit analysis of supplemental insurance coverage for theft and fraud related losses.

(2) The review shall be documented in writing, with any approved changes to the plastic card program being entered into the minutes of the board meeting.

[(3) At least annually, the credit union's board shall also cause to be performed an assessment of earnings and the capital position to ensure that the credit union can absorb potential related plastic card program losses. This review shall include a cost benefit analysis of supplemental insurance coverage for theft and fraud related losses. Establishment of a segregated contingency reserve may be utilized to further mitigate the credit union's risk exposure for losses resulting from its plastic card program.]

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

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7 TAC §91.713

The Credit Union Commission proposes amendments to §91.713, concerning indirect financing of motor vehicles or other chattels. The amendments define indirect financing and add requirements relating to written policies, third party providers and subprime indirect lending programs.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be less confusion by the credit unions regarding indirect financing program requirements. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The specific section affected by the proposed amendments is Texas Finance Code, §124.001.

§91.713. Indirect Financing of Motor Vehicles or Other Chattels.

(a) Indirect Financing Program. Credit unions may implement a program of indirect financing of motor vehicles and other tangible personal property [~~chattels~~]. As used in this chapter, an indirect financing is the purchase by a credit union of a retail installment contract of a member that is originated by a seller to finance the purchase of the motor vehicle or other property.

(b) Contracts Treated as a Loan. For the purposes of this chapter, a retail installment contract purchased under this authority may be treated as a loan on the books and records of the credit union and is subject to the same limitations and restrictions imposed upon loan transactions. As with other lending, the credit union is responsible for making the final underwriting decision. The seller may initially determine whether the prospective buyer is a member or eligible for membership in the credit union, but the final determination of membership eligibility is the responsibility of the credit union.

(c) [~~(b)~~] Authorization. Credit unions may purchase or otherwise hold retail installment contracts when authorized by applicable law. The retail installment contract must provide for a rate or amount of time price differential that does not exceed a rate or amount authorized by applicable law.

(d) [~~(c)~~] Written Policies. The board of directors shall establish, implement, and maintain prudent and reasonable written policies that are appropriate for the size and complexity of the credit union's indirect lending program. The board must also ensure that the credit union has sufficient staff with the expertise to purchase, service, and monitor the program and the contract portfolio [~~specify guidelines and criteria to be used in purchasing contracts~~] consistent with safe and sound credit union practices. The policies must be specific and detailed enough to foster prudent and compliant credit practices.

(e) Third Party Providers. A credit union may rely on services provided by third parties to support its indirect lending activities. The board of directors must ensure that the credit union exercises appropriate due diligence before entering into third party arrangements, and maintains effective oversight and control throughout the arrangement.

(f) Subprime Indirect Lending. If a credit union conducts a program that includes subprime indirect lending, it must perform comprehensive due diligence before engaging in and during that type of activity. At a minimum, due diligence shall focus on understanding the higher levels of credit, compliance, reputation, and other risks involved, plus the likelihood that origination, servicing, collections, operating, and capital costs will increase. The strategic decision to engage in subprime indirect lending must also be supported by a sound business plan that establishes measurable financial objectives as well as limitations on growth, volume, and concentrations. For the purposes of this section, "subprime indirect lending" refers to programs that target borrowers with weakened credit histories typically characterized by payment delinquencies, previous charge-offs, judgments, or bankruptcies. Such programs may also target borrowers with questionable repayment capacity evidenced by low credit scores or high debt-burden ratios.

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

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7 TAC §91.714

The Credit Union Commission proposes amendments to §91.714, concerning leasing. The amendments add requirements relating to written policies, insurance and holding period.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be less confusion by the credit unions regarding leasing program requirements. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.351, which authorizes the Commission to adopt rules regarding permitted investments.

The specific sections affected by the proposed amendments is Texas Finance Code, §124.351.

§91.714. Leasing.

(a) - (d) (No change.)

(e) Leasing Salvage Powers. If a credit union believes that there has been an unanticipated change in conditions that threatens its financial position by significantly increasing its exposure to loss, it may:

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

(3) Include any provision in a lease, or make any additional agreements, to protect its financial position or investment in the circumstances set forth in paragraphs (1) and (2) of this subsection [~~subsections (e)(1) and (e)(2) of this section~~].

(f) Written Policies. A credit union engaged in lease underwriting must adopt written policies and develop procedures that reflect lease practices that control risk and comply with applicable laws. Any leasing activity must be consistent with the lending policies and underwriting requirements in §91.701 of this title (relating to Lending Powers). Any credit union engaged in making or buying leases also must adopt written polices and procedures that address the additional risks associated with leasing.

(g) Insurance Requirements. A credit union must maintain a contingent liability insurance policy with an endorsement for leasing or be named as the co-insured if the credit union does not own the leased property. Contingent liability insurance protects the credit union if it is sued as the owner of the leased property. A credit union must use an insurance company with a nationally recognized industry rating of at least a B+. Credit union members must still carry the normal liability and property insurance on the leased property and the credit union must be named as an additional insured on the liability insurance policy and as the loss payee on the property insurance policy.

(h) Holding Period. At the expiration of the lease (including any renewals or extensions with the same lessee), or in the event of a default on a lease agreement prior to the expiration of the lease term, a credit union shall either liquidate the off-lease property or re-lease it under a conforming lease as soon as practicable. The credit union must value off-lease property at the lower of current fair market value or book value promptly after the property becomes off-lease property.

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

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7 TAC §91.715

The Credit Union Commission proposes amendments to §91.715, concerning exceptions to the general lending policies. The amendments require that credit unions identify exceptions to loan policies, report them at least annually to their board and set an aggregate limit.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater disclosure and increased safety and soundness by credit unions when making exceptions to their loan policies. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The specific sections affected by the proposed amendments is Texas Finance Code, §124.001.

§91.715. Exceptions to the General Lending Policies.

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

(c) Exception loans shall be identified in the credit union's records and their aggregate amount reported at least annually to the board of directors. The aggregate amount of all such loans shall not exceed 10 percent of the credit union's net worth.

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

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7 TAC §91.718

The Credit Union Commission proposes amendments to §91.718, concerning charging off or setting up reserves. The amendments require that credit unions develop, maintain and document the methodology used to determine the appropriate amount of allowance for loan and lease losses and reflect those losses accurately on quarterly call reports.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amended rule is in effect, the public benefits anticipated as a result of enforcing the amended rule will be greater disclosure and increased safety and soundness by credit unions in connection with their allowance for loan and lease losses controls and policies. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The specific sections affected by the proposed amendments is Texas Finance Code, §124.001.

§91.718. Charging Off or Setting Up Reserves.

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

(c) The Board of directors is responsible for ensuring that the credit union has controls in place to consistently determine the allowance for loan and lease losses (ALLL) in accordance with its written polices, generally accepted accounting principles, and relevant supervisory guidance. Policies shall be appropriately tailored to the size and complexity of the credit union and its loan and lease portfolio. As a minimum, a credit union shall develop, maintain, and document the methodology used to determine the amounts of an appropriate ALLL and provisions for loan and lease losses. Adjustments to the ALLL shall be made prior to the end of each calendar quarter in order to accurately reflect the loss exposure on the quarterly call reports [~~adjustments to the valuation allowance for loan losses shall be made prior to the distribution or posting of any dividends to the accounts of members so that the valuation allowance established fairly presents the value of loans and probable losses for all categories~~].

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 June 13, 2006.

TRD-200603225
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 837-9236

7 TAC §91.719

The Credit Union Commission proposes amendments to §91.719, concerning loans to officials and senior management employees. The amendments allow the board of directors to increase the limit for which the reporting requirement can be waived for loans to individuals subject to this rule.

The amendments to the rule are proposed as a result of the Department's general rule review.

Kerri T. Galvin, General Counsel, has determined that for the first five year period the amended rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Galvin has also determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of enforcing the amended rule will be reduction of regulatory burden for credit unions. There is no anticipated effect on small businesses as a result of adopting the amended rule. There is no economic cost anticipated to credit unions or individuals for complying with the amendments if adopted.

Written comments on the proposal must be submitted within 30 days after its publication in the *Texas Register* to Kerri T. Galvin, General Counsel, Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699. Oral comments on the proposal can be made at the Commission's Legislative Advisory Committee meeting on Friday, September 15, 2006 at 9:00 a.m. at 914 East Anderson Lane, Austin, Texas 78752.

The amendments are proposed under the provision of the Texas Finance Code, §15.402, which authorizes the Commission to adopt reasonable rules for administering Title 2, Chapter 15 and Title 3, Subchapter D of the Texas Finance Code and under Texas Finance Code §124.001, which authorizes the Commission to adopt rules regarding loans to members.

The specific sections affected by the proposed amendments are Texas Finance Code, §§124.001, 124.201 and 124.202.

§91.719. Loans to Officials and Senior Management Employees.

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

(f) At the discretion of the Board, the reporting requirement of subsection (e) of this section may be waived for any individual if the aggregate amount of all outstanding loans and extensions of credit to that [~~any one~~] person, the person's business interests, and the members of the person's immediate family do not exceed the greater of [~~is less~~

~~than~~] $25,000 or one-quarter of one percent (.25%) of the credit union's net worth.

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 June 13, 2006.

TRD-200603226
Harold E. Feeney
Commissioner
Credit Union Department
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 837-9236

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION

SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §303.7

The Texas Residential Construction Commission (the "commission") proposes amendments to Title 10, Part 7, Chapter 303, Subchapter A, §303.7, the registration of designated agents for registered builders in the State of Texas as provided for in Title 16, Property Code. The amendments are proposed to correct errors in the rule language published for adoption in the June 9, 2006 issue of the *Texas Register* (31 TexReg 4729) effective June 12, 2006.

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five year period that the amended rule is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the amended rule is in effect the public will benefit from having complete rule language available. There will not be an effect on individuals, or large, small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Ms. Durso has also determined that for each year of the first five-year period the proposed rules are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, Section 2001.022.

Interested persons may send written comments regarding these proposed amendments to the Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144. Comments regarding these proposed amendments will be accepted for fourteen days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "303.7 rule correction" in the subject line.

The amendments are proposed pursuant to Chapter 416, Property Code, which provides for the designation of registered agents for registration of builders and, generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

The statutory provisions affected by these proposed amendments adoption of these rules are those set forth in Property Code, Chapters 408 and 416.

No other statutes, articles, or codes are affected by the proposed amendments.

§303.7. Designated Agents.

(a) To be eligible to receive a certificate of registration under this subchapter all applicants must designate an individual as the primary designated agent.

(b) Each designated agent must adhere to the same registration requirements and meet the same eligibility requirements as any person applying for builder registration under this subchapter. There is no separate builder registration application form or fee required to register the primary agent designated by a registered builder.

(c) The primary designated agent of a sole proprietorship is limited to the individual proprietor.

(d) A corporation must designate one of its officers as the primary designated agent.

(e) A limited liability company must designate one of its managers or members as the primary designated agent.

(f) A partnership, limited partnership or limited liability partnership must designate one of its managing partners as the primary designated agent or, if there are no individuals serving as a managing partner, a partnership, limited partnership or limited liability partnership must designate an individual officer from among its managing partner entities as the designated agent.

(g) A corporation, limited liability company, partnership, limited partnership or limited liability partnership is not eligible for registration as a builder and may not act as a builder unless the entity's primary designated agent is individually eligible for registration as a builder.

(h) Individuals who are approved as registered designated agents of a corporation, limited liability company, partnership, limited partnership, limited liability partnership or other entity registered as builder, are registered builders.

(i) A corporation, limited liability company, partnership, limited partnership or limited liability partnership may submit a Secondary Agent Registration Form and fee to register one or more qualified individuals to serve as a secondary registered agent(s).

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 June 15, 2006.

TRD-200603289
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 463-2886

TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. TEXAS COMMISSION OF LICENSING AND REGULATION

SUBCHAPTER B. ORGANIZATION

16 TAC §60.63

The Texas Department of Licensing and Regulation ("Department") proposes an amendment to an existing rule at 16 Texas Administrative Code, Chapter 60, Subchapter B, §60.63, concerning the responsibilities of the Department and Executive Director. The amendment adds a new subsection (j) concerning the security of licensing examinations. The Department is responsible for administering examinations to license applicants, either directly or through a testing service, and the proposed amendment is necessary to ensure that the security of these examinations is not compromised and to discourage cheating. The proposed amended rule is part of Chapter 60 of the Department's rules, which contains general provisions applicable to the Department, and will apply to all Department programs that include a licensing examination.

The proposed amendment states that the contents of a licensing examination are confidential. The amended rule prohibits certain conduct related to licensing examinations and provides that engaging in such conduct is grounds for denial of a license, an administrative penalty, and/or an administrative sanction. The prohibited conduct is as follows: obtaining or attempting to obtain from any source examination questions or answers for use by an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course; providing or attempting to provide examination questions or answers to an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course; presenting a falsified or fraudulent document to gain entry to an examination; presenting a falsified or fraudulent document concerning an individual's results from an examination; an applicant or prospective applicant knowingly allowing another person to take an examination for the applicant or prospective applicant; while taking an examination, using study notes, questions, or answers obtained from another person or from previous examination attempts; while taking an examination, communicating with an unauthorized person about the examination; or for open book examinations, bringing unapproved materials into the examination, including hand-written notes in approved reference materials.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amended rule is in effect there will be no significant impact to costs or revenues of the State in enforcing or administering the amended rule. There will be no impact to costs or revenues of local government as a result of enforcing or administering the amended rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amended rule is in effect, the public benefit will be enhanced security of licensing examinations, helping to ensure that individuals who pass a licensing examination are competent and qualified to hold the license.

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

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.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Occupations Code, Chapter 51, in particular §51.203, which directs the Commission to adopt rules as necessary to implement each law establishing a program regulated by the Department. The proposed amendment is necessary for the administration of examinations that are required by the laws establishing various Department programs.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51. Other statutes also are affected because the proposed amendment would apply to examinations administered pursuant to these statutes: Texas Occupations Code, Chapters 1152 (property tax consultants), 1302 (air conditioning and refrigeration contractors), 1305 (electricians), 1601 (barbers), 1602 (cosmetologists), 1603 (barbers and cosmetologists), 1802 (auctioneers), 1901 (water well drillers), 1902 (pump installers); Texas Government Code, Chapters 57 (court interpreters) and 469 (registered accessibility specialists); and Texas Health and Safety Code, Chapter 755 (boiler inspectors). No other statutes, articles, or codes currently are affected by the proposal.

§60.63. Responsibilities of the Department and Executive Director.

(a) - (i) (No change.)

(j) Examination security. The contents of any examination that is required for the issuance of a department license are confidential. The following conduct related to licensing examinations is prohibited and is grounds for the denial of a license, an administrative penalty, and/or an administrative sanction:

(1) obtaining or attempting to obtain from any source examination questions or answers for use by an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course;

(2) providing or attempting to provide examination questions or answers to an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course;

(3) presenting a falsified or fraudulent document to gain entry to an examination;

(4) presenting a falsified or fraudulent document concerning an individual's results from an examination;

(5) as an applicant or prospective applicant, knowingly allowing another person to take an examination for the applicant or prospective applicant;

(6) while taking an examination, using study notes, questions, or answers obtained from another person or from previous examination attempts;

(7) while taking an examination, communicating with any person, other than an authorized representative of the department or testing service, about the examination; or

(8) for open book examinations, bringing any materials into the examination, including hand-written notes in approved refer-

ence materials, other than those materials approved by the department or testing service.

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

Filed with the Office of the Secretary of State on June 16, 2006.

TRD-200603346
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 463-6208

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.21

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.21 that remove the requirement that a trainee and sponsor must use the same business address. The amendment also sets a limit of three trainees per sponsor and establishes that an appraiser trainee shall have access to appraisals and work files. The changes further require sponsors be in good standing with the Board which is consistent with the Appraiser Qualifications Board criteria.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments as proposed.

Mr. Thorburn also has determined that for each year of the first five years the amendments are in effect, the anticipated public benefit as a result of these amendments establishes criteria that are consistent with the Appraiser Qualifications Board for appraiser trainees ensuring compliance with Federal mandates. The proposed amendments also permit trainees to appraise under an authorized supervisor as provided in Tex. Occ. Code §1103.354. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the section as proposed.

Comments on the proposed amendments may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

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

§153.21. Appraiser Trainees and Sponsors.

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

(f) Both the sponsoring certified appraiser and any authorized supervisor as well asthe appraiser trainee must reside in this state.

(g) No individual shall sponsor more than three appraiser trainees at one time after December 31, 2007. Prior to January 1, 2008, individuals sponsoring three or more appraiser trainees may not take on any additional appraiser trainees nor shall they be allowed to renew any sponsorship which would result in the individual sponsoring more the than three appraiser trainees.[~~An approved appraiser trainee must use the business address of his or her sponsor.~~]

(h) An approved appraiser trainee who signs an appraisal report must include his or her TALCB approval or authorization number and the word "Trainee."

(i) Certified appraisers may sponsor no more than three trainees at one time. Notification of sponsorship of an appraiser trainee must be provided in writing to the board on a form prescribed by the board with the appropriate fee prior to the assumption of sponsorship. Termination of sponsorship of an appraiser trainee must be provided in writing to the board on a form prescribed by the board with the appropriate fee prior to the release from sponsorship. A sponsor may designate another certified appraiser to serve as an authorized supervisor on specific appraisal projects for which state authorization is required. An authorized supervisor assumes the same responsibilities as a sponsor when supervising the work of an appraiser trainee.

(j) Certified appraisers who sponsor appraiser trainees must provide the trainee with access to any appraisals and work files completed under the sponsor or any authorized supervisor designated by the sponsor.

(k) Certified appraisers who sponsor appraiser trainees or serve as an authorized supervisor must be in good standing and not subject to any disciplinary action within the last two years that affects the supervisor's legal eligibility to engage in appraisal practice.

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 June 14, 2006.

TRD-200603259
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 465-3950

CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE

SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.12

The Texas Appraiser Licensing and Certification Board proposes an amendment to §157.12, concerning Failure to Attend Hearing; Default Judgment. The proposed amendment replaces the phrase of "proposal for decision" with the phrase "final order" for consistency in terminology.

Wayne Thorburn, Commissioner for the Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period that the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Thorburn has also determined that for each year of the first five years the amendment is in effect, the public benefit will be that the change clarifies the terminology in this rule. The rule outlines important hearing procedures and requirements relating to formally disputing disciplinary changes brought by the Board. There will be no effect on small businesses. There will be no cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

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

§157.12. Failure to Attend Hearing; Default Judgment.

(a) (No change.)

(b) For purposes of this section, a default judgment shall mean the issuance of a final order [~~proposal for decision~~] against the respondent in which the factual allegations against the respondent contained in the complaint shall be admitted as prima facie evidence and deemed admitted as true, without any requirement for additional proof to be submitted by the board.

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

Filed with the Office of the Secretary of State on June 15, 2006.

TRD-200603290
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 465-3959

SUBCHAPTER C. POST HEARING

22 TAC §157.18

The Texas Appraiser Licensing and Certification Board proposes an amendment to §157.18, concerning Motions for Rehearing; Finality of Decisions. The proposed amendment changes the days in which the Board may take action on a motion from 90 days to 20 days. The amendment makes the period consistent with the period provided in the Texas Occupations Code, §1103.519.

Wayne Thorburn, Commissioner for the Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period that the amended section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Thorburn has also determined that for each year of the first five years the amendment is in effect, the public benefit is that this change will conform the rule to the requirements of the Texas Appraiser Licensing and Certification Board, Texas Occupations Code, §1103.519. The rule provides individuals an opportunity to appeal an adverse decision rendered by the administrative law judge. There will be no effect on small businesses. There will be no cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

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

§157.18. Motions for Rehearing; Finality of Decisions.

(a) (No change.)

(b) Board action. Board action on a motion must be taken no later than the 20th day [~~within 90 days~~] after the date the commissioner is served with the motion for rehearing [~~rendition of the final decision or order~~]. If board action is not taken within the 20 [~~90~~] day period, the motion for rehearing is overruled by operation of law [~~unless an extension is granted by the board for taking an action on said motion~~].

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

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

Filed with the Office of the Secretary of State on June 15, 2006.

TRD-200603291
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 465-3959

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 321. DEFINITIONS

22 TAC §321.1

The Texas Board of Physical Therapy Examiners proposes amendments to §321.1, concerning Definitions. The amendments clarify what the rules require by adding definitions for the terms evaluation and examination.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be a clearer understanding by the patient

as well as the professional of what a physical therapy evaluation and reevaluation should include. The agency does not expect any financial impact on small businesses. No economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§321.1. Definitions.

The following words, terms, and phrases, when used in the rules of the Texas Board of Physical Therapy Examiners, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited curriculum in physical therapy education--A body of courses in a physical therapy program at a school, college, or university which has satisfied the accreditation standards of the Commission on Accreditation for Physical Therapy Education.

(2) Accredited physical therapist assistant program--A body of courses at a school, college, or university which has satisfied the accreditation standards of the Commission on Accreditation for Physical Therapy Education.

(3) Asymptomatic--Without obvious signs or symptoms of disease.

(4) Board-approved organization or entity--an organization or entity to which the board has formally delegated a role in the licensure, regulation or enforcement functions of the Physical Therapy Practice Act and board rules.

(5) Endorsement--The process by which the board issues a license to a person currently licensed in another state, the District of Columbia, or territory of the United States that maintains professional standards considered by the board to be substantially equivalent to those set forth in the Act.

(6) Emergency circumstances--Instances where emergency medical care is called for, including first aid.

(7) Emergency medical care--Bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(8) Evaluation--A dynamic process in which the physical therapist makes clinical judgments based on data gathered during the examination.

(9) Examination--A comprehensive screening and specific testing process leading to diagnostic classification or, as appropriate, to a referral to another practitioner. The examination has three components: the patient/client history, the systems review, and tests and measures.

(10) [~~(8)~~] Evidence satisfactory to the board--Should all official school records be destroyed, sworn affidavits satisfactory to the board must be received from three persons having personal knowledge of the applicant's physical therapy education. These affidavits will not be used when official school records are available.

(11) [~~(9)~~] Foreign-trained applicant--Any applicant whose education is from a country outside the United States, the District of Columbia, or Territories of the United States.

(12) [~~(10)~~] Hearing--An adjudicative proceeding concerning the issuance, denial, suspension, reprimand, revocation of license, after which the legal rights of an applicant or licensee are to be determined by the board.

(13) [~~(11)~~] Jurisprudence exam--An open-book examination made up of multiple-choice and/or true/false questions covering information contained in the Texas Physical Therapy Practice Act and Board rules.

(14) [~~(12)~~] On-site supervision--The physical therapist or physical therapist assistant is on the premises and readily available to respond.

(15) [~~(13)~~] Physical therapy--The evaluation, examination, and utilization of exercises, rehabilitative procedures, massage, manipulations, and physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound in the aid of diagnosis or treatment. Physical therapists may perform evaluations without referrals. Physical therapy practice includes the use of modalities, procedures, and tests to make evaluations. Physical therapy practice includes, but is not limited to the use of: Electromyographic (EMG) Tests, Nerve Conduction Velocity (NCV) Tests, Thermography, Transcutaneous Electrical Nerve Stimulation (TENS), bed traction, application of topical medication to open wounds, sharp debridement, provision of soft goods, inhibitive casting and splinting, Phonophoresis, Iontophoresis, and biofeedback services.

(16) [~~(14)~~] Supervision--The delegation and continuing direction by a person or persons responsible for the practice of physical therapist, physical therapist assistant, or physical therapy aide as specified in the Physical Therapy Practice Act.

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 June 19, 2006.

TRD-200603363
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 305-6953

CHAPTER 322. PRACTICE

22 TAC §322.1

The Texas Board of Physical Therapy Examiners proposes amendments to §322.1, concerning Provision of Services. The amendments describe what a physical therapy reevaluation of the patient must include and when it must occur.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be increased oversight of physical therapy treatment for those patients receiving treatment primarily from a physical therapist assistant, due to the increased involvement of the supervising PT. The agency does expect that some small businesses will feel a financial impact. No economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§322.1. Provision of Services.

(a) Initiation of physical therapy services

(1) Referral requirement. A physical therapist is subject to discipline from the board for providing physical therapy treatment without a referral from a qualified healthcare practitioner licensed by the appropriate licensing board, who within the scope of the professional licensure is authorized to prescribe treatment of individuals. The list of qualifying referral sources includes physicians, dentists, chiropractors, podiatrists, physician assistants, and advanced nurse practitioners.

(2) Exceptions to referral requirement

(A) A PT may evaluate without referral.

(B) A PT may provide instructions to any person who is asymptomatic relating to the instructions being given without a referral.

(C) Emergency Circumstances. A PT may provide emergency medical care to a person after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity without referral if the absence of immediate medical attention could reasonably be expected to result in a serious threat to the patient's health, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(D) Prior referrals. A physical therapist may treat a patient for an injury or condition that is the subject of a prior referral if all of the following conditions are met.

(i) The physical therapist must notify the original referring healthcare personnel of the commencement of therapy by telephone within five days, or by letter postmarked within five business days;

(ii) The physical therapy provided must not be for more than 20 treatment sessions or 30 consecutive calendar days, whichever occurs first. At the conclusion of this time or treatment, the physical therapist must confer with the referring healthcare personnel before continuing treatment.

(iii) The treatment can only be provided to a client/patient who received the referral not more than one year previously.

(iv) The physical therapist providing treatment must have been licensed for one year. The physical therapist responsible for the treatment of the patient may delegate appropriate duties to another physical therapist having less than one year of experience or to a physical therapist assistant. A physical therapist licensed for more than one year must retain responsibility for and supervision of the treatment.

(3) Methods of referral. A referral may be transmitted by a qualifying referral source in the following ways:

(A) a document (including an electronically transmitted document or facsimile); or

(B) verbally, in person or by telephone. If a referral is transmitted verbally, whether in person or by telephone, it must be received, recorded and signed by the PT, PTA or other authorized personnel, and include all of the information that would appear on a written referral.

(b) Evaluation and screening.

(1) Evaluation. Physical therapy treatment may not be provided prior to the completion of an evaluation of the patient's condition by a PT.

(2) Reevaluation. A patient receiving treatment must be reevaluated [~~evaluated at least every 30 days~~] by a PT:

(A) at least once every 30 days, or at a higher frequency as established by the PT; or

(B) In response to a change in the patient's medical status that affects physical therapy treatment, when a change in the plan of care is needed, or prior to any planned discharge.

(C) A reevaluation must include:

(i) An onsite reexamination of the patient, and

(ii) A review of the plan of care with appropriate revision or termination.

(3) PTAs may screen patients designated by a PT as possible candidates for physical therapy services. Screening entails the collection of uniform information from all patients screened using a predetermined, standardized format. The information collected is delivered to the supervising PT. Only a PT may determine whether further intervention for patients screened is necessary.

(c) Physical therapy plan of care development and implementation.

(1) A written plan of care must be developed for each patient by a PT.

(2) The plan of care must be updated following the periodic reevaluation of the patient's condition.

(3) The plan of care or treatment goals may only be changed or modified by a PT.

(4) Physical therapy treatment may not be provided by a PTA or an aide until a written plan of care, based on an evaluation by a PT, has been completed.

(5) A PTA may modify treatment techniques as indicated in the plan of care.

(6) A PT or PTA must interact with the patient regarding his/her condition, progress and/or achievement of goals during each treatment session.

(d) Documentation of treatment.

(1) Each progress note in a patient's permanent record completed by a PTA must include the name of the supervising PT.

(2) A PTA may not sign progress notes which design or modify the plan of care.

(3) Physical therapy aides may not write or sign physical therapy documents in the permanent record. However, a physical therapy aide may record quantitative data for tasks delegated by the supervising PT or PTA. Any document reflecting aide activities must identify the aide and the supervising PT or PTA.

(e) Discharge. The supervising PT is responsible for the content and validity of the discharge summary and must sign it. A PTA may provide clerical assistance with a discharge summary.

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 June 19, 2006.

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 305-6953

22 TAC §322.3

The Texas Board of Physical Therapy Examiners proposes an amendment to §322.3, concerning Supervision. The amendment adds a requirement for documented conferences between a PT supervising treatment of a patient and the PTA providing that treatment.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be increased oversight of physical therapy treatment for those patients receiving treatment primarily from a physical therapist assistant due to the increased involvement of the supervising PT. The agency expects no financial impact on small businesses. No economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§322.3. Supervision.

(a) It is the responsibility of each PT and/or PTA to determine the number of PTAs and/or aides he or she can supervise safely.

(b) Supervision of PTAs.

(1) A supervising PT is responsible for and will participate in the patient's care.

(2) A supervising PT must be on call and readily available when physical therapy services are being provided.

(3) A PT may assign responsibilities to a PTA to provide physical therapy services, based on the PTA's training, that are within the scope of activities listed in §322.1, Provision of Services.

(4) The supervising PT must hold documented conferences with the PTA regarding the patient. The PT is responsible for determining the frequency of the conferences.

(c) Supervision of physical therapy aides.

(1) A supervising PT or PTA is responsible for the supervision of, and the physical therapy services provided by, the PT aide.

(2) A PT or PTA must provide onsite supervision of a physical therapy aide, and remain within reasonable proximity during the aide's interaction with the patient.

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

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Texas Board of Physical Therapy Examiners
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CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners proposes amendments to §329.2, concerning Licensure by Examination. The amendment replaces references to the raw score on the national physical therapy examination with references to the converted scale score, which is how the score is reported to applicants. This will make it easier for applicants who have failed the exam two or more times to determine how much additional work they must do before they may take the exam again.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clearer information for applicants. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code,

which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§329.2. License by Examination.

(a) Requirements. An applicant applying for licensure by examination must:

(1) meet the requirements as stated in §329.1 of this title (relating to General licensure requirements and procedures); and

(2) pass the National Physical Therapy Exam (NPTE) for physical therapists or physical therapist assistants with the score set by the board. Score reports must be sent directly to the board by the authorized score reporting service.

(b) Notification of exam score. The board will notify applicants in writing of the exam score.

(1) If an applicant passes the exam, the board will include a permanent license with the score notification.

(2) If an applicant fails the exam, a re-examination application and fee is required for a subsequent examination.

(c) An applicant may take the examination for PT or PTA licensure only after the application process is complete and all requirements are met.

(d) Applying for licensure in more than one state. An applicant who applies for licensure by exam in another state, but does not receive a license from any other state, may apply for licensure by exam in Texas. The applicant must meet all other requirements for licensure in Texas, and must have the score report sent directly to the board from the authorized score reporting service.

(e) If an examinee has failed the physical therapy examination and wishes to take the physical therapist assistant examination, the examinee may apply under the Act, §453.203.

(f) Re-examination.

(1) First re-examination. An applicant who fails the exam the first time is eligible to take the examination a second time after submitting a re-exam application and fee.

(2) Second or subsequent re-examination. An applicant who fails the exam twice or more must complete additional education before taking the exam again. The amount of additional education is set forth in the attached chart. To be eligible to register for the exam again, the applicant must submit a letter that identifies the area(s) of weakness and describes the plan that addresses the weakness(s). The letter must be accompanied by proof that the additional education has been successfully completed. Additional education may be one or more of the following:

(A) A commercial review course.

(B) An individual tutorial. The completed tutorial must be signed by the tutor and notarized, and include the tutor's curriculum vitae. If the applicant is applying for a PT license, the tutor must be a licensed PT. If the applicant is applying for a PTA license, the tutor must be a licensed PT, or a licensed PTA who is associated with a Texas PTA program.
[~~Figure: 22 TAC §329.2(f)(2)(B)~~]

(C) Board-approved continuing education.
Figure: 22 TAC §329.2(f)(2)(C)

(g) Failure of PT exam. An applicant who fails the physical therapy examination may apply for licensure as a PTA and take the physical therapist assistant examination if he meets all other requirements for licensure.

(h) License upgrading. An applicant who was licensed under the grandfather clause may take the NPTE to upgrade his or her score. The applicant must submit a written request and the examination registration materials and the appropriate fee.

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

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John P. Maline
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Texas Board of Physical Therapy Examiners
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22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes amendments to §329.5, concerning Licensing Procedures for Foreign-trained Applicants. The amendments add more information about educational program equivalency; correct an error in the ibtTOEFL scores, clarify how the coursework tool should be used, and delete requirements for resumes and other documents from the board's approved credentialing entities.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the clearer instructions for applicants and credentialers. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§329.5. Licensing Procedures for Foreign-Trained Applicants.

(a) The provisions of §329.1 of this title (relating to General Licensing Procedure) apply to foreign-trained applicants.

(b) If required by §343 of the U.S. Illegal Immigration Reform and Immigrant Responsibility Act, the foreign-trained applicant must present a prescreening certificate issued by a board-approved prescreening entity. The board will establish by policy a list of board-ap-

proved prescreening entities, which will be made available to foreign-trained applicants on request.

(c) The foreign-trained applicant's educational credentials and qualifications will be evaluated by a board-approved credentialing entity in accordance with the requirements of subsection (f) of this section. The board will establish by policy a list of approved credentialing entities. In the event that the credentialer does not adhere to the guidelines of subsection (f) of this section, the Board may override the evaluation. An evaluation by a board-approved education credentialing entity is valid for the purpose of licensing in this state for not more than two years after the date of issuance of the evaluation.

(d) After arrival in the United States, the applicant must submit a United States residential address and pay all remaining fees. Only after the applicant has arrived in the United States will the board approve registration for the national exam.

(e) Designated representative letter.

(1) An applicant may designate a person as a representative by providing in writing to the board the name, telephone number, and address of the person and by stating in the letter that the person will be the designated representative for the applicant.

(2) This letter must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy should be sent to the representative by the applicant.

(3) A designated representative may obtain confidential information regarding the application.

(4) A designated representative of an applicant will remain so until the applicant receives his permanent license or until the board is notified in writing by the applicant that the designated representative has been eliminated or replaced. An applicant may have only one designated representative at any time.

(5) The designated representative is not required by the board to have power of attorney for the applicant. A person who does have power of attorney for an applicant may not submit any document that is required by the board to be signed by the applicant and notarized. Documents submitted by a person with power of attorney for the applicant must be submitted in accordance with all requirements set by the Act and rules regarding these documents. Any falsification of documents required for licensing submitted by a designated representative or a person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.

(f) Guidelines for board-approved education credentialing entities.

(1) The credentialing entity will review all of an applicant's post-secondary professional education credentials earned outside of the United States. The entity will evaluate allowable transfer credit for the 13th year based on recommendations of the National Council on the Evaluation of Educational Credentials or on current published reference materials. The applicant must have completed, with a passing grade of A, B, C, Pass or Credit, 60 semester hours credit or the equivalent in general education courses from an accredited institution of higher learning. This requirement may be met by credits earned at U.S. colleges or universities, by College Level Examination Program (CLEP) credits, or Advanced Placement (AP) according to standards of the American Council on Education. The number of credits earned by CLEP or AP may not exceed 12 semester credits.

(2) The credentialing entity must attest that the institution attended by the applicant has the recognition of the Ministry of Education or the equivalent in that country.

(3) All foreign-trained applicants must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the TOEFL tests. This requirement is waived for graduates of entry-level physical therapy programs in Australia, Canada (except Quebec), Ireland, New Zealand and the United Kingdom. For graduates of entry-level physical therapy programs in other foreign countries, the Board may grant an exception to the TOEFL tests if the applicant holds a current license in physical therapy in another state and has been licensed in the U.S. for 10 years prior to application. The Board also may grant an exception to the TOEFL tests to an applicant who submits satisfactory proof that he/she is a citizen or lawful permanent resident of the United States, and has attended four or more years of secondary or post-secondary education in the U.S. Regarding the Paper-based and Computer-based TOEFL tests: If an applicant makes a score of 50 on the TSE, the board will allow the applicant to submit three original, notarized letters of recommendation from individuals who have practical knowledge of the applicant's ability to communicate successfully in spoken English. Individuals who provide this written testimony must be native English speakers, cannot be related by blood or marriage to the applicant, and at least one of the letters must be from a PT licensed to practice in Texas. These letters must be submitted by their authors directly to the board. At the board's discretion, the letters may be considered satisfactory evidence of proficiency in spoken English. Minimum acceptable scores for the TOEFL tests are as follow:

(A) Paper based TOEFL tests (pbt): TOEFL (reading/comprehension) 580; TWE (writing/essay) 5.0; TSE (speaking) 55.

(B) Computer-based TOEFL tests (cbt): TOEFL (reading/comprehension) 237; TWE (writing/essay) 5.0; TSE (speaking) 55.

(C) Internet-based (ibt): Writing 24; Speaking 26; Reading Comprehension 21 [~~18~~]; Listening Comprehension 18 [~~21~~].

(4) The credentialing entity must attest that the applicant is or was licensed or authorized to practice in the country in which the entry-level degree in physical therapy was granted. If there is no licensure or authorization in such country, the applicant must be eligible for unrestricted practice there. The Board may waive this requirement for an applicant who is not licensed in the country of education due to a citizenship requirement of that country.

(A) If the application is by examination, the license or authorization in such country must be in good standing and the licensure current.

(B) If the application is by endorsement, and the applicant has passed the exam according to Texas standards, the license or other authorization must have been in good standing at the time the license or authorization in such country expired.

(5) The credentialing entity adopts the policy of "scaling" as defined by the National Council on the Evaluation of Foreign Educational Credentials, American Association of Collegiate Registrar and Admissions Officers, Washington D.C.; i.e., a year of foreign study is worth no more than a year of American study, regardless of contact hours, or general education is converted to equate to approximately 30-32 United States semester credit hours per year, and professional education to approximately 36 semester credit hours per year.

(6) The credentialing entity must use a method to convert classroom hours to semester units which has a ratio no greater than the following: 15 contact lecture hours = one semester unit/hour; 45 contact laboratory hours = one semester unit/hour. When lecture/lab hours are not delineated on the transcript or syllabi, the evaluator may use an appropriate ratio and indicate the ratio used in the evaluation.

(7) The credentialing entity must list and assign a grade for each course taken by the applicant, by assigning the grade of A, B, C, D, F, Pass, Fail, Credit or No Credit. Those grades assigned by the credentialing entity must be the grades that are converted to the U.S. equivalent, in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. The credentialing entity must identify and list those courses which would not transfer to the U.S. as a C or above or Pass or Credit in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. An applicant must earn a grade of A, B, C, or Pass or Credit in any professional physical therapy education courses. An applicant with a grade of D, F, Fail, or no credit appearing for a professional physical therapy education course on his/her evaluation who has not successfully retaken the course with a grade of A, B, C, Pass or Credit is not eligible for licensure in Texas.

(8) The credentialing entity must attest that the applicant has successfully completed an educational program substantially equivalent to U.S. programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) and has earned the equivalent of a minimum of 72 semester hours of professional physical therapy education. The program must be post-secondary, requiring for entry the equivalent of high school graduation in the United States; must consist of at least three years of classroom instruction; and must result in the award of the first academic diploma or degree leading to professional practice in physical therapy. The applicant must have completed courses in each of the following broad areas: basic sciences, clinical science, and physical therapy theory and procedures. The applicant must have also successfully completed United States required equivalent courses/hours in clinical education. The applicant must have successfully completed at least 15 semester credit hours in clinical education (upper division level) but will receive credit for no more than 23 semester hours. If the applicant has completed the required course work in clinical education but the transcript does not reflect the required credit hours then the credentialing entity may use the conversion formula of 60 contact hours per one semester credit.

(9) If the degree awarded is substantially equivalent to a degree in physical therapy as awarded by CAPTE-accredited programs in regionally accredited colleges and universities in the United States, the credentialing entity must use [~~one version of~~] the Coursework Evaluation Tool for Foreign Educated Physical Therapists (Coursework Evaluation Tool), as developed by the Federation of State Boards of Physical Therapy and modified by the Texas board, when evaluating an applicant's credentials. The version of the tool used must correspond at minimum to the year the entry-level degree was awarded. Deficiencies must be identified and must show the subjects and credit hours necessary to satisfy the requirements of the Coursework Evaluation Tool. If the degree received is from a CAPTE-accredited program located outside the U.S., the program is considered equivalent to a domestic CAPTE-accredited physical therapy program, and the applicant is exempt from meeting the requirements of the Coursework Evaluation Tool.

[~~(10) The credentialing entity must submit to the board the resumes of any and all credential analysts and the physical therapy consultants involved in the evaluation of foreign-trained applicants for licensure in Texas. This must be submitted to the council at least 30 days prior to any analysis performed by that person.~~]

[~~(11) The credentialing entity must submit to the board a board-approved form, properly signed and notarized, in which it agrees to use the board's guidelines and the Coursework Evaluation Tool to evaluate transcripts of applicants seeking licensure in Texas.~~]

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

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John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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CHAPTER 341. LICENSE RENEWAL

22 TAC §341.9

The Texas Board of Physical Therapy Examiners proposes new rule §341.9, concerning Retired Status. The new rule allows retired licensees of this board to provide physical therapy services as voluntary charity care.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be more voluntary charity care provided by PTs and PTAs who are otherwise no longer working in the field. There will be no impact on small businesses. No economic cost to persons having to comply is anticipated.

Comments on the proposed rule may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The rule is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this new rule.

§341.9. Retired Status.

(a) Retired status means that a licensee is providing physical therapy services only in the domain of voluntary charity care.

(b) As used in the section:

(1) "voluntary charity care" means physical therapy services provided for no compensation as a volunteer of a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. Charitable organizations include any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization promoting the common good and general welfare for the people in a community, including these types of organizations with a §501.(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "compensation" means direct or indirect payment of anything of monetary value.

(c) To be eligible for retired status, a licensee must hold a current license on active or inactive status.

(d) Requirements for initiation of retired status. The components required to put a license on retired status are:

(1) a completed and notarized retired status application form;

(2) completion of board-approved continuing education (CE) for the current renewal period;

(3) the retired status fee and any late fees which may be due; and

(4) a passing score on the jurisprudence exam.

(e) Requirements for renewal of retired status. A licensee on retired status must renew the retired status every two years on his/her license renewal date. The components required to renew the retired status are:

(1) a completed retired status application form;

(2) completion of six hours of board-approved continuing education (CE) by both PTs and PTAs;

(3) the retired status renewal fee, and any late fees which may be due; and

(4) a passing score on the jurisprudence exam.

(f) Requirements for return to active practice. A licensee who has been on retired status for less than one year must submit the regular license renewal fee and the late fee as described in §341.1, Requirements for Renewal. A licensee who has been on retired status for more than one year must retake and pass the national licensure examination to return the license to active status. The components required to return the license to active status are:

(1) a completed and notarized application;

(2) a fee equal to the license application fee;

(3) a passing score on the retake of the national examination, and

(4) a passing score on the jurisprudence exam.

(g) A license may be maintained on retired status indefinitely.

(h) A licensee on retired status may use the designation "PT, retired" or "PTA, retired", as appropriate.

(i) Licensees on retired status are subject to the audit of continuing education as described in §341.2 of this title, concerning Continuing Education Requirements.

(j) Licensees providing voluntary charity care are subject to disciplinary action under the Physical Therapy Practice Act.

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 June 19, 2006.

TRD-200603368

John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
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PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §651.1, §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes amendments to §651.1, Occupational Therapy Board Fees, and §651.2, Physical Therapy Board Fees. The amendments will remove the facility waiver for OT Linked Facilities, but will enable the OT facilities to apply and renew online through the TexasOnline system and will add fees to support the FY2006/2007 Appropriations Act. The amendment will also add fees for a new status, the retired status.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be a fiscal implication of raising fees for the OT linked facilities. There will be no fiscal implications for state or local government as a result of enforcing or administering the amended rules.

Mr. Maline also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended rules will be more efficient processing of facility applications and renewals. There will be a minimal effect on small businesses and individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Jennifer Jones, Executive Assistant, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; e-mail: jennifer.jones@mail.capnet.state.tx.us.

The amendments are proposed under Title 3, Subtitle H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452, Occupations Code is affected by the proposed amendments.

§651.1. Occupational Therapy Board Fees.

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

(g) Retired Status

(1) Application--$25.

(2) Renewal--$25.

(h) [~~(g)~~] Late Fees Renewal (all licensees).

(1) Late 90 days or less--the renewal fee plus late fee which is equal to one-half of the certification examination fee.

(2) Late more than 90 days but less than one year--the renewal fee plus late fee which is equal to the certification examination fee.

(i) [~~(h)~~] License Restoration Fee for all licensees--a fee equal to the certification examination fee.

(j) [~~(i)~~] Registration Fees--Facilities.

(1) Registration of First Facility--$314.

(2) Registration of Each Additional Facility--$124.

(3) Registration of Linked Primary Facility--$40.

(4) Registration of Linked Additional Facility--$30.

(k) [~~(j)~~] Renewal Fees--Facilities.

(1) Renewal of Registration of First Facility--$306.

(2) Renewal of Registration of Each Additional Site--$126.

(3) Renewal of Linked Primary Facility--$40.

(4) Renewal of Linked Additional Facility--$30.

(l) [~~(k)~~] Late Fees--All Facilities.

(1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.

(2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.

(m) [~~(l)~~] Facility Restoration (all facilities)--Late one year or more-renewal fee(s) plus a restoration fee which is double the renewal fee.

§651.2. Physical Therapy Board Fees.

(a) - (i) (No change.)

(j) Retired Status.

(1) Application--$25

(2) Renewal--$25

(k) [~~(j)~~] Facility Registration.

(1) First Facility--$314.

(2) Additional site--$124.

(l) [~~(k)~~] Facility Renewal.

(1) First Facility--$306

(2) Additional site--$126.

(m) [~~(l)~~] Late Fees--All Facilities.

(1) Late 90 days or less--a fee equal to one-half of the renewal fee, in addition to the renewal fee.

(2) Late more than 90 days but less than one year--a fee equal to the renewal fee, in addition to the renewal fee.

(n) [~~(m)~~] Facility Restoration (all facilities)--renewal fee(s) plus a restoration fee that is double the renewal fee.

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

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John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 448. STANDARD OF CARE

SUBCHAPTER E. FACILITY REQUIREMENTS

25 TAC §448.505

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §448.505 concerning the general environment in chemical dependency treatment facilities.

BACKGROUND AND PURPOSE

The proposed amendment to §448.505 makes available to all chemical dependency treatment facilities by rule a limited exception to the prohibition against alcohol on the program site, which had been previously granted by variance to a facility requesting it. The proposed amendment provides for a narrow exception, with safeguards, for presiding clergy members' possession and consumption on the program site of a limited amount of alcohol as a standard part of a sacramental rite in order to avoid undue governmental interference with the free exercise of religion.

SECTION-BY-SECTION SUMMARY

The amendment to §448.505 allows four ounces of alcohol to be brought onto the program site by a clergy member, and while on site to remain in the sole possession, custody, and control of the clergy member. The alcohol is permitted to be brought onto the program site and used solely for the purpose of enabling a clergy member to preside over a sacramental rite. The chemical dependency treatment facility is not permitted to allow any person other than the clergy member to be in possession, custody, or control of, or to consume any portion of the alcohol brought to the program site. The facility is required to maintain and make available to the department upon request documentation of the clergy member's identification, and each date and time when alcohol is permitted to be brought onto the program site.

FISCAL NOTE

Kathy Perkins, Director, Healthcare Quality Section, Regulatory Division, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed in that costs and workload resulting from the rule amendment will be absorbed within the existing budget.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation

of the rule that small businesses and micro-businesses that operate chemical dependency treatment facilities will not be required to significantly alter their business practices in order to comply with the section. There are no anticipated economic costs to persons who are required to comply with the section as proposed because the alcohol would be brought onto the program site by a clergy member and additional documentation requirements are minimal and can be absorbed within facilities' existing costs. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is the prevention of state interference with the free exercise of religion by chemical dependency treatment facility clients by permitting, with safeguards, a clergy member's use of alcohol during a sacramental rite at a facility.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Jane Guerrero, Facility Licensing Group, Regulatory Licensing Unit, Department of State Health Services, 1100 West 49th Street, Mail Code 1980, Austin, Texas 78756, (512) 834-6639 or by email to jane.guerrero@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §464.009, which authorizes the Executive Commissioner of the Health and Human Services Commission (Executive Commissioner) to adopt rules governing chemical dependency treatment facilities, including their policies and procedures, client living environment, protection of client rights, and standards to ensure client safety, protection, health and comfort; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner 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.

The proposed amendment affects the Health and Safety Code, Chapters 464 and 1001, and Government Code, Chapter 531.

§448.505. General Environment.

(a) The facility shall comply with applicable requirements of the Americans with Disabilities Act (ADA). The facility shall maintain documentation that it has conducted a self-inspection to evaluate compliance and implemented a corrective action plan, as necessary, with reasonable time frames to address identified deficiencies.

(b) The facility shall have a certificate of occupancy from the local authority that reflects the current use by the occupant or documentation that the locality does not issue occupancy certificates.

(c) The site, including grounds, buildings, electrical and mechanical systems, appliances, equipment, and furniture shall be structurally sound, in good repair, clean, and free from health and safety hazards.

(d) The facility shall provide a safe, clean, well-lighted and well-maintained environment.

(e) The facility shall have adequate space, furniture, and supplies.

(f) The facility shall have private space for confidential interactions, including all group counseling sessions.

(g) The facility shall prohibit smoking inside facility buildings and vehicles and during structured program activities. If smoking areas are permitted, they shall be clearly marked as designated smoking areas and shall not be less than 15 feet from any entrance to any building(s) and comply with local codes and ordinances. Staff shall not provide or facilitate client access to tobacco products.

(h) The facility shall prohibit firearms and other weapons, alcohol, illegal drugs, illegal activities, and violence on the program site or at or during the course of any program activity, except as provided for in paragraphs (1) and (2) of this subsection. The facility shall be responsible for any noncompliance with this subsection.

(1) The facility may allow a clergy member to bring four ounces or less of alcohol on site or to a program activity for purposes of presiding over a religious or spiritual rite, as long as the alcohol remains in the possession, custody, or control of the presiding clergy member at all times while on the program site or at the program activity, is not distributed, and is consumed only by the presiding clergy member, if at all.

(2) The facility shall inform any clergy member bringing alcohol on site or to a program activity under paragraph (1) of this subsection. The facility shall create and maintain documentation, which shall be available to staff of the Department of State Health Services upon request, reflecting each date and time when alcohol is permitted to be brought onto the program site or to a program activity pursuant to this subsection. The documentation shall include the name, address, and title of the clergy member, and shall document staff verification that the clergy member was self-identified as such, that alcohol was brought on site or to a program activity and that it was thereafter either removed from the site or program activity, or represented by the presiding clergy member to have been personally consumed.

(i) Animals shall be properly vaccinated and supervised.

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 June 19, 2006.

TRD-200603359
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 458-7111 x6972

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

The Texas Water Development Board (board) proposes amendments to 31 TAC §363.33, concerning the Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects. The amendments are proposed to allow the board to set a unique interest rate for a revenue bond offered by an entity as consideration for the purchase of the board's interest in a state participation project.

Section 363.33(b)(4) of the board rules sets the interest rate for a revenue bond where the revenue bonds constitutes consideration for the purchase of the board's interest in a state participation project. Currently, the interest rate is set at either (1) the prevailing state participation lending rate or (2) the rate in effect at the time the board provided funds for the project, if bond proceeds were the source of funds and the bonds are outstanding. An amendment is proposed to §363.33(b)(4) to allow the board to set a unique interest rate for a revenue bond where no fixed purchase schedule was established at the time the board initially provided funds for a state participation project. The proposed new §363.33(b)(4)(C) is intended to provide the board with a vehicle to assist an entity to purchase the board's interest in a state participation project by offering flexibility in the consideration offered by the entity for such a purchase.

James LeBas, Chief Financial Officer, has determined that, for the first five-year period the amendments are in effect, state government will benefit from the potential for an acceleration of the purchase of the state's interest in a state participation project. Local government will benefit an undetermined amount from a reduction in the cost of purchasing the state's interest in a state participation project, where a revenue bond is offered as consideration for the purchase of such interest.

Mr. LeBas has also determined that for the first five years the amendments, as proposed, are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be to provide flexibility to the board to facilitate the purchase of the board's interest in a state participation project. Mr. LeBas has determined there will not be economic costs to small businesses or individuals required to comply with the amendments as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Attorney, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

The amendments are proposed under the authority of the Texas Water Code, §6.101.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 16, Subchapter E.

§363.33. Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects.

(a) (No change.)

(b) Lending rate scale. After each bond sale, or as necessary to meet changing market conditions, the board will set the lending rate scale for loans and state participation projects based upon cost of funds to the board, risk factors of managing the board loan portfolio, and market rate scales. To calculate the cost of funds, the board will add new bond proceeds to those remaining bond funds that are not currently assigned to schedule loan closings, weighting the funds by dollars and true interest costs of each source. The board will establish separate lending rate scales for tax-exempt and taxable projects from each of the following:

(1) loans from the Texas Water Development Fund and Texas Water Development Fund II;

(2) purchase of the board's interest in state participation projects from the State Participation Account;

(3) loans from the Economically Distressed Area Program Account; and

(4) if revenue bonds constitute the consideration for the purchase of the board's interest in a state participation project by a political subdivision, the revenue bonds shall bear interest at [~~either~~]:

(A) the prevailing state participation lending rate, as set in subsection (b)(2) of this section; [~~or~~]

(B) if there is outstanding board indebtedness related to the purchase of its state participation interest, then at the rate then in effect at the time the board provided funds, through the issuance of bonds, to participate in the project ; or[~~.~~]

(C) a different rate as established by the board, where no schedule for the purchase of the board's interest in the project was fixed at the time the board provided funds to participate in the project.

(c) (No change.)

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

Filed with the Office of the Secretary of State on June 14, 2006.

TRD-200603278

Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Proposed date of adoption: August 15, 2006
For further information, please call: (512) 475-2052

TITLE 34. PUBLIC FINANCE

PART 10. TEXAS PUBLIC FINANCE AUTHORITY

CHAPTER 223. HISTORICALLY UNDERUTILIZED BUSINESS PROGRAM

34 TAC §223.1

The Texas Public Finance Authority (Authority) proposes new §223.1 concerning Historically Utilized Businesses. The new section adopts, through incorporation by reference, the rules of the Texas Building and Procurement Commission (TBPC) for historically underutilized businesses, 1 Texas Administrative Code §§111.11 - 111.28, in accordance with the requirements of Texas Government Code §2166.003.

The rules of the TBPC that are adopted by reference provide requirements for state agencies to make a good faith effort to include participation of historically underutilized businesses in an agency's contracts. They provide definitions, policies and procedures applicable to the HUB program, including annual procurement utilization goals, subcontracting requirements, agency planning and reporting requirements, HUB certification, protest procedures, HUB business directory requirements, HUB coordinator responsibilities, HUB forums, and a mentor-protege program.

Kim Edwards, Executive Director, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rules. There will be no measurable effect on local employment or the local economy as a result of the proposed rules.

Ms. Edwards has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of the proposed section will be uniform standards, consistent with statute, for the procurement of goods and services from HUB vendors. There is no anticipated economic cost to persons who are required to comply with the rules. There is no anticipated difference in cost of compliance between micro, small, and large businesses and no anticipated economic cost for these entities. State agencies are required to comply with TBPC HUB rules.

Comments may be submitted to Judith Porras, General Counsel, Texas Public Finance Authority, 300 W. 15th St., Room 411, Austin, TX 78701, judith.porras@tpfa.state.tx.us.

The new section is proposed under the authority of §2161.003 of the Government Code that requires agencies to adopt TBPC's HUB rules.

The following code provision is affected by this proposal: Government Code, §2161.003, Agency Rules.

§223.1. Historically Underutilized Businesses.

The Authority adopts by reference the rules promulgated by the Texas Building and Procurement Commission (TBPC) concerning Historically Underutilized Businesses, which are found in 1 Texas Administrative Code §§111.11 - 111.28, as amended. A copy of the TBPC rules may be obtained by written request to the Authority to the attention of the Executive Director at Texas Public Finance Authority, 300 W. 15th Street, Austin, Texas 78701, or by accessing the rules at: http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=5&ti=1&pt=5&ch=111&sch= B&rl=Y.

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 June 13, 2006.

TRD-200603240
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 463-3143

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 95. YOUTH DISCIPLINE

SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.9

The Texas Youth Commission (the commission) proposes an amendment to §95.9, concerning Youth Discipline. The amendment will allow Level I hearing to be deferred not only upon written request from local authorities, but also if there are pending criminal (adult) charges against the youth. The commission may, but is not required to, pursue a Level I hearing on a deferred hearing any time there is a change in circumstances.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be efficient use of agency resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to

make rules appropriate to the proper accomplishment of its functions.

The proposed rule affects the Human Resources Code, §61.034.

§95.9. Parole Revocation Consequence.

(a) - (d) (No change.)

(e) Restrictions.

(1) A Level I hearing is required in order to revoke a youth's parole status.

(2) A Level I due process hearing on any allegations(s) shall be scheduled within seven (7) days of the date staff receives notice of the offense, excluding weekends and holidays, except when:

(A) Staff documents that it was impossible, impractical or inappropriate to have scheduled the hearing sooner; or

(B) Local authorities make a written request that TYC defer an allegation to their jurisdiction for prosecution; or

(C) Unless the pending criminal charge(s) concern a first degree felony offense, TYC staff may elect to defer a Level I hearing on all allegations of misconduct due to criminal allegation(s) pending or filed as adult charges.

[(2) When local authorities make a written request to defer an allegation to their jurisdiction for prosecution, Texas Youth Commission (TYC) will cancel the directive, unless a due process hearing will be scheduled on other allegation(s). A due process hearing on any allegation(s) shall be scheduled within seven days (excluding weekends and holidays).]

(3) TYC may reissue a directive and request a Level I hearing concerning new or previously deferred allegation(s) if later circumstances make such action appropriate.

(4) [(3)] If a youth is on parole from another state and is being supervised by TYC under agreement with the other state, a parole revocation hearing is held by TYC and the youth returned to the sending state, coordinated by the interstate compact administrator and general counsel.

(5) [(4)] If a TYC parolee commits an offense in another state, the return of such youth is coordinated by the interstate compact administrator and the general counsel. A parole revocation hearing is coordinated by and held at the request of the assigned parole officer.

(6) [(5)] The minimum length of stay assigned under this rule may be reduced based on the youth's behavior and progress toward goals.

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 June 13, 2006.

TRD-200603234
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 424-6301

SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES

37 TAC §95.51

The Texas Youth Commission (the commission) proposes an amendment to §95.51, concerning Due Process Hearings Procedures. The amendment to the section will align the rule regarding admissibility of youth statements with the current laws in the Juvenile Justice Code, found in Texas Family Code §51.095. It will allow such statements to be admitted in Level I Hearings under the same rules that allow them to be admissible in a juvenile court. Also, the amendment will allow Hearing Examiners to find violations that differ from those alleged as long as the youth and his attorney received adequate notice of the conduct being called into question.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in compliance with current laws and efficient use of the commissions resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Texas Family Code, §51.095, which provides the commission the authority to permit the admissibility of non-recorded oral statements under certain circumstances.

The proposed rule affects the Human Resources Code, §61.034.

§95.51. Level I Hearing Procedure.

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

(d) Procedure.

(1) The hearing shall be conducted by a hearing [hearings] examiner appointed by the Texas Youth Commission (TYC) hearings section chief. The hearing [hearings] examiner shall be impartial.

(2) - (4) (No change.)

(5) The primary service worker (PSW) requests a hearing by completing the Level I Hearing Request E-form and transmitting it to the legal services department as soon as practical but no later than seven (7) days, excluding weekends and holidays, after the alleged violation. A delay of more than seven (7) days in scheduling the hearing must be justified by documentation of circumstances (including a deferral to local authorities)[,] which made it impossible, impractical, or inappropriate to schedule the hearing earlier.

(6) The date and time for the hearing shall be determined by the hearing [hearings] examiner.

(7) The hearing shall be held in the community where the alleged rule violation occurred unless, for good cause, the hearing [hearings] examiner directs that it be held in another locale.

(8) All necessary parties shall be present at the hearing site unless it is conducted pursuant to (GAP) §95.53 of this title [~~(relating to Level I Hearing by Telephone)~~].

(9) (No change.)

(10) If the youth is under 18 years of age, the [~~The~~] staff representative shall make reasonable efforts to inform the youth's parent(s) of the date, time and place of the hearing not less than three (3) working days prior to the scheduled hearing date. If the youth is 18 years of age or older, such notice shall be provided only with the youth's authorization to release information.

(11) The staff representative shall provide counsel for the youth with written notice of the date, time, and place of the hearing not less than three (3) working days prior to the scheduled hearing date. The notice to counsel shall also include:

(A) the name, address, and telephone number of the staff representative and the hearing [~~hearings~~] examiner;

(B) a list of all witnesses the staff representative intends to call;

(C) an indication of the expected testimony of each witness;

(D) copies of any statements made by the youth;

(E) copies of any statements, affidavits, reports, or other documentation relied upon as grounds for the proposed action; and

(F) copies of any reports or summaries which will be relied upon at disposition.

(12) Requests for continuance or postponement shall be directed to the hearing [~~hearings~~] examiner.

(13) If defense counsel has not received at least ten (10) days notice of the items listed in subsection (d)(11) of this section [~~policy,~~] and requests a continuance, the hearing [~~hearings~~] examiner shall postpone the hearing. The hearing [~~hearings~~] examiner may, upon his/her own motion or the good cause motion of any party, recess or continue the hearing for such periods of time as may be necessary.

(14 - (15) (No change.)

(16) Prior to the hearing, the hearing [~~hearings~~] examiner may review copies of any documentation previously provided to counsel except for those documents which relate solely to dispositional criteria. Such information shall be made available to the hearing [~~hearings~~] examiner only if the hearing proceeds to disposition.

(17) The hearing [~~hearings~~] examiner or designee may sign and issue a subpoena to compel the attendance of a witness at the hearing or the production of books, records, papers, or other objects.

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

(18) (No change.)

(19) To protect the confidential nature of the hearing, persons other than the youth, counsel for the youth, the staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearing [~~hearings~~] examiner, however:

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

(20) The hearing shall be tape-recorded and the hearing [~~hearings~~] examiner shall retain copies of all documents admitted into evidence. Physical evidence may be retained at the discretion of the hearing [~~hearings~~] examiner; if not retained, an adequate description of the item(s) shall be entered in the record by oral stipulation.

(21) - (22) (No change.)

(23) The hearing [~~hearings~~] examiner may administer an oath. All witnesses shall take an oath to testify truthfully.

(24) (No change.)

(25) The hearing [~~hearings~~] examiner may question each witness at his/her discretion. Counsel for the youth and the staff representative shall be given an opportunity to question each witness.

(26) The hearing [~~hearings~~] may permit a witness to testify outside the presence of the youth if such appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, counsel for the youth shall be present during the testimony and shall have the opportunity to review the testimony with the youth before questioning the witness.

(27) - (28) (No change.)

(29) The hearing [~~hearings~~] examiner shall determine the admissibility of evidence. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(30) - (35) (No change.)

(36) A youth's non-recorded oral statement is admissible if it: [~~admissible only if it relates facts which would not have otherwise been discovered, are found to be true and which tend to establish the youth's involvement in illegal activities.~~]

(A) relates facts which are found to be true and which tend to establish the youth's quilt; or

(B) was res gestae of the conduct that is the subject of the hearing or of the arrest; or

(C) does not stem from law enforcement or agency staff questioning of youth; or

(D) is voluntary and bears on the youth's credibility as a witness.

(37) A youth's recorded oral statement (tape recorded, videotaped, or otherwise electronically recorded) concerning his/her possible involvement in illegal activities is admissible if it is accompanied by evidence on the recording that it was given after the youth was advised of the rights in paragraph (35) of this section [~~section (d)(35) of this policy~~]. All voices on the recording must be identified and the recording must be accurate and unaltered. A transcript of the recordings is not sufficient.

(38) The hearing [~~hearings~~] examiner shall rule immediately on any motions or objections made in the course of the hearing. All such motions, objections, and rulings shall be included in the hearing [~~hearings~~] examiner's written report.

(39) Following the presentation of all evidence pertaining to the factual issues raised at the hearing, the hearing [~~hearings~~] examiner shall announce his/her findings as to those issues.

(A) The hearing examiner may find that the evidence suffices to prove conduct other than that originally alleged and enter the appropriate finding in the record if the original allegation gave sufficient notice of the conduct proved. [~~When the fact finding concerns an allegation of criminal conduct, the hearings examiner may find that the evidence suffices to prove an offense other than that originally alleged and enter the appropriate allegation in the record if the original allegation gave sufficient notice of the offense proved.~~]

(B) Irrespective of the evidence, the hearing [~~hearings~~] examiner may not find a criminal offense more serious than that orig-

inally alleged unless the original allegation has been amended on the record and after notice to counsel for the youth.

(C) If the hearing [hearings] examiner's findings require that disposition be made, the hearing shall proceed to disposition; if not, the hearing shall be adjourned with no change in the youth's status.

(40) The hearing [hearings] examiner may receive additional evidence for purposes of disposition. The evidence received at disposition may be in the form of testimony from witnesses submitted during fact-finding or at disposition, as well as written reports offered by youth, staff, professionals, counselors, or consultants. Relevant documents contained in the youth's record may be admitted and considered. All written documents offered shall be provided to the parties three (3) days prior to the hearing unless otherwise waived.

(41) Following announcement of the decision as to disposition, the hearing [hearings] examiner shall inform the youth of the right to appeal any or all findings and decision made at the hearing.

(42) Immediately following the close of the hearing, the hearing [hearings] examiner shall give the youth a copy of the Hearing Examiner's Report of a Level I Hearing form.

(43) A notice of appeal or request for a rehearing shall not suspend implementation of the hearing [hearings] examiner's decision(s), which shall be effective when announced at the hearing.

(44) As soon as possible following the conclusion of the hearing, the hearing [hearings] examiner shall prepare a written report which shall include:

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

(45) Copies of the hearing [hearings] examiner's report shall be provided to counsel for the youth and the staff representative.

(46) An edited copy of the hearing [hearings] examiner's report is given to the youth.

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 June 13, 2006.

TRD-200603233
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 424-6301

37 TAC §95.55

The Texas Youth Commission (the commission) proposes an amendment to §95.55, concerning Due Process Hearings Procedures. The amendment to this section will allow the commission to conform to the rules as set out in the Human Resources Code §61.0731(a) which prohibits the commission to notify parents of a youth who is 18 years or older of Level II hearing unless the youth consents to such notification.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in compliance with the law governing disclosure of information regarding a youth who is 18 years of age or older. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.0731(a), which requires the commission not to release information about a youth who is 18 years of age or older unless the youth consents to such disclosure.

The proposed rule affects the Human Resources Code, §61.034.

§95.55. Level II Hearing Procedure.

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

(d) Procedure.

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

(3) If the youth is admitted to Institution Detention Program (IDP) pending a Level II hearing, the hearing shall be conducted within ten (10) days, excluding weekends and holidays, from date of admission to detention. A delay of more than ten (10) days, weekends and holidays, in conducting the hearing must be justified by documentation of circumstances which made it impossible, impractical, or inappropriate to conduct the hearing earlier.

(4) - (9) (No change.)

(10) If the youth is less than 18 years of age, reasonable [Reasonable] efforts shall be made to inform the youth's parent(s) of the time and place of the hearing not less than 24 hours prior to the hearing. If the youth is 18 years of age or older, such notice shall be provided only with the youth's authorization to release information.

(11) - (17) (No change.)

(18) To protect the confidential nature of the hearing, persons other than the youth, the youth's advocate, staff representative, and the youth's parent(s) may be excluded from the hearing room at the discretion of the hearing [hearings] manager; however, any person except the youth's advocate may be excluded from the hearing room if his/her presence causes undue disruption or delay of the hearing. The reason(s) for the exclusions are stated on the record.

(19) (No change.)

(20) The hearing [hearings] manager may permit a witness to testify outside the presence of the youth if such appears reasonable and necessary to secure the testimony of the witness. If the youth is excluded from the hearing room during testimony, the advocate for the youth shall be present during the testimony and shall have the opportunity to review the testimony with the youth before questioning the witness.

(21) - (23) (No change.)

(24) The hearing [hearings] manager may recess or continue the hearing for such period(s) of time as may be necessary to insure an informed and accurate fact-finding or to secure evidence the hearing manger determines may be relevant.

(25) - (29) (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 June 13, 2006.

TRD-200603232
Dwight Harris
Executive Director
Texas Youth Commission
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 424-6301

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER I. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission proposes the repeal of four sections, and the amendment of an additional five sections, of Title 40, Part 2, Chapter 101, Subchapter I, of the rules of the Department of Assistive and Rehabilitative Services, pertaining to the Early Childhood Intervention Services. The four sections to be repealed are: §§101.5601, 101.5603, 101.5605 and 101.5607, concerning Division 1, Conduct of Board Meetings. The five sections to be amended are: §§101.5751, 101.5753, 101.5755, 101.5757 and 101.5759, concerning Division 3, Relationship With Private Donors.

The repeals and amendments are being proposed to conform the rules pertaining to Early Childhood Intervention Services to the organizational and operational requirements of House Bill 2292, 78th Legislature, Regular Session, and to conform nomenclature used in the rules to that resulting from consolidation of Health and Human Services Agencies under the Texas Health and Human Services Commission.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeals and amendments will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeals and amendments will be in effect, the public benefit anticipated as a result of adopting the proposed changes will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed for repeal and amendment. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed repeals and amendments will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

DIVISION 1. CONDUCT OF BOARD MEETINGS

40 TAC §§101.5601, 101.5603, 101.5605, 101.5607

(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 Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.5601. Introduction.

§101.5603. Applicability of Texas Open Meetings Law.

§101.5605. Council Procedures.

§101.5607. Public Participation.

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 June 13, 2006.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

DIVISION 3. RELATIONSHIP WITH PRIVATE DONORS

40 TAC §§101.5751, 101.5753, 101.5755, 101.5757, 101.5759

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.5751. Purpose.

The purpose of these sections is to establish the criteria, procedures, and standards of conduct governing the relationship between the Department of Assistive and Rehabilitative Services (DARS) [~~Interagency Council on Early Childhood Intervention (Council)~~], its

[~~officers and~~] employees, and private donors and private organizations that exist to further the duties and purposes of the Division for Early Childhood Intervention Services [~~Council~~].

§101.5753. Definitions.

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

(1) Commissioner--Commissioner of the Department of Assistive and Rehabilitative Services. [~~Executive Director--The Executive Director of the Interagency Council on Early Childhood Intervention.~~]

(2) Department--Department of Assistive and Rehabilitative Services. [~~Board--Board of the Interagency Council on Early Childhood Intervention.~~]

(3) Division--Division for Early Childhood Intervention Services (ECI). [~~Council--Interagency Council on Early Childhood Intervention.~~]

(4) Donation--A contribution of anything of value (financial or in-kind gifts such as goods or services) given to the Department [~~Council~~] or to a private organization or foundation that exists to further the duties or functions of the Department [~~Council~~].

(5) Employee--A regular full-time or part-time employee of the Department [~~Council~~].

[~~(6) Officer--A member of the Board of the Council.~~]

(6) [~~(7)~~] Private donor--A person who gives a donation to the Department [~~Council on Early Childhood Intervention~~] or to a private organization that exists to further the duties and purposes of the Department [~~Council~~].

(7) [~~(8)~~] Private organization--A private organization that exists to further the purposes and duties of the Department [~~Council~~].

§101.5755. Donations by Private Donors to the Department of Assistive and Rehabilitative Services [~~Interagency Council on Early Childhood Intervention~~].

(a) All donations to the Department [~~Council~~] shall be expended in accordance with the provisions of the state Appropriations Act and shall be deposited in the state treasury unless exempted by specific statutory authority.

(b) All donations will be coordinated through the Assistant Commissioner, Division for Early Childhood Intervention Services [~~Executive Director of the Council~~].

(c) The Department [~~Council~~] may not transfer a private donation to a foundation or private/public development fund without specific written permission from the donor and the written approval of the Commissioner [~~Executive Director~~].

§101.5757. Relationship Between Private Organizations and the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services [~~Interagency Council on Early Childhood Intervention~~].

(a) A private organization that exists to further the duties and purposes of the Department's ECI mission and programs [~~Council~~] and the Department [~~Council~~] shall enter into a memorandum of understanding (MOU) that contains specific provisions regarding:

(1) the relationship between the private organization and the Department [~~Council~~];

(2) fundraising and solicitation;

(3) the use of all funds and other donations from fundraising or solicitation, minus the legitimate expenses described in the MOU, for the benefit of the Department's ECI Division [~~Council~~];

(4) the maintenance by the private organization of receipts and documentation of all funds and other donations received, including furnishing such records to the Department [~~Council~~];

(5) the furnishing to the Department [~~Council~~] of any audit of the private organization by the Internal Revenue Service or a private firm; and

(6) the conditions under which the Department [~~Council~~] will provide property and/or staff support to the organization to further the duties and purposes of the Department [~~Council~~] and the organization.

(b) The Department [~~Council~~] may assist a private organization in fund raising and solicitation when:

(1) the ultimate use of the funds, less administrative expenses, will benefit early childhood intervention programs and is consistent with and will further the goals and mission of the Department [~~Council~~]; and

(2) such fund raising activity does not violate rules governing standards of conduct between Department [~~Council~~] employees and private donors described in §101.5759 [~~section 621.163~~] of this subchapter (relating to Standards of Conduct for Officers or Employees of the Department [~~Council~~]).

(c) The Department [~~Council~~] may accept from a private organization financial assistance designed to promote early childhood intervention services and programs in the state of Texas. These funds must enhance state funds and not supplant or replace state appropriations. Before the Department [~~Council~~] may accept such assistance, the Commissioner [~~Executive Director~~] must ascertain and document that the acceptance will promote the goals of the Department [~~Council~~], and that the acceptance does not violate the personnel or administrative policies of the Department [~~Council~~].

(d) With regard to all funds received:

(1) The private organization shall maintain receipts and documentation of all funds and other donations received, and shall furnish such documentation to the Department [~~Council~~] on request.

(2) The private organization shall maintain all funds in insured accounts at established financial institutions, unless the organization and the Commissioner of the Department of Assistive and Rehabilitative Services [~~Council Executive Director~~] approve other investments.

(3) State funds held by the organization shall be invested according to the state's Public Funds Investment Act.

(4) The organization shall obtain an independent audit on an annual basis and submit the results to the Commissioner of the Department of Assistive and Rehabilitative Services [~~Executive Director of the Council~~]. Records relating to activities supported by public funds will be subject to public scrutiny.

(5) Funds generated by the organization will be spent in accordance with the organization's established priorities. Department [~~Council~~] employees cannot directly spend organization funds - all organization expenditures will be controlled by the organization and its employees.

(6) Expenditures of funds by the organization shall meet requirements of the source of the funds, if applicable.

(7) The organization may solicit and accept corporate sponsorships and will ensure the sponsorships serve and support the organization and Department's Early Childhood Intervention [~~ECI Board~~] mission. The organization shall establish selection criteria and guidelines when seeking corporate sponsorships and ensure sponsorships serve the public interest and are consistent with the Department's [~~Council's~~] mission.

(8) Fundraising for the organization shall be conducted by organization employees and Board members and not by state employees with regulatory authority over the potential donor or those for whom it could pose a conflict of interest with a potential donor.

(9) No funding generated by the organization shall be used to provide a salary supplement or bonus to any state employee.

(10) The organization shall perform an annual evaluation of its achievement of established goals/objectives to determine the effectiveness of the organization.

§101.5759. Standards of Conduct for [~~Officers or~~] Employees of the Department [~~Council~~].

(a) An [~~officer or~~] employee shall not accept or solicit any gift, favor, or service from a private donor or private organization that might reasonably tend to influence his/her official conduct.

(b) An [~~officer or~~] employee shall not accept employment or engage in any business or professional activity with a private donor or private organization that the [~~officer or~~] employee might reasonably expect would require or induce him/her to disclose confidential information acquired by reason of his/her official position.

(c) An [~~officer or~~] employee shall not accept other employment or compensation from a private donor or private organization that would reasonably be expected to impair the [~~officer's or~~] employee's independence of judgment in the performance of his/her official position.

(d) An [~~officer or~~] employee shall not make personal investments in association with a private donor or private organization that could reasonably be expected to create a substantial conflict between the [~~officer's or~~] employee's private interest and the interest of the Department [~~Council~~].

(e) An [~~officer or~~] employee shall not solicit, accept, or agree to accept any benefits for having exercised his/her official powers on behalf of a private donor or private organization or performed his/her official duties in favor of a private donor or private organization.

(f) The Commissioner of the Department of Assistive and Rehabilitative Services or the Assistant Commissioner for the Division for Early Childhood Intervention Services [~~The Executive Director of the Council or an officer of the Council~~] may be a non-voting member(s) of the board of directors of a private organization that exists to further the duties and purposes of the Department [~~Council~~].

(g) An [~~officer or~~] employee shall not authorize a private donor or private organization to use property of the Department [~~Council~~], unless the property is used in accordance with a contract or memorandum of understanding between the Department [~~Council~~] and the private donor or private organization, or the Department [~~Council~~] is otherwise compensated for the use of the property.

(h) The relationship between a private donor and a private organization and the Department [~~Council~~], including fundraising and solicitation activities, is subject to all applicable federal and state laws, rules and regulations, and local ordinances governing each entity and its employees.

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 June 13, 2006.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050

CHAPTER 108. EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission proposes the repeal and the amendment of the following sections of Title 40, Part 2, Chapter 108, of the rules of the Department of Assistive and Rehabilitative Services, pertaining to the Early Childhood Intervention Services. The following sections will be amended: §§108.21, 108.23, 108.25, 108.27, 108.29, 108.31, 108.33, 108.35, 108.37, 108.39, 108.43, 108.57, 108.59, 108.61, 108.63, 108.65, 108.85, 108.87, 108.89, 108.91, 108.221, 108.223, 108.225, 108.227, 108.229, 108.231, 108.233, 108.261, 108.263, 108.265, concerning Early Childhood Intervention Services. The following section will be repealed: §108.237, concerning Reviews and Administrative Hearings.

The repeal and amendments are being proposed to conform the rules pertaining to Early Childhood Intervention Services to the organizational and operational requirements of House Bill 2292, 78th Legislature, Regular Session, and to conform nomenclature used in the rules to that resulting from consolidation of Health and Human Services Agencies under the Texas Health and Human Services Commission.

In addition, the repeals and amendments accomplish the following:

--removes requirements that are now included in provider contracts,

--streamlines restrictions on physicals for referrals consistent with current law;

--removes a partial listing of eligible medical conditions to instead reference the complete list which is available on the Department of Assistive and Rehabilitative Services website and Appendix;

--adds a requirement from the IDEA reauthorization that transition planning meetings may not occur more than 270 days before the child's third birthday;

--provides for the loss of professional status for early intervention specialists who fail to report timely;

--allows in-house safety and sanitation inspections for non-consumer service areas;

--increases the dollar value threshold for equipment reporting;

--eliminates the requirement that a court reporter prepare a transcript for each hearing to instead require that the hearing be recorded and that a transcript be provided on request;

--revises the ECI Advisory Committee composition and duties, including: replacing legacy agencies with HHS Enterprise agencies, allowing the Governor to have a designee make appointments, aligning the committee's duties with federal requirements, and establishing standard grounds for removal of members who no longer meet qualifications;

--expands the qualifications for parent representatives on the ECI advisory committee to include parents of children with developmental delay, as well as those with developmental disabilities.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeal and amendments will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeal and amendments will be in effect, the public benefit anticipated as a result of adopting the proposed changes will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed for repeal and amendment. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed repeal and amendments will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

SUBCHAPTER A. EARLY CHILDHOOD INTERVENTION SERVICE DELIVERY

40 TAC §§108.21, 108.23, 108.25, 108.27, 108.29, 108.31, 108.33, 108.35, 108.37, 108.39, 108.43

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.21. Purpose.

These sections are intended to implement the provisions of the Interagency Council on Early Childhood Intervention Act, Human Resources Code, Chapter 73, and the Individuals with Disabilities Education Act, Part C (20 U.S.C. Sections 1431-1444) [~~(Public Law 105-17)~~], which established a statewide system of early childhood intervention comprehensive services for children with developmental delay.

§108.23. Definitions.

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

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

(4) Committee--Advisory Committee to the Department concerning early childhood intervention services [~~Interagency Council on Early Childhood Intervention~~]. Its functions are those of the Interagency Coordinating Council described in the Individuals with Disabilities Education Act, 20 U.S.C. Sections 1431-1444 [~~Public Law 105-17~~].

(5) Complaint--A formal written allegation submitted to the department [~~council~~] stating that a requirement of the Individuals with Disabilities Education Act, or an applicable federal or state regulation has been violated.

(6) Comprehensive services--Individualized intervention services, as determined by the interdisciplinary team and listed in the Individualized Family Service Plan (IFSP). Services are further defined in §108.25(5)(C) - (E) [~~§621.23(5)(C)~~ - ~~(E)~~] of this title (relating to Service Delivery Requirements for Comprehensive Services). Programs receiving funds from the Department [~~Interagency Council on Early Childhood Intervention~~] are required to have the capacity to provide or arrange for all services listed in §108.25(5)(C) [~~§621.23(5)(C)~~] of this title (relating to Service Delivery Requirements for Comprehensive Services).

(7) Department [~~Council~~]--The entity designated as the lead agency by the governor under the Individuals with Disabilities Education Act, Part C. The department [~~council~~] has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. The department [~~council~~] has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules. [~~The council board includes eight lay members who are family members of children with developmental delay, appointed by the governor with the advice and consent of the senate, and one member from the Texas Education Agency appointed by the commissioner of education. Five of the lay members must be the parents of children who are receiving or have received early childhood intervention services. The board shall also have fully participating, non voting representatives appointed by the commissioner or executive head of the following agencies: Texas Department of Health (TDH), Texas Department of Human Services (TDHS), Texas Department of Mental Health and Mental Retardation (TDMHMR), Texas Commission on Alcohol and Drug Abuse (TCADA), Texas Department of Protective and Regulatory Services (TDPRS), and the Texas Workforce Commission (TWC).~~]

(8) - (11) (No change.)

(12) Family Educational Rights and Privacy Act of 1974 (FERPA)--20 U.S.C. Section 1232g; 34 CFR Part 99 - Federal law that outlines privacy [~~Requirements for the~~] protection for [~~of~~] parents and children enrolled in the ECI program. FERPA includes rights to [~~under the General Education Provision Act, Section 438, which include~~] confidentiality and restrictions on [~~,~~] disclosure of personally identifiable information, and the right to inspect records.

(13) - (22) (No change.)

(23) Provider--A local private or public agency with proper legal status and governed by a board of directors that accepts funds from the Department [~~Interagency Council on Early Childhood Intervention~~] to administer the Early Childhood Intervention (ECI) Program.

(24) Public agency--The Department [~~Interagency Council on Early Childhood Intervention~~] and any other political subdivision of the state that is responsible for providing early intervention services to eligible children under the Individuals with Disabilities Education Act, Part C.

(25) - (26) (No change.)

(27) Referral date--The date the child's name and sufficient information to contact the family was obtained by the agency receiving

funds for ECI services from the Department [Interagency Council on Early Childhood Intervention].

(28) Service coordinator (case manager)--A staff person with a local ECI provider who is assigned to a child or family who is the single contact point for families, and who is responsible for assisting and empowering families to receive the rights, procedural safeguards, and services authorized by these rules and Department [ECI] policy and procedures. The service coordinator is from the profession most immediately related to the child's or family's needs. (The term profession includes service coordination.)

(29) Services--Individualized intervention services, as determined by the interdisciplinary team and listed in the IFSP. Services are further defined in §108.25(5)(C) - (E) [§621.23(5)(C) - (E)] of this title (relating to Service Delivery Requirements).

(30) - (32) (No change.)

(33) UGMS [UGCMS]--Uniform grant management standards adopted by the governor's Office of Budget and Planning in 1 TAC §§5.141 - 5.167 under the authority of Chapter 783, Government Code [Texas Civil Statutes, Article 4413(32g)].

§108.25. Service Delivery Requirements for Comprehensive Services.

Programs that receive Early Childhood Intervention (ECI) funds for comprehensive services must have written policies and procedures which are implemented and evaluated in each of the following areas.

(1) Client eligibility. The comprehensive program must have written criteria for determining infants and toddlers with disabilities and accepting them into the program.

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

(C) Determination of eligibility shall be as follows.

(i) (No change.)

(ii) Children who have a medically diagnosed physical or mental condition that has a high probability of resulting in developmental delay must be determined eligible by identification of specific conditions with known etiologies and developmental consequences that are included in the list of covered medical conditions approved by the Department.[, including, but not limited to:]

[*(I)* Down syndrome and other chromosomal abnormalities;]

[*(II)* sensory impairments;]

[*(III)* inborn errors of metabolism;]

[*(IV)* microcephaly;]

[*(V)* failure to thrive;]

[*(VI)* seizure disorders; and]

[*(VII)* fetal alcohol syndrome.]

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

(4) Health admission requirement for comprehensive services.

(A) Each child must have an examination by a physician, physicians assistant, an advanced pediatric nurse practitioner or clinician, or a registered nurse in a public health clinic. [The public health clinic may provide physical examinations by a physician who assumes the responsibility for the examination and agrees to be available routinely for consultation to nursing staff, ensures that the registered nurse has the training and adequate skills for performing the physical examination, and reviews periodically the level of performance of the registered nurses administering the physical examination.]

(B) (No change.)

(C) Children who will be participating in any ECI group activities must have immunizations appropriate to the child's age as recommended by the Texas Department of State Health Services (DSHS) [Health]. If medical or religious reasons contraindicate immunization requirements, documentation to that effect must be maintained by the program and the family must be notified that their infant could be excluded from group activities if a contagious outbreak occurs.

(5) Individualized family service plan (IFSP). An IFSP must be developed for each child eligible for comprehensive services and the child's family. Services must be delivered in conformity with an IFSP.

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

(C) Required early intervention comprehensive services. Individualized intervention services, as determined by the interdisciplinary team, must be provided under public supervision in all geographic areas of the state to meet the developmental needs of the child, and to address the resources, priorities, and concerns of the family related to enhancing the child's development. All services identified as needed for the child by the interdisciplinary team must be addressed in the IFSP. With concurrence of the family, all services identified as needed by the family may be addressed in the IFSP. The array of services must include, but is not limited to, the following:

(i) - (iii) (No change.)

(iv) developmental services [special instruction];

(v) - (xx) (No change.)

(D) Types of services. For the purpose of this chapter the following types of services apply.

(i) - (xi) (No change.)

(xii) Developmental [Special instruction] services include:

(I) - (IV) (No change.)

(xiii) - (xvi) (No change.)

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

(H) Contents of the plan. Programs which receive funds from the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services [Interagency Council on Early Childhood Intervention] must have a written IFSP for each child developed jointly by the interdisciplinary team including the child's parents.

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

(iii) The IFSP must include a statement of the major [strategies and] outcomes expected to be achieved for the child and family, strategies to be implemented and the criteria, procedures, and timelines used to determine:

(I) - (II) (No change.)

(iv) - (vii) (No change.)

(I) Transition. The IFSP must include the steps to be taken to support the transition of the child to public school preschool services (Part B of the Individuals with Disabilities Education Act),

upon reaching the age of three, or to other services that may be available, if appropriate. The steps required include:

(i) - (iii) (No change.)

(iv) with the approval of the family, the convening of a conference among the local ECI provider [~~lead agency~~], the family, and the local educational agency at least 120 days, but no more than 270 days, before the child's third birthday, or, if earlier, the date on which the child is eligible for the preschool program under Part B of the Individuals with Disabilities Education Act to:

(I) - (II) (No change.)

(J) - (K) (No change.)

(L) Reimbursement for comprehensive service.

(i) All programs will be required to establish third-party billing systems, determine client eligibility for all third-party reimbursement sources, and complete and submit reimbursement requests to corresponding third-party sources, in accordance with clause (iii) of this subparagraph. Third parties include, but are not limited to, health maintenance organizations (HMOs), private insurance, Medicaid programs (Texas Health Steps [~~Early Periodic Screening, Diagnosis, and Treatment Program (EPSDT)~~] and Targeted Case Management), Children's Health Insurance Program and the Children with Special Health Care Needs Program [~~and the Chronically Ill and Disabled Children's Program~~].

(ii) Certain [~~All ECI-required comprehensive~~] services must be available at no cost to families, including, but not limited to, child find, evaluation and assessment, service coordination, and administration and coordination related to the development, review, and evaluation of IFSPs. The determination of the duration, scope, and nature of the services provided will not be based on parental consent to the use of funding resources for which they may be eligible.

(iii) (No change.)

(iv) Programs will be required to encourage the family to apply for all applicable funding resources for which they are potentially eligible including, but not limited to, Medicaid and CHIP. No child may be denied services because of the family's refusal to apply for Medicaid or other funding resources for which they may be eligible.

§108.27. Program Administration for Comprehensive Services.

(a) (No change.)

(b) Program requirements.

(1) Child find. Each program must develop and implement a child find plan which includes:

(A) ongoing contact and coordination with primary referral sources and other service providers, including, but not limited to:

(i) - (v) (No change.)

(vi) child [~~day~~] care programs;

(vii) - (xi) (No change.)

(xii) any program funded under the Developmental [~~Development~~] Disabilities Assistance and Bill of Rights Act; and

(xiii) (No change.)

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

(2) Required services. Each comprehensive program must provide an evaluation and assessment, service coordination, and Individualized Family Service Plan (IFSP) and comprehensive services. Each program funded by the Department for comprehensive ECI services and follow along [~~Interagency Council on Early Childhood Intervention~~] must have the capacity to provide or arrange for all services described in §108.25(5)(C) [~~§621.23(5)(C)~~] of this title (relating to Service Delivery Requirements for Comprehensive Services). All services which the child or family receives, regardless of the funding sources, must be considered toward meeting the service needs of the child as defined in the child's IFSP. No ECI funding can be used to arrange, provide, or duplicate a service for which other funding sources, public or private, are available and could be used.

(3) Public awareness. Each program must develop and implement a public awareness plan which includes:

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

(D) Programs [~~By September 1, 2001 programs~~] must implement the use of the ECI logo and slogan and meet requirements listed in the ECI Graphic Standards Manual for all materials used by the ECI program for marketing, public awareness, child find, promotion, public education, and program correspondence related to the ECI program. Programs must use "ECI" as part of their program name.

(E) The ECI logo and slogan are for use by providers under contract with ECI or by entities not under contract when directed or authorized by the Department [~~Interagency Council on Early Childhood Intervention~~]. All use must be in accordance with the ECI Graphic Standards Manual.

(4) Interagency coordination. Each program must develop and implement an interagency coordination plan which includes, as a minimum, procedures to:

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

(5) Staff composition and qualifications.

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

(D) The [~~As of September 1, 1995, the~~] following qualifications and responsibilities apply to [~~for~~] EIS Professionals [~~are effective~~].

(i) (No change.)

(ii) Scope of responsibilities. Early Intervention Specialist Professionals (Entry Level and Fully Qualified EIS Professionals) may represent the discipline of early intervention and may be one of the two required professionals on an Interdisciplinary Team (IDT). EIS Professionals may conduct family intake processes, participate in determining eligibility, conduct developmental screenings, evaluations and assessments, participate in the development and implementation of Individualized Family Service Plans, and provide service coordination, developmental services [~~special instruction~~], and family education services.

(iii) Supervision. The Entry Level EIS Professionals must receive a minimum of one hour per week of direct supervision from a fully qualified professional until successful completion of [~~they have successfully completed~~] the requirements to be Fully Qualified EIS Professionals. The supervising professionals may be from any of the disciplines related to early intervention and must meet the highest state standards for their profession.

[~~*(iv)* EIS Professionals and Provisional EIS Professionals who were hired before September 1, 1995, and are currently employed in ECI-funded programs, who failed to complete the required application process are not considered EIS Professionals. They will no longer be able to independently perform the scope of responsibilities of EIS Professionals as defined in clause (ii) of this subparagraph. To obtain status as Fully Qualified EIS Professionals, they must enter the~~

system as Entry Level EIS Professionals and complete the conditions defined in clause (v) of this subparagraph.]

(iv) [(v)] To [Professional recognition for EIS Professionals hired after September 1, 1995. Persons hired as EIS Professionals after September 1, 1995, who are not Fully Qualified EIS Professionals are identified as Entry Level EIS Professionals and to] be recognized as a Fully Qualified EIS Professional an individual [Professionals] must:

(I) meet the educational requirements of a bachelor's degree which includes a minimum of 18 hours of course credit relevant to early intervention service provision and submit a statement of intent to complete the required demonstrations of early intervention knowledge and skills and apply for full professional recognition;

(II) within nine months of [their hiring] date of hire, submit a progress report of the demonstration of early intervention knowledge and skills signed [completed] by an [their] ECI program director and supervisor;

(III) within two years of [their hiring] date of hire, complete the Competency Demonstration System [required demonstrations of early intervention knowledge and skills] and submit documentation to the state office; and

(IV) complete the required processes in subclauses (I) and (II) of this clause, or lose professional status and privileges. Loss of professional status means the individual will [If the required processes are not completed as specified in subclauses (I) - (III) of this clause; they will] no longer be able to independently perform the scope of responsibilities of an EIS Professional [Professionals] as defined in clause (ii) of this subparagraph.

(v) [(vi)] Continuing professional education requirements. EIS Professionals must meet annual continuing professional education requirements to maintain their status. Continuing professional education consists of the planned individual learning experiences as described in the EIS Professional's annual Individual Professional Development Plan (IPDP) which shall include completion of a minimum of ten contact hours of approved continuing professional development education experiences.

(vi) [(vii)] EIS Professionals must submit annually the record of their continuing education on or before the anniversary of the certificate date. Failure to submit the record of continuing education by the anniversary date will result in a loss of professional status and privileges.

(vii) [(viii)] Registry. The Department [Texas Interagency Council on Early Childhood Intervention] shall issue certificates of recognition to and maintain a registry of individuals who are enrolled in and successfully complete the requirements to be Fully Qualified EIS Professionals.

(viii) [(ix)] Grievance process. Each local agency shall have a procedure for local resolution of personnel grievances. A party who has a disagreement with the local decision regarding his qualifications or status as an EIS Professional shall have an opportunity for dispute resolution at the local level. Agencies may use existing personnel grievance procedures to resolve disagreements and will inform their staff of their existence.

(ix) [(x)] Complaints. Any individual or organization may file a complaint with the Department [Council] alleging that a requirement of the applicable federal and/or state regulations has been violated as provided in §108.59 [§621.43] of this title (relating to Confidentiality).

(E) The director of the local ECI program must provide and document the amounts of appropriate supervision for all ECI contract staff and program staff to ensure the philosophy and intent of these regulations are met as adopted by the Department [Interagency Council on Early Childhood Intervention].

(F) (No change.)

(6) (No change.)

(7) ECI child service standards.

(A) (No change.)

(B) Programs which provide child care as defined by the Texas Department of Family and Protective Services (DFPS) [Human Services (TDHS)] must meet licensing standards of DFPS [TDHS].

(8) Child health standards. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in each of the following areas.

(A) (No change.)

(B) Infectious disease prevention and management.

(i) All programs must adhere to the procedures of the universal precautions for the Texas Early Childhood Intervention Program, as issued by the Department [council].

(ii) All programs must comply with the Texas Communicable Disease Prevention and Control Act, Chapter 81, Health and Safety Code [Texas Civil Statutes, Article 4419b-1].

(iii) (No change.)

(C) (No change.)

(9) Safety regulations regarding emergencies for all buildings where ECI programs are housed. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated [in the following areas].

(10) Accessibility and safety. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated in the following areas.

(A) (No change.)

(B) Buildings where the ECI program is housed (including offices) must be inspected annually by a local or state fire authority. A safety and sanitation inspection must be completed annually [by an entity outside of the ECI program using an approved ECI checklist]. If the fire or safety and sanitation inspection indicates that hazards exist, these hazards must be corrected.

(C) - (E) (No change.)

(11) - (12) (No change.)

(13) Staff health regulations. Programs that receive ECI funds must have written policies and procedures which are implemented and evaluated [in the following areas].

(14) (No change.)

(15) Data collection and reporting. The provider shall collect and report data as required by [council] rules, the contract, and applicable instruction manuals. Reports shall be submitted in the form, manner, and timeframe specified by the department [council]. Required data may include, but is not limited to: client data, including personally identifiable information regarding children served or referred; services received by individual eligible children; family information, including family size and income; service provider information, including information about individual employees or subcontracted employ-

ees of the provider; agency and ECI program revenue and expenditure information; and any other information that might be necessary by the department [council] to perform their legally authorized functions, including the documentation of services planned and provided, billing and reimbursement functions, and other purposes.

(16) The Texas Kids Intervention Data System (TKIDS) [(T-KIDS)] and ECI data standards, established by the department [council] under Texas Human Resources Code §73.0051(k), shall be used by ECI providers to submit client and services information to the department [council]. [The data standards and reporting requirements, including reporting deadlines, will be established with local provider input and will be published annually and disseminated to providers. The council may approve changes to the data standards or requirements outside of this process when necessary for efficient implementation of data collection.]

§108.29. Application and Program Requirements for Comprehensive Services.

(a) Proposal format. The department [council staff] shall [annually] disseminate a funding application. [document entitled "Funding Application."] Copies are available upon request from the Department of Assistive and Rehabilitative Services (DARS), Division for Early Childhood Intervention Services [Interagency Council on Early Childhood Intervention (council), 4900 North Lamar Boulevard, Austin, Texas 78751-2399].

(b) Application content. The application shall consist of the forms and related material that the applicant shall complete to apply to receive funding for performing program services. Applications must be submitted for a [one-year] period specified in the funding application instructions [unless the Funding Application Instructions specify otherwise].

(c) (No change.)

(d) Program income.

(1) Program income is defined as all revenue directly generated by ECI contract-supported activities or earned only as a result of the ECI contract. It includes, but is not limited to, Medicaid Targeted Case Management (TCM), Medicaid Texas Health Steps/Comprehensive Care Program (THSteps/CCP), Medicaid Administrative Claiming (MAC), Children's Health Insurance Program (CHIP), Children with Special Health Care Needs (CSHCN) funds, and private insurance, and family cost share revenue.

(2) Program income also includes proceeds from the sale of equipment and [or] income collected by a subcontractor on behalf of the provider from Medicaid, CHIP or private insurance and accepted as payment in full for ECI services.

[(3) Program income excludes third party revenue generated from Developmental Rehabilitation Services (DRS).]

(3) [(4)] All program income collected by the ECI program must be reported and used for eligible ECI program expenditures.

(4) [(5)] Program income claims, collections, uncollected amounts, and prior year collections must be reported cumulatively by source on quarterly and annual financial reports. The ECI provider is accountable for and must report total program income on an accrual basis by the date of service. Program income earned during the state fiscal year ending August 31 and collected no later than October 31 of the following fiscal year must be used for allowable program expenses in the fiscal year in which the service was provided and the revenue was earned.

(5) [(6)] Interest earned on program income will be used to supplement the funds already committed to the program.

(6) [(7)] Cumulative collections are total program income received from current fiscal year claims. Cumulative uncollected program income is income not received for the current fiscal year cumulative claims. Accrued revenues must [should] be adjusted through periodic write-off of uncollectible amounts.

(e) Maintenance of Effort

(1) (No change.)

(2) The ECI provider's MOE may include, if applicable and allowable, the following:

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

(D) Program income including [and/or] third party reimbursements.

(3) (No change.)

(4) Providers that have not previously contracted with the department [council] will be expected to achieve the MOE level as designated in their contract.

(5) Each program that has previously contracted with the department for ECI services [council] is required to budget and expend at least the same amount of MOE, [from each revenue source other than program income and in-kind and cash contributions,] as was actually expended [from that source] in the preceding fiscal year, and as specified in their approved funding application and contract.

(A) To determine the amount of MOE which must be maintained, subtract the ECI contract funds, program income, [and] in-kind contributions and unsolicited cash contributions from the total revenue [program costs] used for [the] ECI program expenditures. The remaining funding, known as the "effective MOE," must meet or exceed the previous year's expenditure level [by specific source of funds].

(B) (No change.)

(6) MOE will be reviewed by the department [council] and the provider's independent [external] auditor to ensure that the effective MOE is maintained at the appropriate level.

(A) ECI providers will report program revenue and expenditures by funding source on annual financial reports submitted to the department [council]. The department [council] will review MOE reporting throughout the year and as part of the final closeout process and follow up with providers to resolve any concerns about compliance with this policy. Settlement related to MOE shortages will be required prior to the closeout for each contract year.

(B) (No change.)

(7) The department [council] may make exceptions to the requirement that effective MOE must be maintained at a level equal to or above the level of that source in the previous year as a result of:

(A) (No change.)

(B) Unusually large amounts of funds [Funds] expended for long-term purposes such as the acquisition of equipment [or the construction of facilities];

(C) - (D) (No change.)

(8) Increases in program income revenues from one fiscal year to the next cannot be used to supplant other effective MOE funding sources. Supplanting is defined as the withdrawal of local, private, or other public funds for services that were available during the previous year of funding. All program income collected by the ECI program must be reported and used for eligible ECI program expenditures. [In-

~~creases in one revenue source used as MOE cannot be used to replace, supplant or reduce the revenue obligation of another MOE source.~~]

(9) Voluntary displacement of MOE funds is not allowed. Redistribution, reallocation or removal of a specific revenue source is only acceptable if the net amount of effective MOE is maintained [~~prohibited unless the revenue source is discontinued, decreased, or no longer available to the provider~~].

(f) Allowable costs. The following is intended to be a summary of the most frequently requested allowable costs, and should not be construed to be complete. Exclusion of a particular item from the allowable list does not necessarily mean it is unallowable. All costs to be reimbursed by ECI or applicant share must go exclusively for conducting the program. A complete list of expenditures is listed in the Uniform Grant Management Standards (UGMS):

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

(5) equipment--tangible nonexpendable personal property with an acquisition cost of $5,000 [~~$1,000~~] or greater per unit and a useful life of more than one year[~~, with the following exceptions: facsimile machines, stereo systems, still and video cameras, VCRs and VCR/TV combinations, microcomputers, printers, and digital cameras. These items will be considered equipment if their unit cost is $500 or greater~~].

(6) "Other expenses," such as:

(A) (No change.)

(B) depreciation--allowable whenever real or personal property are used for the benefit of the program with department [~~council~~] staff approval;

(C) - (E) (No change.)

(F) taxes--allowable only for those taxes which the ECI provider is required to pay for employment services, travel, renting, or purchasing for the program;

(G) - (L) (No change.)

(g) Unallowable costs.

(1) The following is intended to be a summary of the most frequently requested unallowable costs, and should not be construed to be complete. Exclusion of a particular item from the unallowable list does not necessarily mean it is allowable.

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

[~~(G) Interest and other financing costs;~~]

(G) [~~(H)~~] Legislative expense;

(H) [~~(I)~~] Under recovery of costs under grant agreements;

(I) [~~(J)~~] Fund-raising expenses and investment management costs;

(J) [~~(K)~~] purchase of vehicles;

(K) [~~(L)~~] lobbying; and

(L) [~~(M)~~] Other costs not included in the approved ECI budget.

(2) (No change.)

§108.31. Financial Management and Recordkeeping Requirements.

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

(c) Reports and data submission.

(1) All providers will be expected to submit [~~enrollment and service delivery information on a monthly basis,~~] quarterly and final financial [~~and program performance~~] reports by the specified date and in the specified format[~~, and must participate in the Texas Kids Intervention Data System as specified in §621.23 (15) of this title (relating to Service Delivery Requirements for Comprehensive Services)~~].

(2) The department [~~council~~] will establish monthly, quarterly and final report deadlines at the beginning of each fiscal year and will notify providers in their contract.

(3) The department [~~council~~] is authorized to withhold payment and return vouchers to any provider whose reports are delinquent.

(d) Record Availability and Review [~~Reviews~~].

(1) Program review.

(A) DARS [~~The council~~] staff will conduct reviews of providers to determine compliance with the contract and evaluate the work performed by the ECI program. These include desk reviews and on-site reviews.

(B) Program review will include a review of policies and procedures, individual records of services provided to children and families, documentation of data submitted to DARS [~~the council~~], contact with parents, staff, community members, fiscal records, and documentation of other requirements of the ECI contract, rules, and policies.

(2) Financial review. DARS [~~The council~~] staff will conduct a financial review to ascertain that program costs are:

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

(3) Record availability. Providers and subcontractors shall make all [~~All~~] records, books and documents [~~shall be made~~] available to the department's [~~council's~~] monitoring teams.

(e) Audit requirements. Providers shall have a financial audit of the ECI program performed by an independent certified public accountant (CPA) or other independent public accountant licensed by the Texas State Board of Public Accountancy for those fiscal years that include any portion of an ECI contract period. A copy of this audit must be sent to the department [~~council~~] within the earlier of 30 days after receipt from the independent CPA, or nine months after the end of the audit period, unless a longer period is agreed to in advance by the department [~~council~~] or a different period is specified in a program-specific audit guide.

§108.33. Funding Application Submission and Review.

(a) Submission of application.

(1) Applications are deemed received when logged by the department [~~council~~]. The department [~~council~~] staff will review each application to ensure that all parts of the proposal are included.

(2) (No change.)

(3) A completed original and one copy [~~two copies~~] of the application shall be submitted to Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services [~~Interagency Council on Early Childhood Intervention~~], 4900 North Lamar Boulevard, Austin, Texas 78751-2399.

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

(b) Review of Application(s). A "Request for Proposal" (RFP) process may be used to ensure that the department [~~council~~] is obtaining the best value in purchasing services. [~~The council staff will be responsible for making recommendations to the board for approval or denial of all requests.~~]

§108.35. Contract Award.

(a) Following the review process, the department [board] will [meet to] approve funding recommendations. Each applicant will be notified in writing of the department's [board's] decision. The reason for a denial will be communicated in writing to the applicant.

(b) (No change.)

§108.37. Contract.

(a) An approved provider will enter into a contract with the Department of Assistive and Rehabilitative Services (DARS), Division for Early Childhood Intervention Services [Interagency Council on Early Childhood Intervention (council)] prior to being allocated funds. A contract is not fully executed until it has been signed by the department [council] and the provider.

(1) The department [council] shall send the provider two original contracts [signed by the council]. Both copies of the contract must be signed by an official authorized to enter into such agreements on behalf of the governing body. One copy shall be submitted to the department [council] before the start of the contract period and the other shall be maintained by the organization.

(2) The original contract cannot be altered by the ECI provider without department [council] consent. This consent can only be evidenced by authorized officials of both parties initialing and dating the change.

(3) (No change.)

(4) By signing the contract the provider agrees to all terms included therein and to adherence with all applicable statutes, rules, policies and procedures of the department [council], including subsequent amendments.

(b) The contract shall:

(1) contain provisions requiring the provider to comply with the requirements in these sections, including statutes, rules, policies and procedures of the department [council], including subsequent amendments, and the fiscal requirements on the administering, accounting, auditing, and recovering of funds as authorized by the Uniform Grant Management Standards (UGMS);

(2) (No change.)

(3) authorize the department [council] to impose sanctions for noncompliance with contract terms and conditions, statutes, rules, and department [council] policies and procedures in accordance with the provisions of the Human Resources Code, §73.0051;

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

(6) authorize the department [council] to adjust the contract amount [without board approval] when the number of enrolled children on which the budget was based increases or decreases by a specified percentage or number of children.[, and]

[(7) require the provider to notify the council by January 31st of its intent to withdraw as a provider in the next fiscal year.]

(c) (No change.)

(d) The contract shall be concurrent with the current fiscal year, unless the department [board] approves partial year funding due to extenuating circumstances.

(e) Program and fiscal findings documented in department [council] monitoring or other reports must be cleared in accordance with the department [council] policies, provisions in the UGMS and within the time frame specified in the monitoring or other report.

(f) The contract shall identify the county(ies) in which the provider is authorized to perform ECI services and reference the service area approved by the Assistant Commissioner [council staff] within the county(ies).

(1) All requests to change the approved service area must be reviewed and approved by the department [council] staff.

(2) The department [council] will not incur additional expenses for the provision of the same level of services for the same number of children as a result of a request to change a service area.

(3) A request to change the designated service area must be either made during the annual contracting process or be submitted to the ECI Assistant Commissioner [award process or at a regularly scheduled board meeting].

§108.39. Contract Actions.

The Department [Interagency Council on Early Childhood Intervention (council)] may take the following actions with respect to a contract with a provider:

(1) (No change.)

(2) Withhold or reduce payments. The department [council] may withhold or reduce payments to offset any reimbursement made to the provider for any ineligible expenditures not refunded to the department [council] by the provider, or for services that are covered by Medicaid. The department [council] may withhold or reduce payments for noncompliance issues including, but not limited to, the following: failure to submit required program and financial reports, including failure to submit TKIDS [T-KIDS] data, by specified timelines; failure to respond to required corrective actions resulting from monitoring activities; failure to submit independent audit reports as required by applicable OMB Circulars; and failure to meet program requirements as specified in the contract, regulations or policies.

(3) Revise contract terms and provisions. The department [council] may revise contract terms and provisions to accomplish objectives including, but not limited to, the following: establishing additional prior approvals for expenditure of funds by the provider; reducing the contract amount for failure to achieve or maintain the proposed level of service; expending funds appropriately; or providing services as set out in the contract.

(4) Non-renewal of contract after contract term. The department [council] may choose not to issue another contract with a provider after the contract term expires.

(5) Terminate all or part of the contract.

(A) If the department [council] determines that the provider is not, or has not been, in substantial compliance with the contract provisions, applicable federal or state law or regulations, ECI Policies and Procedures, Uniform Grant Management Standards (UGMS) or applicable OMB circulars, the department [council] may propose to terminate part or all of the contract before the term of the contract expires.

(B) If the department [council] proposes to terminate the contract, the department [council] shall notify the provider in writing of the reasons for the proposed termination and give the provider an opportunity to contest the proposed action through a formal hearing. The hearing shall be in accordance with the hearing procedures in §108.41 [§621.31] of this title (relating to Formal Hearing Procedures). The provider may request a hearing by giving written notification to the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services [Interagency Council on Early Childhood Intervention], 4900 North Lamar Boulevard, Austin, Texas 78751-2399. Any questions which the provider might have concerning the proposed action shall be addressed to the Assistant Commissioner of ECI [council's executive director].

(C) The provider has 10 days from the date of the receipt of the notice of proposed termination to request a hearing on a proposed termination under subparagraphs (A) and (B) of this paragraph. If the provider does not request a hearing in writing within the 10-day period, the provider shall be deemed to have waived the hearing and the department [~~council~~] will proceed to terminate the contract.

(D) Between the time a provider files a request for a hearing and the final decision of the department [~~board~~], any funds eligible for distribution may be retained at the sole discretion of the department [~~board~~]. In the event the department's [~~board's~~] final decision is favorable to the provider, the eligible funds shall be promptly distributed to the provider. In the event the department's [~~board's~~] final decision is adverse to the provider, the funds may be withheld.

(E) No contract will be terminated prior to the final decision of the department [~~board~~] following a hearing provided under these sections if such a hearing is requested.

(6) (No change.)

§108.43. Waiver of Program Standards for All ECI Providers Funded by the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services [~~Interagency Council on Early Childhood Intervention~~].

(a) When under an unusual circumstance, a provider funded by the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services [~~Interagency Council on Early Childhood Intervention~~] wishes to request approval of a waiver from adherence to an Early Childhood Intervention (ECI) policy, the provider must submit to the ECI Assistant Commissioner [~~assigned program or fiscal consultant~~] a written request which includes the following:

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

(b) The appropriate consultants will review the request and forward a recommendation within 10 working days to the Assistant Commissioner [~~ECI executive director~~] for assignment to the waiver review committee.

(c) (No change.)

(d) The waiver review committee will consist of the Assistant Commissioner for Early Childhood Intervention Services, the designated representative of the Assistant Commissioner [~~ECI program executive director, the ECI board chairperson, the director of the Provider Relations Division of the ECI Program~~], and any other person appointed by the Assistant Commissioner [~~executive director~~]. The recommendation of the waiver committee will be presented to the department [~~at the next scheduled board meeting for full board review. All decisions will be made by majority vote~~].

(e) The program requesting the waiver will be informed of the date of the waiver committee and department [~~council~~] meetings and invited to attend. Attendance is not expected or required.

(f) The program requesting the waiver will be notified by mail within five working days of the department's [~~council's~~] decision, including the effective date of the decision.

(g) - (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 June 13, 2006.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 424-4050

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SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §§108.57, 108.59, 108.61, 108.63, 108.65

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.57. Early Childhood Intervention [~~Council~~] Procedures for Resolving Complaints.

(a) An individual or organization may file a complaint with the Department of Assistive and Rehabilitative Services (DARS), Division for Early Childhood Intervention Services [~~Interagency Council on Early Childhood Intervention (council)~~] alleging that a requirement of the Individuals with Disabilities Education Act, Part C (Act) or applicable federal and/or state regulations has been violated. The complaint must be in writing, be signed, and include a statement of the facts on which the complaint is based.

(b) A complaint may be filed directly with the department [~~council~~] without having been filed with the local provider.

(c) Procedures for receipt of complaint are as follows.

(1) All complaints received by the department concerning ECI services [~~council~~] shall be forwarded to the Assistant Commissioner, Division for Early Childhood Intervention Services [~~deputy executive director~~]. The Assistant Commissioner [~~deputy executive director~~] will log and assign all complaints, monitor the resolution of those complaints, and maintain a copy of all complaints for a five-year period.

(2) The department [~~council~~] will have the following information entered in the data file: name of complainant, name of program if applicable, date received, type of complaint, action taken, followup, and case-closed date. Letters of acknowledgment will be mailed by the Assistant Commissioner [~~deputy executive director~~] to the program and to the complainant or to the third party if the complaint was forwarded by someone other than the complainant, such as the governor's office.

(3) - (4) (No change.)

(d) Procedures for investigation and resolution of complaints.

(1) After receipt of the complaint, the Assistant Commissioner [~~deputy executive director~~] will assign a staff person to conduct an individual investigation, on-site if necessary, to make a recommendation to the Assistant Commissioner [~~executive director~~] for resolution of the complaint.

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

(2) Within 60 days of the receipt of the complaint the Assistant Commissioner [~~executive director~~] must resolve the complaint.

(3) (No change.)

(4) Complainants shall be informed in writing of the final decision of the Assistant Commissioner [executive director] and of their right to request the secretary of the United States Department of Education to review the final decision of the executive director. The Assistant Commissioner's [executive director's] written decision to the complainant will address each allegation in the complaint and contain:

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

(5) To ensure that effective implementation of the Assistant Commissioner's [executive director's] final decision, the Assistant Commissioner [deputy executive director,] will assign a staff person to provide technical assistance and appropriate followup to the parties involved in the complaint to achieve compliance with any corrective actions when necessary.

(6) In resolving a complaint in which it finds a failure to provide appropriate services, the Assistant Commissioner [executive director] will remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and appropriate future provision of services for all infants and toddlers with disabilities and their families.

(7) When a complaint [compliant] is filed, the Assistant Commissioner, Division for Early Childhood Intervention Services [deputy executive director] will offer mediation services as an alternative to proceeding with the complaint investigation. Mediation may be used when both parties agree. A parent's right to a due process hearing or complaint investigation will not be denied or delayed because they chose to participate in mediation. The complaint investigation will continue and be resolved within 60 days even if mediation is used as the resolution process.

§108.59. Confidentiality.

The department [council] and each ECI program providing comprehensive services have the following responsibilities in regard to confidentiality of information.

(1) Notice to parents.

(A) The department [council] shall develop a document which is adequate to fully inform parents about the following requirements:

(i) (No change.)

(ii) a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the department [council] intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(iii) - (iv) (No change.)

(B) (No change.)

(2) Confidentiality and procedural safeguards. Each program shall distribute the document developed by the department [council] to all parents and ensure that they are fully informed about requirements related to confidentiality and procedural safeguards.

(3) Access rights.

(A) The parents of a child eligible under this chapter must be afforded the opportunity to inspect and review any Early Childhood Intervention (ECI) records relating to evaluations and assessments, eligibility determination, development and implementation of Individualized Family Service Plan (IFSPs), individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family. Records are the records covered by the Family Educational Rights and Privacy Act of 1974, Title 20, United States Code Annotated, section 1232g [§123g]. Any participating agency, institution, or program which collects, maintains, or uses personally identifiable information [of] from which information is obtained for the purpose of determining eligibility for or providing early intervention services will be subject to these provisions. The program shall comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to the identification, evaluation, or placement of the child, and in no case, more than 45 days after the request has been made.

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

(4) - (11) (No change.)

(12) Consent.

(A) (No change.)

(B) A provider may request that parents provide a release to share information with others for legitimate purposes. However, when such a release is sought:

(i) - (iv) (No change.)

(v) the release must be time-limited not to exceed one year; and

[*(vi)* for the purpose of eligibility screening, as a part of the Texas Eligibility Screening System (TESS), parents may consent to any information entered in the TESS system being released for a three-year period. Parents must be informed that participation in TESS is voluntary and their decision to participate shall have no effect on their ECI eligibility or service provision; and]

(vi) [*(vii)*] if the parent refuses to consent to the release of all or some personally identifiable information, the program will not release the information.

(C) (No change.)

(13) - (17) (No change.)

§108.61. Primary Referral Requirements.

All primary referral sources must refer a child under age three who may be in need of and/or qualify for comprehensive early intervention services. Referrals must be within two working days of identification, and must be made to a contracted provider for evaluation and assessment of the child. Primary referral sources include:

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

(4) child [day] care programs;

(5) - (8) (No change.)

§108.63. Administrative Hearings Concerning Individual Child Rights.

(a) Purpose. This section is intended to bring the procedures for hearings of the department [council] into compliance with Part C of the Individuals with Disabilities Education Act, and the applicable federal regulations, 34 Code of Federal Regulations §303.1 et seq. This section supplements existing department [council] rules governing hearings and is intended to be applied together except where a conflict exists, in which case this section shall prevail.

(b) Definition. The term "public agency," when used in this section refers to the department [council] and any other political subdivision of the state responsible for providing early childhood services to eligible children and their families.

(c) (No change.)

(d) Request for hearing.

(1) (No change.)

(2) The request for hearing shall be in writing and filed with the ECI Assistant Commissioner [council]. The request for hearing shall be deemed filed when actually received by the ECI Assistant Commissioner [council].

(e) Impartial hearing officer.

(1) Hearings shall be conducted by an impartial hearing officer appointed by the ECI Assistant Commissioner [Early Childhood Intervention (ECI) executive director]. The hearing officer shall be a person who is licensed to practice law in the State of Texas, and who:

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

(2) The person shall not be an employee of the department [council] or any program involved in the provision of services or care to the child or the child's family, or have a personal or professional interest which would conflict with his or her objectivity in the hearing.

(3) (No change.)

(f) (No change.)

(g) Hearing procedures.

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

(4) The hearing shall be recorded by the hearing officer. A transcript of the recording will be provided to the parties upon request. [a reporter who shall immediately prepare and transmit a written or electronic verbatim record of the evidence to the hearing officer with copies to the parties. The hearing officer shall instruct the reporter and the parties to delete all personally identifiable information from the transcription and from all evidence submitted.]

(5) The hearing officer may issue subpoenas and commissions to take depositions pursuant to the Government Code, Chapter 2001. Subpoenas and commissions to take depositions shall be issued in the name of the department [council].

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

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

§108.65. Opportunities for Citizen Participation.

In addition to other procedures listed in §101.5607 [§621.5] of this title (relating to Public Participation) and in §108.63 [§621.46] of this title (relating to Administrative Hearings Concerning Individual Child Rights), citizens, including individuals with disabilities and parents of infants and toddlers with disabilities have the opportunity to:

(1) Participate [voice concerns] through [public] representation on the ECI Advisory Committee [and board];

(2) Attend and make public comments at ECI Advisory Committee meetings (notification of all Advisory Committee meetings and agenda items are published in the *Texas Register*) [attend and make public comments at board meetings (notification of all board meetings and agenda items are published in the *Texas Register*)];

(3) attend DARS Council meetings and provide public comment on all proposed rules; and

(4) submit a petition requesting the adoption of rules.

(A) All petitions proposing the adoption of [ECI] rules shall be submitted in writing to the Commissioner [ECI executive director]. The petition shall contain the following:

(i) - (iii) (No change.)

(B) Requests will be reviewed by the Department [ECI] staff and recommendation for action will be presented to the Commissioner [board] for 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.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER C. EARLY CHILDHOOD INTERVENTION ADVISORY COMMITTEE

40 TAC §§108.85, 108.87, 108.89, 108.91

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.85. Purpose.

The purpose of these sections is to establish the size, composition, terms of office, duties, and procedures of an advisory committee to assist the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services [Interagency Council on Early Childhood Intervention board] in its duties. The sections implement the provisions in:

(1) the Human Resources Code, §73.004, concerning an advisory committee to assist the department [board]; and

(2) the federal regulations covering an advisory committee to the department [board] in 34 Code of Federal Regulations, Part 303, Subpart G.

§108.87. Size, Composition, and Terms of Office.

(a) Size. The advisory committee shall consist of 24 members which the governor, or the governor's designee, shall appoint.

(b) Composition. The advisory committee shall be composed as follows.

(1) Official members must include:

(A) at least seven parents, including minority parents of infants or toddlers with developmental disabilities or delays or children with developmental disabilities or delays aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with developmental disabilities. At least one such member shall be a parent of an infant or toddler with a developmental disability or delay or a child with a developmental disability or delay aged six or younger, and no parent may be an employee of an early childhood intervention funded program;

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

(E) at least one representative from each of the following agencies and public program: the Health and Human Services

Commission, The Department of Assistive and Rehabilitative Services, the Department of Aging and Disabled Services, the Department of State Health Services, the Department of Family and Protective Services [~~the Texas Department of Public Health; the Texas Department of Mental Health and Mental Retardation; the Texas Department of Protective and Regulatory Services~~]; the Texas Education Agency; the Texas Department of Insurance; the Texas Workforce Commission and Head Start. The representative must have sufficient authority to engage in policy planning and implementation on behalf of his or her agency. The Texas Education Agency representative must be responsible for preschool services to children with disabilities;

(F) - (H) (No change.)

(2) Ex officio members may be appointed by the department [~~Board~~] to perform specific, time-limited tasks as needed. The department [~~Board~~] determines voting status of ex officio members.

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

§108.89. Advisory Committee Duties.

(a) The advisory committee shall:

(1) advise and assist the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services [~~Interagency Council on Early Childhood Intervention board~~] in the development and implementation of the policies that constitute the statewide ECI system;

(2) advise and assist the state educational agency regarding appropriate services and the transition of toddlers with developmental disabilities to services provided under IDEA [~~Public Law 102-119~~], Part B, 20 U.S.C. Sec. 1411 - 1419 to the extent such services are appropriate;

~~[(3) advise and assist the board and TEA regarding the provision of appropriate services for children aged birth to five, inclusive;]~~

(3) [~~(4)~~] assist the department [~~council~~] in achieving the full participation, coordination, and cooperation of all appropriate public agencies in the state; and

(4) [~~(5)~~] assist the department [~~board~~] in the effective implementation of the statewide system, by establishing a process that includes:

(A) seeking information from service providers, case managers (service coordinators [~~coordinator~~]), parents, and others about any federal, state, or local policies that impede timely service delivery; and

(B) taking steps to ensure that any [~~identified~~] policy problems identified in subparagraph (A) of this paragraph are resolved; and

(5) [~~(6)~~] to the extent appropriate, assist the department [~~board~~] in the resolution of disputes.

(b) The advisory committee shall advise and assist the department [~~board~~] in the:

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

(c) The advisory committee shall advise and assist the department [~~board~~] in the preparation of applications under this chapter, and amendments to those applications.

(d) The advisory committee shall:

(1) with assistance from the department [~~board~~] prepare an annual report to the governor and to the secretary of the United States Department of Education (secretary) on the status of early intervention programs operated within the state for children eligible under this chapter and their families; and

(2) (No change.)

(e) (No change.)

(f) The committee may advise and assist the department and the Texas Education Agency regarding the provision of appropriate services for children aged birth to five, inclusive.

§108.91. Advisory Committee Procedures.

(a) Notice, frequency, and location of meetings.

(1) All advisory committee meetings are subject to the Government Code, Chapter 551 [~~(Code)~~]. Written notice of the date, time, place, and subject of each meeting shall be posted with the Texas Register Division, secretary of state's office, as required by the Code.

(2) The Assistant Commissioner [~~executive director, Early Childhood Intervention Program,~~] shall send a copy of the notice of each meeting to each advisory committee member at least one week prior to the meeting.

(3) Meetings will be held at least quarterly and generally will be held in Austin.

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

(h) Absences from meetings. The Department of Assistive and Rehabilitative Services [~~Interagency Council on Early Childhood Intervention~~] may recommend to the governor the removal of any advisory committee member who is absent from more than half of the regularly scheduled meetings of the advisory committee that the member is eligible to attend during each calendar year or is absent from more than two consecutive regularly scheduled meetings that the member is eligible to attend.

(i) Eligibility. Official members must maintain the qualification for appointment specified in §108.87 of this title (relating to Size, Composition, and Terms of Office). The Chair shall notify the ECI Assistant Commissioner of the need to request a replacement appointed by the Governor. An official member's position becomes vacant if the member no longer meets the qualifications for appointment.

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

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SUBCHAPTER D. GENERAL PROVISIONS FOR CASE MANAGEMENT SERVICES FOR INFANTS AND TODDLERS WITH DEVELOPMENTAL DISABILITIES

40 TAC §§108.221, 108.223, 108.225, 108.227, 108.229, 108.231, 108.233

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Com-

missioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.221. Introduction.

Targeted Case Management Services for Infants and Toddlers with Developmental Disabilities are included in the Texas Medical Assistance Program (Medicaid). The general operation of the Texas Early Childhood Intervention (ECI) program is governed by the Department of Assistive and Rehabilitative Services [~~Texas Interagency Council on Early Childhood Intervention Services~~].

§108.223. Definitions.

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

(1) (No change.)

(2) Department [~~Board~~]--The entity designated as the lead agency by the Governor under 20 U.S.C. Sec. 1431-1444 [~~Public Law 102-119~~]. The Department of Assistive and Rehabilitative Services [~~Board~~] has the final authority and responsibility for the administration, supervision, and monitoring of programs and activities under this system. The Department [~~Board~~] has the final authority for the obligation and expenditure of funds and compliance with all applicable laws and rules.

(3) - (4) (No change.)

(5) Case manager (service coordinator)--An Early Childhood Intervention (ECI) local program staff person who is assigned to a child and[~~/or~~] family, who is the single contact point for families, and who is responsible for assisting and empowering families in accessing services and coordinating those services.

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

(9) Early Childhood Intervention (ECI) services--Individualized intervention services provided to children from birth to age three, and their families, as:

(A) (No change.)

(B) provided in accordance with the rules of the Department [~~Texas Interagency Council on Early Childhood Intervention Services~~] in Chapter 108 [~~Chapter 621~~] of this title (relating to Early Childhood Intervention).

(10) - (19) (No change.)

§108.225. Reimbursable Services.

(a) Targeted Case management services are reimbursable to Medicaid providers who meet the conditions for provider participation as specified in §108.229 [~~§621.125~~] of this title (relating to Conditions for Case Management Provider Participation). Reimbursable case management services include face-to-face and telephone contacts with the child's caregiver on behalf of the child, or with other service providers or professionals on behalf of the child, for the purpose of assisting that child in gaining access to needed medical, social, educational, developmental, and other appropriate services. Case management providers are paid one flat monthly rate each month in which at least one reimbursable case management contact occurred.

(b) (No change.)

§108.227. Recipient Eligibility for Early Childhood Intervention (ECI) Case Management Services.

In order to receive ECI case management services, the recipient must meet the following criteria:

(1) (No change.)

(2) have a developmental delay [~~disability~~], as defined in §108.223 [~~§621.122~~] of this title (relating to Definitions). ECI providers must determine developmental delay [~~disability~~] based on the criteria described below:

(A) Children are eligible who have a medically diagnosed physical or mental condition that has a high probability of resulting in developmental delay and is included in the list of covered medical conditions approved by the Department.[~~, including, but not limited to:~~]

[~~*(i)* Down Syndrome and other chromosomal abnormalities;~~]

[~~*(ii)* sensory impairments, including vision and hearing;~~]

[~~*(iii)* inborn errors of metabolism;~~]

[~~*(iv)* microcephaly;~~]

[~~*(v)* failure to thrive;~~]

[~~*(vi)* seizure disorders;~~]

[~~*(vii)* fetal alcohol syndrome or fetal alcohol effects;~~]

[~~*(viii)* testing positive for the Human Immunodeficiency Syndrome (HIV) virus after 15 months of age.~~]

(B) (No change.)

(C) A qualified professional must observe and document atypical development during:

(i) Administration of an assessment tool [~~device~~], or

(ii) (No change.)

§108.229. Conditions for Case Management Provider Participation.

In order to be reimbursed for Early Childhood Intervention (ECI) services as specified in §108.225 [~~§621.123~~] of this title (relating to Reimbursable Services), a provider must:

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

(3) ensure that services are provided by appropriately qualified staff as specified in §108.231 [~~§621.126~~] of this title (relating to Qualified Personnel);

(4) - (7) (No change.)

§108.231. Qualified Personnel.

Early Childhood Intervention (ECI) case management services must be provided by case managers who meet the educational and work experience requirements, commensurate with their job responsibilities, as specified in §108.227(c)(4) [~~§621.24(c)(4)~~] of this title (relating to Recipient Eligibility for Early Childhood Intervention (ECI) Case Management Services); Texas Early Childhood Intervention Staff Qualification Policies (ECI Policy III.8); and who have also completed the ECI Case Management Curriculum.

§108.233. Retention of Records.

Providers of Early Childhood Intervention (ECI) services must maintain and retain all necessary records and claims, as specified in §108.235 [~~§621.128~~] of this title (relating to Provider Records), to fully document the services and supplies provided to a Medicaid recipient. These records must be made available promptly upon

request to the Texas Early Childhood Intervention Program (ECI), the Texas attorney general's office, the Department's [~~ECI's~~] designee, and representatives of the United States Department of Health and Human Services. Upon request, the provider must submit copies of their records, at no cost, to representatives of the agencies specified in this section.

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

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Sylvia F. Hardman
General Counsel
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40 TAC §108.237

(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 Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.237. Reviews and Administrative 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.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER E. DEVELOPMENTAL REHABILITATION SERVICES

40 TAC §108.261, 108.263, 108.265

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.261. Reimbursable Services.

(a) Services that are covered under the Developmental Rehabilitation Services Program are reimbursable to Medicaid providers who meet the conditions for provider participation as specified in §108.265 [~~§621.153~~] of this title (relating to Conditions for Developmental Rehabilitation Provider Participation). Developmental Rehabilitation Services are diagnostic, evaluative, and consultative services for the purposes of identifying or determining the nature and extent of, and rehabilitating an individual's medical or other health-related condition. They are medical and/or remedial services that integrate therapeutic interventions into the daily routines of the child and family in order to restore or maintain function and/or to reduce dysfunction resulting from a mental or physical disability or developmental delay. Services [~~Developmental Rehabilitation services~~] are designed to enhance development in the physical/motor, communication, adaptive, cognitive, social or emotional and sensory domains, or to teach compensatory skills for deficits that directly result from medical, developmental or other health-related conditions. Developmental Rehabilitation Services are provided as specified in the active Individualized Family Service Plan (IFSP) developed in accordance with §108.25(5)(A) - (K) [~~§621.23(5)(A)~~ - ~~(K)~~] of this title (relating to Service Delivery Requirements for Comprehensive Services). The services include:

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

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

§108.263. Recipient Eligibility for Services Funded by the Developmental Rehabilitation Services Program.

In order to receive Developmental Rehabilitation Services [~~services,~~] the recipient:

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

(3) must demonstrate the need for these services as documented in an active Individualized Family Service Plan (IFSP) developed in accordance with §108.25(5)(A) - (K) [~~§621.23(5)(A)~~ - ~~(K)~~] of this title (relating to Service Delivery Requirements for Comprehensive Services).

§108.265. Conditions for Provider Participation in the Developmental Rehabilitation Services Program [~~Provider Participation~~].

(a) (No change.)

(b) In order to be reimbursed for developmental rehabilitation services as specified in §108.261 [~~§621.151~~] of this title (relating to Reimbursable Services), a provider must:

(1) (No change.)

(2) sign a provider agreement with the Medicaid single state agency;

(3) be certified by the Department [~~Texas Interagency Council on Early Childhood Intervention, the state program for infants and toddlers with developmental delays~~];

(4) - (6) (No change.)

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

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 367. CONTINUING EDUCATION

40 TAC §§367.1 - 367.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §§367.1 - 367.3, concerning Continuing Education. The amendments will re-organized the chapter and add clarification.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rules.

Mr. Maline also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended rules will be clarification of the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, telephone: 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Chapter 454, Subchapter H Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Occupations Code is affected by the amended sections.

§367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All continuing education must be directly relevant to the profession of occupational therapy and meet the definition of Type 1 or Type 2 as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements.

(b) New licensees holding a regular license, issued for a period of less than two years, do not have a continuing education requirement until they receive a regular two-year license. [~~Continuing education documentation includes, but is not limited to, a final official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, certificates of completion, and official correspondence from the board approving requesting credits.~~]

(c) All licensees, except those addressed in subsection (b) of this section must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license, and provide this information as requested. [~~The first regular license, which has a duration of less than 2 years, does not have a continuing education requirement.~~]

(d) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal. [~~All licensees, except those addressed in subsection (c) of this section must complete 30 hours of continuing education every two years during the period of time the license is current in order to renew the license. Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.~~]

[~~(1) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, quality improvement, administration, reimbursement and other occupational therapy related subjects. (AOTA's Category 3)~~]

[~~(2) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with patients or clients hereafter referred to as Type 2. (AOTA's Category 1 or 2)~~]

[~~(A) Type 2 courses teach occupational therapy treatment and intervention with patients or clients.~~]

[~~(B) All continuing education hours may be in Type 2.~~]

(e) Types of Continuing Education [~~Any continuing education submissions may be counted only one time.~~]

(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with patients or clients hereafter referred to as Type 2. (AOTA's Category 1 or 2)

(A) Type 2 courses teach occupational therapy treatment and intervention with patients or clients.

(B) All continuing education hours may be in Type 2, but no less than 15 hours of Type 2 is acceptable.

(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, quality improvement, administration, reimbursement and other occupational therapy related subjects. (AOTA's Category 3)

(f) Continuing educational activities may be counted only one time in the licensee's career.

(g) [~~(f)~~] Effective January 1, 2003, Type 1 and Type 2 educational activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the board. The board will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

§367.2. Categories of Continuing Education.

(a) All continuing education must comply with Type 1 or Type 2 as outlined in §367.1 of this title (relating to Continuing Education). Continuing education undertaken by a licensee for renewal shall be acceptable if it falls in one or more of the following categories.

(1) Formal academic courses related to occupational therapy. Completion of course work at or through an accredited college or university shall be counted as follows: three CE hours for each credit hour of a course with a grade of A, B, C, and/or P (Pass). Thus a three-credit course counts for 9 credit hours of continuing education. All college course work must comply with Type 1 and Type 2 as out-

lined in §367.1 of this title (relating to Continuing Education), no maximum.

(2) In-service educational programs, training programs, institutes, seminars, workshops, facility based courses, and conferences in occupational therapy. Hour for hour credit on program content only, no maximum.

(3) Development of publication, media materials or research/grant activities per two year renewal period: [.]

(A) Published scholarly work in a peer-review journal, 15 hours maximum.

(B) Principle investigator or co-principle investigator in grant or research proposals accepted for consideration. 10 hours maximum. [Secondary author (second or other author), 7 hours maximum.]

(C) Published book [or book chapter(s)], 10 hours maximum.

(D) Second or other author, 7 [6] hours maximum.

(E) Book chapter, 5 hours maximum. [Other publications such as newsletter and trade magazines, 2 hours maximum.]

(F) Other publications such as newsletter and trade magazines, 2 hours maximum. [Principle investigator or co-principle investigator in grant or research proposals accepted for consideration.]

(4) Home study courses, Internet-based courses, and videotape instruction, no maximum.

(A) Courses must fit the criteria for continuing education for Type 1 or Type 2.

(B) These courses must have a post-test and give a certificate of completion.

(C) Internet courses must reflect a pre-determined number of credit hours.

(5) Professional presentations by licensee

(A) Professional presentation, e.g. in-services, workshops, institutes: any presentations counted only one time. Hour for hour credit. 10 hour maximum.

(B) Community/Service organization presentation: any presentation counted once. Hour for hour credit. 10 hours maximum.

(6) Any deviation from the above continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60 days prior to expiration of the license.

(b) Unacceptable Continuing Education Activities include but are not limited to:

(1) Any non-instructional time frames such as breaks, meals, introductions, and pre/post testing.

(2) Business meetings

(3) Exhibit hall attendance

(4) Reading journals

(5) Courses such as, but not limited to: grant writing, case management, massage therapy, general management and business, social work, defensive driving, water safety, team building, GRE, GMAT, MCAT preparation, cooking for health, weight management, women's health and stress management, reading techniques, geriatric anthology, general foreign languages.

(6) Facility-based annual required courses such as, but not limited to patient abuse, disposal of hazardous waste, patient privacy, HIPPA & FERPA, blood borne pathogens, and other annual facility required repetitive courses do not count toward continuing education.

(7) Program providers are prohibited from self-promotion of programs, products, and/or services during the presentation of the program.

§367.3. Continuing Education Audit.

(a) The board shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the 30 hours required and has signed to that fact on the renewal form.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification. Documentation submitted must specify whether they are Type 1 or Type 2.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes, or a total of four years.

[(1) The continuing education record card (blue card) will no longer be accepted as proof of continuing education activities, effective December 1, 2001.]

[(2) Documentation must identify the licensee by name and license number, and must include the date and title of the course, the signature of the authorized signer, and the number of CEUs or contact hours awarded for the course.]

(d) Continuing education documentation includes, but is not limited to: an official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, and certificates of completion. [Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.]

(e) Documentation must identify the licensee by name and license number, and must include the date and title of the course, the signature of the authorized signer, and the number of CEUs or contact hours awarded for the course.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is 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.

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John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
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CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.2

The Texas Board of Occupational Therapy Examiners proposes new Chapter 371, §371.2 for a new retired status. House Bill 2680 added the requirement for health professionals to have a retired status with reduced fees and reduced continuing education requirements for those who wish to volunteer for non-profit work without compensation.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a new status of licensees with limited rights and privileges. There will be no effect on small businesses. There is a very small anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, telephone: 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The new section is proposed under the Occupational Therapy Practice Act, Title 3, Chapter 454, Subchapter H, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H, of the Occupations Code is affected by the new section.

§371.2. Retired Status.

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "voluntary charity care" means occupational therapy services provided as a volunteer with no compensation, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fine charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c) 3 or (4) exemption from federal income tax, some Chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Licensed Occupational Therapist, Retired, (LOT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Licensed Occupational Therapy Assistant, Retired (LOTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status.

(c) Requirements for initial retired status are:

(1) a completed and notarized application form;

(2) a passing score on the jurisprudence exam;

(3) the completed continuing education for the current renewal period; and

(4) the retired status fee and any late fees which may be due.

(d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:

(1) the retired status renewal form;

(2) a passing score on the jurisprudence exam;

(3) the retired renewal fee and any late fee which may be due; and

(4) completion of 6 hours of Type 2 continuing education each license renewal period, as described in §367.1 of this title (relating to Continuing Education).

(e) A licensee who has been on retired status less than one year must submit the regular license renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal). A licensee who has been on retired status for more than one year must retake and pass the national examination to return the license to active status. The licensee must submit:

(1) a complete and notarized application;

(2) a passing score on the jurisprudence exam;

(3) a passing score on the recent retaking of the national examination; and

(4) the initial application fee.

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the OT Practice Act.

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 June 16, 2006.

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John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 305-6900

CHAPTER 373. SUPERVISION

40 TAC §373.2

The Texas Board of Occupational Therapy Examiners proposes an amendment to §373.2, concerning Supervision of a Temporary Licensee. The amendment will re-organized the section and add clarification.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in

effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Maline also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended rule will be clarification of the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, telephone: 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Chapter 454, Subchapter H Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Occupations Code is affected by this amended section.

§373.2. Supervision of a Temporary Licensee.

(a) Requirements for all temporary licensees [Supervision of an occupational therapist with a temporary license includes]:

(1) A temporary licensee works under the supervision of a regular licensed occupational therapist, whose name and license number are on file on the Board's "Supervision of a Temporary Licensee" form. [frequent communication between the supervising occupational therapist and the temporary licensee by telephone, written report or conference, including the review of progress of patients/clients assigned, plus]

(2) All documentation completed by an individual holding a temporary license which becomes part of the patient's/client's permanent file, must be approved and co-signed by the supervising occupational therapist. [encounters twice a month where the OTR or LOT directly observes the temporary licensee providing services to one or more patients/clients with face-to-face, real time interaction.]

(3) Temporary licensees may not supervise anyone.

(4) A temporary licensee does not become a regular licensee with those privileges until the regular license is in hand.

(b) Supervision of an occupational therapy assistant with a temporary license includes: [;]

(1) sixteen hours of supervision a month of which at least twelve hours are through telephone, written report or conference, including the review of progress of patients/clients assigned; plus

(2) four or more hours of supervision a month which are face-to-face, real time supervision with the temporary licensee providing services to one or more patients/clients.

(c) Supervision of an occupational therapist with a temporary license includes documentation regarding: [Temporary licensees may not supervise anyone.]

(1) frequent communication between the supervising occupational therapist and the temporary licensee by telephone, written report or conference, including the review of progress of patients/clients assigned, plus

(2) encounters twice a month where the OTR or LOT directly observes the temporary licensee providing services to one or more patients/clients with face-to-face, real time interaction.

[(d) All documentation completed by an individual holding a temporary license which becomes part of the patient's/client's permanent file, must be approved and co-signed by the supervising occupational therapist.]

[(e) A temporary licensee works under the supervision of an regular licensed occupational therapist, whose name and license number are on file on the board's "Supervision of a Temporary Licensee" form.]

[(f) A temporary licensee does not become a regular licensee with those privileges until the regular license is in hand.]

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 June 16, 2006.

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John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
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For further information, please call: (512) 305-6900

CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §376.3

The Texas Board of Occupational Therapy Examiners proposes an amendment to §376.3, regarding Requirements for Registration Application. The section is proposed for amendment to remove the waiver for OT facilities where a PT facility was already registered by the same owner in the same location. A large number of waived OT facilities received all the agency services and privileges of a regular OT facility without paying any fee. A new discounted fee for this category will be created, which will allow the application to be through the state's TexasOnline process.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Maline also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended rule will be the ability to apply for registration online at a discounted fee and use the state's TexasOnline process. There is a small anticipated economic costs to small businesses and persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, telephone: 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Chapter 454, Subchapter H Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Occupations Code is affected by this amended section.

§376.3. Requirements for Registration Application.

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

(f) The Occupational Therapy Facility will be charged a registration fee(s) for the primary site and/or additional site(s). In some cases an OT linked facility fee may apply. An OT linked facility is a facility in which PT services are already registered at the same location with the same owner(s). If the PT facility registration is not current, full OT registration must be paid. [will be waived if the facility application is for both OT and PT services at the same location with the same owner(s). The waiver form must accompany the application form.]

(g) The Occupational Therapy Facility registration fee(s) for the primary site and/or additional site(s) will be waived in circumstances which are temporary in nature, such as a natural disaster or events for special populations, such as the Special Olympics. [Waiver from Occupational Therapy Facility registration fees does not nullify all other sections as set forth in the TBOTE Rules, Chapter 376.]

(h) Waiver from Occupational Therapy Facility registration fees does not nullify all other sections as set forth in the TBOTE Rules, Chapter 376.

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 June 16, 2006.

TRD-200603341
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
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For further information, please call: (512) 305-6900

40 TAC §376.6

The Texas Board of Occupational Therapy Examiners proposes an amendment to §376.6, regarding Renewal of Registration. The section is proposed for amendment to remove the waiver for currently waived facilities where the same owner at the same location has a PT facility registered. A large number of waived OT facilities received all the privileges of a regular OT facility without any fee and will now be able to renew the registration online. A largely discounted fee will be established.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Maline also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended rule will be the ability to renew the registration online with a discounted fee using the state's TexasOnline process. There is a small anticipated economic costs to small businesses and persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, telephone: 305-6900, or through e-mail: augusta.gelfand@mail.capnet.state.tx.us.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Chapter 454, Subchapter H Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Chapter 454, Subchapter H of the Occupations Code is affected by this amended section.

§376.6. Renewal of Registration Application.

(a) (No change.)

(b) Requirements to renew a facility are:

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

[(5) The waiver form must accompany the renewal form if the renewal is for an Occupational Therapy Facility where the same owner(s) at the same location are also currently registered for PT services.]

(c) The annual renewal date of a primary Occupational Therapy Facility registration is the last day of the month in which the registration was originally issued. The renewal date for an additional facility will be the same as the renewal date for the primary facility. The owner of the OT facilities may request that the renewal date of the OT facilities be synchronized with the PT facilities with which they are associated.

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

(g) The registration renewal fee for an OT linked facility will be for OT primary and/or additional facility where the same owner has previously registered a PT facility at the same location. The PT facility registration must be current in order for the owner to pay the OT linked facility fee.

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 June 16, 2006.

TRD-200603342
John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: July 30, 2006
For further information, please call: (512) 305-6900

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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture (the department) adopts amendments to §20.22(a), concerning cotton stalk destruction deadlines, without changes to the proposed text, as published in the May 12, 2006, issue of the *Texas Register* (31 TexReg 3764). The amendments are adopted to update the chart that lists pest management zones and destruction deadlines to make it consistent with recent amendments to §20.20 which reclassified Pest Management Zone 5 as Zone 3, Area 3, and established an October 20 destruction deadline for Zone 3, Area 3.

Amendments to the table are adopted to clarify October 20 as the destruction deadline for Pest Management Zone 3, Area 3. Previously this deadline was associated with the same geographic area when the geographic area was Pest Management Zone 5. The amendments provide continuity in the destruction deadline for producers in that geographic area.

No comments were received on the proposal.

The amendments to §20.22 are adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and the Code, §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

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 June 19, 2006.

TRD-200603358
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: July 9, 2006
Proposal publication date: May 12, 2006
For further information, please call: (512) 463-4075

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.478

The Public Utility Commission of Texas (commission) adopts an amendment to §25.478, relating to credit and deposit requirements for residential customers with changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2962).

The amendment addresses the requirements for victims of family violence and customers who are 65 years or older to satisfy retail electric providers' (REPs') credit and deposit requirements. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). This amendment is adopted under Project Number 31853.

The commission received comments on the proposed amendment from Imajean Gray, Alan Abraham, Texas Legal Services Center (TLSC) and Texas Ratepayers' Organization to Save Energy (TX ROSE) (together "TLSC"), and Texas Senior Advocacy Coalition (TSAC). The commission received reply comments from the Texas Council on Family Violence (TCFV) and the Retail Electric Provider Coalition (REP Coalition) comprised of CPL Retail Energy, Direct Energy, First Choice Power, Green Mountain Energy Company, Reliant Energy, Incorporated, Stream Energy, TXU Energy Retail Company LP, WTU Retail Energy, and Texas Energy Association for Marketers consisting of Accent Energy, Cirro Energy, Commerce Energy, Incorporated, Just Energy Texas, StarTex Power, Stream Gas & Electric Ltd. (d/b/a Stream Energy) and Tara Energy, Incorporated.

Imajean Gray, Alan Abraham, TLSC, TCFV, and TSAC support the proposed amendment.

TLSC noted its concern that the rule does not include a requirement as to how and when a customer would be informed of the existence of the waivers and suggested that notification be included as part of the communication with the consumer about the security deposit. The REP Coalition filed reply comments and noted that in Project Number 27084, consumer groups made a similar recommendation, but it was rejected by the commission. The REP Coalition also stated that the number of victims of family violence constitutes a small segment of the population of elec-

tric customers and therefore it would not be practical to discuss waiver options on every call where a deposit is required. The REP Coalition further pointed out that it is reasonable to expect that the professionals who assist qualifying victims are aware of the deposit waivers and would pass that along to their clients as a matter of routine.

Commission response

The commission agrees with the REP Coalition that it may be reasonable to expect that the professionals who assist qualifying victims of family violence will pass along the information. However, an additional reminder from the REP at the time the deposit is being discussed may be of significant help to a victim, who likely has other pressing issues on his/her mind. Furthermore, there are a significant number of elderly customers who may not receive information regarding their eligibility for a waiver of deposit apart from information provided by REPs. Therefore the commission, finds merit in the REPs including this information in their written and oral communication with customers and applicants. The commission does not believe that providing notice of these two options will be burdensome for the REPs. Because written notice of the ability of low-income customers to pay a deposit over $50 in two installments must be provided pursuant to P.U.C. Substantive Rule §25.478(e)(3), the incremental costs of adding written notice of these two additional options should not be burdensome. Likewise, the addition of oral notice when discussing deposit options with applicants or customers should also not be burdensome, as there are only two options that must be discussed for which the eligibility requirements are clear.

TLSC also urged the lifting of credit and deposit requirements for low-income customers. The REP Coalition responded that the proposal was outside the scope of this rulemaking project and that the commission already considered credit policies for residential customers, including low-income customers, in two separate rulemakings. The REP Coalition also noted that a complete waiver of the deposit for low-income customers would negate the protection to the REP afforded by the deposit.

Commission response

Recently in Project Number 31417, *Rulemaking Relating to the Discount for Low-Income Electric Customers*, the commission considered deposit policies for low income customers. In that project, the commission decided that it was appropriate to allow low-income customers to pay any deposit over $50 in two installments. The commission declines to address this issue again at this time.

All comments, including any not specifically referenced herein, were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA Chapter 17, Subchapter A which relates to customer protection policy.

Cross Reference to Statutes: PURA §§14.002, 39.101, and PURA Chapter 17, Subchapter A.

§25.478. Credit Requirements and Deposits.

(a) Credit requirements for residential customers. A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

(1) Establishment of satisfactory credit shall not relieve any customer from complying with the requirements for payment of bills by the due date of the bill.

(2) The credit worthiness of spouses established during shared service in the 12 months prior to their divorce will be equally applied to both spouses for 12 months immediately after their divorce.

(3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (E) of this paragraph.

(A) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant:

(i) has been a customer of any REP or an electric utility within the two years prior to the request for electric service;

(ii) is not delinquent in payment of any such electric service account; and

(iii) during the last 12 consecutive months of service was not late in paying a bill more than once.

(B) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant possesses a satisfactory credit rating obtained through a consumer reporting agency, as defined by the Federal Trade Commission.

(C) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.

(D) A residential customer or applicant may be deemed as having established satisfactory credit if the customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the affiliated REP or POLR.

(E) A residential customer or applicant seeking to establish service may be deemed as having established satisfactory credit if the customer is medically indigent. In order for a customer or applicant to be considered medically indigent, the customer or applicant must make a demonstration that the following criteria are met. Such demonstration must be made annually:

(i) the customer's or applicant's household income must be at or below 150% of the poverty guidelines as certified by a governmental entity or government funded energy assistance program provider; and

(ii) the customer or applicant or the spouse of the customer or applicant must have been certified by that person's physician as being unable to perform three or more activities of daily living as defined in 22 TAC §224.4, or the customer's or applicant's monthly out-of-pocket medical expenses must exceed 20% of the household's gross income. For the purposes of this subsection, the term "physician" shall mean any medical doctor, doctor of osteopathy, nurse practitioner, registered nurse, state-licensed social workers, state-licensed physical and occupational therapists, and an employee of an agency certified to provide home health services pursuant to 42 U.S.C. §1395 *et seq.*

(4) A residential customer or applicant seeking to establish service with a REP other than an affiliated REP or POLR can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (B) of this paragraph. Notice of these options for customers or applicants shall be included in any written or oral notice to a customer or applicant when a deposit is requested. A REP other than an affiliated REP or POLR may establish additional methods by which a customer or applicant not meeting the criteria of subparagraphs (A) or (B) of this paragraph can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) The residential customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.

(B) The customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the REP.

(5) Pursuant to the Public Utility Regulatory Act (PURA) §39.107(g), a REP that requires pre-payment for metered residential electric service may not charge an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.

(6) The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.

(b) Credit requirements for non-residential customers. A REP may establish nondiscriminatory criteria pursuant to §25.471(c) of this title to evaluate the credit requirements for a non-residential customer or applicant and apply those criteria in a nondiscriminatory manner. If satisfactory credit cannot be demonstrated by the non-residential customer or applicant using the criteria established by the REP, the customer may be required to pay an initial or additional deposit. No such deposit shall be required if the customer or applicant is a governmental entity.

(c) Initial deposits for applicants and existing customers.

(1) If satisfactory credit cannot be demonstrated by a residential applicant, a REP may require the applicant to pay a deposit prior to receiving service.

(2) An affiliated REP or POLR shall offer a residential customer or applicant who is required to pay an initial deposit the option of providing a written letter of guarantee pursuant to subsection (i) of this section, instead of paying a cash deposit.

(3) A REP shall not require an initial deposit from an existing customer unless the customer was late paying a bill more than once during the last 12 months of service or had service terminated or disconnected for nonpayment during the last 12 months of service. The customer may be required to pay this initial deposit within ten days after issuance of a written disconnection notice that requests such deposit. The disconnection notice may be combined with or issued concurrently with the request for deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title (relating to Disconnection of Service).

(d) Additional deposits by existing customers.

(1) A REP may request an additional deposit from an existing customer if:

(A) the average of the customer's actual billings for the last 12 months are at least twice the amount of the original average of the estimated annual billings; and

(B) a termination or disconnection notice has been issued or the account disconnected within the previous 12 months.

(2) A REP may require the customer to pay an additional deposit within ten days after the REP has requested the additional deposit.

(3) A REP may terminate or disconnect service if the additional deposit is not paid within ten days of the request, provided a written disconnection notice has been issued to the customer. A disconnection notice may be combined with or issued concurrently with the written request for the additional deposit. The disconnection notice shall comply with the requirements in §25.483(m) of this title.

(e) Amount of deposit.

(1) The total of all deposits, initial and additional, required by a REP from any residential customer or applicant

(A) shall not exceed an amount equivalent to the greater of

(i) one-fifth of the customer's estimated annual billing or;

(ii) the sum of the estimated billings for the next two months.

(B) A REP may base the estimated annual billing for initial deposits for applicants on a reasonable estimate of average usage for the customer class. If a REP requests additional or initial deposits from existing customers, the REP shall base the estimated annual billing on the customer's actual historical usage, to the extent that the historical usage is available. After 12 months of service with a REP, a customer may request that a REP recalculate the required deposit based on actual historical usage of the customer.

(2) For the purpose of determining the amount of the deposit, the estimated billings shall include only charges for electric service that are disclosed in the REP's terms of service document provided to the customer or applicant

(3) If a customer or applicant qualifies for the rate reduction program under §25.454 of this title (relating to Rate Reduction Program), then such customer or applicant shall be eligible to pay any deposit that exceeds $50 in two equal installments. Notice of this option for customers eligible for the rate reduction program shall be included in any written notice to a customer requesting a deposit. The customer shall have the obligation of providing sufficient information to the REP to demonstrate that the customer is eligible for the rate reduction program. The first installment shall be due no sooner than ten days, and the second installment no sooner than 40 days, after the issuance of written notification to the applicant of the deposit requirement.

(f) Interest on deposits. A REP that requires a deposit pursuant to this section shall pay interest on that deposit at an annual rate at least equal to that set by the commission in December of the preceding year,

pursuant to Texas Utilities Code §183.003 (relating to Rate of Interest). If a deposit is refunded within 30 days of the date of deposit, no interest payment is required. If the REP keeps the deposit more than 30 days, payment of interest shall be made from the date of deposit.

(1) Payment of the interest to the customer shall be made annually, if requested by the customer, or at the time the deposit is returned or credited to the customer's account.

(2) The deposit shall cease to draw interest on the date it is returned or credited to the customer's account.

(g) Notification to customers. When a REP requires a customer to pay a deposit, the REP shall provide the customer written information about the provider's deposit policy, the customer's right to post a guarantee in lieu of a cash deposit if applicable, how a customer may be refunded a deposit, and the circumstances under which a provider may increase a deposit. These disclosures shall be included either in the Your Rights as a Customer disclosure or the REP's terms of service document.

(h) Records of deposits.

(1) A REP that collects a deposit shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit; and

(C) each transaction concerning the deposit.

(2) A REP that collects a deposit shall issue a receipt of deposit to each customer or applicant paying a deposit or reflect the deposit on the customer's bill statement. A REP shall provide means for a depositor to establish a claim if the receipt is lost.

(3) A REP shall maintain a record of each unclaimed deposit for at least four years.

(4) A REP shall make a reasonable effort to return unclaimed deposits.

(i) Guarantees of residential customer accounts. A guarantee agreement in lieu of a cash deposit issued by any REP, if applicable, shall conform to the following requirements:

(1) A guarantee agreement between a REP and a guarantor shall be in writing and shall be for no more than the amount of deposit the provider would require on the customer's account pursuant to subsection (e) of this section. The amount of the guarantee shall be clearly indicated in the signed agreement. The REP may require, as a condition of the continuation of the guarantee agreement, that the guarantor remain a customer of the REP, have no past due balance, and have no more than one late payment in a 12-month period during the term of the guarantee agreement.

(2) The guarantee shall be voided and returned to the guarantor according to the provisions of subsection (j) of this section.

(3) Upon default by a residential customer, the guarantor of that customer's account shall be responsible for the unpaid balance of the account only up to the amount agreed to in the written agreement.

(4) If the guarantor ceases to be a customer of the REP or has more than one late payment in a 12-month period during the term of the guarantee agreement, the provider may treat the guarantee agreement as in default and demand a cash deposit from the residential customer as a condition of continuing service.

(5) The REP shall provide written notification to the guarantor of the customer's default, the amount owed by the guarantor, and the due date for the amount owed.

(A) The REP shall allow the guarantor 16 days from the date of notification to pay the amount owed on the defaulted account. If the sixteenth day falls on a holiday or weekend, the due date shall be the next business day.

(B) The REP may transfer the amount owed on the defaulted account to the guarantor's own electric service bill provided the guaranteed amount owed is identified separately on the bill as required by §25.479 of this title (relating to Issuance and Format of Bills).

(6) The REP may initiate termination of the guarantor's service (or disconnection of service for the POLR, or any REP having disconnect authority) for nonpayment of the guaranteed amount only if the termination of service (or, where applicable, the disconnection of service) was disclosed in the written guarantee agreement, and only after proper notice as described by paragraph (5) of this subsection and §25.482 of this title (relating to Termination of Service) or §25.483 of this title.

(j) Refunding deposits and voiding letters of guarantee.

(1) A deposit held by a REP shall be refunded when the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive non-residential billings without having any late payments. A REP may refund the deposit to a customer via a bill credit. REPs shall comply with this provision as soon as practicable, but no later than August 31, 2004.

(2) Once the REP is no longer the REP of record for a customer or if service is not established with the REP, the REP shall either transfer the deposit plus accrued interest to the customer's new REP or promptly refund the deposit plus accrued interest to the customer, as agreed upon by the customer and both REPs. The REP may subtract from the amount refunded any amounts still owed by the customer to the REP. If the REP obtained a guarantee, such guarantee shall be cancelled to the extent that it is not needed to satisfy any outstanding balance owed by the customer. Alternatively, the REP may provide the guarantor with written documentation that the contract has been cancelled to the extent that the guarantee is not needed to satisfy any outstanding balance owed by the customer.

(3) If a customer's or applicant's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee on the account or provide written documentation that the guarantee agreement has been voided, or refund the customer's or applicant's deposit plus accrued interest on the balance, if any, in excess of the unpaid bills for service furnished. Similarly, if the guarantor's service is not connected, or is terminated or disconnected, the REP shall promptly void and return to the guarantor all letters of guarantee or provide written documentation that the guarantees have been voided. This provision does not apply when the customer or guarantor moves or changes the address where service is provided, as long as the customer or guarantor remains a customer of the REP.

(4) A REP shall terminate a guarantee agreement when the customer has paid its bills for 12 consecutive months without service being disconnected for nonpayment and without having more than two delinquent payments.

(k) Re-establishment of credit. A customer or applicant who previously has been a customer of the REP and whose service has been terminated or disconnected for nonpayment of bills or theft of service by that customer (meter tampering or bypassing of meter) may be required, before service is reinstated, to pay all amounts due to the REP or execute a deferred payment agreement, if offered, and reestablish credit.

(l) Upon sale or transfer of company. Upon the sale or transfer of a REP or the designation of an alternative POLR for the customer's electric service, the seller or transferee shall provide the legal successor to the original provider all deposit records.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

16 TAC §25.484

The Public Utility Commission of Texas (commission) adopts an amendment to §25.484, relating to the Electric No-Call List, with no changes to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8781).

The amendment reflects an amendment made to Public Utility Regulatory Act, Texas Utilities Code Annotated §39.1025 (Vernon 1998, Supplement 2005) (PURA) by the 79th Legislature. Specifically, the amendment limits electric no-call registration to nonresidential electric customers on or after May 27, 2005. This amendment is adopted under Project Number 31926.

No party requested a public hearing on this rulemaking pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The commission received no comments on the proposed amendment.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, PURA §39.1025, which grants the commission the authority to operate the no-call database and prohibits the telephone solicitation of an electric customer who has previously advised the commission that he/she does not want to receive such solicitations.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.1025.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.37

The Public Utility Commission of Texas (commission) adopts amendments to §26.37, relating to the Texas No-Call List with no changes to the proposed text as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8782).

The amendments comport with the amendments made to Texas Business & Commerce Code Annotated §44.101 by the 79th Legislature and also provide clarification regarding the commission's enforcement authority. Specifically, the proposed amendments: 1) define the Texas no-call list as a combined list consisting of the name and telephone numbers of each consumer in this state who has requested to be on the list and of each person in the portion of the national do-not call registry maintained by the United States government that relates to this state; 2) provide for registration via the commission's internet website at no charge; and 3) clarify that a violation of the section by a telemarketer, other than a state licensee or telecommunications provider, is subject to enforcement action pursuant to P.U.C. PROC. R. §22.246. These amendments are adopted under Project Number 31900.

No party requested a public hearing on this rulemaking pursuant to the Administrative Procedure Act, Texas Government Code §2001.029. The commission received no comments on the proposed amendment.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically, Texas Business & Commerce Code §§44.101-44.104, which grant the commission the authority to administer and enforce the no-call list.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002; Texas Business & Commerce Code Annotated §§44.101-44.104.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.417

The Public Utility Commission of Texas (commission) adopts an amendment to §26.417, relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF), with no changes to the proposed text as published in the March 10, 2006 issue of the *Texas Register* (31 TexReg 1581). The adopted amendment implementing PURA, §56.030 will define the requirements for eligible telecommunications providers (ETPs) to submit an annual affidavit of compliance in order to certify that Texas Universal Service Funds (TUSF) received are being used in a manner consistent with the requirements regarding the use of money from each TUSF program for which the ETP receives disbursements. This amendment is adopted under Project Number 32161.

The commission received comments on the proposed amendment from the Texas Telephone Association (TTA).

In its comments submitted to the commission, TTA maintained that the "annual compliance affidavit" for each ETP has already been approved by the commission in Docket No. 31952. According to TTA, because that Order approved the compliance affidavit filed by each ETP attesting to its proper use of TUSF pursuant to PURA, §56.029(g), a new proceeding to develop another affidavit is not required. TTA further stated that, should the commission determine a new compliance affidavit is needed, then it should be undertaken through a docketed proceeding seeking input from interested parties.

Commission response

The commission notes that the affidavit referenced by TTA in its comments, and approved in Order No. 1 in Docket No. 31952, was developed pursuant to PURA, §56.029(g), which required each telecommunications provider receiving TUSF to attest by December 31, 2005 that those funds had been used in a manner consistent with the purposes provided by PURA, §56.021 and the commission's final orders in Docket No. 18515 and Docket No. 18516. The affidavit that the commission is required to develop pursuant to PURA, §56.030, reflected in this rulemaking, will include an additional TUSF program to those TUSF programs listed in the affidavit approved in Docket No. 31952. Docket No. 32567 has been established in order to develop the new affidavit. Parties will have an opportunity to participate in Docket No. 32567.

All comments were fully considered by the commission.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and §56.030, which specifically requires telecommunication providers that receive disbursements from the TUSF to provide the aforementioned affidavits.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002 and §56.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Adriana A. Gonzales
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16 TAC §26.424

The Public Utility Commission of Texas (commission) adopts new §26.424, relating to Audio Newspaper Assistance Program, with no changes to the proposed text as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1581). The adopted rule is necessary to implement Public Utility Regulatory Act §56.301, regarding financial assistance from the Texas universal service fund to support a free telephone service that offers blind and visually impaired residents access to the text of newspapers using synthetic speech. This new section is adopted under Project Number 31864. The rule sets forth requirements the Audio Newspaper Program (ANP) provider must meet and the eligibility and registration requirements for users. Further, the adopted rule outlines the process for selecting the ANP through a request for proposal.

The commission received comments on the proposed new section from the Office of Public Utility Council (OPUC) and the National Federation of the Blind of Texas (NFBT).

Recommended Revisions to §26.424(c)(1)(B)

OPUC commented that the components of the ANP should be clearly spelled out so that the blind and visually-impaired have access to a service that is convenient and user friendly. OPUC recommended that the commission add an additional requirement to §26.424(c)(1)(B) specifying that a menu of articles be provided, as well as the menu of newspapers. In their written comments, NFBT agreed with OPUC.

Commission response

While the commission agrees with OPUC and NFBT that this is an important feature for the ANP to provide, it disagrees that it should be required as part of the rule. Instead, it will be part of the request for proposal.

Recommended Revisions to §26.424(c)(1)(B)(v)

OPUC commented that proposed §26.424(c)(1)(B)(v) does not specify whether access to customer service would be available through local number only, or whether a nationwide toll-free number would also be provided. OPUC opined that nationwide toll-free access should be available when a registered user is traveling. Further, OPUC stated that "regular business hours" is not defined. OPUC contended that the rules should define regular business hours and include a minimum standard such as five or more days per week and eight or more hours a day. NFBT agreed with OPUC, but felt that this could be best addressed in the request for proposal issued by the commission.

Commission response

The commission agrees with OPUC that access to customer service is important. The commission wants to ensure that ANP subscribers have access to customer service at least eight hours a day, five days a week. However, the commission concurs with NFBT that it is more appropriate to address this issue in the request for proposal.

Recommended Revisions to §26.424(c)(2)(A)

In written comments, OPUC sought to include a requirement under §26.424(c)(2)(A) requiring the two Texas newspapers to be geographically specific to the local area covered by the ANP, or have a minimum circulation of 150,000. OPUC argued that there is a need to reach a balance in the rule so that a variety of newspapers can be made available, while ensuring, through a restriction that the papers used to meet the ANP's required two Texas newspaper minimum are actually of interest to persons targeted by the program. NFBT recommended that the commission include the requirement under §26.424(c)(2)(A) that all ANP subscribers in Texas should have access to all newspapers on the system, regardless of geographical location.

Commission response

While the commission appreciates OPUC's concern regarding targeting specific geographic areas, it does not believe it is appropriate to require a minimum circulation or a geographic designation as suggested. In order to solicit more newspapers into the program, the ANP should be allowed as much flexibility as possible. Further, elements such as data availability and willingness to participate are beyond the ANP's control and can not be enforced. In addition, the commission does not believe it is necessary to add the requirement that ANP subscribers in Texas should have access to all newspapers on the system regardless of geographic location as that is already implied in the rule itself.

Recommended Revisions to §26.424(c)(4)

OPUC commented that while it supported the commission's efforts to encourage ANP providers to make Spanish newspapers available through the ANP, it was equally supportive of making available other foreign papers, small town weekly papers and daily college papers. OPUC suggested additional language to the "Content Acquisition" section of the rule. NFBT agreed with OPUC and recommended that the "Content Acquisition" section, §26.424(c)(4), require that the ANP provider begin service with at least two Texas newspapers, and should steadily add newspapers during the first two years of operation until it has a total of at least ten Texas newspapers by the end of that period.

Commission response

The commission appreciates and shares OPUC's concern regarding variety for ANP subscribers; however the commission does not believe that it is necessary to add such a requirement to the rule. In order to solicit more newspapers into the program, the ANP should be allowed as much flexibility as possible. Further, elements such as data availability from newspapers and their willingness to participate are beyond the ANP's control and cannot be enforced. In addition, although the commission appreciates NFBT's desire to see the ANP program succeed quickly, the commission believes that 10 Texas papers within two years may prove an unreasonable expectation for an ANP and rejects NFBT's recommendation.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: Public Utility Regulatory Act, §14.002, §14.052 and §56.301.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Adriana A. Gonzales
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TITLE 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATIONS

22 TAC §§371.1 - 371.8, 371.11 - 371.17

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §§371.1 - 371.8 and 371.11 - 371.17 concerning Examinations, without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 15). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enact-

ment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
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CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §§371.1, 371.3, 371.5, 371.7, 371.9, 371.11, 371.13, 371.15, 371.17, 371.19, 371.21, 371.23, 371.25

The Texas State Board of Podiatric Medical Examiners adopts new §§371.1, 371.3, 371.5, 371.7, 371.9. 371.11, 371.13, 371.15, 371.17, 371.19, 371.21, 371.23 and 371.25 concerning Examinations and Licensure without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 16). The text will not be republished.

These new rules have been adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the old rules that these new rules replace, instead of being amended, were repealed in their entirety at the same time that these new rules were adopted in their entirety. For the most part, the text of the new rules remains identical to the text of the old rules they replace--only some section numbers will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding those specific changes and a reasoned justification for those changes. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules, as they currently exist, require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

The Board received one letter of comment jointly from the Texas Medical Association and the Texas Orthopedic Association. The letter includes a comment regarding proposed new §371.7(g), concerned that a 12-month residency is not adequate to train a graduate from podiatry school to practice "medical and surgical techniques on all aspects of the foot up to and including the ankle." The letter states that the 12-month residency differs from the training that various podiatric certifying boards require for specialty certification; that because one or more certifying boards offers 3 levels of certification based on the number of years of residency training a podiatrist has received; and that, therefore, in the opinion of the TMA and TOA, the podiatry board should issue three different types of podiatry license, depending on the number of years of residency a podiatry school graduate completes. The board does not agree with the comments. The rules adopted in Chapter 371, as they concern the residency requirement consist merely of a renumbering of the sections in which the residency rules were contained. The language of the rule itself is not being amended from how it read prior to this rulemaking. The board determined that the initial reasons for adopting those rules continue to exist. As a result, additional reasoned justification for the language the letter addresses is not required; however, the Board adopts by reference the reasons set forth in the adoption preamble(s) that accompanied the text of that rule when the text was previously adopted and amended.

In a more direct response to the comment, the Board notes that the statute requires no residency, but authorizes the board to require applicants for license to additional training requirements. The board has exercised its discretion and applied its special-

ized knowledge in adopting a residency requirement. The level to which a podiatrist will be permitted to perform certain surgical procedures will depend on the level of ability that podiatrist exhibits. The statute does not provide for three different types of podiatric license based on number of years in residency. The one, two, and three-year requirements the TMA/TOA letter cites are not legal requirements. Those requirements have been adopted by private organizations to apply to licensed podiatrists who wish to obtain additional private board certification, over and above licensure. Private board certification in addition to a podiatry license is not required to practice podiatry, just as private board certification in addition to a medical license is not required to practice medicine.

The Board also notes that the practice of "Medicine" (Texas Occupations Code §151.002(13)is defined as "the diagnosis, treatment, or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who: (A) publicly professes to be a physician or surgeon; or (B) directly or indirectly charges money or other compensation for those services." Furthermore, in part, General Eligibility Requirements for "medical" licensure (Texas Occupations Code §155.003) require that the applicant be at least 21 years of age, has completed at least 60 hours of undergraduate courses and successfully completed a one year residency. A holder of a "medical" license (also with a minimum one year residency requirement for licensure) does not have automatic free reign on the human body, as treatments are approved upon credentialing at the hospital/medical staff level. For example, a cardiologist would need to exhibit to the credentialing committee that he has the special education and training necessary to perform a knee replacement procedure before being permitted to perform one. A proctologist would need to exhibit to the credentialing committee that he has the special education and training necessary to perform an ocular procedure. An orthopedist would need to exhibit to the credentialing committee that she has the special education and training necessary to perform brain surgery. While those specialists hold medical licenses allowing access to the entire body, their individual qualifications, as credentialed at the hospital/medical staff level, limit their privileges for patient treatment based on specialty and exhibited ability. This is all accomplished without requiring a separate type of medical license for each type of medical doctor, based on years of residency.

Likewise, the Texas State Board of Podiatric Medical Examiners sets forth general requirements to obtain a license to practice podiatric medicine, including a one-year residency. The podiatrist's practice is also reviewed and assessed at the hospital/medical staff level. Local credentialing committees determine privileges for podiatric physicians, as well, with those privileges limited to the scope of "podiatry" as that term is defined in the law, but limited even further, depending on the skills and education shown by the individual practitioner.

The new rules are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry.

These new rules, as adopted, implement the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005). Provisions related to the Licensing of Guaranteed Student Loan Defaulters implement Texas Occupations Code Chapter 56 and Texas Education Code Chapter 57.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
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CHAPTER 373. IDENTIFICATION OF PRACTICE

22 TAC §§373.1 - 373.7

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §§373.1 - 373.7 concerning Identification of Practice without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 21). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discus-

sion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 373. ADVERTISING AND PRACTICE IDENTIFICATION

22 TAC §§373.1, 373.3, 373.5, 373.7, 373.9, 373.11, 373.13, 373.15

The Texas State Board of Podiatric Medical Examiners adopts new §§373.1, 373.3, 373.5, 373.7, 373.9, 373.11, 373.13 and 373.15 concerning Advertising and Practice Identification without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 22).

These new rules have been adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the old rules that these new rules replace, instead of being amended, were repealed in their entirety at the same time that these new rules were adopted in their entirety. For the most part, the text of the new rules remains identical to the text of the old rules they replace--only some section numbers will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, this notice of adopted rule includes discussion regarding those specific rules and a reasoned justification for the rule. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules, as they currently exist, require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

New §373.13 seeks to clarify the limitations of proper advertising to prevent misleading the public into what insurance payment provisions are required of both the podiatric physician and the prospective patient. For example, patients are required to make co-payments. That insurance requirement cannot be waived by the podiatric physician to solicit patient business. Furthermore, §373.13 also clarifies that podiatric physicians can only advertise board certifications that are approved by the Council on Podiatric Medical Education or the American Podiatric Medical Association. Due to the ability of any person to obtain questionable credentials in this age of mass communication via the internet, the purpose of this provision is to ensure that the public is not misled or deceived by exaggerated credentials not recognized by formal standards of education and training.

No comments were received regarding the board's adoption of the new rules.

The new rules are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry. These rules implement Texas Occupations Code §202.152, concerning rules regarding advertising.

The proposed new rules implement the reorganization as current §375.3 to be merged to new Chapter 373. This reorganization updates the rule language in a manner that ensures the rules remains consistent with Texas Occupations Code §202.001 et seq., as amended by S.B. 402 of the 79th regular legislative session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
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CHAPTER 375. RULES GOVERNING CONDUCT

22 TAC §§375.1 - 375.6, 375.8 - 375.16

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §§375.1 - 375.6 and 375.8 - 375.16 concerning Rules Governing Conduct without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 25). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
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CHAPTER 375. CONDUCT AND SCOPE OF PRACTICE

22 TAC §§375.1, 375.3, 375.5, 375.7, 375.9, 375.11, 375.13, 375.15, 375.17, 375.19, 375.21, 375.23, 375.25, 357.27, 375.29, 375.31, 375.33

The Texas State Board of Podiatric Medical Examiners adopts new §§375.1, 375.3, 375.5, 375.7, 375.9, 375.11, 375.13, 375.15, 375.17, 375.19, 375.21, 375.23, 375.25, 375.27, 375.29, 375.31 and 375.33 concerning Conduct and Scope of Practice with no changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 25).

These new rules have been adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code

§2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the old rules that these new rules replace, instead of being amended, were repealed in their entirety at the same time that these new rules were adopted in their entirety. For the most part, the text of the new rules remains identical to the text of the old rules they replace--only some section numbers will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, this notice of adopted rule includes discussion regarding those specific rules and a reasoned justification for the rule. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules, as they currently exist, require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar. Section 375.5 adds the provision for annual renewal of Hyperbaric Oxygen Certification. Annual renewal is necessary to ensure that podiatrists maintain modern techniques as recognized by the Undersea and Hyperbaric Medical Society. This section also identifies the scope of this modality by limiting it to the treatment of the foot and ankle as the entire body is submerged in the dive. Section 375.7 adds the provision for annual renewal of Nitrous Oxide/Oxygen Inhalation Conscious Sedation. Annual renewal is necessary to ensure that podiatrists maintain modern didactic and clinical techniques for the purpose of proper administration of Nitrous Oxide/Oxygen Inhalation Conscious Sedation. Section 375.21 adds the cost of x-rays when a patient is requesting copies of their records. Unlike photocopying paper records, separate radiological machines and processes are utilized to duplicate x-ray films at cost. Finally §375.33 clarifies the level of offenses relating to sexual misconduct that can occur in the setting of a doctor/patient relationship. Three levels of boundary violations have been identified to categorize physician behavior responsive to national patient advocacy guidelines.

The Texas State Board of Podiatric Medical Examiners is in receipt of a February 2, 2006 public comment (the TMA/TOA letter) submitted by Robert T. Gunby, M.D. and Steve Norwood, M.D., on behalf of the Texas Medical Association and the Texas Orthopedic Association. The TMA/TOA letter references the litigation currently involving adopted §375.1(2). The Board is aware that the case is currently under appeal but that there is currently in effect the August 23, 2005 "Final Judgment" in Travis County District Court (Cause No. GN-204022) adjudicating §375.1(2), as it appears in these new rules, to be valid and to be within the Board's authority to promulgate.

The letter states an objection to the definition of foot contained in §375.1(2) because the rule includes what is commonly known as the ankle in the definition of "foot." The letter states that including the ankle within the definition of the foot is a "distortion of the anatomical definition of the foot."

The Board disagrees with the comment. The adoption of §375.1(2), and all the other rules in this chapter are re-adoptions of rules already in effect, in accordance with the requirements of Texas Government Code §2001.039, requiring the review of existing rules every four years. In accordance with that law, the Board determined that the rules, in their entirety, continued to exist, and that, therefore, they should be re-adopted. No additional justification is required.

Figure: 22 TAC Chapter 375 -- Preamble

To reiterate the Board's position referenced in the March 23, 2001, issue of the *Texas Register*: The definition of "podiatry" provided by the podiatry practice act, Texas Occupations Code §202.001(4), addresses the scope of practice of podiatry in broad, general terms. The board had determined that there exists uncertainty among various groups resulting from the lack of a definition of the term "foot" in the podiatric practices act. Podiatrists were not entirely sure of the limits of their practice; insurance companies were not sure for what procedures podiatrists may charge; hospitals were not entirely sure about the scope of practice for podiatrists; and the public had no guidance to determine whether a podiatrist is practicing within the scope of practice. The board had determined that the definition of the "foot" should be clarified for purposes of the practice of podiatry. It also had determined that the definition should reflect the long-standing practice of podiatry in the State of Texas. The definition the board had adopted was based on a common sense approach to the treatment of patients that is medically sound and protects the patient's interests. The board had applied its expertise in identifying those injuries or other conditions that affect that ability of the foot to function. The rule was arrived at after considering the public welfare and safety, its effect on the consumer, and various definitions that exist for foot. This definition best describes the foot as it functions in the human body.

What commonly is referred to in layman's terms as the "ankle" was included in the definition of "foot" because injury to the ankle causes a failure in the foot's ability to function properly. A procedure on the ankle would be within the podiatrist's scope of practice to the extent that the injury to the ankle causes the inability of any part of the rest of the foot to function properly. While a surgical procedure is being performed on the part of the foot below the ankle, it frequently occurs that the tendon or ligament being repaired is one which is attached to the lower part of the foot on one end and is attached to a higher part of the foot, on the other end. The podiatrist is in the best position to repair the damage on the higher end of that tissue at the same time as the damage to the tissue is being repaired a few centimeters below that spot. Although some of these tissues may be attached at the foot on one end and as high as the knee at the other end, the board, by this rule, limits the scope of podiatric practice to that area that is no higher up the human body than the area at the level at which the structures affect the function of the foot.

In other instances, after the podiatrist begins surgery, pathology to the ankle and soft tissues of the lower leg is noted for the first time. The podiatrist is in the best position to repair the damage during the surgery rather than subjecting the patient to a separate surgical procedure on another day along with the exposure to anesthesia, the discomfort, and other medical risks, costs, and inconveniences that arise from having to return on another day to perform a second procedure that could have been performed during the first surgery. One alternative would be for the podiatrist to obtain another surgeon while the patient is still anesthetized, to complete the repair, assuming another surgeon can be found on short notice. The other option would be to close the patient, leaving the injury as is, until another appointment can be made for another surgery, risking additional injury to the patient in the meantime. Both of those options are not acceptable, when the podiatrist is trained to perform the procedure to repair the damage to the ankle. Of course, a podiatrist that is not trained to perform surgery of the ankle or of the tissues that attach to a location above the lower foot, would not be authorized to perform the procedure, not because the definition does not allow it, but because the proper practice of podiatric medicine consistent with the public health and welfare would require an unqualified podiatrist to refrain from attempting procedures that are not within the podiatrist's capability. The podiatric practice act already protects against such an occurrence by making it a violation of the act for a podiatrist to practice podiatry in a manner inconsistent with the public health and welfare.

The new rules are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry.

The adopted new rules implement the reorganization as current Chapter 380 to be merged to Revised Chapter 375; Current Chapter 381 to be merged to Revised Chapter 375; and Current Chapter 383 to be merged to Revised Chapter 375. This reorganization updates the rules in a manner that ensures the rules remains consistent with Texas Occupations Code §§202.001 et seq., as amended by S.B. 402 of the 79th regular legislative session (2005). The provisions related to sexual misconduct are responsive, but not limited to Texas Penal Code, Title 5, regarding sexual offenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
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CHAPTER 376. VIOLATIONS AND PENALTIES

22 TAC §§376.1 - 376.11, 376.21

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §§376.1 - 376.11 and §376.21 concerning Violations and Penalties without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 31). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect cer-

tain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §§376.1, 376.3, 376.5, 376.7, 376.9, 376.11, 376.13, 376.15, 376.17, 376.19, 376.21, 376.23, 376.25, 376.27, 376.29, 376.31, 376.33, 376.35

The Texas State Board of Podiatric Medical Examiners adopts new §§376.1, 376.3, 376.5, 376.7, 376.9, 376.11, 376.13, 376.15, 376.17, 376.19, 376.21, 376.23, 376.25, 376.27, 376.29, 376.31, 376.33, and 376.35 concerning Violations and Penalties without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 32).

These new rules have been adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the old rules that these new rules replace, instead of being amended, were repealed in their entirety at the same time that these new rules were adopted in their entirety. For the most part, the text of the new rules remains identical to the text of the old rules they replace--only some section numbers will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, this notice of adopted rule includes discussion regarding those specific rules and a reasoned justification for the rule. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules, as they currently exist, require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar. Section 376.5 increases the maximum penalty per violation from $2,500 to $5,000 as required by amendments to Texas Occupations Code, §202.552. Section 376.15 implements the board's authority to issue cease and desist orders as authorized by §202.6015. Section 376.17 implements the board's the authority to issue refund orders as authorized by §202.5085. Refund orders are not a means for a patient to seek restitution from the physician beyond actual out-of-pocket costs rendered for podiatric services provided. For example, a patient may not receive compensation for pain and suffering, even if such compensation is labeled as a refund. The board will look at the substance of the relief requested and the violation that is alleged in determining whether a refund is appropriate. In addition, an order requiring a refund of co-payments is not permitted. Physicians are required to collect co-payments in accordance with insurance industry standards. Insurance requirements cannot be waived by the podiatric physician to solicit patient business. Section 376.19(a) clarifies other actions which rise to the level of a criminal violation of practice without a license as provided in Texas Occupations Code §202.605. Section 376.19(c) implements the statutory provisions that authorize the board to conduct unannounced visits. In addition to allowing the board to investigate and confirm that a licensee is complying with the laws of podiatry, this provision also implements a program authorized by statute for the board to investigate whether or not a licensee on suspension is practicing podiatry in violation of a Board order as authorized by Texas Occupations Code §202.602. Section 376.21 provides a process for the temporary suspension of a license as authorized by Texas Occupations Code §202.510, for situations that pose an immediate threat to public welfare. Section 376.27(a) clarifies the means and manner in which complaints can be filed with the Board and also describes categories of complaints investigated by the Board as required by amendments to Texas Occupations Code §202.204. Section 376.27(b) clarifies that the Board shall periodically notify the complaint parties of the status of the complaint until final disposition in accordance with requirements of Texas Occupations Code §202.204. Section 376.27(d) implements a requirement of federal law that all board actions be reported to the National Practitioner Data Bank/Healthcare Integrity Protection Data Bank as required by Section 1921 and Section 1128E of the Social Security Act. Section 376.27(f) identifies the Board's role and duty in pursuing alleged crimes by conducting requisite criminal investigations and cooperating with law enforcement agencies in the investigation and prosecution of those crimes. This section is also responsive to the Board's duties related to conducting criminal background checks through the Texas Department of Public Safety, the Federal Bureau of Investigation and any other means necessary to ensure the proper practice of podiatric medicine, as authorized by Texas Occupations Code §202.509(e), Texas Occupations Code Chapter 53, H.B. 660 pursuant to the acts of the 78th Legislature and implementation of Texas Government Code Sections 411.087 and 411.122. Section 376.29 implements the board's authority to monitor

licensee compliance as authorized by Texas Occupations Code §202.602. Section 376.31 consists of factors and criteria that the board will consider when faced with a licensee whose background and criminal history checks turn up positive or who are otherwise implicated in matters related to criminal activity. They also contain guidelines required by Texas Occupations Code Chapter 53, concerning disciplinary action resulting from a felony conviction as authorized by Texas Occupations Code §202.1525.

No comments were received regarding the board's adoption of the new sections.

The new rules are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry.

The adopted new rules implement the reorganization of current Chapter 376. This chapter will remain separate but has been updated to reflect amendments to Chapter 202 of the Occupations Code during the 2005 regular legislative session. This reorganization updates the rules in a manner that ensures the rules remain consistent with Texas Occupations Code §§202.001 et seq., as amended by S.B. 402 of the 79th regular legislative session (2005).

Provisions related to reporting Board disciplinary actions to the National Practitioner Databank - Healthcare Integrity Protection Databank implement Section 1921 and Section 1128E of the Social Security Act. Provisions related to the Consequences of Background and Criminal History Checks implement Texas Occupations Code Chapter 53, H.B. 660 pursuant to the acts of the 78th Legislature and implementation of Texas Government Code §411.087 and §411.122. Provisions related to criminal investigations are also responsive to all titles found within the Texas Penal Code as executed through the Texas Code of Criminal Procedure, efforts to fight waste, fraud and abuse pursuant to Governor Perry's Executive Order RP-36; and Texas Occupations Code §202.509(e) related to the board's cooperation with law enforcement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 377. PROCEDURES GOVERNING GRIEVANCES, HEARINGS, AND APPEALS

22 TAC §§377.1 - 377.3, 377.5 - 377.12, 377.14 - 377.16, 377.19 - 377.22, 377.24, 377.27, 377.31 - 377.38, 377.41, 377.45

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §§377.1 - 377.3, 377.5 - 377.12, 377.14 - 377.16, 377.19 - 377.22, 377.24, 377.27, 377.31 - 377.38, 377.41 and 377.45 concerning Procedures Governing Grievances, Hearings, and Appeals without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 38). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
Staff Services Officer V
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22 TAC §§377.1, 377.3, 377.5, 377.7, 377.9, 377.11, 377.13, 377.15, 377.17, 377.19, 377.21, 377.23, 377.25, 377.27, 377.29, 377.31, 377.33, 377.35, 377.37, 377.39, 377.41, 377.43, 377.45, 377.47, 377.49, 377.51, 377.53, 377.55, 377.57, 377.59

The Texas State Board of Podiatric Medical Examiners adopts new §§377.1, 377.3, 377.5, 377.7, 377.9, 377.11, 377.13, 377.15, 377.17, 377.19, 377.21, 377.23, 377.25, 377.27, 377.29, 377.31, 377.33, 377.35, 377.37, 377.39, 377.41, 377.43, 377.45, 377.47, 377.49, 377.51, 377.53, 377.55, 377.57 and 377.59 concerning Procedures Governing Grievances, Hearings, and Appeals without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 39).

These new rules have been adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the old rules that these new rules replace, instead of being amended, were repealed in their entirety at the same time that these new rules were adopted in their entirety. For the most part, the text of the new rules remains identical to the text of the old rules they replace--only some section numbers will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, this notice of adopted rule includes discussion regarding those specific rules and a reasoned justification for the rule. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules, as they currently exist, require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's adoption of the new sections.

The new rules are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the laws regulating the practice of podiatry.

The adopted new rules implement the reorganization and incorporation of the provisions contained in Chapter 379 of the rules, which has been repealed. This chapter will remain separate but has been updated to reflect amendments to Chapter 202 of the Occupations Code during the 2005 regular legislative session. This reorganization updates the rules in a manner that ensures the rules remain consistent with Texas Occupations Code §§202.001 et seq., as amended by S.B. 402 of the 79th regular legislative session (2005). This Chapter also implements Texas Government Code Chapter 2009 and is responsive to Texas Government Code Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 378. CONTINUING EDUCATION

22 TAC §§378.1 - 378.3, 378.5 - 378.8

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §§378.1 - 378.3 and 378.5 - 378.8 concerning Continuing Education without changes to the proposed text as pub-

lished in the January 6, 2006, issue of the *Texas Register* (31 TexReg 43). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 378. CONTINUING EDUCATION AND LICENSE RENEWAL

22 TAC §§378.1, 378.3, 378.5, 378.7, 378.9, 378.11, 378.13

The Texas State Board of Podiatric Medical Examiners adopts new §§378.1, 378.3, 378.5, 378.7, 378.9, 378.11 and 378.13 concerning Continuing Education and License Renewal without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 44).

These new rules have been adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the old rules that these new rules replace, instead of being amended, were repealed in their entirety at the same time that these new rules were adopted in their entirety. For the most part, the text of the new rules remains identical to the text of the old rules they replace--only some section numbers will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, this notice of adopted rule includes discussion regarding those specific rules and a reasoned justification for the rule. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in

2005. In some cases, the changes reflect the Board's decision that the rules, as they currently exist, require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

Section 378.13 bases the penalty for expired licenses on the amount for annual license renewal rather than the amount for examination application fee as required by amendments to Texas Occupations Code §202.301.

No comments were received regarding the board's adoption of the new sections.

The new rules are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry.

The adopted new rules implement the reorganization of old Chapter 378, which these rules replace. To the extent applicable, this Chapter has been updated to reflect amendments to Chapter 202 of the Occupations Code during the 2005 regular legislative session. This reorganization updates the rules in a manner that ensures the rules remain consistent with Texas Occupations Code §§202.001 et seq., as amended by S.B. 402 of the 79th regular legislative session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 379. FEES AND RENEWAL

22 TAC §379.1, §379.2

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §379.1 and §379.2 concerning Fees and Renewal without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 46). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
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For further information, please call: (512) 305-7000

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CHAPTER 380. HYPERBARIC OXYGEN GUIDELINES

22 TAC §380.1

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §380.1 concerning Hyperbaric Oxygen Guidelines without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 46). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Staff Services Officer V
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For further information, please call: (512) 305-7000

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CHAPTER 381. RELATIVE ANALGESIA

22 TAC §§381.1 - 381.8

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §§381.1 - 381.8 concerning Relative Analgesia without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 47). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in

their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
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CHAPTER 382. PODIATRIC MEDICAL TECHNICIANS

22 TAC §§382.1 - 382.6

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §§382.1 - 382.6 concerning Podiatric Medical Technicians without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 48). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain

consistent with Texas Occupations Code §§202.001-202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
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CHAPTER 382. RADIOLOGIC TECHNOLOGISTS

22 TAC §§382.1, 382.3, 382.5, 382.7, 382.9, 382.11

The Texas State Board of Podiatric Medical Examiners adopts new §§382.1, 382.3, 382.5, 382.7, 382.9 and 382.11 concerning Radiologic Technologists without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 49).

These new rules have been adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the old rules that these new rules replace, instead of being amended, were repealed in their entirety at the same time that these new rules were adopted in their entirety. For the most part, the text of the new rules remains identical to the text of the old rules they replace--only some section numbers will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, this notice of adopted rule includes discussion regarding those specific rules and a reasoned justification for the rule. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules, as they currently exist, require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

The following new rules contain language that differs from the language in the original rules as they read under old Chapter 382, which has been repealed:

The heading for Chapter 382 is changed to "Radiologic Technologists."

New §382.9 decreases the penalty time-frame from one to ninety days to one to thirty days and also changes the penalty amount from $5.00 to $25.00 to ensure timely and proper registration of technicians.

The Texas State Board of Podiatric Medical Examiners is in receipt of a February 2, 2006 public comment submitted by Robert T. Gunby, M.D. and Steve Norwood, M.D., on behalf of the Texas Medical Association and the Texas Orthopaedic Association, to the Board's proposed rules published in the January 6, 2006, issue of the *Texas Register*.

The TMA/TOA states that the proposed §382.7(a) allowing a podiatrist to delegate "certain radiological procedures affecting the ankle to a non-certified podiatric technician" "parlays upon the anatomically incorrect definition of the foot" and that it does not conform to the podiatrist's education, training, and experience or to that of the technician who is delegated the tasks. The Board does not agree with the comments. The definition of the term foot is not proposed in this chapter and is not at issue in this rulemaking. The Board determined that the ankle is included in the definition of the foot in 2001; and that is the language that has remained in effect to date. The adoption of rule §382.7(a) is merely a re-adoption of a rule already in effect, in accordance with the requirements of Texas Government Code §2001.039, requiring the review of existing rules every four years. In accordance with that law, the Board determined that the reasons why the rule was originally adopted continued to exist, and that, therefore, it should be re-adopted. No additional justification is required.

Concerns relating to the delegation of "certain radiological procedures affecting the ankle to a non-certified podiatric technician" are misplaced. It is within the podiatrist's scope of practice to treat the ankle, and so, too, the podiatrist may delegate radiologic procedures to qualified people as determined pursuant to the laws regulating podiatry, radiologic procedures and delegation authority.

The new rules are adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the law of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the laws regulating the practice of podiatry.

The adopted new rules implement the reorganization of old Chapter 382. This reorganization updates the rules in a manner that ensures the rules remain consistent with Texas Occupations Code Section 202.001 et seq., as amended by S.B. 402 of the 79th regular legislative session (2005). This reorganization also implements Texas Occupations Code §601.252.

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 June 15, 2006.

TRD-200603327
Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
Effective date: July 5, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 305-7000

CHAPTER 383. SEXUAL MISCONDUCT

22 TAC §§383.1 - 383.4

The Texas State Board of Podiatric Medical Examiners adopts the repeal of §§383.1 - 383.4 concerning Sexual Misconduct without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 50). The text will not be republished.

The repeal is being adopted as the culmination to the rule review process wherein the Board reviews its rules in their entirety every four years, as required by Government Code §2001.039. The review was completed, and the Board has determined that the reasons the rules initially were adopted continue to exist. However, the Board has also determined that a few substantive changes are necessary for a few of the rules and that a comprehensive and non-substantive re-organization of the rules is needed, as well. Part of the comprehensive reorganization of the Board's rules under 22 Texas Administrative Code (TAC) Part 18, includes collapsing related administrative provisions, currently spread out in various chapters of the TAC, into fewer, more understandable and functional chapters that follow a more logical progression. Regarding this re-organization of the rules, the board determined that, given the large number of rules involved, administrative inconvenience and probable reader confusion would arise from striking a large volume of individual sections, paragraphs, or clauses and then adding those same sections, paragraphs, or clauses elsewhere in the rules, as would have otherwise been required by the formatting and style requirements for amending rules. To avoid reader confusion, the current rules, instead of being amended, are being repealed in their entirety at the same time that new rules to replace them are being adopted in their entirety. For the most part, the text of the new rules will be identical to the current rules--only the section number will have changed.

To a lesser degree, certain new rules with new text are being adopted, and a few substantive changes are being made to some of the rules that are being repealed and that are being adopted in another chapter of the Board's rules. To the extent that this occurs, the notice of adopted rule will include discussion regarding the change and a reasoned justification for that change. Some substantive changes seek to update the Board's rules to conform to changes in the law occasioned by the enactment of S.B. 402 during the 79th regular legislative session in 2005. In some cases, the changes reflect the Board's decision that the rules as they currently exist require some refinement; and in some cases, the change in the rule merely consists of clarification of the current rule, correction of a grammatical or typographical error, or something similar.

No comments were received regarding the board's repeal of these rules.

The repeal is being adopted under Texas Occupations Code, §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The repeal implements the reorganization described above, with the text of current Chapter 379 to be merged into new Chapter 371; current Chapter 380 to be merged into new Chapter 375; current Chapter 381 to be merged into new Chapter 375; Chapter 376 will remain separate but has been updated to reflect certain changes in the law; current Chapter 382 will remain separate but with a change in heading to "Radiologic Technologists;" and current Chapter 383 to be merged into new Chapter 375. This reorganization updates the rules in a way that the rules remain consistent with Texas Occupations Code §§202.001 - 202.606, as amended by S.B. 402, 79th Legislature, Regular Session (2005).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Janie Alonzo
Staff Services Officer V
Texas State Board of Podiatric Medical Examiners
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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 91. CANCER

SUBCHAPTER A. CANCER REGISTRY

25 TAC §§91.1 - 91.12

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts amendments to §§91.1 - 91.12, concerning the reporting of cancer cases for the recognition, prevention, cure or control of those diseases, and to facilitate participation in the national program of cancer registries established by 42 United States Code §§280e to 280e-4. The amendment to §91.2 is adopted with a change to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3154). Sections 91.1, and 91.3 through 91.12 are adopted without changes, and therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments will bring rules in line with federal requirements for cancer case information to be reported to the central cancer

registry; update methods of transmitting case information to the state to reflect current technology; and, clarify reporting expectations for large cancer caseload facilities and facilities with highly qualified cancer reporting personnel to improve cancer reporting efficiency and timeliness. The amendments remove a reference to a repealed state law regarding medical records privacy to avoid conflicts with federal law.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 91.1 - 91.12 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

The reference to the Texas Board of Health was deleted in §91.1. Amendments to §91.2, Definitions, add a new definition and clarify other definitions. Amendments to §91.3(e), Who Reports, Access to Records, and §91.9(d), Confidentiality and Disclosure, remove the reference to repealed law, Health and Safety Code, Chapter 181, Medical Records Privacy, §181.101. Amendments to §91.4(a)(1)(B) clarify language to comply with the national program of cancer registries. Additional amendments to §91.4(b), Reportable Information, add; casefinding source; managing physician; and follow-up physician and removes capability to submit cancer reports manually. Section 91.4(b)(1)(B) adds language to report the primary payer at the time of diagnosis to the extent that information is available in the medical record, and additional language to §91.4(b)(2)(B) adds that reports shall be fully coded. The amendment to §91.5 revises timeframes for reporting data.

Amendments to §91.6, How to Report, add the requirements for Internet reporting using acceptable software by large facilities. In §91.6, the amendments also remove the ability of facilities to submit paper reports and the ability to transmit cases via modem. Section 91.7(a) and (b) was deleted to eliminate the submission of paper forms. Amended language to §91.8(b) clarifies reporting timeframes. Additional language to §91.10(1) states that the department will provide technical assistance. Section 91.11 revises references to new agency and data needed for years "1998-2002" instead of "1992-1995". Section 91.12(b)(3) was deleted to reflect organizational changes resulting in centralized registry operations. Amended language to §91.12(b)(5) clarifies who has access to personal medical records.

All of Subchapter A includes updates to names, references and processes to reflect post-consolidation operations.

COMMENTS

The department, on behalf of the commission, did not receive any public comments concerning the proposal during the comment period. However, the department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following change that will clarify the definition of Cancer.

Change: Concerning §91.2(3), the department noted an incorrect inclusion of the word "nervous" in the definition of Cancer. The text was published in the April 14, 2006, issue of the *Texas Register* as "benign tumors nervous as required by the national program of cancer registries." It was recommended that the word "nervous" be deleted to reflect correct wording and grammar. The amendment language is corrected and now reads "benign tumors as required by the national program of cancer registries."

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 authorized by Health and Safety Code, §82.005 as amended, which requires the department to maintain a central data bank of accurate, precise, and current information to serve as a tool in the early recognition, prevention, cure and control of cancer; 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. Review of the rules implements Government Code, §2001.039.

§91.2. Definitions.

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

(1) Act--The Texas Cancer Incidence Reporting Act, Texas Health and Safety Code, Chapter 82.

(2) Branch--Cancer Epidemiology and Surveillance Branch of the department.

(3) Cancer--Includes a large group of diseases characterized by uncontrolled growth and spread of abnormal cells; any condition of tumors having the properties of anaplasia, invasion, and metastasis; a cellular tumor the natural course of which is fatal, including intracranial and central nervous system malignant, borderline, and benign tumors as required by the national program of cancer registries; and malignant neoplasm, other than non-melanoma skin cancers such as basal and squamous cell carcinomas.

(4) Cancer reporting handbook--The branch's manual for cancer reporters that documents reporting procedures and format.

(5) Clinical laboratory--An accredited facility in which tests are performed identifying findings of anatomical changes; specimens are interpreted and pathological diagnoses are made.

(6) Department--Department of State Health Services.

(7) Health care facility--A general or special hospital as defined by the Health and Safety Code, Chapter 241; an ambulatory surgical center licensed under the Health and Safety Code, Chapter 243; an institution licensed under the Health and Safety Code, Chapter 242; or any other facility, including an outpatient clinic, that provides diagnostic or treatment services to patients with cancer.

(8) Health care practitioner--A physician as defined by Occupations Code, §151.002 or a person who practices dentistry as described by the Occupations Code, §251.003.

(9) Personal cancer data--Information that includes items that may identify an individual.

(10) Quality assurance--Operational procedures by which the accuracy, completeness, and timeliness of the information reported to the department can be determined and verified.

(11) Report--Information provided to the department that notifies the appropriate authority of the occupancy of a specific cancer

in a person, including all information required to be provided to the department.

(12) Research--A systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

(13) Statistical data--Aggregate presentation of individual records on cancer cases excluding patient identifying information.

(14) Texas Cancer Registry--The cancer incidence reporting system administered by the Cancer Epidemiology and Surveillance Branch.

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 June 19, 2006.

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Cathy Campbell
General Counsel
Department of State Health Services
Effective date: July 9, 2006
Proposal publication date: April 14, 2006
For further information, please call: (512) 458-7111 x6972

CHAPTER 128. PERMITS FOR CONTACT LENS DISPENSERS

25 TAC §§128.1 - 128.5, 128.9, 128.14

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§128.1 - 128.5, 128.9, and 128.14, concerning the permitting and regulation of contact lens dispensers. Section 128.9 is adopted with changes to the proposed text as published in the March 3, 2006, issue of the *Texas Register* (31 TexReg 1411). Sections 128.1 - 128.5 and 128.14 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The Texas Legislature passed House Bill (HB) 1025, 79th Legislature, Regular Session (2005), Sunset legislation, located in Occupations Code, Chapter 351, relating to the continuation and functions of the Texas Optometry Board, with conforming amendments to the Texas Contact Lens Prescription Act as required by the federal "Fairness to Contact Lens Consumers Act" (Public Law 108-164), and federal rules implementing the law, 16 CFR Part 315 (Contact Lens Rule); HB 2680, 79th Legislature, Regular Session (2005), located in Occupations Code, Chapter 112, relating to reduced fees and continuing education requirements for retired health professionals, including contact lens permit holders, engaged in the provision of voluntary charity care; and HB 164, 79th Legislature, Regular Session (2005), relating to amendments to the Health and Safety Code (HSC), Chapter 431, including prohibiting the sale of prescription devices, including contact lenses, at a flea market. The amendments also implement HSC, §12.0111, which requires the department to charge fees for issuing or renewing a license.

SECTION-BY-SECTION SUMMARY

Amendments to §128.1 reflect the new section name for §128.5, and include a prescription verification requirement. Amendments to §128.2 reflect changes required by the abolishment of the "Board of Health"; and the addition of "Executive Commissioner." The section has been renumbered to reflect deletions and insertions. Amendments to §128.3 reflect the new reduced fee for renewal for a retired contact lens dispenser providing voluntary charity care required by HB 2680 of $50 (for a retired optician registered with the department) and $75 (for a retired optician not registered with the department) for each two-year renewal. Amendments to §128.4 remove obsolete language related to the abolished Board of Health. Amendments to §128.5 require that a record of a prescription or prescription verification be retained for a period of two years, and include the new requirement in federal and state law for prescription verification, including standards for verification. The section also authorizes the Executive Commissioner of the commission and the Executive Director of the Texas Optometry Board to enter into interagency agreements as necessary to enforce the rules. The section also reflects the prohibition on the sale of contact lenses at a flea market. The name of the section is amended to reflect the standards for verification. Amendments to §128.9 reflect the renewal requirements for a retired contact lens dispenser providing voluntary charity care required by HB 2680. An amendment to §128.14 reflects a name change from "Division" to "Unit" necessitated by reorganization with the department.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period. However, the department staff, on behalf of the commission, provided a comment and the commission has reviewed and agrees to the following change.

Change: Concerning §128.9(m), the word "renumeration" was changed to the correct word "remuneration" for clarification of the rule.

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 final amendments are authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§128.9. Renewal of Permit.

(a) The purpose of this section is to set out the rules governing permit renewal.

(b) When issued, a permit is valid for one year or two years, as determined by the department, commencing on the date of issuance of the initial permit.

(c) A permit holder must renew the permit annually or every two years. The renewal date of a permit shall be the last day of the month in which the permit was originally issued.

(d) At least 30 days prior to the expiration date of a permit, the department shall send a notice to the permit holder's address in the department's records and a permit renewal form. The renewal form shall give notice of the expiration date of the permit and the amount of the renewal fee required. The permit holder must complete and return the renewal form and fee to the department.

(e) The permit renewal form shall require the applicant to provide the preferred mailing address, primary employment address and telephone number, trade names and addresses of all locations in which the optician intends to conduct business, and the disclosure of misdemeanor or felony convictions.

(f) A permit holder has renewed the permit when the permit holder has mailed the fully completed renewal form and the required renewal fee to the department prior to the expiration date of the permit. The postmark date shall be considered the date of mailing.

(g) The department shall issue a renewed permit to a permit holder who has met all requirements for renewal.

(h) Each permit holder is responsible for renewing the permit before the expiration date and shall not be excused from paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the permit shall not excuse failure to file for timely renewal.

(i) A permit holder whose permit has expired may not fill a contact lens prescription in this state or sell, deliver, or dispense contact lenses to any person in this state.

(j) A person whose permit has been expired for 90 days or less may renew the permit by paying to the department a renewal fee that is equal to one and one-half times the normally required permit fee.

(k) A person whose permit has been expired for more than 90 days but less than one year may renew the permit by paying to the department a renewal fee that is equal to two times the normally required permit fee.

(l) A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by complying with requirements and procedures for an original permit.

(m) A retired individual permit holder who wishes to dispense contact lenses only in the provision of voluntary charity care may renew the permit every two years by submitting the renewal form and the retired contact lens dispenser renewal fee in accordance with the renewal procedures described in this section. Voluntary charity care means dispensing contact lenses at no cost to the consumer. A retired contact lens dispenser who renews under this subsection may not sell contact lenses or receive any remuneration for dispensing lenses.

(n) A permit holder whose check for the renewal fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the permit holder's receipt of the department's notice. If proper payment is not received, the permit shall not be renewed. If a renewed permit has already been issued, it shall be ineffective.

(o) If a permit holder fails to timely renew his or her permit because the permit holder is or was on active duty with the armed forces of the United States of America serving outside the state of Texas, the permit holder may renew the permit pursuant to this subsection.

(1) Renewal of the permit may be requested by the permit holder, the permit holder's spouse, or an individual having power of attorney from the permit holder. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the permit. Permit holders who renew in accordance with this subsection shall be excused from paying late fees and penalties.

(3) A copy of the official orders or other official military documentation showing that the permit holder is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the permit holder shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(p) The department shall not renew a permit if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(q) The department shall not renew a permit if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License), for failure to pay child support or failure to comply with a court order providing for the possession of or access to a child.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

SUBCHAPTER J. WASTEWATER OPERATORS AND OPERATIONS COMPANIES

30 TAC §§30.340, 30.342, 30.350

The Texas Commission on Environmental Quality (commission) adopts amendments to §§30.340, 30.342, and 30.350 *without changes* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 970) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems.

The commission adopts amendments to Chapter 30 to include requirements for licensing of operators of subsurface area drip dispersal systems and the wastewater treatment facilities that treat domestic wastewater and supply treated effluent to the subsurface area drip dispersal systems.

The commission also adopts additional rulemaking in 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 222, Subsurface Area Drip Dispersal System; Chapter 281, Applications Processing; Chapter 305, Consolidated Permits; Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting; and Chapter 331, Underground Injection Control, to implement HB 2651 in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 30.340, Qualification for Initial License

The adopted amendment to §30.340 prohibits individuals from applying for a new Class D wastewater license if that individual previously held a Class D license and is currently operating a wastewater treatment facility that treats domestic wastewater and disposes of treated effluent through a subsurface area drip dispersal system. Currently, all land application facilities, including subsurface area drip dispersal systems, are required to have a minimum of a Class D wastewater operator. Subsurface area drip dispersal systems require a very high quality effluent on a very consistent basis to prevent the drip lines and emitters from clogging. A higher level of licensed operator will help provide that quality and consistency.

Section 30.342, Qualifications for License Renewal

The adopted amendment to §30.342(c) adds paragraph (3) to prohibit the renewal of a Class D wastewater license for an operator who is operating a wastewater treatment facility that treats domestic wastewater and disposes of treated effluent through a subsurface area drip dispersal system. Subsurface area drip dispersal systems require a very high quality effluent on a very consistent basis to prevent the drip lines and emitters from clogging. A higher level of licensed operator will help provide that quality and consistency.

Section 30.350, Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Licenses Required

Adopted §30.350(e) is amended to require that the chief operator of a wastewater treatment facility that treats domestic wastewater and disposes of treated effluent through a subsurface area drip dispersal system holds at least a Class C wastewater license. Currently, the commission allows all land application facilities, including subsurface area drip dispersal systems, to be operated by a Class D wastewater operator. Subsurface area drip dispersal systems require a very high quality effluent on a very consistent basis to prevent the drip lines and emitters from clogging. A higher level of licensed operator will help improve quality and consistency.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The specific intent of this rulemaking is to amend Chapter 30 to include licensing requirements for operators of subsurface area drip dispersal systems and wastewater treatment facilities that treat domestic wastewater and supply treated effluent to the subsurface area drip dispersal systems. The adopted rules do not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the adopted rules simply add licensing requirements for operators of subsurface area drip dispersal systems and wastewater treatment facilities that treat domestic wastewater and supply treated effluent to the subsurface area drip dispersal systems. The adopted rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in Texas Government Code, §2001.0225(a). Texas Government Code, §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.

The adopted rules do not meet any of these criteria. First, the adopted rules do not exceed a standard set by federal law, because there is no comparable federal law. Second, the adopted rules do not exceed a requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are adopted to implement HB 2651. Third, the adopted rules do not exceed an express 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. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of HB 2651, which directs the commission to implement rules under TWC, Chapter 32. The adopted rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225. Written comments on the draft regulatory impact analysis determination were solicited; no comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to amend Chapter 30 to include licensing requirements for operators of subsurface area drip dispersal systems and wastewater treatment facilities that treat domestic wastewater and supply treated effluent to the

subsurface area drip dispersal systems. The adopted rules do not constitute a takings because they do not burden private real property. Written comments on the draft takings impact analysis determination were solicited; no comments were received on the draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) and is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the CMP, and will therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this action for consistency and determined that Chapter 30 does not impact any CMP goals or policies because it prescribes the level of licensure or training required for operators of subsurface area drip dispersal systems and the treatment facilities that supply treated effluent to subsurface area drip dispersal systems. Chapter 30 is administrative and does not regulate the environment.

PUBLIC COMMENT

The public comment period ended March 20, 2006. A public hearing was held March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Conference Room 2210, 12100 Park Thirty-Five Circle, Austin, TX. Oral comments were received from JN Technologies (JNT). Written comments were received from Harris County Public Infrastructure Department (HCPID); United States Department of Energy, National Nuclear Security Administration, Pantex Site Office (DOE); Lower Colorado River Authority (LCRA); Drip-Tech Wastewater Systems (DTWS); Save Our Springs Alliance (SOSA); and Snowden Onsite Septic, Inc. (SOSI). Texas Council of Engineering Companies (TCEC) submitted a written comment after the close of the comment period, which was addressed. One comment was related to this chapter.

RESPONSE TO COMMENTS

SOSI commented that the amendments to Chapter 30 requiring that subsurface area drip dispersal systems be operated by a chief operator with at least a Class C wastewater operator license exceeds legislative intent and directive.

RESPONSE

The commission disagrees with the comment. The amendments to Chapter 30 are supported by TWC, §32.003(4), that requires the use of all reasonable methods to implement the policy of maintaining the quality of fresh water in the state, promote the beneficial reuse of commercial, industrial, and municipal waste, and prevent underground injection that may pollute fresh water. Because of the level of automation required, a more experienced, more educated operator is warranted.

STATUTORY AUTHORITY

The amendments are adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted in HB 2651, §2 to the commission to adopt rules under TWC, Chapter 32.

The adopted amendments implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

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 June 15, 2006.

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Robert Martinez
Acting Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

CHAPTER 55. REQUESTS FOR RECONSIDERATION AND CONTESTED CASE HEARINGS; PUBLIC COMMENT

The Texas Commission on Environmental Quality (commission) adopts amendments to §§55.101, 55.150, and 55.200 *without changes* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 973) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems.

The commission amends Chapter 55 to regulate subsurface area drip dispersal systems that beneficially reuse treated wastewater effluent generated by treatment facilities processing more than 5,000 gallons per day of domestic wastewater and any amount of industrial wastewater. The adopted amendments clarify that these systems are included in the current processes for the requests for reconsideration, contested case hearings, and public comment.

The commission also adopts additional rulemaking in 30 TAC Chapter 30, Occupational Licenses and Registrations; Chapter 222, Subsurface Area Drip Dispersal System; Chapter 281, Applications Processing; Chapter 305, Consolidated Permits;

Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting; and Chapter 331, Underground Injection Control, to implement HB 2651 in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 55.101, Applicability

Adopted §55.101(c) and (d) is amended by adding TWC, Chapter 32 to the list of statutes that require public participation under this section.

Section 55.150, Applicability

Adopted §55.150 is amended by adding TWC, Chapter 32 to the list of statutes to clarify that subsurface area drip dispersal systems are included in the requirements of Subchapter E.

Section 55.200, Applicability

Adopted §55.200 is amended by adding TWC, Chapter 32 to the list of statutes to clarify that subsurface area drip dispersal systems are included in the requirements of Subchapter F.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The specific intent of this rulemaking is to amend Chapter 55 to include the procedures for requests for reconsideration, contested case hearings, and public comment relating to new, amended, or renewed subsurface area drip dispersal system permits to be subject to the requirements of this chapter. The adopted rules do not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the adopted rules simply require applications for new, amended, or renewed subsurface area drip dispersal system permits to be subject to the requirements of this chapter. The adopted rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in §2001.0225(a). Texas Government Code, §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. The adopted rules do not meet any of these criteria. First, the adopted rules do not exceed a standard set by federal law, because there is no comparable federal law. Second, the adopted rules do not exceed a requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are adopted to implement HB 2651. Third, the adopted rules do not exceed an express 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. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of HB 2651, which directs the commission to implement rules under TWC, Chapter 32. These adopted rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225. Written comments on the draft regulatory impact analysis determination were solicited; no comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to amend Chapter 55 to require that the requests for reconsideration, contested case hearings, and public comment relating to new, amended, or renewed subsurface area drip dispersal system permits be subject to the requirements of this chapter. The promulgation and enforcement of the adopted rules will not affect private real property in a manner that requires compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this rulemaking does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007. Written comments on the draft takings impact analysis determination were solicited; no comments were received on the draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) and is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the CMP, and will therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this action for consistency with the CMP goals and determined that Chapter 55 does not impact any CMP goals or policies because it regulates the permitting process. Chapter 55 is administrative and does not regulate the environment.

PUBLIC COMMENT

The public comment period ended March 20, 2006. A public hearing was held March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Conference Room 2210, 12100 Park Thirty-Five Circle, Austin, Texas. Oral comments were received from JN Technologies (JNT). Written comments were received from Harris County Public Infrastructure Department (HCPID); United States Department of Energy, National Nuclear Security Administration, Pantex

Site Office (DOE); Lower Colorado River Authority (LCRA); Drip-Tech Wastewater Systems (DTWS); Save Our Springs Alliance (SOSA); and Snowden Onsite Septic, Inc. (SOSI). Texas Council of Engineering Companies (TCEC) submitted a written comment after the close of the comment period, which was addressed. No comments were received in relation to this chapter.

SUBCHAPTER D. APPLICABILITY AND DEFINITIONS

30 TAC §55.101

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, as amended by HB 2651.

The adopted amendment implements HB 2651, which added new Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

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 June 15, 2006.

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SUBCHAPTER E. PUBLIC COMMENT AND PUBLIC MEETINGS

30 TAC §55.150

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted in HB 2651.

The amendment implements HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. REQUESTS FOR RECONSIDERATION OR CONTESTED CASE HEARING

30 TAC §55.200

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of

the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, as enacted by HB 2651.

The adopted amendment implements HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 222. SUBSURFACE AREA DRIP DISPERSAL SYSTEMS

The Texas Commission on Environmental Quality (commission) adopts new §§222.1, 222.3, 222.5, 222.31, 222.33, 222.35, 222.37, 222.39, 222.41, 222.43, 222.45, 222.71, 222.73, 222.75, 222.77, 222.79, 222.81, 222.83, 222.85, 222.87, 222.111, 222.113, 222.115, 222.117, 222.119, 222.121, 222.123, 222.125, 222.127, 222.151, 222.153, 222.155, 222.157, 222.159, 222.161, and 222.163.

Sections 222.1, 222.3, 222.33, 222.35, 222.39, 222.41, 222.43, 222.45, 222.71, 222.75, 222.77, 222.83, 222.111, 222.113, 222.119, 222.127, 222.153, 222.155, 222.157, 222.159, and 222.161 are adopted *without changes* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 976) and will not be republished. Sections 222.5, 222.31, 222.37, 222.73, 222.79, 222.81, 222.85, 222.87, 222.115, 222.117, 222.121, 222.123, 222.125, 222.151, and 222.163 are adopted *with changes* to the proposed text and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems.

The commission adopts these rules to regulate subsurface area drip dispersal systems that dispose of wastewater generated by treatment facilities that process more than 5,000 gallons per day (gpd) of domestic wastewater or any amount of industrial wastewater. The adopted rules provide permitting procedures and technologically based requirements for design, operation, and closure of subsurface area drip dispersal systems. HB 2651 does not limit applicability to systems with capacity of greater than 5,000 gpd of domestic wastewater, but systems with a capacity of less than 5,000 gpd of domestic wastewater are regulated by Texas Health and Safety Code (THSC), Chapter 366 and 30 TAC Chapter 285, On-Site Sewage Facilities. Those statutes and regulations provide adequate protection of human health and the environment for domestic systems with a capacity of less than 5,000 gpd. There has been legislative and stakeholder consensus that current regulations are adequate for domestic systems that treat less than 5,000 gpd and that TWC, Chapter 32 should not be interpreted as applying to those systems.

The commission also adopts additional rulemaking in 30 TAC Chapter 30, Occupational Licenses and Registrations; Chapter 55, Requests for Reconsideration and Contested Case Hearings and Public Comment; Chapter 281, Applications Processing; Chapter 305, Consolidated Permits; Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting; and Chapter 331, Underground Injection Control, in this issue of the *Texas Register* to implement HB 2651.

SECTION BY SECTION DISCUSSION

Subchapter A, General Provisions

Section 222.1, Purpose and Scope

Adopted §222.1 establishes the purpose and scope of Chapter 222, which is to establish procedures for the permitting, design, and operation of subsurface area drip dispersal systems.

Section 222.3, Applicability

Adopted §222.3 establishes to which systems the chapter does and does not apply. The chapter applies to subsurface area drip dispersal systems that inject treated effluent at a depth of less than 48 inches from facilities with a capacity of more than 5,000 gpd of domestic wastewater and from facilities that process industrial wastewater. This chapter does not apply to subsurface area drip dispersal systems that are regulated by THSC, Chapter 366 and Chapter 285. Chapter 222 exempts systems that are excluded from TWC, Chapter 32 and systems that do not meet the definition of subsurface area drip dispersal system in TWC, §32.002.

Section 222.5, Definitions

Adopted §222.5 defines the terms used in this chapter.

Subchapter B, Administrative Procedures

Section 222.31, Application Process

Adopted §222.31 establishes the procedure that applicants must follow to submit an application for authorization to operate a subsurface area drip dispersal system and the associated treatment system. The process is essentially the same as other wastewater discharge permits. Section 222.31 also allows subsurface area drip dispersal system permittees with valid permits to continue to operate under their current permit until that permit expires or is superceded by an amended permit. Applicants who have administratively complete permit applications on file with the commission prior to the adoption of these rules, will be permitted using the current process under TWC, Chapter 26.

Adopted §222.31 also contains the opportunity for permittees filing a permit renewal application for a subsurface area drip dispersal system to request a variance from the requirements of this chapter. To qualify for the variance, the subsurface area drip dispersal system must: 1) be in good working order; 2) not cause

pollution, soil saturation, or a build-up of waterborne constituents in the soil; 3) not be prohibited by other commission regulations; and 4) not be a poor performer under commission compliance history rules.

Section 222.33, Public Notice

Adopted §222.33 requires applicants for subsurface area drip dispersal system applications to comply with the commission's regulations regarding public notice for wastewater discharge permit applications found in 30 TAC Chapter 39, Public Notice.

Section 222.35, Requests for Reconsideration and Contested Case Hearing and Public Comment

Adopted §222.35 establishes the procedures for public participation in an application to authorize a subsurface area drip dispersal system. The commission applies TWC, Chapter 5, Subchapter M, Environmental Permitting Procedures rules, the "HB 801 process," to applications for subsurface area drip dispersal system permits. The procedures in Chapter 55, Subchapters D - F will apply to applications for subsurface area drip dispersal system permits for requesting a public meeting, submitting public comment, and requesting reconsideration or a contested case hearing. Because TWC, §32.056 is based upon language derived from TWC, §27.018 and permit applications under TWC, Chapter 27 are subject to the HB 801 process, the commission expressed its belief that it is the legislative intent to subject TWC, Chapter 32 applications to the HB 801 process. The commission states that affected persons and local governments must follow the process established under the provisions of Chapter 55, Subchapters D - F in order for a contested case hearing to be granted. Under §55.211, a request for a contested case hearing is granted: 1) if made by an affected person who raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application; is timely filed with the chief clerk; 2) is pursuant to a right to hearing authorized by law; and 3) complies with the requirements of §55.201, Requests for Reconsideration or Contested Case Hearing. Under §55.203 governmental entities, including local governments and public agencies, with authority under state law over issues raised by the application may be considered affected persons.

Section 222.37, Compliance History

Adopted §222.37 establishes the method for evaluating the compliance history of an applicant seeking authorization to operate a subsurface area drip dispersal system. TWC, §32.101(c) establishes a broader compliance history than required by 30 TAC Chapter 60, Compliance History. TWC, §32.101(c) requires that a compliance history be prepared for all entities related to or closely related to the permittee, while Chapter 60 requires that a compliance history be prepared for the permitted entity only.

Section 222.39, Term of the Permit

Adopted §222.39 establishes the term of a permit. Texas Land Application Permits are permitted for a maximum of ten-year terms, and the maximum permit term for subsurface area drip dispersal systems is set at ten years.

Section 222.41, Right of Entry

Adopted §222.41 establishes parameters for commission representatives to enter the facility where a subsurface area drip dispersal system is located. TWC, §32.151 establishes the power to enter property, addressing commission staff, authorized agents, and employees of local government. Employees of local governments are not addressed in this section as included in TWC, Chapter 32, since the commission's jurisdiction does not extend to employees of local government. TWC, §26.173 grants local government the same power as the commission is granted in TWC, §26.014, to enter property for the purpose of inspecting and investigating conditions relating to the quality of water in the state or compliance with any rule, regulation, or permit.

Section 222.43, Construction Notices to Regional Office

Adopted §222.43 establishes the requirements for the permittee to notify the appropriate regional office of construction milestones. Regional office staff may be able to prevent substandard subsurface area drip dispersal systems from being installed during the construction process, and therefore, protect the environment and possibly offer a cost savings to the permittee when noncompliance with rules or permit requirements can be discovered before construction is complete.

Section 222.45, Local Health Department Notification

Adopted §222.45 establishes the procedure for the permittee to notify the local health department of the installation and operation of a subsurface area drip dispersal system, as required by TWC, §32.102(b).

Subchapter C, Siting Requirements and Effluent Limitations

Section 222.71, Site Selection

Adopted §222.71 establishes §309.12, Site Selection to Protect Groundwater or Surface Water, as the criteria for site selection of a subsurface area drip dispersal system.

Section 222.73, Soil Evaluation

Adopted §222.73 establishes the criteria for performing a soil evaluation of the site adopted for a subsurface area drip dispersal system. An in-depth evaluation of the soils at the subsurface area drip dispersal system site is necessary to assess the suitability of the proposed site. It is also necessary to know the specific conditions of the chosen site in order to design a subsurface area drip dispersal system that will function properly.

Section 222.75, Site Preparation Plan

Adopted §222.75 establishes the elements necessary in the site preparation plan that commission staff need to determine if the site preparation is suitable to address site-specific limitations for the proposed subsurface area drip dispersal system.

Section 222.77, Protection of Groundwater

Adopted §222.77 prohibits the pollution of groundwater and establishes procedures for determining the quality of groundwater located under a subsurface area drip dispersal system prior to installing a subsurface area drip dispersal system. The documentation of the condition of the groundwater prior to installation of a subsurface area drip dispersal system is necessary to determine if the subsurface area drip dispersal system has the potential to pollute the quality of the groundwater.

Section 222.79, Recharge Feature Plan

Adopted §222.79 establishes the requirement for certification that documents the presence or absence of recharge features on the proposed site of a subsurface area drip dispersal system, and establishes the required elements of the plan to protect the recharge feature, if one is located on the site.

Section 222.81, Buffer Zone Requirements

Adopted §222.81 establishes the distance required to locate the subsurface area drip dispersal system and the associated system from water features. These buffer zone requirements are designed to be protective of groundwater, surface water, and public health.

Section 222.83, Hydraulic Application Rates

Adopted §222.83 establishes the maximum rate at which effluent can be applied to the soil through a subsurface area drip dispersal system. The rates are based on the amount of effluent that can safely be applied to the soil and utilized by vegetation without causing seepage, percolation or surfacing of water, or an excess of nitrogen in the soil. The limits for the application rate are based on observation of subsurface area drip dispersal systems that are successfully operating and upon scientific modeling done by Bruce Lesikar, Ph.D. and Guy Phipps, Ph.D., who are associated with Texas A&M University, Texas Cooperative Extension Service. The commission adopts this requirement to ensure that groundwater will not be contaminated.

Adopted §222.83(a) provides that the maximum allowable hydraulic application rate of effluent is 0.1 gallons per square foot per day (g/sf/d) assuming that: 1) the site is located west of the boundary shown in Figure 1; 2) the cover crop is non-native grasses that is over-seeded in the winter; and 3) there is at least four feet of clay or clay-loam soil below the drip emitters. The east-west boundary is drawn along county lines closest to the 35 inch-per-year rainfall line. This section also requires the applicant to calculate the hydraulic application rate for the subsurface drip dispersal system and provides the equation for the calculation, if the applicant does not wish to use the 0.1 g/sf/d application rate or the applicant's site does not fit the criteria to use the 0.1 g/sf/d application rate.

Adopted §222.83(b) requires the applicant that does not qualify for the default 0.1 g/sf/d application rate or chooses not to use the default to calculate the allowable annual hydraulic loading rate based on nitrogen used by the vegetative cover. The nitrogen application rate equation is the same equation used by several other states, as well as the United State Environmental Protection Agency (EPA). Section 222.83(b) also establishes that upon approval by the executive director, the applicant may use an alternate equation.

Adopted §222.83(c) requires the applicant to design and operate the subsurface area drip dispersal system based on the limiting application rate derived from the more restrictive of the application rate calculations based on either the hydraulics equation or the nitrogen loading equation.

Section 222.85, Effluent Quality

Adopted §222.85 establishes the minimum quality of effluent that can be introduced from a treatment facility into a subsurface area drip dispersal system. Limitations are established to protect the environment and public health.

Section 222.87, Effluent Limitations

Adopted §222.87 establishes the effluent limitations for domestic wastewater effluent, the methods for determining industrial effluent limitations, and the prohibitions against certain substances being discharged through a subsurface area drip dispersal system. These effluent limitations are necessary to protect the environment and public health.

Subchapter D, Design Criteria

Section 222.111, General Provisions

Adopted §222.111 establishes that approval of a subsurface area drip dispersal system by the executive director does not relieve the permittee of any liabilities or responsibilities related to designing, constructing, and operating the subsurface area drip dispersal system and the associated treatment facility in compliance with federal and state statutes, commission rules, or in a manner that protects human health and the environment. New §222.111 also establishes a provision to allow the applicant to apply for a variance from design criteria in this subchapter, provided that the variance is at least as protective of human health and the environment as the required design.

Section 222.113, Engineering Report

Adopted §222.113 sets the requirements for the engineering report. The engineering report is the report that accompanies the plans and specification of the subsurface area drip dispersal system and is submitted after the permit is issued. These requirements include that the report is prepared by a licensed professional engineer, includes the design and the engineering justification for the design, specifications for all equipment, and maps and drawings of all pertinent features of the site and the proposed system.

Section 222.115, Treatment System

Adopted §222.115 provides the design criteria for the units and processes used to provide treatment prior to discharging effluent into the soil treatment portion of the subsurface area drip dispersal systems. The requirements of adopted §222.115 are based on standard engineering and commission practices.

Adopted §222.115(a) gives the applicant the option to use the design criteria in 30 TAC Chapter 317, Design Criteria for Sewerage Systems, as the requirements for designing, installing, and operating the system of a subsurface area drip dispersal system. The requirements of Chapter 317 have been adopted by the commission as the standard for sewage system designs.

Adopted §222.115(b) gives the applicant the option to use the design criteria in Chapter 285, Subchapter D, Planning, Construction, and Installation of OSSFs, if the applicant plans to use septic tanks as the treatment system. The requirements of Chapter 285 have been adopted by the commission as the standard for septic system designs.

Adopted §222.115(c) provides the design criteria for anaerobic biological reactors. The requirements of adopted §222.115(c) are based on standard engineering and commission practices.

Adopted §222.115(d) provides the design criteria for sand filters. The requirements of adopted §222.115(d) are based on standard engineering and commission practices.

Adopted §222.115(e) requires that the design for the subsurface area drip dispersal system include the criteria for solids removal from the treatment unit.

Adopted §222.115(f) establishes that the treatment unit be designed to process the flow of the facility supplying the sewage. Most sewage systems experience peaks and valleys in flow rates and with some systems, those peaks are significant. Recreational facilities that are used more on the weekends or in the summer months, churches, and sports facilities with grandstands are some examples of systems that would require the treatment system to be able to process a significantly higher peak flow than the average daily flow.

Section 222.117, Subsurface Area Drip Dispersal System Design

Adopted §222.117 establishes the design criteria for the systems that discharge the effluent into the soil treatment portion of the subsurface area drip dispersal system. The requirements of adopted §222.117 are based on standard engineering and commission practices.

Adopted §222.117(a) establishes subsurface area drip dispersal system components and requirements for those components that include effluent filters, dosing tanks, pumps, control systems, supply lines, and manifolds. These components, with these minimum requirements, are necessary for the subsurface area dispersal system to operate properly.

Adopted §222.117(b) requires the permittee to include the hydraulic calculations for the pump and distribution system in the engineering report. The calculations are necessary for the evaluation of the efficacy of the design of the subsurface area drip dispersal system.

Adopted §222.117(c) requires that the permittee design the subsurface area drip dispersal system to uniformly supply effluent to all the dispersal zones. Unless effluent is evenly distributed to the dispersal zones in the subsurface area drip dispersal system, the design of the system is not valid. The efficiency and efficacy of the system rely on the uniform distribution of effluent, even to the dispersal zones farthest from the system.

Adopted §222.117(d) establishes that the permittee design the subsurface area drip dispersal system to be self-draining to prevent freezing if there is a potential for freezing in the area and at the depth where the subsurface area drip dispersal system is located. This requirement will vary with the climate in the location of the subsurface area drip dispersal system. Frozen effluent in pipes and lines could cause lines to crack or break causing system malfunction or failure.

Adopted §222.117(e) requires that the permittee provide adequate velocity of flush water throughout the system during the flushing operation. This requirement ensures that the entire system is properly scoured during the flushing. The commission establishes this requirement to be consistent with standard engineering and commission practices.

Adopted §222.117(f) requires that the subsurface area drip dispersal system be equipped with backflow prevention devices to prevent the siphoning of soil and water into the emitters. Siphoning of soil and water back into the emitters could cause the emitters to clog or the system to malfunction. The commission adopts this requirement to be consistent with standard engineering and commission practices.

Adopted §222.117(g) requires the permittee to establish storm water run-on controls to minimize infiltration of precipitation into the dispersal zones. Minimization of water on the site, other than the effluent delivered to the subsurface area drip dispersal system, is required for the system to operate properly and not cause seepage or percolation. The commission adopts this requirement to be consistent with standard engineering and commission practices.

Section 222.119, Delivery Systems

Adopted §222.119 establishes the requirements for the piping and pumps that deliver effluent from the treatment facility to the dispersal zones.

Adopted §222.119(a) requires the permittee to use the criteria from Chapter 317 for the piping associated with delivering treated effluent from the treatment facility to the dispersal zones.

Adopted §222.119(b) requires the permittee to use standardized nomenclature for identifying piping materials. This requirement is necessary so that commission staff can identify the type of piping used.

Adopted §222.119(c) establishes that the permittee is required to use a multiple pump system and include the design criteria for the pumps. A multiple pump system protects the operation of the subsurface area drip dispersal system by maintaining a redundant system of pumping treated effluent from the treatment facility to the dispersal zones.

Adopted §222.119(d) requires that there are valves installed for each submersible pump to assure that there is a method for regulating flow into and out of each submersible pump.

Adopted §222.119(e) requires corrosion-resistant materials in a subsurface area drip dispersal system that is subject to corrosive gases.

Adopted §222.119(f) requires that any self-priming pumps meet the requirements of §317.3, except that self-priming pumps used in subsurface area drip dispersal systems are not required to meet the solids-handling requirements found in §317.3.

Adopted §222.119(g) requires that each unit of the self-priming pump's discharge piping have a valve to regulate the flow of effluent from the pump to the dispersal zones.

Section 222.121, Dispersal Zones

Adopted §222.121 establishes the design criteria for the subsurface area drip dispersal system.

Adopted §222.121(a) requires that the placement lines with emitters be installed between 6 and 48 inches below the surface of the soil. Six inches under the surface is the minimum depth for placement of emitters to prevent effluent from surfacing and to protect the tubing from surface activities. The 48-inch maximum depth is the maximum depth allowed for injection for a system to be considered a subsurface area drip dispersal system according to the definition of a subsurface area drip dispersal system defined in TWC, §32.002(a)(8).

Adopted §222.121(b) requires that the subsurface area drip dispersal system be divided into different dispersal zones. The subsurface area drip dispersal system must be able to treat and disperse the entire permitted flow with the greater of one dispersal zone or 10% of the total number of dispersal zones out of service.

Adopted §222.121(c) requires that the layout of the dispersal lines follow the contour of the site and not exceed 1% lateral slope. More than a 1% lateral slope prevents the even distribution of effluent to all emitters in all zones. The efficiency and efficacy of the system rely on the uniform distribution of effluent.

Adopted §222.121(d) requires that the engineering report include the design and specifications for each dispersal zone. This information is necessary to evaluate the efficacy of the design.

Adopted §222.121(e) requires that emitters shall be spaced not less than one foot, nor more than three feet, on center, unless a variance is granted due to site specific conditions of the subsurface area drip dispersal systems or the location. With less than one foot centers, there is a potential for wetting zone over-

lap from adjacent emitters that could cause subsoil seepage or percolation. With more than three feet centers, soil moisture would not be evenly distributed over the site and there would be patches of vegetative cover that would not receive adequate water or nutrients.

Adopted §222.121(f) requires the disinfection of the drip lines and emitters according to the degree and frequency determined by the design engineer to keep the system functioning properly and not clogging. No schedule has been imposed by the rule because different systems have different requirements. Adopted §222.121(f) allows the applicant to submit the criteria and then requires the permittee to comply with the criteria submitted.

Adopted §222.121(g) requires that the subsurface area drip dispersal system be equipped with audible and visual alarms that will activate in case of a problem with the system. An audio-visual alarm is necessary to alert anyone in the area that there is a problem with the system. Adopted §222.121(g) also requires that subsurface area drip dispersal systems that are not manned daily have a telemetry system to notify a responsible party of a system problem. Because the majority of a subsurface area drip dispersal system is underground, alarms and telemetry are necessary to notify a responsible party, usually the operator, that a problem exists. Early warning systems prevent system failures and protect human health and the environment by notifying the operator of a problem before the system is compromised or a spill or discharge occurs.

Section 222.123, Controls

Adopted §222.123 establishes the design criteria and components necessary for the automated control of the subsurface area drip dispersal system and the associated equipment. Because consistently even distribution of effluent is necessary for the subsurface area drip dispersal system to operate properly and much of the operation is underground, the operations must be constantly monitored by electronic means. Adopted §222.123 establishes the equipment standards and operational standards necessary to ensure that the operator is aware of how the system is functioning so that adjustments or repairs can be made in a timely manner.

Section 222.125, Vertical Separation

Adopted §222.125 establishes the minimum separation distances beneath the subsurface area drip dispersal system to ensure that there is adequate soil for the system to operate properly and to protect groundwater. This section also allows the permittee to request a variance if soil conditions at the specific subsurface area drip dispersal system site do not meet the requirements of this section. If a variance is granted, the executive director may impose alternate methods of preventing pollution in the individual permit.

Section 222.127, Storage

Adopted §222.127 establishes the minimum storage capacity for a subsurface area drip dispersal system. Minimum storage capacity is necessary to protect the environment if the system has a mechanical failure, requires maintenance, or if weather conditions prevent the application of effluent through the subsurface area drip dispersal system.

Subchapter E, Operations and Maintenance

Section 222.151, Prohibitions

Adopted §222.151(a) prohibits the effluent from leaving the root zone through either seepage or percolation. TWC, §32.3(8) defines a subsurface area drip dispersal system, in part, as a means of waste disposal that spreads waste over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded. Seepage and percolation would occur only if the soil hydrologic absorption rate and the crop/plant root absorption rate are exceeded. Adopted §222.151 would allow leaching sufficient to maintain the health of the cover crop.

Adopted §222.151(b) prohibits permittees causing ponding or surfacing of effluent in drip dispersal zones. Surfacing or ponding effluent are indicators of a malfunctioning subsurface area drip dispersal system.

Adopted §222.151(c) prohibits permittees from allowing conditions to exist that cause odors or attract vectors.

Section 222.153, System Flushing

Adopted §222.153 establishes the minimum frequency and method to flush the subsurface area drip dispersal system piping and emitters. Flushing is necessary to clear sediment and bacterial slime from the piping and emitters and therefore prevent clogging.

Section 222.155, Soil Moisture Monitoring

Adopted §222.155 establishes that certain subsurface area drip dispersal system permittees must sample soil moisture and prescribes the method to sample the presence of moisture beneath the dispersal zones. If groundwater is located under the subsurface area drip dispersal system site, soil moisture monitoring may be added to the permit by the executive director. Soil moisture sampling may be necessary if groundwater is present to ensure that the subsurface area drip dispersal system is operating properly and not threatening groundwater.

Section 222.157, Soil Sampling

Adopted §222.157 requires that the permittee sample soils in the dispersal zones for the presence of constituents. A build-up of constituents could harm or degrade the cover vegetation or leach out of the root zone and potentially impact groundwater.

Adopted §222.157(a) provides that the soil nutrient sampling be performed during the same 45-day period on an annual basis. A consistent sampling protocol is necessary to assess the change over time in the nutrient levels in the soil beneath a subsurface area drip dispersal system.

Adopted §222.157(b) requires that the permittee submit the results of the soil samples by September 1 following the sampling event.

Adopted §222.157(c) enumerates the constituents for which the permittee must sample.

Adopted §222.157(d) establishes the depths at which the samples must be taken.

Adopted §222.157(e) allows the permittee to request an alternate sampling schedule and requires the permittee to comply with any alternate sampling schedule that has been approved by the executive director.

Adopted §222.157(f) allows the permittee to request alternate sampling depths and frequencies with justification that the alternate depths and frequencies sufficiently monitor the levels of constituents in the soil beneath the subsurface area drip dispersal system.

Adopted §222.157(g) establishes that soil samples be collected from each different type of soil in the subsurface area drip dispersal system. Because constituents behave differently in different soil types, a sample from each soil type within the dispersal zones is necessary to evaluate the nutrient loading in the soils of the subsurface area drip dispersal system.

Adopted §222.157(h) establishes that the soil samples be composite soil samples and at least one sample be taken from each dispersal zone. Because application rates can vary from dispersal zone to dispersal zone, a composite sample from each zone is necessary to evaluate the nutrient loading in the soils of the subsurface area drip dispersal system.

Adopted §222.157(i) provides that if alternate samples or sampling methods or schedules are required by the executive director, the permittee must comply.

Section 222.159, Operator Licensing

Adopted §222.159 establishes the minimum classification of licensure held by an operator of a domestic wastewater treatment facility that uses a subsurface area drip dispersal system and the subsurface area drip dispersal system. The subsurface area drip dispersal system must be operated by a chief operator holding a Class A, B, or C wastewater operator license. Adopted §222.159 also requires that operators of all subsurface area drip dispersal systems receive training relevant to the specific systems they are to operate. Because subsurface area drip dispersal systems are an innovative technology, are mostly underground, and have automated control systems, the use of a wastewater operator with more experience and training than is normally required for other land application disposal systems is appropriate. Subsurface area drip dispersal systems currently operating have two years from the date of adoption of this rule to have a Class A, B, or C chief operator. This allows Class D operators who are currently operating subsurface area drip dispersal systems to gain the training and experience necessary to become a Class C operator.

Section 222.161, Vegetative Cover

Adopted §222.161 establishes requirements for minimum standards for planning, reporting, and maintaining the vegetative cover portion of a subsurface area drip dispersal system. A key component of a subsurface area drip dispersal system is the vegetative cover that utilizes both the water and the nutrient components of the effluent.

Section 222.163, Closure Requirements

Adopted §222.163 establishes the requirements for decommissioning a subsurface area drip dispersal system. Proper closure is required to protect the environment and prevent pollution.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are intended to implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The adopted rules will regulate subsurface area drip dispersal systems that beneficially reuse treated domestic or municipal wastewater effluent generated by treatment facilities of more than 5,000 gpd or industrial wastewater effluent. The adopted rules are intended to provide a permitting procedure and criteria for using subsurface area drip dispersal systems. The adopted rules will also require the commission to prepare a comprehensive compliance history for applicants seeking a permit under Chapter 222. Chapter 222 is applicable to any person who operates a waste dispersal system that uniformly injects processed wastewater effluent into the ground at a depth of not more than 48 inches and spreads the waste over the area so that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded. Although the intent of the adopted rulemaking is to protect the environment or reduce risks to human health from environmental exposure, it is not a major environmental rule because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. Therefore, the adopted rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the specified criteria. Texas Government Code, §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.

The adopted rules do not meet any of these requirements. First, the adopted rules do not exceed a standard set by federal law, because there is no comparable federal law. Second, the adopted rules do not exceed an express requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are adopted to implement HB 2651. Third, the adopted rules do not exceed an express 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. Fourth, the adopted rules have not been adopted solely under the general powers of the agency, but have been adopted under the express requirements of TWC, Chapter 32. The adopted rules substantially advance this specific purpose by setting forth permitting procedures, criteria for subsurface area drip dispersal systems, and a comprehensive compliance history review of applicants. Therefore, the commission does not adopt these rules solely under the commission's general powers. These adopted rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225. Written comments on the draft regulatory impact analysis determination were solicited; no comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. The purpose of this adopted rulemaking is to implement the provisions of TWC, Chapter 32. The primary purpose of this

adopted rulemaking is to implement the provisions of TWC, Chapter 32, which will regulate subsurface area drip dispersal systems that beneficially reuse treated wastewater effluent generated by domestic treatment facilities of more than 5,000 gpd and industrial facilities regardless of flow. The adopted rules are intended to provide a permitting procedure that includes scientifically based requirements for design and operation of these systems. The adopted rules also specifically contain the intention for the commission to prepare a more comprehensive compliance history for Chapter 222 applications. Chapter 222 applies to any person who operates a waste dispersal system that uniformly injects processed wastewater effluent into the ground at a depth of not more than 48 inches and spreads the waste over the area so that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded. The adopted rules substantially advance this purpose by setting forth the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for managing beneficial reuse of treated wastewater by means of subsurface area drip dispersal systems. The promulgation and enforcement of the adopted rules will not affect private real property in a manner that requires compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, these rules do not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007. Written comments on the draft takings impact analysis determination were solicited; no comments were received on the draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that the rule 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 adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The CMP goal applicable to the adopted rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. Adopted Chapter 222 meets the provisions of this goal. Adopted Chapter 222 regulates effluent applied into the soil through subsurface area drip dispersal systems and does not allow that effluent to cause pollution.

CMP policies applicable to the adopted rulemaking are located in 31 TAC §501.21, Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters. Adopted Chapter 222 complies with the policies in this section. Adopted Chapter 222 regulates effluent applied into the soil through subsurface area drip dispersal systems and does not allow that effluent to impact groundwater or surface water of any kind, including coastal waters.

Promulgation and enforcement of these adopted rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules are consistent with these CMP goals and policies, because these adopted rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

PUBLIC COMMENTS

The public comment period ended March 20, 2006. A public hearing was held March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Conference Room 2210, 12100 Park Thirty-Five Circle, Austin, TX. Oral comments were received from JN Technologies (JNT). Written comments were received from Harris County Public Infrastructure Department (HCPID); United States Department of Energy, National Nuclear Security Administration, Pantex Site Office (DOE); Lower Colorado River Authority (LCRA); Drip-Tech Wastewater Systems (DTWS); Save Our Springs Alliance (SOSA); and Snowden Onsite Septic, Inc. (SOSI). Texas Council of Engineering Companies (TCEC) submitted a written comment after the close of the comment period, which was addressed. The comments generally concerned technical issues.

RESPONSE TO PUBLIC COMMENTS

Comment

SOSA commented that the rules fail to prohibit discharges to land, ponding, vector generation, odor and nuisance conditions.

RESPONSE

The commission agrees in part with the comment. TWC, Chapter 32 and Chapter 222 add regulations to those already established against these activities in TWC, Chapter 26 and applicable chapters of 30 TAC. Prohibitions against ponding, and nuisance conditions such as vector attraction and odor have been added to §222.151 for clarity.

Comment

SOSA commented that the rule ascribes unfettered discretion to the executive director (ED) in many cases, e.g., he could approve more or less stringent methods of compliance. SOSA claims that this results in a rule which fails to serve the regulated community, since they do not have guidance in the rule to determine what methods would be determined acceptable by the ED.

RESPONSE

The commission disagrees with the comment. The regulated community has a set of rules that covers most aspects of applying for authorization, designing, installing, and operating subsurface area drip dispersal systems. ED discretion is necessary to address unforeseen, site-specific situations. Permitting staff members are available to meet with the regulated entities before and throughout the permit application process to assist them in designing a system that protects human health and the environment and meets the regulations. Each permit application will be given a thorough technical review and the draft permit will be available for public comment. ED decisions are subject to commission review.

Comment

SOSA commented that the rules fail to address cumulative impacts of subsurface area drip dispersal systems.

RESPONSE

The rules do not address cumulative impacts because subsurface area drip dispersal systems are required to be designed

not to create cumulative impacts. The application rate must be within soil hydrologic absorption rates and crop/root absorption rates. Effluent must be applied within specified absorption rates, no migration is allowed beyond the root zone and no buildup of effluent constituents is expected in the soil. Therefore, no cumulative impacts are anticipated.

Comment

SOSI commented that throughout the proposed rules are statements similar to the following, "subsurface area drip dispersal systems are an innovative technology and require a consistently high quality of effluent to prevent clogging and malfunction . . .." SOSI stated that this is not a factual statement and, therefore, cannot be repeatedly used as the factual basis anywhere in this rule package.

RESPONSE

The commission agrees in part with the comment. Subsurface area drip dispersal systems are an innovative technology that allow for precise application rates and specific placement of treated effluent. Most systems are operated through computerized control systems that require skilled operators. Equipment standards require effluent that can be filtered to 100 microns to ensure that sediment buildup does not affect the tubing or the emitters. Field flushing, in conjunction with the 100 micron filtration, prevent biological growth that can foul the tubing and emitters.

Comment

Re: §222.5(2)

SOSA stated that the definition of buffer zone should include public and private wells.

RESPONSE

The commission agrees with the comment and has revised the definition of buffer zone to include public wells, private wells, and springs.

Comment

Re: §222.5(4) and (13)

SOSI commented that the definitions of domestic wastewater and industrial wastewater in this rule contradict the Chapter 285 definitions of domestic wastewater and industrial wastewater. The definitions in this rule would transfer jurisdiction of subsurface area drip dispersal systems serving office buildings, restaurants, grocery stores, and other facilities that are not strictly "household" activities from Chapter 285 to new Chapter 222.

RESPONSE

The commission disagrees with the comment. There are no definitions of domestic wastewater and industrial wastewater in Chapter 285. Facilities that produce wastewater that meet the Chapter 222 definition of industrial waste will be required to apply for authorization under the rules of this chapter. Facilities that produce wastewater from human activities and household operations will be required to apply for authorization under the rules of this chapter if they produce an average flow over 5,000 gpd.

Comment

Re: §222.31

SOSA requested the required components for a complete application and the factors the ED will consider when reviewing a permit application to be clearly stated.

RESPONSE

As part of the rule package, the commission is revising Chapter 305, which identifies the contents of permit applications and §281.5, which identifies the additional items needed for wastewater permit applications to include the applications received under this chapter. The information identified in these chapters is required before an application can be declared administratively complete.

Comment

Re: §222.31

SOSA requested clarification of whether public notice and hearing requirements apply to the ED's granting of variances in this provision. SOSA commented that such public notice and hearing requirements ought to apply to ensure that the variances sought are truly in the public interest.

RESPONSE

If a permittee seeks to take advantage of the variance allowed in this rule, it may occur as part of the permit renewal or amendment process. The permit application will be subject to the applicable provisions of Chapter 55, that apply to applications that are declared administratively complete after September 1, 1999.

Comment

Re: §222.31(e)

SOSA commented that a consultation with the United States Fish and Wildlife should be added to the list of consultations in this provision.

RESPONSE

Section 222.31(e) reflects the language in the statute, which does not include notification of the United States Fish and Wildlife Service. The commission's rules require facilities to meet applicable local, state, and federal laws. The applicant must comply with the requirements that apply to this facility concerning threatened or endangered species. The United States Fish and Wildlife Service or the Texas Parks and Wildlife Department have jurisdiction over and can provide assistance regarding the presence of threatened or endangered species or habitat. The United States Fish and Wildlife Service may be contacted by mail at 711 Stadium Drive, Suite 252, Arlington, Texas 76011-6247 or by phone at 1-817-277-1100. The Texas Parks and Wildlife Department may be contacted by mail at 4200 Smith School Road, Austin, Texas 78744 or by phone at 1-800-792-1112.

Comment

Re: §222.31(e)(1)

SOSA requested that this provision specify what factors the ED's inspection will include.

RESPONSE

The ED will investigate all sites that propose to use subsurface drip irrigation as its disposal method permitted under these requirements. The ED is proposing to use the current standard operating procedures for inspecting systems with domestic flows of less than 5,000 gpd that use subsurface drip irrigation as their wastewater disposal method as the basis for designing an in-

vestigation protocols for subsurface area drip dispersal systems for industrial sites and domestic sites over 5,000 gpd. Standard operating procedures will require verifying the suitability of items such as the soil type, the slope, the buffer zones, the cover crop, and the precipitation averages. Using standard operating procedures rather than rules to define investigation criteria will allow the ED to revise the protocol in relation to emerging issues.

Comment

Re: §222.31(j)

SOSA requested establishing standard to the ED to accept late renewals.

RESPONSE

Section 222.31(j) and §305.63 require permittees to submit their renewal applications at least 180 days prior to the expiration date of the effective permit. In addition, TCEQ rules allow the ED to grant permission upon request for applications to be submitted within 180 days of the permit expiration date, but no later than the permit expiration date. Permission to file within the 180 days prior to the permit expiration date may be granted as long as the delay causes no threat to human health or the environment and does not extend beyond the date of the permit expiration.

Comment

Re: §222.31(l)

DOE commented that the rule does not provide any guidance on continued system operation should a variance request not be approved. DOE requested that a 60-month compliance period be allowed to comply with any criteria for which a variance request was denied.

RESPONSE

The commission agrees in part with this comment. A compliance period is necessary to allow the permittee to meet the criteria when a variance request is denied. This section was amended to include a compliance period of no more than three years, in accordance with §305.127(3).

Comment

Re: §222.37(b)

DOE commented that the compliance history for a governmental entity should be limited to the facility, not all facilities owned by the same governmental unit as was provided for military bases. DOE asked for its compliance history to be for its facility and not the entirety of the Department of Energy facilities in Texas.

RESPONSE

The commission agrees in part with the comment. TWC, Chapter 32 requires that the compliance history of all related entities be evaluated. The compliance history of all Department of Energy facilities in Texas will be evaluated for any permitting action for any DOE facility. The draft rule erred in basing the compliance history of military bases on the individual base. A military base was the only type facility whose compliance history did not include other related facilities. The rule has been revised to state that all facilities belonging to a single branch of service will be evaluated for any facility belonging to that branch.

Comment

Re: §222.73(a)(2) and (3)

JNT asked for clarification on what evidence is necessary to demonstrate primary and secondary rooting depths.

RESPONSE

Primary rooting depth is the depth where most roots are found. For most plants, it is the interval from zero to one foot. Secondary rooting depth is, by default, the rooting depth below the primary rooting zone and in this case, below the one-foot depth. Note that these are functional definitions since rooting density varies by species and it is affected by many environmental factors such as moisture availability, presence of restrictive strata, etc.

Description of roots in these two depth intervals should include, at a minimum, root density by depth (sometimes, most roots are found in the zero to six-inch depth), whether the plants are tap rooted or fibrous (branches out in all directions) in growth habit, presence and depth of root restrictive layers. No change was made to the provision. Standard definitions from the related literature are used in this provision.

Comment

Re: §222.73(a)(4)(F)

JNT asked if the coarse fragments requirement was going to follow the same basic program that Chapter 285 does now.

RESPONSE

The purpose of this provision is for the permittee to provide information on the coarse fragments in the soil so that the technical review of the permit application can result in an overall understanding of the soil profile. The intent of this provision is not to provide the restrictions imposed by Chapter 285.

Comment

Re: §222.73(b)

JNT, TCEC, and SOSI requested that a licensed professional engineer, in addition to a Texas licensed professional geoscientist, be allowed to conduct a soil evaluation.

RESPONSE

The commission agrees with this comment. Section 222.73(b) has been revised to include a licensed professional engineer. The Texas Geoscience Practice Act and the rules of the Texas Board of Professional Geoscientists require that geoscientific work be performed by a licensed professional geoscientist unless exempted under the act. As such, it is the responsibility of the licensed individual to ensure that he or she is qualified to perform the soil evaluation.

Comment

Re: §222.77

SOSI commented that §222.77, concerning the protection of groundwater, was not directed by HB 2561 and exceeds the legislative intent and directive.

RESPONSE

The commission disagrees with the comment. Section 222.77 was included in order to aid in the implementation of TWC, §32.003(1) and (3) that states: "It is the policy of this state and the purpose of this chapter to: (1) maintain the quality of fresh water in the state to the extent consistent with public health and welfare and the operation of existing industries" and "(3) prevent underground injection that may pollute fresh water." The intent of §222.77 is to provide the ED with the means to

establish a baseline quality of groundwater and to continue to sample the groundwater at subsurface area drip dispersal sites where it is necessary to ensure that no pollution of fresh water has occurred.

Comment

Re: §222.77

JNT requested a clarification of what is meant by the term groundwater in this section.

RESPONSE

Section 222.5(10) provides the following definition for groundwater: "subsurface water occurring in soils and geologic formations that are fully saturated year-round, seasonally, or intermittently."

Comments

Re: §222.77(b) and (c)

LCRA requested that the commission remove the ED's exercise of discretion in §222.77(b) and (c), under which the ED may require baseline groundwater quality be documented and may impose groundwater monitoring. SOSA requested clarification and specification of the ED's exercise of discretion in requiring baseline groundwater quality documentation and the imposition of groundwater monitoring.

RESPONSE

These provisions allow the ED to base decisions on the best professional judgment on the part of technical staff and the applicant. Initial documentation of groundwater quality or groundwater monitoring may not be appropriate for portions of the state where the first occurrence of groundwater is hundreds of feet below ground level and the application rate of the system is quite low. Likewise, initial documentation and groundwater monitoring would likely be appropriate in parts of the state where the first occurrence of groundwater is in the soil zone a few feet from the surface. These conditions would be established in a draft permit, on which the applicant and any interested parties would be allowed to comment.

Comment

Re: §222.79

JNT asked if there is a hierarchy to the review of the listed agencies or if a professional engineer or geoscientist needs agency sign off that its records were reviewed.

RESPONSE

This provision lists the sources that the licensed professional engineer or geoscientist will review to look for recharge features (i.e. water wells, oil wells, borrow pits, etc.). There is no hierarchy to the sources, nor is there a sign-off procedure with those agencies. Rather, it is the role of the professional engineer or professional geoscientist to state in the Recharge Feature Plan that the records kept with the listed entities (at minimum) were reviewed for the presence or absence of recharge features on the site of the proposed subsurface area drip dispersal system.

Comment

Re: §222.79

SOSA commented on the absence of reference to the Edwards Aquifer and other sensitive groundwater areas in the state. TCEQ should prohibit subsurface area drip dispersal systems in the artesian or recharge zones of the Edwards Aquifer and other karst-type aquifers or strengthen the requirements of §222.79.

RESPONSE

Subsurface area drip dispersal systems are already prohibited over the Edwards Aquifer recharge zone and the Edwards Aquifer transition zone as stated in 30 TAC §213.8(a)(1), (b)(1), and (c).

There are no existing prohibitions for subsurface area drip dispersal systems over other karst aquifers in the state, and to include those prohibitions is outside of the scope of this rulemaking. New and expanding subsurface area drip dispersal systems proposed within the recharge areas of other karst aquifers in the state will be required to include a Recharge Feature Plan as required in §222.79.

Comment

Re: §222.79(4)

SOSA commented that permittees should be required to install necessary and appropriate protective measures and implement a groundwater monitoring plan. SOSA pointed out that the proposed rule allows permittees a choice between those two options in §222.79(4)(A) and (B).

RESPONSE

Section 222.79(4)(A) and (B) provides a professional engineer or professional geoscientist with options on how to best offer protection of recharge features identified on the Recharge Feature Plan developed for the site. Section 222.71 allows the ED to issue a permit for a new or expanding facility only if the permit minimizes the risk to groundwater and surface water quality. Additionally, §222.77(b) and (c) enable the ED to require groundwater monitoring for facilities if necessary to ensure that they do not pollute groundwater.

Comment

Re: §222.79(4)(B)

JNT asked the commission to clarify the depth and size of monitoring wells to be used under the groundwater monitoring plan. Is the intent to sample an aquifer or perched water table?

RESPONSE

The intent of this provision is to sample the first occurrence of groundwater. This groundwater can include saturated waters in the soil, perched water tables, and aquifers. The monitoring wells need to be deep enough to sample the first occurrence of groundwater and of a sufficient size to pull a sample. The item has been revised to clarify that the plan is required to be designed to monitor the first occurrence of groundwater.

Comment

Re: §222.79(4)(A)

SOSA asked for clarification of the reference to using impervious cover as a protective measure for recharge features. SOSA notes it is not clear how impervious cover protects recharge features and state that "paving over" is not protective.

RESPONSE

The commission agrees with the comment. This provision has been revised to remove the term impervious cover.

Comment

Re: §222.79(4)(B)

SOSA asked for clarification that groundwater monitoring is required downstream of the dispersal fields.

RESPONSE

The commission agrees with the comment. This provision has been revised to require that, at a minimum, two wells down-gradient of subsurface area drip dispersal systems are included in a groundwater monitoring plan when a groundwater monitoring plan is required.

Comment

Re: §222.81

SOSA recommended that recharge features be added to the list of items that require a buffer zone.

RESPONSE

The commission disagrees with the comment. This rule does not mandate the buffer requirements for recharge features beyond surface water in the state, wells, and springs. For new or expanding subsurface area drip dispersal systems, any other recharge feature will have a buffer zone or other protective measures proposed by a licensed professional engineer or professional geoscientist in the Recharge Feature Plan, as required by §222.79. The ED will review the Recharge Feature Plan to ensure that it is protective of groundwater quality.

Comment

Re: §222.81(d)

JNT and DOE requested a definition of floodway.

RESPONSE

Section 222.5(15) contains the definition for floodway.

Comment

Re: §222.81

SOSA commented on the need to add a substantial buffer zone around surface waters currently listed as impaired for biochemical oxygen demand, pathogens, and nutrients.

RESPONSE

Subsurface area drip dispersal systems are designed to deliver doses of water not to exceed soil hydrologic absorption rate and crop/plant root absorption rate as required in §222.3(b). As such, no lateral migration of water is expected. The 100-foot buffer established for all surface waters in the state is expected to be protective of surface water quality, including impaired water bodies if the specific absorption rates determined for the site are followed.

Comment

Re: §222.81(d)

LCRA commented that, "Under the definition of floodway found in proposed §222.5(8), we suggest that you add the following: 'FEMA maps are prima facie evidence of floodway locations. However, in preparing a permit where the floodway boundary is in question, the ED shall also accept the submittal of, and consider, additional scientifically accepted information and data submitted by a County or a river authority, that indicate the presence or absence of a floodway.'"

RESPONSE

The definition of "floodway" in §222.5(8) has been revised to clarify that Federal Emergency Management Agency maps are the commission's primary source of floodway determinations. Section 222.81(d) has been revised to require the permittee to provide the source of all data used to determine floodway locations.

The ED currently accepts and considers information submitted by the public, including a county or river authority, in relation to a draft permit. This information is typically submitted during the public comment period after a draft permit has been published. The commission also considers the additional information in hearing requests or motions to overturn the ED's decision.

Comment

Re: §222.83

HCPID commented that the proposed application rate assumes no percolation or soil absorption into the underlying soils. HCPID stated that this is inconsistent with HB 2651, which defines a subsurface area drip dispersal system as a system that injects commercial, industrial, or municipal waste into the ground at a depth of not more than 48 inches and spreads the waste over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded. HCPID requests that the rule be revised so that soil absorption is to be allowed for consistency with HB 2651.

RESPONSE

The commission disagrees with the comment. The application rate calculations required by the formulas allow soil absorption within the constraints of the definition of subsurface area drip dispersal systems. The definition states that injection cannot occur beyond a depth of 48 inches. The application rate formulas were designed to not allow seepage or percolation beyond the 48-inch depth specified in TWC, §32.002(8).

Comment

Re: §222.83(a)

SOSA commented that this provision is inconsistent with TWC, Chapter 32 and asked that it be revised to state that the subsurface area drip dispersal system's application rate "meet the more restrictive of the following," in reference to the hydraulic application rate and the nitrogen application rate.

RESPONSE

This requirement is found in §222.83(c). Permittees who choose to or are required to use the application rate formulas listed in Figures 2 and 3 are required to use the more restrictive of the calculations. Permittees who apply for permits for subsurface area drip dispersal systems located west of the demarcation line in Figure 1 are allowed to apply at the default rate of 0.1g/d/sf, if the systems are located in clay or clay-loom soils and have non-native grasses overseeded with cool season grasses in the winter.

Comment

Re: §222.83

SOSA commented that phosphorus and salts are critical pollutants and to ignore them and their consequences is arbitrary and capricious.

RESPONSE

The commission disagrees that monitoring of phosphorus and salts has been ignored. Monitoring of these two parameters is

addressed in the rules in §222.157. This provision requires annual soil sampling, analysis, and reporting for phosphorus, conductivity, sodium, and salinity. Conductivity, sodium, and salinity are measurements of salt content.

Comment

Re: §222.83

JNT commented that the line determining whether an applicant can use the default 0.1 g/d/sf application rate or must perform the calculations to determine a site-specific application rate is too conservative and that the line be moved further east.

RESPONSE

The commission disagrees with the comment. The application rate of 0.1 g/d/sf is equal to 4.88 feet per year per square foot and is set for non-native grasses that are over seeded with cool season grasses in the winter months. Using the equations from Texas A & M Extension Service, they showed systems started failing in areas of the state with average rainfall greater than 35 inches per year.

Comment

Re: §222.83

JNT commented that the application rate calculations do not consider the slope of the dispersal zone.

RESPONSE

The commission agrees with the comment. The slope of the land can be very important. The rule requires the drip lines to be placed along the contour lines of the drip dispersal zones. The local site conditions such as soil types, slope of the land, and types of vegetative, are important in designing the hydraulic rate. The applicant must take these factors into account when designing the disposal system. There have been no changes to this provision.

Comment

Re: §222.83

JNT commented that the effective rainfall percentage in the application rate calculation peaks at one-third efficiency drop. JNT's experience is that the effective rainfall percentage can be much lower.

RESPONSE

The commission agrees with the comment. The effective rainfall percentage may be greater than or less than one third of the rainfall. The applicant must justify values used in its calculations if other than the 67% value assumed in the model equations. The applicant must be able to justify a different value based on soil types, location, and area rainfall. No changes were made to this provision.

Comment

Re: §222.83(a)

DOE commented that the hydraulic application rate does not address the distribution of wastewater through a subsurface area drip dispersal system for maintenance purposes or soil moisture preparation when there is no vegetative cover present. System owners need to have the ability to route a limited volume of wastewater through the irrigation system during periods when active crop growth is not occurring to meet the manufacturer's recommended maintenance requirements.

DOE also commented that the proposed rule does not encompass cropping practices, which rotate crops through a fallow period to avoid exhausting the nutrients from the soil column and maintenance of the system. Chapter 222 should include this agriculture practice, with a direct reference to the Underground Injection Control regulations, or include provisions that provide criteria for this practice.

RESPONSE

Before being issued a permit under Chapter 222, an applicant must illustrate that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded at any time. Other permitting option for systems that do not meet the requirements of this chapter remain available. The applicant must also consider nitrogen application rate calculation to determine if the effluent will exceed the capability of the site to prevent the migration of nitrogen based upon the nitrogen loading for the proposed crop/vegetative yields.

Comment

Re: §222.83(a)(3)

DOE commented that a violation would result if the maximum application rate was applied during the first ten days of the month and in the last 20 days of the month an unusually heavy precipitation event were to occur. The combination of the two could cause a facility to be out of compliance even though irrigation was halted before the application rate was exceeded.

RESPONSE

The commission agrees that there may be some seepage or percolation if monthly rainfall exceeds the normal rainfall amounts for which the application rates were set. The design of the system should minimize the effect of rainfall by encouraging rainfall runoff and prohibiting rainfall run-on over the dispersal zones. If the terms of the permit are met and no negative effects on the environment or human health are noted, the facility would not be charged with a violation. No change was made to this provision.

Comment

Re: §222.85(b)(1)

DOE commented that this provision does not specify where the pH limit would be applicable (before or after addition of maintenance and agricultural chemicals to the system). Chemicals such as nitrogen-based fertilizers dramatically increase the pH of the water delivered to crops. Some systems use acids to remove mineral and biologic deposits from the system and as a means to add other agricultural chemicals. DOE requested that pH limits be deleted from the proposed rule as it is not relevant to the protection of the environment or the protection of the public from facilities from which the public is denied access.

RESPONSE

The commission agrees in part with this comment. All monitoring of effluent and the application of limitations is required on the final effluent after commingling of all component wastewater streams and additives (maintenance chemicals and agricultural amendments). The language has been revised to indicate that the permittee shall maintain the pH of the effluent within the limits of 6.0 to 9.0 standard units immediately prior to dispersal, in accordance with §309.20(b)(5)(E), unless a specific variance is approved by the ED based upon site-specific conditions.

Comment

Re: §222.85(b)(2)

SOSA commented that this provision regarding domestic effluent quality does not include specifics, is vague, obtuse, and confusing. The proposed rule states "the permittee shall comply with specific effluent limitations placed in the permit by the ED to control the discharge of toxic constituents." SOSA questions the consistency with §222.87 (Effluent Limitations) with regards to establishing effluent limitations in a permit for toxic pollutants for domestic wastes. Specifically, SOSA requests that the rules specify whether or not effluent limitations for toxic pollutants will be applied; what limitations will be applied for which toxic pollutants; and when will effluent limitations for toxic pollutants be required in a permit.

RESPONSE

The commission agrees in part with the comment. Section 222.85(b)(2) has been deleted from the rule and §222.87 has been expanded to require permittees to comply with the effluent limits from Chapter 309 and with any specific effluent limits included in the permit by the ED. This change allows greater control of effluent constituents, because it allows the ED to control substances that are harmful to human health and the environment but may not be considered toxic. Each facility's limits will be determined by TCEQ technical staff, based on the constituents in its proposed wastewater streams during the evaluation of the individual permit application.

Comment

Re: §222.85(b)(3)

DTWS commented that the rules should not require that subsurface drip technology meet a standard imposed on surface application technology. DTWS commented that subsurface area drip dispersal system designers should only be required to design wastewater systems in accordance with the proper functioning of the equipment components in the design. DTWS states that the rule should not require subsurface area drip disposal system designers to design for failure to get approval from TCEQ.

RESPONSE

The commission disagrees with the comment. Subsurface area drip dispersal systems installed in areas such as school playgrounds and ball fields are required to demonstrate that their effluent meet a standard of 200 colony forming units of fecal coliform bacteria per milliliter of effluent, the standard for water designated for contact recreation. Spray irrigation effluent applied to areas not restricted from public access is required to have a chlorine residual that inhibits bacterial growth. Due to the natural siphoning effect of activity on the surface of the soil, some effluent may surface in wet conditions when persons are running, jumping, and playing on an field that contains a subsurface drip dispersal zone.

Comment

Re: §222.85(b)(3)

JNT commented that certain limitations placed on system components by the manufacturers may cause difficulty with complying with the disinfection requirements.

RESPONSE

The commission disagrees with this comment. The rules do not prescribe the method by which permittees must comply with the 200 cfu/ml fecal coliform requirement. Ultraviolet light is one alternative that would not affect system components.

Comment

Re: §222.87

JNT requested clarification on whether continuous monitoring of effluent would be required and the frequency required if the testing is required on an intermittent basis.

RESPONSE

The testing frequency for each effluent parameter in the permit will be established using 30 TAC Chapter 319, Subchapter A requirements and commission practice.

Comment

Re: §222.87(b)

SOSA stated that this provision relating to industrial effluent limitations is vague. SOSA questioned the meaning of the statement that the permittee shall "demonstrate compliance with technology-based effluent limitations by monitoring the effluent prior to introduction into the subsurface area drip dispersal system" and stated that "compliance with technology-based effluent limitation can be determined by asking, quite simply, 'has the permittee employed the necessary technology and processes.'" SOSA also requested that the draft rule be revised to include specific details related to what effluent limitations a permittee would likely expect to find in a permit.

RESPONSE

The statement in this provision that the permittee shall "demonstrate compliance with technology-based effluent limitations by monitoring the effluent prior to introduction into the subsurface area drip dispersal system" means that the permit will require routine monitoring of the effluent that is introduced into the subsurface area drip dispersal system and the effluent sampled at this point must comply with any technology-based effluent limitations established in the permit. The monitoring requirements may include parameters that are common to such systems {such as pH, ammonia as nitrogen, total dissolved solids and biochemical oxygen demand (5-day)} and other parameters (metals, toxics, organics, pesticides, etc.) that are unique to the permittee's wastewater streams.

Technology-based effluent limitations refer to those limitations that are established in a permit and are not derived by agronomic requirements, capabilities of the crops, and/or local groundwater quality. Technology-based limitations typically reflect quality levels that need to be achieved by a combination of effluent pretreatment and facility management practices that will insure that a contaminant is not present above limited amounts. An example would be establishing a technology-based limitation for benzene as an indicator parameter on effluent from a petroleum bulk storage facility.

Since there are infinite number of manufacturing/commercial activities that can occur and an infinite number of combinations of chemicals that could be handled at a facility, it is impractical to establish a definitive list of effluent limitations that may be included in an individual permit. Technology-based effluent limitations appropriate to the specific facility will be established in the individual permit after technical review of the permit application. Actual limitations and monitoring frequencies will be included in the draft permit which will be available for public review.

Comment

Re: §222.87(b)(1)(D)

DOE commented that it has exclusive authority to regulate itself for the disposition of radioactive wastes regulated by the Atomic Energy Act of 1954. DOE also recommended this provision be revised as follows: "radioactive wastes unless the permittee is authorized to store, process, and dispose of these wastes in compliance with the Atomic Energy Act of 1954 (as amended); or the permittee is authorized to store, process, and dispose of these wastes in compliance with specific licensing and permitting requirements under Texas Health and Safety Code, Chapter 401 and the rules of the Texas Commission on Environmental Quality or Texas Department of Health Services or Texas Railroad Commission, and/or any other state or federal authorities."

RESPONSE

The commission agrees in part with the comment. Generally, subsurface irrigation is not an appropriate disposal method for radioactive materials because such disposal does not assure that releases of radioactivity in the effluent to the general environment is as low as is reasonably achievable. The Department of Energy does self-regulate certain radioactive material under the Atomic Energy Act of 1954. However, not all radioactive materials are subject to regulation under the Atomic Energy Act. The commission has revised the language in the prohibition to use the term "wastes containing radioactive materials" and to acknowledge that certain wastes may be regulated under the Atomic Energy Act or in compliance with the Texas Radiation Control Act in Texas Health and Safety Code, Chapter 401. Existing commission rules at 30 TAC §305.52, require an application that involves the disposal of waste containing radioactive materials must be accompanied by a letter or other instrument from the commission, the Texas Department of State Health Services, or other appropriate regulatory authority stating that either the applicant has the appropriate license or authorization for disposal of the waste containing radioactive material or that the applicant does not need such a license. An applicant for a subsurface area drip dispersal system permit would have to comply with this requirement in §305.52.

Comment

Re: §222.117(a)(2)

DOE commented that this provision is overly prescriptive, because it includes an equipment capacity requirements for dosing tanks.

RESPONSE

The commission disagrees with this comment. This subsection prescribes that at minimum the dosing tank must be able to accommodate the permitted design flow, the volume of the supply lines and supply, and the volume of the return manifold. The ED may grant a variance to this requirement if an applicant presents adequate documentation to show that the operation of the system will not compromised by the lack of capacity in the dosing tank. No changes were made to this subsection.

Comment

Re: §222.117(a)(4)

DOE commented that this provision is overly prescriptive, because automatic flushing is convenient, but that manual operation is as efficient and more certain.

RESPONSE

The commission disagrees that this provision is overly prescriptive. This subsection lists the minimum functions of the control system components. The commission agrees that the word "automatic" should be deleted from §222.117(a)(4)(C) and (D). These provisions have been revised.

Comment

Re: §222.117(a)(4)(D)

DTWS commented that dosing chemicals are not necessary to reduce emitter clogging if the emitters used are warranted by the manufacturer not to need chemical injection for this purpose.

RESPONSE

The permittee may request a variance to the requirement for chemical dosing based on the manufacturer's warranty of the emitters. The ED will review and may approve a variance based on its ability to protect human health and the environment.

Comment

Re: §222.117(a)(9)

DOE recommended deleting the provision requiring the return of flush water to the pre-application system from the rule.

RESPONSE

The commission disagrees with deleting this provision from the rule. The water generated by flushing the emitter lines could cause adverse environmental or health effects. The permittee has no way to sample flush water to determine the level of constituents (such as fecal coliform or pH) in it. For example, a dispersal zone located under a school playground could expose children to the flush water that is high in bacteria or is highly acidic. Section 222.11(d) allows the ED to consider a variance to this requirement, if the permittee is able to document that field flushing will not harm the environment or human health.

Comment

Re: §222.117(b)(1) and (2)

JNT and DOE commented that the requirement for system shutdown when there is more than a ten percent variance in flow or pressure in the subsurface area drip dispersal system is overly prescriptive. JNT and DOE requested that these provisions be modified to provide for the design to include criteria for high and low alarms and shut-down for pressure and flow conditions that would indicate abnormal fluid dynamics were occurring in the system.

RESPONSE

The commission agrees with the comment. These provisions have been modified to require the design to include criteria for high and low alarms and for shut-down due to pressure and flow conditions that indicate abnormal fluid dynamics in the system. The provision has been clarified to state that the ten percent variation in pressure applies only after start-up is complete.

Comment

Re: §222.117(d)

JNT commented that it is sometimes difficult to design a system that will drain if required because of the potential for freezing.

RESPONSE

The self-draining requirement is only required when the system is placed in a zone of the soil that is subject to freezing. The applicant has the choice of placing the system below the freeze line or designing it to be self-draining.

Comment

Re: §222.117(f)

DOE commented that the wording of this provision indicates that a separate backflow device is necessary when the backflow prevention is part of the design of many emitters.

RESPONSE

The commission disagrees with the comment. The commission believes the provision includes the concept of incorporated backflow prevention. No change to the provision has been made.

Comment

Re: §222.123(b)

DOE commented that this provision requiring a control system that will run both pumps in a wet well simultaneously is overly prescriptive, is in conflict with §222.117(a)(3)(B), and does not provide protection of the public or the environment. DOE requested that this requirement be deleted.

RESPONSE

The commission agrees with the comment. This provision has been deleted and the subsequent subsections have been relettered.

Comment

Re: §222.125(2)

DTWS commented that this paragraph requires two feet of vertical separation between the drip line and any restrictive soil layer. The rule for wastewater remediation with drip technology should require only one foot of vertical separation.

RESPONSE

The commission agrees with this comment. The paragraph has been changed to require only one foot of soil over any restrictive soil horizon.

Comment

Re: §222.127

JNT asked why three days of effluent storage was determined to be necessary. SOSA commented that there is no justification to prove that three days storage is adequate to protect the environment and cites 30 TAC §285.34(e)(1) as an example of commission rules that require seven days of storage. SOSA asked that the rule be revised to require seven days of storage.

RESPONSE

The commission has established three days storage as the minimum standard for wastewater facilities that use land application disposal methods. Each permit application will be evaluated to insure that the amount of storage proposed will be adequate for the proposed specific system and site conditions. Because 30 TAC §285.34(e)(1) regulates holding tanks and allows them "only on sites where other methods of sewage disposal are not feasible," it is not pertinent to emergency storage for subsurface area drip dispersal systems.

Comment

Re: §222.151(c)

JNT commented that although percolation was prohibited by the rule and not part of the application rate calculations, it would occur when there is rainfall.

RESPONSE

The commission agrees that there may be some seepage and percolation if wet weather conditions exceed the rainfall averages for which the system was designed. This provision prohibits the permittee from using an application rate greater than the soil absorption rate and the crop/root absorption rate for the conditions specific to the site where the system is to be installed. The application rate calculations should take into consideration average rainfall on a monthly basis, as well as the type of soil and the planned vegetative cover. The amount of water leaving the root zone should be included in the leaching calculated as necessary for the health of the vegetative cover. The design of the system should minimize the effect of rainfall by encouraging rainfall runoff and prohibiting rainfall run-on over the dispersal zones. No change has been made to this provision.

Comment

Re: §222.155

LCRA commented that it strongly supports the use of data logger/monitor devices to measure soil moisture at shallow subsurface irrigation sites for one year or until patterns of soil moisture retention are established.

RESPONSE

The purpose of the soil moisture requirements in the rules is to allow commission technical staff the latitude to require this form of monitoring in systems where staff has determined it is needed to protect groundwater. When required, soil moisture monitoring devices will be equipped with an automated system to shut off the flow of wastewater to any zone with saturated soil. Data logger/monitor devices are not necessary to protect groundwater.

Comment

Re: §222.159

SOSA commented that the rulemaking inappropriately grandfathers existing facilities and allows them two years to come into compliance with the requirement that the facility be operated by a chief operator holding a valid Class A, B, or C wastewater operator license.

RESPONSE

The commission disagrees with the comment. This provision requires that operators of all subsurface area drip dispersal systems receive training relevant to the specific systems they are to operate. This requirement will be effective upon adoption of the rules and will insure Class D operators receive additional site-specific training in the operation and maintenance of their specific wastewater treatment facility and the associated subsurface area drip dispersal system. The delayed implementation of the requirement to employ a chief operator with at least a Class C wastewater operator license will allow time for Class D wastewater operators currently serving as chief operators of subsurface area drip dispersal systems to retain their jobs and to obtain the additional wastewater training and experience necessary meet the Class C wastewater licensing requirements. Permits issued under this rule on or after November 1, 2007, will require the chief operator to hold at least a Class C wastewater license.

Comment

Re: §222.161(b)

DOE commented that the rule does not address the distribution of wastewater through a subsurface area drip dispersal system for maintenance purposes or soil moisture preparation when there is no vegetative cover present.

RESPONSE

Under this rulemaking, applicants can apply for a variance if they have systems that discharge to traditional crops such as small grains and row crops. However, the applicant must illustrate that the soil holding capacities will not be exceeded during or after an application of effluent to establish appropriate soil moisture for pre-planting of the desired crop(s) or for maintenance purposes.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§222.1, 222.3, 222.5

STATUTORY AUTHORITY

The new sections are adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations considered advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted by HB 2651, §2.

The adopted sections implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§222.5. Definitions.

The definitions contained in Texas Water Code, §§26.001, 27.002, 28.001, and 32.003 apply to this chapter. The following words and terms, when used in this chapter, have the following meanings.

(1) Aquifer--As defined or amended under Chapter 331 of this title (relating to Underground Injection Control).

(2) Buffer zone--The area between a subsurface area drip dispersal system boundary and surface waters in the state, public and domestic water well, and springs.

(3) Crop requirement--The amount of nutrients that must be present in order to ensure that the crop nutrient needs are met, while accounting for nutrients that may become unavailable to the crop due to absorption to soil particles or other natural causes.

(4) Domestic waste--Waste and wastewater from humans and household operations that are discharged to a wastewater collection system or otherwise enters a treatment facility. This includes waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation, including graywater and blackwater.

(5) Emitter--A device designed to discharge into the soil, a small uniform flow of water at a constant rate.

(6) Evapotranspiration--The water lost from an area through the combined effects of evaporation from the ground surface and transpiration from the vegetation.

(7) Facility--All land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units.

(8) Floodway--A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot. Federal Emergency Management Agency (FEMA) maps are prima facie evidence of floodway locations.

(9) Fresh water--As defined or amended under Texas Water Code, §27.002.

(10) Groundwater--Subsurface water occurring in soils and geologic formations that are fully saturated year-round, seasonally, or intermittently.

(11) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(12) Hydrologic connection--The connection and exchange between surface water and groundwater.

(13) Industrial waste--Any non-domestic wastewater.

(14) Infiltration--The passage of water through the soil surface into the soil profile.

(15) Licensed professional engineer--An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(16) Licensed professional geoscientist--An individual licensed by the Texas Board of Professional Geoscientists in accordance with its requirement for professional practice in the State of Texas.

(17) Local government--An incorporated city, county, river authority, groundwater conservation district, or a water district or authority acting under Texas Constitution, Article III, §52 or Article XVI, §59.

(18) Owner--The person, corporation, partnership, or other legal entity that owns or partially owns a facility or part of a facility, or that owns or partially owns the land on which a facility or part of a facility is located.

(19) Public contact--Significant dermal contact with soil.

(20) Recharge feature--Those natural or artificial features either on or beneath the ground surface at the site that provide or create a significant hydrologic connection between the ground surface and the underlying groundwater within an aquifer. Significant artificial features include, but are not limited to, wells and excavation or material pits. Significant natural hydrologic connections include, but are not limited to: faults, fractures, karst features, or other macro pores that allow direct surface infiltration; a permeable or shallow soil material that

overlies an aquifer; exposed geologic formations that are identified as an aquifer; or a water course bisecting an aquifer.

(21) Soil--The upper layer of the surface of the earth that serves as a natural medium for the growth of plants.

(22) Subsurface area drip dispersal systems--A waste disposal system that injects processed commercial, industrial, or municipal waste into the ground at a depth of not more than 48 inches and spreads the waste over a large enough area that the soil hydrologic absorption rate and crop/plant root absorption rate are not exceeded.

(23) Surface water in the state--Water in the state as defined in Texas Water Code, §26.001(5), except that "groundwater, percolating or otherwise," is specifically excluded.

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 June 15, 2006.

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Robert Martinez
Acting Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

SUBCHAPTER B. ADMINISTRATIVE PROCEDURES

30 TAC §§222.31, 222.33, 222.35, 222.37, 222.39, 222.41, 222.43, 222.45

STATUTORY AUTHORITY

The new sections are adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations considered advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted by HB 2651, §2.

The adopted sections implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§222.31. Application Process.

(a) An owner of a subsurface area drip dispersal system shall apply for a permit in accordance with the provisions of this section for any subsurface area drip dispersal system that did not have an application for a subsurface area drip dispersal system permit that had been declared administratively complete or was authorized by a permit in effect at the time of the adoption of these rules.

(b) A permittee who holds a valid permit for a subsurface area drip dispersal system issued prior to July 31, 2006, and who wishes to renew that permit shall apply for a permit according to the requirements of this chapter upon the expiration date of the current permit.

(c) A permittee who holds a valid permit for a subsurface area drip dispersal system issued prior to July 31, 2006, and who wishes to amend that permit shall apply for a permit amendment according to the requirements of this chapter.

(d) Application for a permit shall be made on forms provided by the executive director. Applicants shall comply with §§305.41, 305.43, 305.44, 305.46, and 305.47 of this title (relating to Applicability; Who Applies; Signatories to Applications; Designation of Material as Confidential; and Retention of Application Data).

(e) Upon receiving an administratively complete application for a permit, the executive director shall:

(1) inspect the location of the proposed subsurface area drip dispersal system to evaluate the local conditions and the probable effect of the subsurface area drip dispersal system;

(2) forward a copy of the permit application to the Department of State Health Services for the purpose of soliciting comments on the application; and

(3) allow 30 days for the Department of State Health Services to submit comments on the permit application.

(f) The applicant shall submit an application that demonstrates compliance with the technical requirements set forth in this chapter and shall demonstrate compliance with the requirements of Subchapter C of this chapter (relating to Siting Requirements and Effluent Limitations).

(g) The applicant shall include the site preparation plan in the permit application packet. The site preparation plan shall comply with the requirements of §222.75 of this title (relating to Site Preparation Plan).

(h) The applicant shall provide such additional information in support of the application as may be necessary, as determined by the executive director, for an adequate technical review of the application.

(i) Each applicant and permittee shall comply with §305.61 and §§305.63 - 305.68 of this title (relating to Applicability; Renewal; Transfer of Permits; Permit Denial; Suspension and Revocation; Revocation and Suspension Upon Request or Consent; and Action and Notice on Petition for Revocation or Suspension).

(j) The permittee must file the application for renewal of an existing permit no later than 180 days before the expiration date of the current permit. Upon request, the executive director may grant an exception to this requirement, but in no case may the executive director grant permission for applications to be submitted later than the expiration date of the existing permit.

(k) Except as provided in §222.33(b) of this title (relating to Public Notice), notice, public comment, and hearing on applications shall be conducted in accordance with commission rules governing in-

dividual permits issued under Texas Water Code, Chapter 26. Each permittee shall comply with §305.125 of this title (relating to Standard Permit Conditions).

(l) A permittee who holds a valid permit for a subsurface area drip dispersal system under Texas Water Code, Chapter 26 issued prior to July 31, 2006, may apply for and be granted a variance from the site requirements and design criteria in this chapter, if the subsurface area drip dispersal system is:

(1) not in need of repair;

(2) not causing pollution as determined by the executive director;

(3) not causing soil saturation or a build-up of waterborne constituents within the soil;

(4) not prohibited by §213.8 of this title (relating to Prohibited Activities);

(5) not prohibited by §331.8 of this title (relating to Prohibition of Motor Vehicle Waste Disposal Wells and Large Capacity Cesspools); and

(6) the permittee is not a poor performer or repeat violator as defined in §60.3(a) of this title (relating to Use of Compliance History) or has other compliance history issues that may indicate the lack of ability of the permittee to comply with the permit and commission rules.

(m) The executive director may grant a period of up to three years, in accordance with §305.127(3)(A) of this title (relating to Conditions to be Determined for Individual Permits) to meet the requirements that were the basis for a denial of a variance to a permittee that applies for and is denied a variance, provided that the system meets the requirements in subsection (l) of this section.

§222.37. Compliance History.

(a) A compliance history will be prepared and evaluated in accordance with Chapter 60 of this title (relating to Compliance History) for each of the following entities that have activities that are subject to regulation by the commission:

(1) the owner of the wastewater treatment facility supplying effluent to the subsurface area drip dispersal system;

(2) the owner of the land where a wastewater treatment facility supplying effluent to the subsurface area drip dispersal system is located;

(3) the owner of the subsurface area drip dispersal system;

(4) the owner of the land where a subsurface area drip dispersal system is located;

(5) each business entity that is related to the applicant(s). Business entities are related for the purposes of this requirement, if the business entities share:

(A) the same owner(s) or partial owner(s); or

(B) the same member(s) of a partnership; or

(6) each business entity that is managed by the permittee.

(b) If the owner of a subsurface area drip dispersal system is a governmental body or a subdivision of that governmental body, a compliance history will be prepared for that governmental body, such as:

(1) a city;

(2) a county;

(3) a branch of military service;

(4) a state or federal agency, commission, or department; or

(5) a quasi-governmental agency created by federal or state legislatures.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. SITING REQUIREMENTS AND EFFLUENT LIMITATIONS

30 TAC §§222.71, 222.73, 222.75, 222.77, 222.79, 222.81, 222.83, 222.85, 222.87

STATUTORY AUTHORITY

The new sections are adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations considered advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted by HB 2651, §2.

The adopted sections implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§222.73. Soil Evaluation.

(a) The applicant shall conduct and submit with the application a soils evaluation to identify the soils associated with the proposed site. At least one profile hole per soil type must be included in the evaluation. The applicant shall use soil borings, where appropriate, for enhancement of the profile hole determinations. The profile holes uti-

lized in the site evaluation must be no more than five feet deep, or to the first continuous lateral lithic contact. The evaluation must include the following information:

(1) total depth of the profile hole;

(2) primary rooting depth;

(3) secondary rooting depth;

(4) horizon descriptions shall include:

(A) depth of the horizon;

(B) soil texture;

(C) soil structure;

(D) soil color;

(E) mottling; and

(F) percent coarse fragments;

(5) boundary descriptions (soil horizons);

(6) restrictive horizons;

(7) potential water bearing zones; and

(8) active water bearing zones.

(b) The soil evaluation shall be performed by a licensed professional geoscientist or engineer.

§222.79. Recharge Feature Plan.

For new facilities and facilities undergoing an expansion of the subsurface area drip dispersal system, the applicant must supply a recharge feature plan with the application that is signed and sealed by a licensed professional engineer or a licensed professional geoscientist who has inspected the site of the proposed subsurface area drip dispersal system. The recharge feature plan must:

(1) document the presence or absence of any recharge features identified on any tracts of land owned, operated, controlled, rented, or leased by the applicant and to be used as a part of the facility;

(2) list the sources and methods used to identify the presence or absence of recharge features. At a minimum, the licensed professional engineer or geoscientist must review the records and maps maintained by the following sources:

(A) Railroad Commission of Texas;

(B) a groundwater conservation district, if applicable;

(C) Texas Water Development Board;

(D) the commission;

(E) Natural Resources Conservation Service;

(F) a previous owner of the site, if available; and

(G) on-site inspection;

(3) provide a narrative description of the site-specific geology and groundwater at the facility. The narrative must include, at a minimum, the following information:

(A) a site-specific description of the geologic formations underlying the facility;

(B) the depth to groundwater;

(C) the general direction of groundwater flow;

(D) potential uses of the groundwater and any known uses of the groundwater within a 1/2 mile radius of the perimeter of the proposed subsurface area drip dispersal system site; and

(E) any well drillers' logs and water quality data obtained for wells on the subsurface area drip dispersal system site and within 500 feet of the property line; and

(4) identify measures to prevent impacts to groundwater from any recharge features present. The licensed professional engineer or licensed professional geoscientist must include at least one of the following in the plan:

(A) provisions for the installation of the necessary and appropriate protective measures for each located recharge feature, including berms, buffer zones, or other equivalent protective measures; or

(B) submission of a detailed groundwater monitoring plan covering all of the affected facility, including the subsurface area drip dispersal system. The plan shall monitor the first occurrence of groundwater. At a minimum, the groundwater monitoring plan shall specify the location of proposed monitoring wells including a minimum of two wells downgradient of the subsurface area drip dispersal systems, procedures to collect a groundwater sample from representative wells, the proposed constituents to be included in the sampling plan, and frequency of the sampling event; and, provide for any other similar method or approach demonstrated by the applicant to be protective of any associated recharge feature and approved by the executive director.

§222.81. Buffer Zone Requirements.

(a) The permittee must locate the subsurface area drip dispersal system a minimum horizontal distance of:

(1) 500 feet from public water wells, springs, or other similar sources of public drinking water;

(2) 150 feet from private water wells as described in §309.13(c)(1) of this title (relating to Unsuitable Site Characteristics); and

(3) 100 feet from surface waters in the state.

(b) The permittees must locate the wastewater treatment plant unit in accordance with §290.41(c)(1)(B) of this title (relating to Water Sources) and §309.13(c) of this title.

(c) Buffer variance.

(1) The executive director may grant a variance to a permittee operating a subsurface area drip dispersal system under an existing authorization issued prior to November 1, 2006, to continue the operation and use of any existing subsurface area drip dispersal system located within the buffer zones listed in this section provided that the system:

(A) is in compliance with the recharge feature plan required by §222.79 of this title (relating to the Recharge Feature Plan); or

(B) is certified by a licensed professional engineer or licensed professional geoscientist determining that the existing buffers will be protective of water quality.

(2) The permittee shall maintain documentation authorizing variances of buffer zones on site for the duration of the permit and make it available to commission personnel upon request.

(d) The permittee shall not locate a subsurface area drip dispersal system within a floodway. The permittee shall provide the source of all data for determination of the floodway locations and include a

copy of the relevant Federal Emergency Management Agency (FEMA) flood map or the calculations and maps used where a FEMA map is not available.

§222.85. Effluent Quality.

(a) Protection of fresh water. The applicant must demonstrate that both surface and subsurface fresh water will not be polluted by the application of wastewater by the subsurface area drip dispersal system.

(b) Domestic waste.

(1) The permittee shall maintain the pH of the effluent within the limits of 6.0 - 9.0 standard units immediately prior to dispersal in accordance with §309.20(b)(5)(E) of this title (relating to Land Disposal of Sewage Effluent), unless a specific variance is approved by the executive director based upon site-specific conditions.

(2) When a subsurface area drip dispersal system applies effluent on land where there is the potential for public contact with the soil, the permittee shall comply with Effluent Set 4 located in §309.4 of this title (relating to Table 1, Effluent Limitations for Domestic Treatment Plants), or with more stringent effluent limitations prescribed by the executive director, if warranted to protect human health and the environment.

(3) When a subsurface area drip dispersal system applies effluent on land where there is not potential public contact with the soil, the permittee shall comply with Effluent Set 5 located in §309.4 of this title, or with more stringent effluent limitations prescribed by the executive director, if warranted to protect human health and the environment.

(4) Disinfection.

(A) Permittees applying treated effluent to land where there is the potential for public contact with the soil must disinfect the effluent prior to it entering the subsurface area drip dispersal system in accordance with §309.3(g) of this title (relating to Application of Effluent Sets).

(B) If the effluent is to be transferred to a holding pond or tank prior to dispersal, the permittee shall ensure that the effluent meets the relevant criteria of §222.87 of this title (relating to Effluent Limitations) at the time it enters the distribution system.

(C) Permittees are allowed to use ultraviolet disinfection systems only with effluent having a daily average five-day biochemical oxygen demand (BOD_5) concentration and total suspended solids concentration that are less than 20 milligrams per liter each.

(5) The permittee must comply with requirements other than those specified in this section, if determined by the executive director to be necessary to protect human health.

§222.87. Effluent Limitations.

(a) Domestic waste. The permittee shall comply with the effluent limitations in §309.3 and §309.4 of this title (relating to Application of Effluent Sets and Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants) and any specific effluent limitations placed in the permit by the executive director.

(b) Industrial waste.

(1) The permittee is prohibited from introducing the following wastes into a subsurface area drip dispersal system:

(A) characteristically hazardous wastes as determined in 40 Code of Federal Regulations (CFR) Part 261, Subpart C;

(B) listed hazardous wastes as defined in 40 CFR Part 261, Subpart D;

(C) wastes specifically prohibited for land disposal in 40 CFR Part 268, Subpart C; and

(D) wastes containing radioactive materials unless the permittee is authorized to store, process and dispose of these wastes in compliance with the Atomic Energy Act of 1954 (as amended) or in compliance with the Texas Radiation Control Act.

(2) Effluent limitations.

(A) The permittee shall comply with effluent limitations established by the executive director in individual permits.

(B) The permittee shall demonstrate compliance with technology-based effluent limitations by monitoring the effluent prior to introduction into the subsurface area drip dispersal system.

(C) If the soil pH is less than 6.5 standard units at a subsurface area drip dispersal system site, the permittee shall monitor certain trace elements, including phosphorus, fluoride, and heavy metals as specified by the executive director in the individual permit.

(D) Prior to disposal, the permittee shall ensure that the effluent from a treatment system meets Effluent Set 5, established in §309.4 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. DESIGN CRITERIA

30 TAC §§222.111, 222.113, 222.115, 222.117, 222.119, 222.121, 222.123, 222.125, 222.127

STATUTORY AUTHORITY

The new sections are adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations considered advisable and necessary for the discharge of the duties under this chapter; §26.034, which authorizes the executive director to review and approve plans and specification for domestic disposal systems; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which

authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted by HB 2651, §2.

The adopted sections implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§222.115. Treatment System.

(a) For the systems and processes used to provide treatment of domestic wastewater prior to the wastewater entering the subsurface area drip dispersal system the applicant shall use the design criteria in Chapter 317 of this title (relating to Design Criteria for Sewerage Systems).

(b) If using septic tanks as the treatment system, the applicant shall design, construct, and install the tanks in accordance with Chapter 285, Subchapter D of this title (relating to Planning, Construction, and Installation of OSSFs).

(c) If using anaerobic biological reactors (ABRs) as the treatment system, the permittee must comply with the following criteria.

(1) The ABR must have a container that is a structural unit such as a concrete tank, or an earthen berm with a membrane liner that may be used for larger installations.

(A) The container must be designed for the internal and external stresses that may be placed on the container during fabrication and use.

(B) Materials used to construct an ABR structural container must meet the requirements for septic tanks in §285.32 of this title (relating to Criteria for Sewage Treatment Systems).

(C) Containers using compacted earthen berms must use a membrane of vinyl or other plastic with a minimum thickness of 40 mils as the waterproofing component.

(D) A cover is required unless a covering layer of gravel or other media is placed above the liquid level to present a dry surface.

(2) The ABR must have media that is inert, stable, of uniform size, and free of fines.

(A) Clean washed gravel, crushed rock, or plastic filter media made for trickling filter use is acceptable.

(B) Minimum media effective size must be one inch and the uniformity coefficient must be less than 3.0.

(3) The ABR must have a distribution system over the bottom of the ABR and a collection system near the top of the ABR.

(A) The piping for the distribution system must be constructed of pipe that:

(i) is class 200 or schedule 40 polyvinyl chloride (PVC);

(ii) meets American Standard Testing Material (ASTM) standards D-2241 or D-1785; and

(iii) has a one inch nominal diameter.

(B) The ABR must incorporate a sight well that allows monitoring the liquid level in the unit.

(C) The ABR must have a means to flush and remove excessive biomat buildup from the media.

(d) If using sand filters as the treatment system, the permittee shall use sand filters that have the following components and meet the following requirements.

(1) Sand filters must be contained in a structural unit designed for all internal and external stresses that may be placed on the containment device during fabrication and use such as:

(A) a septic tank unit that meets the requirements in Chapter 285, Subchapter D of this title;

(B) a poured in place concrete structure; or

(C) an earthen berm with an impermeable membrane liner that has a minimum thickness of 40 mils and an under-drain leak detection system.

(2) The permittee shall use a detention time of at least 24 hours for dosing to a sand filter at rates up to ten gallons per day per square foot.

(3) All sand filter containment devices shall provide sufficient freeboard above the filter surface to hold four dosing volumes.

(4) A sand filter must have a collection pipe system to collect the filtered effluent that meets the following requirements.

(A) The piping shall be arranged so that the maximum horizontal travel distance of water through the under-drain media is less than four feet.

(B) The collection piping and the drain pipe from the filter shall be sized to remove a filter dose volume from the filter within a ten-minute period.

(C) The ends of the collection lines shall be extended above the surface of the filter to allow aeration of the drained filter.

(D) The collection piping system shall be constructed of pipe that:

(i) is class 200 or schedule 40 PVC;

(ii) meets ASTM standards D-2241 or D-1785; and

(iii) has a two-inch nominal diameter.

(E) The sand filter media must:

(i) be an inert clean washed material that is free of fines, dirt, and organic material;

(ii) have an effective size and uniformity coefficient suitable for the design loading rate;

(iii) have a depth based on the effective grain size and the design effluent quality with coarse media requiring a greater media depth; and

(iv) be placed on top of a bottom drain media.

(F) The sand filter bottom media must:

(i) cover the effluent collection piping;

(ii) have an effective grain size from two to four times the effective grain size of the filter media; and

(iii) support the filter media, prevent washout, and hydraulic removal of the filter media.

(5) The surface distribution mechanism must distribute the liquid to be filtered over the surface of the filter in a uniform manner.

(A) If a filter receives the liquid by gravity, distribution shall be accomplished by troughs or channels using splash pads to reduce surface erosion.

(B) Pressure-dosed sand filters must have a distribution system that:

(i) provides even distribution of the liquid;

(ii) consists of a pipe network with discharge holes or spray nozzles; and

(iii) provides a uniform pressure at the discharge outlets.

(6) Loading rates and filter sizing must be designed to treat the specific characteristics of the incoming wastewater and the effluent quality.

(7) The loading rate shall be designed based on the influent qualities, the selected media, and the acceptable run time between filter media cleaning or replacement.

(e) The permittee must submit a design that specifies the minimum frequency for solids removal from the treatment system and the justification of the frequency based on the type of system and good engineering practice.

(f) The permittee shall design the treatment system with the capacity to process the peak flow from the wastewater producer. The following criteria shall be the basis to determine peak flow:

(1) wastewater design values will be determined in accordance with §317.4(a)(1) or (2) of this title (relating to Wastewater Treatment Facilities); or

(2) the peak flows of the particular waste generator when the waste generator has unusually high peak flows.

§222.117. Subsurface Area Drip Dispersal System Design.

(a) The permittee shall use the following design components for subsurface area drip dispersal systems:

(1) a minimum of dual 100-micron wastewater effluent filters prior to the effluent entering the subsurface area drip dispersal system. These filters must:

(A) effectively filter the peak hydraulic flows; and

(B) include control valves and piping that provide filtered effluent to flush the filters;

(2) the dosing tank(s) designed to hold at least the following volume:

(A) the daily design capacity required by the permit;

(B) effluent equal to six times the minimum dose cycle capacity of the drip lines plus the capacity of the supply and return manifold; and

(C) the following storage capacities as part of the dosing tank(s) or included in the plant design at another location:

(i) flow equalization storage;

(ii) emergency storage; and

(iii) return flows from flushing and system drainage;

(3) a duplex alternating pumping system designed:

(A) to dose and flush the dispersal zones and flush the filtration system; and

(B) with pumps sized in accordance with the hydraulic design calculations in §222.83 of this title (relating to Hydraulic Calculations);

(4) control system components that are capable of performing the following functions:

(A) flushing of the filter units;

(B) delivering a specified preprogrammed volume of effluent to each dispersal zone;

(C) flushing of each drip lateral with filtered effluent;

(D) dosing of chemicals intended to reduce emitter clogging, such as chlorine or oxidizing chemicals;

(E) monitoring alarm conditions;

(F) regulating the flow volume to each dispersal zone and to a sand filter, when applicable;

(G) indicating a flow variance when flow varies more than 10% of the actual average daily flow;

(H) regulating pump run times;

(I) regulating the number and time of filter backwash and field flushing cycles; and

(J) regulating the flows to the drip irrigation field system;

(5) supply lines and manifolds;

(6) zones of drip irrigation tubing;

(7) effluent manifolds;

(8) chemical dosing equipment; and

(9) flush return lines that return flushing water to the preapplication system, with provisions made to minimize disturbance of any solids in the settling chamber.

(b) The permittee shall submit the hydraulic calculations for the pump and distribution system with the engineering report. The report must address the following.

(1) Field pressure and flow variation due to friction loss and changes in static head must not exceed plus or minus 10% of the design emitter pressure or flow. The 10% difference must be the difference between any two emitters in the entire system after the start-up process is complete.

(2) The system must be equipped an alarm system for high and low flow conditions and an automatic mechanism to shut down the dispersal system for pressure and flow conditions that would indicate abnormal fluid dynamics were occurring.

(c) The permittee shall design the subsurface area drip dispersal system to supply the effluent uniformly throughout each of the dispersal zones in the system.

(d) The permittee shall design the subsurface area drip dispersal system to be self-draining to prevent freezing if there is a potential for the soil to freeze to the depth that the pipes and lines of the subsurface area drip dispersal system are located.

(e) The permittee shall ensure that the velocity of the flush water shall be at least two feet per second at the end of each dispersal zone or return line during the flushing operation.

(f) The permittee shall equip the system with a backflow prevention device to prevent the siphoning of soil and water into the emitters.

(g) The permittee must establish stormwater run-on controls to minimize infiltration of precipitation into the dispersal zones.

§222.121. Dispersal Zones.

(a) The permittee must place lines with emitters between six and 48 inches below the surface of the soil.

(b) The permittee shall divide the subsurface area drip dispersal system into a sufficient number of different dispersal zones (at least two dispersal zones) so that the system can operate with the greater of either one dispersal zone or 10% of the total number of dispersal zones out of service.

(c) The permittee shall design the dispersal zones so that the dispersal lines follow the contour of the site and shall not exceed 1% lateral slope.

(d) The permittee shall include the dispersal zone design in the engineering report, including the following elements:

(1) the proposed line layout with:

(A) main line sizes and lengths; and

(B) individual dispersal line lengths;

(2) flushing flows;

(3) static head calculations;

(4) the total proposed flow in gallons per day;

(5) total length of emitter piping;

(6) emitter spacing;

(7) line spacing;

(8) total number of lines; and

(9) total number of lines to be included per flushing.

(e) The permittee shall ensure that emitter and tubing spacing is on not less than one foot centers and on not greater than three feet centers, unless an exception is approved by the executive director.

(f) The permittee shall disinfect the drip lines and emitters according to the degree and frequency determined by the design engineer and submitted in the engineering report along with the justification for the degree and frequency of disinfection.

(g) The permittee shall equip the subsurface area drip dispersal system with audible and visual alarms that will activate in case of a problem with the system.

(1) If the subsurface area drip dispersal system is not staffed on a daily basis, the permittee shall equip the system with a telemetry device that notifies the operator in case of a system malfunction.

(2) The telemetry system must include the following components:

(A) remote access;

(B) audio/visual alarms for:

(i) flow or pressure variances; or

(ii) system failure;

(C) automated filter;

(D) zone flushing; and

(E) integrated external monitoring devices if required, such as soil moisture monitors.

§222.123. Controls.

(a) The permittee shall use a control system that includes a means of alternating the pumps on successive cycles.

(b) The permittee shall use a control system with the following features:

(1) high water alarm that activates prior to any "lag pump on" activation;

(2) pump failure alarm;

(3) power outage alarm;

(4) mechanisms for testing and silencing the alarm system; and

(5) manual resetting after the alarm activates.

(c) The permittee shall ensure that all controls recommended by the manufacturer are present and in working order if using a proprietary control system.

(d) The permittee shall use telemetering of the alarms.

(e) The permittee shall house controls in a weatherproof and intruder-resistant enclosure.

(f) The permittee shall use controls that meet Underwriter's Laboratories requirements.

(g) The permittee shall ensure that installation, maintenance, and replacement of parts of the control system are performed in accordance with the National Electrical Code and all applicable federal, state, and local codes, regulations, and ordinances.

§222.125. Vertical Separation.

The permittee must maintain the following vertical separation distances beneath the subsurface area drip dispersal system.

(1) There must be at least five feet of soil over any sand or gravel strata.

(2) There must be at least one foot of soil over any restrictive soil horizons.

(3) There must be at least two feet of soil over any permanent or seasonal saturated zone of groundwater.

(4) The executive director may impose alternate separation requirements if necessary to protect human health and the environment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. OPERATIONS AND MAINTENANCE

30 TAC §§222.151, 222.153, 222.155, 222.157, 222.159, 222.161, 222.163

STATUTORY AUTHORITY

The new sections are adopted under the general authority granted in TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations considered advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted by HB 2651, §2.

The adopted sections implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§222.151. Prohibitions.

(a) Seepage or percolation out of the root zone, other than leaching in the amount required to maintain the health of the vegetative cover, is prohibited.

(b) Surfacing or ponding of effluent is prohibited.

(c) Creating a condition at the treatment facility or the drip dispersal zones that contributes to vector attraction or odor is prohibited.

§222.163. Closure Requirements.

(a) The permittee of a subsurface area drip dispersal system that is to be permanently discontinued or abandoned shall close the system under the standards set forth in this section.

(b) If the permittee removes all tanks, lines, and other equipment from the site, the permittee may:

(1) submit to the appropriate regional office a closure report prepared by the permittee that includes sufficient soil analyses to demonstrate that there is no soil contamination at the subsurface area drip dispersal system site; and

(2) omit the requirement to deed record the location of the closed subsurface area drip dispersal system as required by subsection (f) of this section.

(c) The permittee must conduct the closure according to a system closure plan that is prepared by or under the direct supervision of a licensed professional engineer or licensed professional geoscientist.

(d) The permittee must close the system in a manner that prohibits the movement of fluids into underground sources of drinking water, in compliance with §331.5 of this title (relating to Prevention of Pollution) and 40 Code of Federal Regulations §144.12, concerning Prohibition of Movement of Fluid into Underground Sources of Drinking Water.

(1) The permittee must remove all above ground tanks. The permittee may remove or empty, collapse in place, and cover with clean fill material any underground tanks.

(2) The permittee must cap and remove three feet of the end sections of pipes that convey waste between the pump house and the dispersal lines. The permittee must cut and cap pipes every 500 linear feet between the pump house and the dispersal field.

(3) The permittee shall remove all valves and plug the lines where the valves are located.

(e) If soil, gravel, sludge, liquids, or other materials associated with the system are contaminated, the material must be disposed or otherwise managed in accordance with Chapter 350 of this title (relating to Texas Risk Reduction Program) and all other applicable federal, state, and local regulations and requirements.

(f) The permittee must deed record the location of the closed subsurface area drip dispersal system in the deed records of the county in which the site is located.

(g) The permittee shall submit within 60 days after closing the system a closure report:

(1) that has been prepared by a licensed professional engineer or licensed professional geoscientist;

(2) that certifies that closure was in accordance with the requirements of this section and in a manner that will prevent pollution; and

(3) includes evidence of deed recordation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 281. APPLICATIONS PROCESSING
SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §§281.2, 281.5, 281.21

The Texas Commission on Environmental Quality (commission) adopts amendments to §§281.2, 281.5, and 281.21 *without changes* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 995) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems.

The commission amends Chapter 281 to regulate subsurface area drip dispersal systems that beneficially reuse treated waste-

water effluent generated by treatment facilities processing more than 5,000 gallons per day. The adopted rules clarify that these systems are included in the current processes for preparing and submitting permit applications.

The commission also adopts additional rulemaking in 30 TAC Chapter 30, Occupational Licenses and Registrations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 222, Subsurface Area Drip Dispersal System; Chapter 305, Consolidated Permits; Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting; and Chapter 331, Underground Injection Control, to implement HB 2651 in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 281.2, Applicability

Adopted §281.2(2) is amended to clarify that Chapter 281 is applicable to applications for new, amended, or renewed subsurface area drip dispersal system permits. This is the general applicability statement for Chapter 281 and permit applications for subsurface area drip dispersal systems are subject to the requirements of this section.

Section 281.5, Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits

Adopted §281.5 is amended to add subsurface area drip dispersal systems, as defined in TWC, §32.002(8), to the list of wastewater permit applications that are subject to the requirements of this section.

Section 281.21, Draft Permit, Technical Summary, Fact Sheet, and Compliance History

Adopted §281.21(a) is amended to add subsurface area drip dispersal systems, as defined in TWC, §32.002(8), to the list of waste disposal activities subject to the requirements of this section.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The specific intent of this rulemaking is to amend Chapter 281 to require that applications for new, amended, or renewed subsurface area drip dispersal system permits be subject to the requirements of this chapter. The adopted rules do not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the adopted rules simply require applications for new, amended, or renewed subsurface area drip dispersal system permits to be subject to the requirements of this chapter. The adopted rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in Texas Government Code, §2001.0225(a). Texas Government Code, §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.

The adopted amendments to Chapter 281 do not meet any of these criteria. First, the adopted rules do not exceed a standard set by federal law, because there is no comparable federal law. Second, the adopted rules do not exceed a requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are adopted to implement HB 2651. Third, the adopted rules do not exceed an express 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. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of HB 2651, which directs the commission to implement rules under TWC, Chapter 32. These adopted rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225. Written comments on the draft regulatory impact analysis determination were solicited; no comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to amend Chapter 281 to require that applications for new, amended, or renewed subsurface area drip dispersal system permits be subject to the requirements of this chapter. The promulgation and enforcement of the adopted rules will not affect private real property in a manner that requires compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this rulemaking does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007. Written comments on the draft takings impact analysis determination were solicited; no comments were received on the draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) and is identified in the Coastal Coordination Act Imple-

mentation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the CMP, and will therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this action for consistency and determined that Chapter 281 does not impact any CMP goals or policies because it regulates the permitting process. Chapter 281 is administrative and does not regulate the environment.

PUBLIC COMMENT

The public comment period ended March 20, 2006. A public hearing was held March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Conference Room 2210, 12100 Park Thirty-Five Circle, Austin, TX. Oral comments were received from JN Technologies (JNT). Written comments were received from Harris County Public Infrastructure Department (HCPID); United States Department of Energy, National Nuclear Security Administration, Pantex Site Office (DOE); Lower Colorado River Authority (LCRA); Drip-Tech Wastewater Systems (DTWS); Save Our Springs Alliance (SOSA); and Snowden Onsite Septic, Inc. (SOSI). Texas Council of Engineering Companies (TCEC) submitted a written comment after the close of the comment period, which was addressed. No comments were received in relation to this chapter.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, as enacted by HB 2651, §2.

The adopted amendments implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Acting Director, Environmental Law Division
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CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (commission) adopts amendments to §§305.1, 305.2, 305.41, 305.45, 305.121, 305.123, 305.125, and 305.127 *without changes* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 998) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems. The commission amends Chapter 305 to clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32.

The commission also adopts additional rulemaking in 30 TAC Chapter 30, Occupational Licenses and Registrations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 222, Subsurface Area Drip Dispersal System; Chapter 281, Applications Processing; Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting; and Chapter 331, Underground Injection Control, to implement HB 2651 in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 305.1, Scope and Applicability

Adopted §305.1 is amended by adding TWC, Chapter 32 to the list of statutes from which Chapter 305, Subchapter A has authority.

Section 305.2, Definitions

Adopted §305.2 is amended by adding TWC, §32.002 to the list of statutes from which Chapter 305, Subchapter B derives authority. This amendment also adds permits issued under TWC, Chapters 26 and 32 to the definition of wastewater discharge permits found in §305.2(47). Subsurface area drip dispersal systems are permitted under TWC, Chapters 26 and 32. This section clarifies that the definition of wastewater discharge permits includes subsurface area drip dispersal systems.

Section 305.41, Applicability

Adopted §305.41 is amended by adding TWC, Chapter 32 to the list of statutes from which Chapter 305, Subchapter C derives authority.

Section 305.45, Contents of Application for Permit

Adopted §305.45(a) is amended by adding paragraph (7)(J) to include subsurface area drip dispersal systems in the list of per-

mits and construction approvals that must be included in the application for a permit action.

Section 305.121, Applicability

Adopted §305.121 is amended by adding subsurface area drip dispersal systems as a subset of injection wells to the list of systems covered by Chapter 305, Subchapter F.

Section 305.123, Reservation in Granting Permit

Adopted §305.123 is amended by adding TWC, Chapter 32 to the list of statutes from which Chapter 305, Subchapter F derives authority.

Section 305.125, Standard Permit Conditions

Adopted §305.125(10) is amended by adding TWC, Chapter 32 to the list of statutes that authorizes inspection and entry.

Section 305.127, Conditions to be Determined for Individual Permits

Adopted §305.127(4)(A) and (C) are amended by adding Chapter 222, Subsurface Area Drip Dispersal Systems, to the list of chapters covered by this section.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules implement HB 2651. The specific intent of this rulemaking is to amend Chapter 305 to clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32. The adopted amendments will add permits that are permitted under TWC, Chapters 26 and 32 to the definition of wastewater discharge permits, which is defined as a permit issued under TWC, Chapter 26.

The adopted rules do not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, because the adopted rules simply clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32. The adopted rules do not meet the definition of a major environmental rule as defined in the Texas Government Code.

In addition, the adopted rules are not subject to Texas Government Code, §2001.0225, because they do not meet the criteria specified in Texas Government Code, §2001.0225(a). Texas Government Code, §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.

The adopted amendments to Chapter 305 do not meet any of these criteria. First, the adopted rules do not exceed a standard set by federal law, because there is no comparable federal law. Second, the adopted rules do not exceed a requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are adopted to implement HB 2651. Third, the adopted rules do not exceed an express 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. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of HB 2651, which directs the commission to implement rules under TWC, Chapter 32. These adopted rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225. Written comments on the draft regulatory impact analysis determination were solicited; no comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to amend Chapter 305 to clarify the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32. The adopted amendments will add permits that are permitted under TWC, Chapters 26 and 32 to the definition of wastewater discharge permits, which is defined as a permit issued under TWC, Chapter 26. The promulgation and enforcement of the adopted rules will not affect private real property in a manner that requires compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this rulemaking does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007. Written comments on the draft takings impact analysis determination were solicited; no comments were received on the draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) and is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the CMP, and will therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this action for consistency and determined that Chapter 305 does not impact any CMP goals or policies because it regulates the permitting process. Chapter 305 is administrative and does not regulate the environment.

PUBLIC COMMENT

The public comment period ended March 20, 2006. A public hearing was held March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Conference Room 2210, 12100 Park Thirty-Five Circle, Austin, TX. Oral comments were received from JN Technologies. Written comments were received from Harris County Public Infrastructure Department (HCPID); United States Department of Energy,

National Nuclear Security Administration, Pantex Site Office (DOE); Lower Colorado River Authority (LCRA); Drip-Tech Wastewater Systems (DTWS); Save Our Springs Alliance (SOSA); and Snowden Onsite Septic, Inc. (SOSI). Texas Council of Engineering Companies (TCEC) submitted a written comment after the close of the comment period, which was addressed. No comments were received in relation to this chapter.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §305.1, §305.2

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations considered advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted by HB 2651, §2.

The adopted amendments implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

30 TAC §305.41, §305.45

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations considered advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted by HB 2651, §2.

The adopted amendments implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

30 TAC §§305.121, 305.123, 305.125, 305.127

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations considered advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of

injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted by HB 2651, §2.

The adopted amendments implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Acting Director, Environmental Law Division

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CHAPTER 309. DOMESTIC WASTEWATER EFFLUENT LIMITATION AND PLANT SITING
SUBCHAPTER A. EFFLUENT LIMITATIONS
30 TAC §309.3, §309.4

The Texas Commission on Environmental Quality (commission) adopts amendments to §309.3 and §309.4. Section 309.3 is adopted *with change* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 1004). Section 309.4 is adopted *without change* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems.

The commission adopts amendments to §309.3 and §309.4 to add effluent limitations for domestic wastewater treatment facilities that supply effluent for disposal through subsurface area drip dispersal systems. Effluent limits are necessary to ensure proper operation of the subsurface area drip dispersal system, prevent pollution, and protect human health. Two effluent limit sets are adopted in this rulemaking. One set is for effluent disposed of through subsurface area drip dispersal systems on land that has the potential for public contact with the soil. The other set is for effluent disposed of through subsurface area drip dispersal systems on land that has no potential for public contact with the soil.

Disinfection of the effluent is required only when there is significant public contact with the soil where the effluent is applied. Examples of those types of areas are school and park playgrounds and soccer and football fields. These are areas where the public is likely to have significant skin-to-soil contact. An example of areas that do not require disinfection of the effluent are greenbelts and golf courses. These areas, although public, are less likely to have significant skin-to-soil contact. Due to emerging technologies, e.g., ultraviolet light, a performance-based standard, fecal coliform count, is required rather than a chlorine residual.

The commission also adopts additional rulemaking in 30 TAC Chapter 30, Occupational Licenses and Registrations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 222, Subsurface Area Dispersal System; Chapter 281, Applications Processing; Chapter 305, Consolidated Permits; and Chapter 331, Underground Injection Control, in this issue of the *Texas Register* to implement HB 2651.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 309.3, Application of Effluent Sets

The adopted amendment to §309.3(f) adds paragraphs (4) - (7) to specify the effluent limitations for domestic wastewater that is disposed of through subsurface area drip dispersal systems. Adopted §309.4(f)(4) - (7) specifies the pH range, disinfection requirements, primary treatment methods, and the requirement to comply with Chapter 309, Subchapters B and C, Location Standards and Land Disposal of Sewage Effluent, respectively.

The adopted amendment to §309.3(g)(4) specifies that disinfection of effluent disposed of through a subsurface area drip dispersal system must be evaluated by fecal coliform sampling. Effluent is considered disinfected if a grab sample of fecal coliform contains no more than 200 colony forming units (cfu) per 100 milliliters (ml) of water. 200 cfu/100 ml is the standard for contact recreation in surface water. The rationale is that if 200 cfu/100 ml is safe to contact in water, it is safe to contact in soil. There is a wide variation in the amount of ambient bacteria in soil. This limitation prevents the treated effluent from adding an appreciable amount of bacteria to the soil.

Section 309.4, Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants

Adopted §309.4 is amended to correct a numbering error in Table 1 and the references to those numbers throughout the table.

The adopted amendment adds requirements for subsurface area drip dispersal systems to Table 1. The limitations for five-day biochemical oxygen demand and total suspended solids in domestic effluent disposed of through a subsurface area drip dispersal system on land where there is no potential for public contact are the same as the prior limitations for irrigation on land where there is no potential for public exposure. The limitations for five-day biochemical oxygen demand and total suspended solids in domestic effluent disposed of through a subsurface area drip dispersal system on land where there is potential for public contact are the same as the prior limitations for irrigation on land where there is potential for public exposure, with the exception of the added fecal coliform limitation.

The amendment also adds a note following Table 1 to differentiate between "public exposure" and "public contact." Public exposure is the term associated with irrigation systems. With spray irrigation, as well as other surface irrigation practices, the public has the potential to be exposed to treated effluent. With subsur-

face area drip dispersal systems, the public has the potential to come into contact with the soil that might be wet with treated effluent, so the term "public contact" is adopted.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The specific intent of this rulemaking is to amend Chapter 309 to add effluent limitations for treatment facilities that supply effluent for disposal through subsurface area drip dispersal systems. Although the intent of the adopted rulemaking is to protect the environment or reduce the risks to human health from environmental exposure, it is not a major environmental rule because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or public health and safety of the state or a sector of the state. Therefore, the adopted rules do not meet the definition of a major environmental rule as defined by the Texas Government Code.

Furthermore, the adopted rulemaking action does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental 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.

In this case, the adopted rules do not meet any of these applicability requirements. First, the adopted rules are specifically required to implement state law in HB 2651. Second, the adopted rules do not exceed a requirement of state law, because they are consistent with the express requirements of TWC, Chapter 32, and are adopted to implement HB 2651. Third, the adopted rules do not exceed an express 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. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of HB 2651, which directs the commission to implement rules under TWC, Chapter 32. These adopted rules do not meet the criteria for a major environmental rule as defined by Texas Government Code, §2001.0225. Written comments on the draft regulatory impact analysis determination were solicited; no comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, Chapter 2007. The adopted rules add effluent limitations for treatment facilities that supply effluent for disposal through subsurface area drip dispersal systems. The promulgation and enforcement of the adopted rules will not affect private real property in a manner that requires compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this rulemaking does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007. Written comments on the draft takings impact analysis determination were solicited; no comments were received on the draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) and is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the CMP, and will therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this action for consistency with CMP goals and determined that Chapter 309 does not impact any CMP goals or policies because there are no substantive changes to the protection of human health and the environment. Subsurface area drip dispersal systems are currently subject to the requirements of this chapter. The only change in the requirements is the method by which the commission measures disinfection. Because technology is offering options beyond traditional chlorination, the requirement to meet disinfection levels is stated as a performance measure rather than a performance method. The number of fecal coliform colony forming units per 100 milliliters of water is a standard method of determining the contamination level, and it was used as the measurement tool for this measure. This requirement will result in the same level of protection of human health and the environment as the previous requirement.

PUBLIC COMMENT

The public comment period ended March 20, 2006. A public hearing was held March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Conference Room 2210, 12100 Park Thirty-Five Circle, Austin, TX. Oral comments were received from JN Technologies (JNT). Written comments were received from Harris County Public Infrastructure Department (HCPID); United States Department of Energy, National Nuclear Security Administration, Pantex Site Office (DOE); Lower Colorado River Authority (LCRA); Drip-Tech Wastewater Systems (DTWS); Save Our Springs Alliance (SOSA); and Snowden Onsite Septic, Inc. (SOSI). Texas Council of Engineering Companies (TCEC) submitted a written comment after the close of the comment period, which was addressed. No comments were received in relation to this chapter.

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibil-

ities and duties under TWC, §5.013; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter; §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells; §32.054, which authorizes the executive director to inspect the dispersion area; and §32.151, which authorizes the commission, authorized agent, or employee of local government the power to enter property. Rulemaking authority is expressly granted to the commission to adopt rules under TWC, Chapter 32, enacted by HB 2651, §2.

The adopted amendments implement HB 2651, which added Chapter 32 to the TWC. HB 2651, §2, expressly requires the commission to adopt rules to set standards and requirements for application permits and actions by the commission to carry out the responsibilities for management of beneficial reuse of treated wastewater.

§309.3. Application of Effluent Sets.

(a) Discharges into effluent limited segments.

(1) All discharges into effluent limited segments shall, at a minimum, achieve secondary treatment. An effluent limited segment is any segment which is presently meeting or will meet applicable water quality criteria following incorporation of secondary treatment for domestic sewage treatment plants and/or best practicable treatment for industries.

(2) New or increased discharges into effluent limited segments shall achieve that level of treatment deemed necessary by the commission, based on the assimilative capacity and uses of the receiving stream.

(b) Discharges into water quality limited segments.

(1) All discharges into water quality limited segments for which evaluations have been developed shall, at a minimum, achieve the treatment level specified in the recommendations of the evaluation for that discharge. A water quality limited segment is a surface water segment classified by the commission as water quality limited where conventional treatment of waste discharged to the segment is not stringent enough for the segment to meet applicable water quality standards; monitoring data have shown significant violations of water quality standards; advanced waste treatment for point sources is required to protect existing exceptional water quality; or the segment is a domestic water supply reservoir used to supply drinking water.

(2) Discharges into water quality limited segments for which wasteload evaluations or total maximum daily loads have not been developed shall, at a minimum, achieve secondary treatment as provided by §309.1 of this title (relating to Scope and Applicability).

(c) Discharges into certain reservoirs. Any discharge made within five miles upstream of a reservoir or lake which is subject to on-site/private sewage facility regulation adopted under Texas Water Code, Chapter 26 or Texas Civil Statutes, Article 4477-7e, or which may be used as a source for public drinking water supply shall achieve, at a minimum, Effluent Set 2 in §309.4 of this title (relating to Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants). Five miles shall be measured in stream miles from the normal conservation pool elevation. The commission may grant exceptions to this requirement where it can be demonstrated that the exception would not adversely impact water quality.

(d) Discharges from stabilization ponds. Effluent Set 3 shall apply to stabilization pond facilities in which stabilization ponds are the primary process used for secondary treatment and in which the ponds have been designed and constructed in accordance with applicable design criteria. Effluent Set 3 is considered equivalent to secondary treatment for stabilization pond systems.

(e) Discharge to an evaporation pond. Effluent discharged to evaporation ponds must receive, at a minimum, primary treatment, be within the pH limits of 6.0 - 9.0 standard units, and have a quality of 100 milligrams per liter five-day biochemical oxygen demand or less on a grab sample. For the purpose of this subsection, primary treatment means solids separation which is typically accomplished by primary clarifiers, Imhoff tanks, facultative lagoons, septic tanks, and other such units.

(f) Land disposal of treated effluent. The commission may authorize land disposal of treated effluent when the applicant demonstrates that the quality of ground or surface waters in the state will not be adversely affected. Each project must be consistent with laws relating to water rights. The primary purpose of such a project must be to dispose of treated effluent and/or to further enhance the quality of effluent prior to discharge.

(1) When irrigation systems ultimately dispose of effluent on land to which the public has access, Effluent Set 4, at a minimum, shall apply. The pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions. When lands to which the public does not have access are to be used for ultimate disposal of effluent, the effluent must, at a minimum, receive primary treatment. Effluent Set 5 shall apply and the pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions. For irrigation systems, primary treatment is the same as described in subsection (e) of this section. Effluent may be used for irrigation only when consistent with Subchapters B and C of this chapter (relating to Location Standards and Land Disposal of Sewage Effluent).

(2) When overland flow systems are utilized for effluent treatment, the public shall not have access to the treatment area. Primary treated effluent meeting Effluent Set 6, within the pH limits of 6.0 - 9.0 standard units may be used consistent with environmental safeguards and protection of ground and surface waters. For overland flow systems, primary treatment is the same as described in subsection (e) of this section. At a minimum, Effluent Set 1 shall apply to discharges from overland flow facilities except where more stringent treatment levels are required to meet water quality standards.

(3) When evapotranspiration beds, low pressure dosing, or similar soil absorption systems are utilized for on-site land disposal, the effluent shall, at a minimum, receive primary treatment and meet Effluent Set 7. Use of these on-site systems shall be consistent with environmental safeguards and the protection of ground and surface waters. Primary treatment is the same as described in subsection (e) of this section.

(4) When subsurface area drip dispersal systems, or similar soil absorption systems ultimately dispose of effluent on land where there is the significant potential for public contact, as defined in §222.5 of this title (relating to Definitions), Effluent Set 4, at a minimum, shall apply. The pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions.

(5) When subsurface area drip dispersal systems, or similar soil absorption systems ultimately dispose of effluent on land where there is the minimal potential for public contact, as defined in §222.5 of this title, Effluent Set 5, at a minimum, shall apply. The pH shall be

within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions.

(6) Treated effluent may be land applied only when consistent with Subchapters B and C of this chapter. Use of subsurface area drip dispersal systems shall be consistent with environmental safeguards and the protection of ground and surface waters.

(7) For the purpose of this subsection, primary treatment means solids separation which is typically accomplished by primary clarifiers, Imhoff tanks, facultative lagoons, septic tanks, and other such units.

(g) Disinfection.

(1) Except as provided in this subsection, disinfection in a manner conducive to the protection of both public health and aquatic life shall be achieved on all domestic wastewater which discharges into waters in the state. Any appropriate process may be considered and approved on a case-by-case basis.

(2) Where chlorination is utilized, any combination of detention time and chlorine residual where the product of chlorine (Cl_2 mg/l) X Time (T minutes) equals or exceeds 20 is satisfactory provided that the minimum detention time is at least 20 minutes and the minimum residual is at least 0.5 mg/l. The maximum chlorine residual in any discharge shall in no event be greater than four mg/l per grab sample, or that necessary to protect aquatic life. Where an existing system, constructed prior to October 8, 1990, has a detention time of less than 20 minutes at peak flow, the waste discharge permit will be amended at renewal by the commission to require limits for both chlorine residual and fecal coliform.

(3) On a case-by-case basis, the commission will allow chlorination or disinfection alternatives to the specific criteria of time and detention described in paragraph (2) of this subsection that achieve equivalent water quality protection. These alternatives will be considered and their performance standards determined based upon supporting data submitted in an engineering report, prepared and sealed by a registered, professional engineer. The report should include supporting data, performance data, or field tracer studies, as appropriate. The commission will establish effluent limitations as necessary to verify disinfection is adequate, including chlorine residual testing, other chemical testing, and/or fecal coliform testing.

(4) Except as provided herein, disinfection of domestic wastewater which is discharged by means of land disposal or evaporation pond shall be reviewed on a case-by-case basis to determine the need for disinfection. All effluent discharged to land to which the public has access must be disinfected and if the effluent is to be transferred to a holding pond or tank, the effluent shall be rechlorinated to a trace chlorine residual at the point of irrigation application. All effluent discharged to land via a subsurface area drip dispersal system to which there is a potential for public contact shall be disinfected and shall comply with a fecal coliform effluent limitation of 200 colony forming units per 100 milliliters water, per grab sample, with §309.3(g)(1) of this title (relating to Application of Effluent Sets).

(5) Unless otherwise specified in a permit, chemical disinfection is not required for stabilization ponds when the total retention time in the free-water-surface ponds (based on design flow) is at least 21 days.

(h) More stringent requirements. The commission may impose more stringent requirements in permits than those specified in subsections (a) - (g) of this section, on a case-by-case basis, where appropriate to maintain desired water quality levels.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Acting Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-6087

CHAPTER 331. UNDERGROUND INJECTION CONTROL

The Texas Commission on Environmental Quality (commission) adopts amendments to §§331.2, 331.7, 331.9, and 331.132. Sections 331.2, 331.9, and 331.132 are adopted *without changes* to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 1008) and will not be republished. Section 331.7 is adopted *with change* to the proposed text and will be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

House Bill (HB) 2651, 79th Legislature, 2005, amended the Texas Water Code (TWC) by adding Chapter 32, Subsurface Area Drip Dispersal Systems. Subsurface area drip dispersal systems apply fluid into the soil below the surface of the soil, and therefore, are classified as Class V injection wells in accordance with §331.11(a)(4), Classification of Injection Wells. The commission amends Chapter 331 to address the applicability of this chapter to subsurface area drip dispersal systems as defined by TWC, Chapter 32.

The commission also adopts additional rulemaking in 30 TAC Chapter 30, Occupational Licenses and Registrations; Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; Chapter 222, Subsurface Area Dispersal System; Chapter 281, Applications Processing; Chapter 305, Consolidated Permits; and Chapter 309, Domestic Wastewater Effluent Limitation and Plant Siting, to implement HB 2651 in this issue of the *Texas Register*.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standard in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 331.2, Definitions

Adopted §331.2(90) is amended by adding a statement that includes subsurface area drip dispersal systems in the definition of subsurface fluid distribution systems. This adopted amendment explains that the definition of subsurface fluid distribution systems, a type of injection well, includes subsurface area drip dispersal systems.

Section 331.7, Permit Required

Adopted §331.7(c) is amended to provide that the owner or operator of subsurface area drip dispersal systems must obtain a permit under TWC, Chapters 26 and 32 and submit information to the Underground Injection Control program staff for inclusion in the Class V injection well inventory list.

Section 331.9, Injection Authorized by Rule

Adopted §331.9(b) is amended to clarify which injection wells require a permit and which injection wells are authorized by rule. The reference in this section to §331.7 reinforces the requirement that owners of subsurface area drip dispersal systems must obtain a wastewater discharge permit under TWC, Chapter 26 or Chapters 26 and 32 prior to discharging effluent into a subsurface fluid distribution system, which is a type of Class V injection well.

Section 331.132, Construction Standards

Adopted §331.132(a) is amended to correct an out-of-date statute citation. Previously, TWC, Chapter 32 was repealed and the water well driller provisions recodified into Texas Occupations Code, Chapter 1901, as amended by HB 2813, 77th Legislature, 2001. The adopted amendment to §331.132(a) reflects the recodification of the water well driller provisions in the Texas Occupations Code.

Adopted §331.132(b)(1) is amended to identify the information that is required to be submitted with the applicable permit application for injection wells that are both authorized by rule under this chapter and regulated by permit under other commission permitting programs.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rules are intended to implement HB 2651, relating to the regulation of subsurface area drip dispersal systems. The adopted rules clarify that a subsurface area drip dispersal system regulated under Chapter 222 is also considered as an injection well under the definition of subsurface fluid distribution system under Chapter 331. The adopted rules do not alter the underlying technical requirements for injection wells. Therefore, because this rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, the rulemaking does not fit the Texas Government Code, §2001.0225, definition of "major environmental rule."

Furthermore, the adopted rulemaking action does not meet any of the four applicable requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225(a) only applies to a major environmental 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.

In this case, the adopted rules do not meet any of these applicability requirements. First, the adopted rules are specifically required to implement state law in HB 2651. Second, the adopted rules do not exceed an express requirement of state law, instead these rules implement HB 2651 and the Injection Well Act in TWC, Chapter 27. Third, the adopted rules do not exceed an express 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. Fourth, the commission does not adopt these rules solely under the general powers of the agency, but rather under the authority of HB 2651, which directs the commission to implement rules under TWC, Chapter 32 and under TWC, §27.019, which authorizes the commission to adopt rules reasonably required for the performance of its duties under TWC, Chapter 27. Written comments on the draft regulatory impact analysis determination were solicited; no comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for these adopted rules under Texas Government Code, Chapter 2007. The adopted rules establish requirements for subsurface area drip dispersal systems and clarify that subsurface area drip dispersal systems are a type of injection well. The promulgation and enforcement of the adopted rules will not affect private real property in a manner that requires compensation to private real property owners under the United States Constitution or the Texas Constitution. The adopted rules also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Consequently, this rulemaking does not meet the definition of a takings under Texas Government Code, §2007.002(5). Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007. Written comments on the draft takings impact analysis determination were solicited; no comments were received on the draft takings impact analysis determination.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) and is identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the CMP, and will therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission reviewed this action for consistency and determined that Chapter 331 does not impact any CMP goals or policies because it prescribes the level of licensure or training required for operators of subsurface area drip dispersal systems and the treatment facilities that supply treated effluent to subsurface area drip dispersal systems. Chapter 331 is administrative and does not regulate the environment.

PUBLIC COMMENT

The public comment period ended March 20, 2006. A public hearing was held March 14, 2006, at 2:00 p.m. at the Texas Commission on Environmental Quality, Building F, Conference Room 2210, 12100 Park Thirty-Five Circle, Austin, TX. Oral com-

ments were received from JN Technologies (JNT). Written comments were received from Harris County Public Infrastructure Department (HCPID); United States Department of Energy, National Nuclear Security Administration, Pantex Site Office (DOE); Lower Colorado River Authority (LCRA); Drip-Tech Wastewater Systems (DTWS); Save Our Springs Alliance (SOSA); and Snowden Onsite Septic, Inc. (SOSI). Texas Council of Engineering Companies (TCEC) submitted a written comment after the close of the comment period, which was addressed. No comments were received in relation to this chapter.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§331.2, 331.7, 331.9

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells. The amendments are also adopted under HB 2651, which requires the commission to adopt rules relating to subsurface drip dispersal systems.

The adopted amendments implement HB 2651 and TWC, Chapter 27, which requires the commission to regulate injection wells.

§331.7. Permit Required.

(a) Except as provided in §331.9 of this title (relating to Injection Authorized by Rule) and by subsection (d) of this section, all injection wells and activities must be authorized by permit.

(b) For Class III in situ uranium solution mining wells, Frasch sulfur wells, and other Class III operations under commission jurisdiction, an area permit authorizing more than one well may be issued for a defined permit area in which wells of similar design and operation are proposed. The wells must be operated by a single owner or operator. Before commencing operation of those wells, the permittee may be required to obtain a production area authorization for separate production or mining areas within the permit area.

(c) The owner or operator of a large capacity septic system, a septic system which accepts industrial waste, or a subsurface area drip dispersal system, as defined in §222.5 of this title (relating to Definitions) must obtain a wastewater discharge permit in accordance with Texas Water Code, Chapter 26 or Chapters 26 and 32, and Chapter 305 of this title (relating to Consolidated Permits), and must submit the inventory information required under §331.10 of this title (relating to Inventory of Wells Authorized by Rule).

(d) Pre-injection units for Class I nonhazardous, noncommercial injection wells and Class V injection wells permitted for the disposal of nonhazardous waste must be either authorized by a permit issued by the commission or registered in accordance with §331.17 of this title (relating to Pre-Injection Units Registration). The option of registration provided by this subsection shall not apply to pre- injection units for Class I injection wells used for the disposal of byproduct material, as that term is defined in Chapter 336 of this title (relating to Radioactive Substance 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.

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Robert Martinez
Acting Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER H. STANDARDS FOR CLASS V WELLS

30 TAC §331.132

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; and §27.019, which requires the commission to adopt rules reasonably required for the regulation of injection wells. The amendment is also adopted under HB 2651, which requires the commission to adopt rules relating to subsurface drip dispersal systems.

The adopted amendment implements HB 2651 and TWC, Chapter 27, which requires the commission to regulate injection wells.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Robert Martinez
Acting Director, Environmental Law Division
Texas Commission on Environmental Quality
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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.6, §53.8

The Texas Parks and Wildlife Commission adopts amendments to §53.6 and §53.8, concerning Fees, without changes to the proposed text as published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1190).

The amendment to §53.6, concerning Recreational Fishing Licenses, Permits, Stamps, and Tags, eliminates references to the tarpon tag and fees. Another rulemaking has discontinued the tarpon tag. The fee for the tarpon tag is therefore unnecessary.

The amendment to §53.8, concerning Alligator Licenses, Permits, Stamps, and Tags, eliminates references to the resident and nonresident alligator hunting licenses and fees. The passage of House Bill 2026 by the 79th Texas Legislature eliminated the alligator hunting license, rendering the fees unnecessary.

The amendments to §53.6 and §53.8 will function by eliminating references to fees for items that no longer exist.

The department received no comments concerning adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species or to other categories of persons; §46.0045, which authorizes the commission to establish fees for initial and duplicate tags issued under Chapter 46; and House Bill 2026, 79th Texas Legislature (Regular Session) which amended Parks and Wildlife Code, Chapter 65, to eliminate alligator hunting licenses and the commission's authority to establish fees for alligator hunting licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

The Texas Parks and Wildlife Commission adopts amendments to §§65.3, 65.11, 65.24, 65.26, 65.34, 65.42, 65.64, 65.72, and 65.82, and new §65.49, concerning the Statewide Hunting and Fishing Proclamation. Sections 65.11, 65.26, 65.42, 65.64 and 65.72 are adopted with changes to the proposed text as published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1192). Sections 65.3, 65.24, 65.34, 65.49, and 65.82 are adopted without changes and will not be republished.

The change to §65.11, concerning Lawful Means, corrects an error in an internal reference in paragraph (5)(C)(iv). The text as proposed referred to subsection (a)(1) of the section. The reference should be to paragraph (1)(E).

The change to §65.26, concerning Managed Lands Deer Permits (MLDP)--White-tailed Deer, also corrects erroneous internal references. Under current rule, stamp requirements and regulations applying to the take of white-tailed deer during the archery-only and muzzleloader-only seasons apply on properties that receive only antlerless MLD permits, but do not apply on properties that receive both buck and antlerless deer MLD permits. Due to redesignations caused by the adoption of the amendment to §65.42, concerning Deer, the internal references in §65.26 must be changed to be correct. References to §65.42(b)(8) are changed to refer to §65.42(b)(17) and references to §65.42(b)(9) are changed to refer to §65.42(b)(18). Since the proposed text clearly indicates that the department's intent, the effect of the change is nonsubstantive.

The change to §65.64, concerning Turkey, eliminates proposed language that would have comported the section with a proposed amendment to §65.25, concerning Wildlife Management Plan (WMP), which is necessary because the proposed amendment to §65.25 is not being adopted. The change rewords the language defining spring youth-only seasons to ensure that youth seasons always occur one week prior to the opening of the general season. The commission's intent in the creation of youth-only seasons was to provide a weekend during which adult mentors could foster an appreciation for wildlife conservation and recreational hunting in young hunters. Last year, the spring turkey season in many counties was lengthened. In light of those changes, the current wording of the youth season rule proves problematic, in that the current wording would allow the general season and the youth season to overlap once every eight years. Therefore, the rule has been changed such that the youth-only weekend will always be separate from the general season.

The change to §65.72, concerning Fish, places a one-year term of effectiveness on the use of lawful archery equipment to take catfish. The change is necessary in order to allow the department to design a method for evaluating the biological impacts of bowfishing upon catfish populations.

The amendment to §65.3, concerning Definitions, alters the current definition of 'wildlife resources;' adds definitions for 'alligator gig' and 'alligator hide tag;' and adds a species of fish to the list of fishes designated as game fish.

Parks and Wildlife Code, §61.005, defines wildlife resources as, "all wild animals, wild birds, and aquatic animal life." The amendment is necessary to expand the applicability of the subchapter to include alligators, because provisions governing the recreational take of alligator have been relocated from another subchapter to this subchapter.

The definition of 'alligator gig' also has been added as a result of the relocation of recreational hunting rules for alligators to the Statewide Hunting and Fishing Proclamation. The amendment is necessary because there are other types of gigs used in angling that are not lawful for the take of alligators; therefore, the regulations must stipulate the nature of a lawful alligator gig.

The definition of 'alligator hide tag' also has been added as a result of the relocation of the recreational hunting rules for alligators. The hide tag is a federal requirement pursuant to the Convention on International Trade in Endangered Species (CITES) intended to provide a means for identifying lawfully harvested alligators for purposes of international trade. The amendment is necessary to distinguish the alligator hide tag from other types of tags referenced in the rules.

The amendment also adds tripletail to the list of game fishes. The tripletail is becoming increasingly popular with recreational anglers, and to offer greater protection to the species, the department proposes to designate tripletail as a game fish, which can be taken lawfully only by pole and line. The amendment is

necessary to add further protection to an increasingly popular sport fish.

The amendment to §65.11, concerning Lawful Means, establishes the means of take that are lawful for use on alligators, and would extend the prohibition on the use of rimfire ammunition, fully automatic firearms, and silencers to include alligators. As addressed in the discussion of the adoption of new §65.49 elsewhere in this rulemaking, all provisions relating to the hunting of alligators have been relocated from 31 TAC Chapter 65, Subchapter P to the Statewide Hunting and Fishing Proclamation. In general, the provisions have been transferred without change; however, there are several exceptions, as follows.

The amendment to §65.11 is taken verbatim from current §65.356, which the department is repealing in a rulemaking published elsewhere in this issue, except for the provisions in §65.11(1)(E) and (5)(A)(v), which provide for the limited use of firearms to take alligators on private lands and waters. Under current rules, firearms are a prohibited means for taking alligators, although an alligator may be dispatched with a firearm once the alligator has been caught on a lawful taking device. Paragraph (1)(E) would allow the take of alligator by means of firearms on private lands except in Angelina, Brazoria, Calhoun, Chambers, Galveston, Hardin, Jackson, Jasper, Jefferson, Liberty, Matagorda, Nacogdoches, Newton, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, Trinity, Tyler and Victoria counties (hereafter referred to as 'core counties') and on properties in other counties where the department has conducted biological surveys and issued CITES tags to the landowner. The area represented by the core counties is the prime historical habitat for the American alligator in Texas, consisting primarily of freshwater swamps and marshes, but also including nearby rivers, lakes, and smaller bodies of water, in areas where freezing conditions are rare or of short duration. In this area of the state, alligator hunting is commercially viable and must be regulated, both to equitably distribute the harvest and to manage the species for sustainable harvest and prevention of depletion, since alligators in this area of the state are a key species in certain wetland ecosystems. Means of take otherwise remain limited to 'capture'-type devices such as hook-and-line, snares, gigs, and archery equipment, with the requirement that all taking devices be connected to a line of at least 300-lb. test to ensure recovery of all alligators. When free-swimming alligators are shot with a firearm, they typically sink very quickly and become difficult or impossible to locate and recover. Therefore, the use of firearms to take alligators has been prohibited in core counties to minimize wounding loss and subsequent waste of meat and hides.

Outside of the core counties, where alligator populations exist they are ephemeral or the result of population expansion into marginal or less-than-desirable habitats (with the notable exception of the greater Houston metropolitan area, which is geographically within the historic range of the American alligator, but heavily urbanized). In these areas of the state, alligators must move frequently as landscape water conditions change, and are often seen traveling across land in search of new waters. Alligators near human habitation are often found crossing roads, entering suburbs and finding shelter in artificial ponds and even an occasional swimming pool during the drier months. New paragraph (1)(E) maintains the prohibition on the use of firearms in the core counties, would allow the use of firearms to take alligators on private property elsewhere in the state (provided that CITES tags have not been issued for the property), and would prohibit the take of alligators by means of firearms from, on, in, or over public water. The department reasons that the risk of wounding loss is negligible for the take of alligators on dry land and in private waters, but increases substantially on public waters. The amendment is necessary to provide additional hunting opportunity in areas of the state where alligator populations are expanding but where long-term viability of populations is unlikely because of erratic fluctuations in habitat conditions.

Additionally, the amendment modifies the provisions governing the use of line sets. Under current rules, a hunter must possess at least one valid hide tag per line set in use. The provisions of new §65.49 would allow hunters outside of the core counties to take one alligator per year (unless they are on a property for which the department has issued hide tags) and to tag the alligator after harvest. Obviously, a hunter under these circumstances will not be able to possess a hide tag while they are hunting; therefore, the current rule language must be altered. The provision is necessary to prevent enforcement conflicts.

Under current rules, it is unlawful to hunt game animals or game birds with a fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device, or to use rimfire ammunition to hunt deer, antelope, or desert bighorn sheep. The amendment would extend the applicability of those provisions to include alligators.

The amendment to §65.24, concerning Permits, clarifies that the section does not apply to deer harvested under MLD permits. Under current rules, persons harvesting deer under an MLD permit are not required to possess an MLD tag on their person. The current rule acknowledges that landowners face logistical problems related to permit allotment, distribution, and use. Hunters are not always successful, and to require each hunter to have a permit on their person while they are in the field means that unused permits would have to be returned to the landowner and reissued to subsequent hunters, which is inefficient, particularly on larger properties that might entertain dozens of hunters in a season. The department thus allows hunters on MLD properties to harvest a deer and then immediately take it by the most direct route to a location on the property where the MLD tag can then be attached to the carcass. The amendment is necessary to eliminate a conflict between the provisions of §65.24 and the provisions of §65.26 and §65.34.

The amendment to §65.26, concerning Managed Lands Deer Permits (MLDP)--White-tailed Deer, rewords subsection (d) to remove unintended potential for misunderstanding. The current rule provides that a 'deer killed under the authority of an MLDP' must immediately be tagged or taken to a tagging station on the property. The department has become aware that this provision has been interpreted by some to mean that when landowners or hunters are harvesting deer they have the option of using an MLDP or a tag from a hunting license, or that if all MLDPs have been used, additional harvest is acceptable. A core element of the biological effectiveness of the MLDP program is the harvest quota established in the wildlife management plan. At the point that MLDPs have been issued to a landowner, the harvest quota is not a suggestion or a recommendation; it is the total number of deer that may be lawfully harvested from the property for which the permits were issued. Under the provisions of §65.25, concerning Wildlife Management Plan (WMP), an approved WMP, specifying a harvest quota for antlerless deer or both buck and antlerless deer, is required for the issuance of Managed Lands Deer Permits. Additionally, under the provisions of §65.26(g), exceeding the harvest quota is sufficient reason for the department to deny further issuance of permits. Therefore, in order to

eliminate potential confusion, the amendment makes clear that all deer taken on a property for which MLDPs (buck, antlerless, or both) have been issued must be tagged with an applicable MLDP, and that when the harvest quota for the property has been achieved, no additional deer may be taken on the property. The amendment is necessary to prevent confusion and possible inadvertent misunderstandings.

The amendment to §65.34, concerning Managed Lands Deer Permits (MLDP)--Mule Deer, effects changes to address the same situation discussed in the amendment to §65.26, and is necessary for the same reason.

The amendment to §65.42, concerning Deer, implements special antler restrictions in Bell, Bosque, Bowie, Burleson, Camp, Cass, Cherokee, Comal (east of IH 35), Comanche, Coryell, Delta, Eastland, Erath, Fannin, Franklin, Gregg, Hamilton, Harrison, Hays (east of IH 35), Hopkins, Houston, Lamar, Lampasas, Leon, Marion, Morris, Nacogdoches, Panola, Rains, Red River, Rusk, Sabine, San Augustine, Shelby, Somervell, Titus, Travis (east of IH 35), Upshur, Williamson, and Wood counties. Hunting pressure on buck deer in these counties has been excessive for many years. In 1971, the bag limit in most counties in the eastern third of the state was reduced from two bucks to one in an effort to mitigate excessive hunting pressure. Despite the reduction, the data continues to indicate an excessive harvest of bucks, which results in very poor age structure. Although the one-buck bag limit redistributed the harvest among hunters, it did not produce a significant amount of older age bucks in the herd. Under the one-buck bag limit, very few bucks survive into the older age classes (older than three years). Research results indicate that poor age structure within a buck herd creates a longer breeding season, which in turn leads to a longer fawning season and a reduction in fawn production. Poor age structure also contributes to adverse hunter satisfaction.

In April of 2002, the commission adopted a three-year experimental antler restriction regulation in six counties in the Oak Prairie ecoregion, with the following goals: improve the age structure of the buck herd, increase hunter opportunity, and encourage landowners and hunters to become more actively involved in better habitat management. The antler restriction regulation was designed to protect the majority of younger bucks until those deer could reach a level of advanced physical maturity.

The experimental regulation has given the department considerable insight into the impact that it can have on a buck herd. Department data indicate that the experimental regulation has been effective. The proportion of bucks younger than 3.5 years old in the harvest dropped from 79% to 29% during the 2004-2005 hunting season. Prior to the implementation of the regulation, only 20% of the harvested bucks were at least 3.5 years old; however, by the third year of the experiment, 71% of the harvested bucks were at least 3.5 years old. It is important to note that while buck harvest dropped 38% during the first year of the experiment (compared to the average harvest from 1997-2001), the harvest during the second year of the experiment exceeded the five-year average prior to the regulation change. The data also showed a decline in the harvest of spike bucks and an increase in the harvest of bucks with an inside spread of 13 inches or greater, which means that one effect of maintaining a one-buck limit under the antler restrictions is that hunting pressure is deflected from the spike-buck segment of the population, which is undesirable. Therefore, in April 2004 the department implemented a two-buck bag limit in counties with antler restrictions, with the proviso that if a hunter took two lawful bucks at least one of them had to have at least one unbranched antler. By adding the second buck to the bag, the department intended to encourage the harvest of spike bucks, which research has indicated are less likely to develop into lawful bucks (as defined for the counties with the antler-restriction rules in place).

Given the results of the experimental regulations, the department has endeavored to identify additional counties where implementation might yield similar results. The criteria used for candidate counties were: the county currently must be a one-buck county, 60% of the buck harvest in the county must consist of bucks less than 3.5 years of age, and the county must have a contiguous border with another county in which antler restriction regulations have been implemented. On this basis, the department identified the 40 counties affected by the amendment.

The amendment to §65.42 also implements a four-deer bag limit and a late muzzleloader-only for the entirety of Upton County. Under current rules, the bag limit in the portions of Upton County that are either north of U.S. Highway 67 or both south of U.S. Highway 67 and west of State Highway 349 is three deer. Data indicate that deer populations in the northern and western parts of the county are increasing and able to withstand additional hunting pressure. Additionally, the counties adjoining Upton County on the east and northeast (Glasscock and Reagan counties) contain deer densities similar to those found in Upton County but are under a more liberal regulation (5 deer; no more than 2 bucks) than that being implemented in Upton County. The regulations have been in effect in Glasscock and Reagan counties for five years, and the deer herds in these counties have experienced no adverse impacts. The department therefore does not anticipate that the amendment will result in either waste or depletion of the resource in Upton County. The portion of the county that has had a four-deer bag limit has also had a 14-day late muzzleloader-only season. The expansion of the four-deer bag limit to countywide applicability also would entail the expansion of the muzzleloader season countywide. Based on hunter-success data from other counties, the harvest of deer during the muzzleloader in Upton County should be negligible as a component of overall harvest.

New §65.49, concerning Alligators, establishes the open seasons, rules for tag issuance and use, reporting requirements, and provisions for the sale of alligators taken under a Texas hunting license. Prior to 2005, an alligator hunting license was required to hunt alligators in this state, and all provisions relating to the hunting of alligators were located in 31 TAC Chapter 65, Subchapter P. The passage of House Bill 2026 by the 79th Texas Legislature eliminated the alligator hunting license. As a consequence, the department has determined that it is appropriate to relocate all provisions relating to recreational alligator hunting from Subchapter P to the Statewide Hunting and Fishing Proclamation. In general, the provisions are transferred without change; however, there are several exceptions, as follows.

The new section provides for the harvest of alligator by means of firearms under certain conditions, which is addressed in the discussion of the changes to §65.11.

Under federal law, all alligators harvested in the United States must be permanently tagged with a CITES (Convention on the International Trade in Endangered Species) tag. Although the American alligator is not endangered, it is similar in appearance to other reptilian species that are endangered. The CITES tag functions to distinguish legally taken reptiles from unlawfully taken reptiles. Under the current system, the U.S. Fish and

Wildlife Service annually issues CITES tags to the department, which then issues the tags to landowners, who then use or distribute the tags as they see fit. In order to determine appropriate levels of tag issuance and subsequent harvest, the department conducts annual surveys of populations, nesting activity, and harvest in counties containing commercially viable alligator populations. From this data the department derives the annual harvest quotas that form the basis for the issuance of CITES tags to landowners. At this time, the majority of tag issuance occurs in those areas of the state considered to be critical alligator habitat. In those counties (Angelina, Brazoria, Calhoun, Chambers, Galveston, Hardin, Jackson, Jasper, Jefferson, Liberty, Matagorda, Nacogdoches, Newton, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, Trinity, Tyler and Victoria, hereafter referred to as 'core' counties), a licensed hunter may take one alligator per CITES tag in possession under current regulations. Under the new rule, tag issuance and harvest in core counties and on properties outside of core counties for which the department has issued hide tags would continue to be conducted in this manner. However, in the remainder of the state, a licensed hunter is now entitled to harvest one alligator per year, provided the take occurs on private property. Under the new section, hunters who harvested an alligator would immediately complete and affix a Wildlife Resource Document to the alligator, and complete and mail to the department within 72 hours a Harvest Report (which will be available in the Texas Parks and Wildlife Outdoor Annual, at department law enforcement offices, and on the department's website), accompanied by a $20 payment for a CITES tag. The department would then mail a CITES tag to the hunter, who would then permanently tag the alligator. The department does not anticipate that the additional harvest under the new rule will be biologically significant. Although the department conducts comprehensive biological survey efforts in the core counties, limited resources do not allow for similar efforts everywhere in the state; however, the federal issuance of CITES tags to Texas, which is based on overall harvest data submitted to the U.S. Fish and Wildlife Service (Service) on an annual basis, has never been exceeded; in fact, tag utilization does not typically exceed 86% of tag issuance. Therefore, the department reasons that additional demand, since it will be restricted to areas outside of the core counties (where the overwhelming majority of the alligator population occurs), is unlikely to exceed permit availability and, in any event, since the total permit issuance by the Service cannot be exceeded, harvest on a macro level will not be biologically significant.

Additionally, the amendment prohibits the employment of more than one taking device per unused hide tag in possession at a time on properties for which hide tags have been issued. Under current regulations, hide tags must be obtained prior to hunting and hunters are prohibited from utilizing more than one taking device per unused hide tag in possession. The one-to-one ratio of taking devices to tags was established to prevent hunters from accidentally exceeding the number of alligators authorized for take, and to prevent the practice of 'culling,' whereby an unscrupulous person would take more alligators than authorized and retain only the most desirable individuals for tagging. Because new §65.49 allows tags to be issued on a post-harvest basis in parts of the state where the bag limit is one alligator, it is necessary to create a parallel to the current requirements for persons hunting with hide tags in hand. The amendment is necessary to prevent persons from exceeding bag limits and over-harvest of the resource.

The amendment to §65.72, concerning Fish, consists of several changes. The amendment adds Kinney County to the list of counties where bait fish are restricted to common carp, fathead minnows, gizzard and threadfin shad, golden shiners, goldfish, Mexican tetra, Rio Grande cichlid, silversides (Atherinidae family), and sunfish (Lepomis). The restrictions were promulgated to protect endangered pupfish (Cyprinodon) in the western Texas posed by the introduction and potential establishment of exotic species that prey upon or compete with indigenous species. The amendment also protects the Devils River minnow, which only occurs in Val Verde and Kinney counties.

The amendment also implements an 18-inch minimum length limit for largemouth bass on Marine Creek Reservoir (Tarrant County). The amendment is necessary because Marine Creek Reservoir has been selected to be involved in the Operation World Record research project. The project will involve stocking coded-wire tagged largemouth bass and monitoring their growth for a minimum of five years following stocking. The stocked bass are ShareLunker offspring and are valuable, considering the limited number that will be produced and their importance to the project. The ShareLunker program allows anglers to loan largemouth bass weighing 13 pounds or more to the department for spawning and research purposes, which include the study of genetics, life history, growth, performance, behavior, and competition. The increased length limit will protect the stocked bass through at least 18 inches and will increase the department's ability to evaluate their performance in natural systems.

The amendment to §65.72 also would allow the take of channel, blue, and flathead catfish by means of lawful archery equipment or crossbows. The use of archery equipment has historically been prohibited, primarily because of concerns that the guaranteed mortality of fish caught by mistake or in violation of legal length limits could negatively impact reproductive potential and age distribution in sensitive populations. Based on the estimated number of persons believed to currently engage in the take of fish by archery equipment (less than 1% of all licensed anglers), the department has determined that the take of catfish by archery equipment probably will not result in significant impacts to catfish populations.

The amendment to §65.72 also eliminates the tagging requirement for tarpon. Under the previous rule, no person could catch and retain a tarpon of less than 80 inches in length unless the fish was tagged with a trophy tarpon tag. The amendment eliminates the tagging requirement and replaces it with a bag limit of one tarpon of 80" in length or longer per person per day. The amendment is necessary because the department is seeking ways to reduce regulatory complexity and paperwork. The amendment affords the same protection to the resource as the previous rule while allowing for pursuit and retention of a record size tarpon.

The amendment to §65.72 also modifies the rules governing possession of black drum. Until this rulemaking, black drum were managed by means of a bag limit combined with minimum and maximum size limits. The amendment allows a person to keep one black drum of greater than 52 inches in length per day as part of the five-fish daily bag limit. The amendment is necessary because the department would like to make it possible for anglers to pursue and retain a state record black drum.

The amendment to §65.72 also reduces the possession limit for flounder taken under a recreational license. Prior to this rulemaking, the possession limit for flounder was twice the daily bag limit. Thus, with a daily bag limit of 10, the possession limit for flounder was 20; thus, for those fishing past midnight, a 20-fish posses-

sion limit applied. The amendment makes the possession limit identical to the daily bag limit. The amendment is necessary because data indicate that after a long-term declining trend in abundance, flounder have begun to stabilize. The amendment will aid in maintaining or enhancing the current level of recovery by exerting a limited but positive impact on flounder stocks and should aid law enforcement by providing less of an incentive for recreational catches to enter the commercial market.

The amendment to §65.72 also implements bag and minimum size limits for tripletail. The amendment is necessary because the species is becoming increasingly popular with anglers. The size limit should protect young females from harvest prior to first spawn and the bag limit will have the effect of distributing harvest opportunity. The department intends to continue monitoring populations to see what effect the regulation change has on the population of tripletail in Texas waters.

The amendment to §65.82 prohibits the take of largetooth sawfish (Pristis perotteti). The amendment is necessary because the U.S. Fish and Wildlife Service has listed the smalltooth sawfish (Pristis pectinata) as endangered. Due to the extreme difficulty in distinguishing the smalltooth sawfish from the largetooth sawfish, the department believes that protection of both species is the only way to protect the listed species.

The amendment to §65.3, which alters the current definition of 'wildlife resources;' adds new definitions for 'alligator gig' and 'alligator hide tag;' and adds a species of fish to the list of fishes designated as game fish, will function by providing unambiguous explanations of the terms used in the subchapter.

The amendment to §65.11 will function by establishing the means of take that are lawful for use on alligators.

The amendment to §65.24 will function by clarifying that the section does not apply to deer harvested under MLD permits.

The amendment to §65.26 will function by clarifying that all white-tailed deer taken on a property for which Managed Lands Deer Permits (MLDP) have been issued must be tagged with an applicable MLDP, and that when the harvest quota for the property has been achieved, no additional deer may be taken on the property.

The amendment to §65.34 will function by clarifying that all mule deer taken on a property for which Managed Lands Deer Permits (MLDP) have been issued must be tagged with an applicable MLDP, and that when the harvest quota for the property has been achieved, no additional deer may be taken on the property.

The amendment to §65.42, concerning Deer, will function by implementing special antler restrictions for the take of white-tailed deer in Bell, Bosque, Bowie, Burleson, Camp, Cass, Cherokee, Comal (east of IH 35), Comanche, Coryell, Delta, Eastland, Erath, Fannin, Franklin, Gregg, Hamilton, Harrison, Hays (east of IH 35), Hopkins, Houston, Lamar, Lampasas, Leon, Marion, Morris, Nacogdoches, Panola, Rains, Red River, Rusk, Sabine, San Augustine, Shelby, Somervell, Titus, Travis (east of IH 35), Upshur, Williamson, and Wood counties, and by creating a countywide bag limit of four white-tailed deer in Upton County, accompanied by a late muzzleloader-only season.

New §65.49 will function by establishing the open seasons, means and methods of take, rules for tag issuance and use, reporting requirements, and provisions for the sale of alligators taken under a Texas hunting license.

The amendment to §65.64 will function by establishing a spring youth-only season for turkey that always takes place the weekend prior to the opening of the general spring open season.

The amendment to §65.72 will function by adding Kinney County to the area where bait fish are restricted to common carp, fathead minnows, gizzard and threadfin shad, golden shiners, goldfish, Mexican tetra, Rio Grande cichlid, silversides (Atherinidae family), and sunfish (Lepomis); by implementing an 18-inch minimum length limit for largemouth bass on Marine Creek Reservoir; and by allowing the take of channel, blue, and flathead catfish by means of lawful archery equipment or crossbows. The amendment will also function by controlling tarpon and black drum harvest by means of a minimum length limit; by reducing the possession limit for flounder taken under a recreational license; and by implementing bag and minimum size limits for tripletail.

The amendment to §65.82 will function by prohibiting the take of sawfish (Pristis perotteti).

The department received 62 comments opposing adoption of the amendment to §65.42 that implements antler restriction regulations in 40 additional counties. Several commenters offered a specific reason or reasons for opposition. Those comments, and the department's responses, follow.

One commenter opposing adoption stated that instead of harvest regulations, the department should implement harvest incentives. The department disagrees with the comment and responds that in a general sense, the department possesses neither the fiscal resources nor the manpower to create incentives for a stratified deer harvest; however, it is a longstanding policy of the commission that the management goals of landowners and hunters are the most appropriate incentives. No changes were made as a result of the comment.

One commenter opposing adoption stated that the antler restrictions were unfair to archery hunters. The department disagrees with the comment and responds that the rule is designed to protect certain age classes of buck deer, irrespective of means and methods of take. No changes were made as a result of the comment.

One commenter opposing adoption stated that compliance would be difficult in heavily vegetated areas where visibility could be an issue. The department disagrees with the comment and responds that one of the rule of gun safety is that persons shouldn't shoot at targets they cannot see clearly. No changes were made as a result of the comment.

Seven commenters opposing adoption stated that waste of game will occur as a result of the rule, because hunters will shoot and then leave deer that do not meet the definition of a lawful buck. The department disagrees with the comments and responds that it is incumbent upon any person who engages in hunting to know and obey the pertinent rules, and that compliance with the antler-restriction rules is no different than compliance with any other hunting rule. No changes were made as a result of the comments.

Three commenters opposing adoption stated that it is too difficult to determine whether a buck is lawful or not. The agency disagrees with the comments and responds that the regulations are clear as to what constitutes a legal buck. The department also notes that intensive outreach and education efforts in counties where the rules have been implemented in previous years have been successful, which is reflected in department surveys

indicating that very few people feel that identification of lawful bucks is a problem. No changes were made as a result of the comments.

One commenter opposing adoption stated that the antler restriction is inappropriate west of IH-35. The department disagrees with the comment and responds that the rule is designed for application in any area where the harvest of yearling bucks exceeds 60%. No changes were made as a result of the comment.

One commenter opposing adoption stated that the rule will result in an increase in poaching. The department disagrees with the comment and responds that the vast majority of hunters are law-abiding citizens. No changes were made as a result of the comment.

Three commenters opposing adoption stated that the antler restriction rules should not apply to youth. The department disagrees with the comments and responds that the rule is designed to protect certain age classes of buck deer, irrespective of the age of the hunter. Allowing the take of buck deer within the protected class would frustrate the attainment of the goal the rule is intended to accomplish. No changes were made as a result of the comments.

One commenter opposing adoption stated that the rule will result in the overharvest of spike bucks. The department disagrees with the comment and responds that the rule is expected to cause an overall decline in the harvest of young bucks, even if more spikes are shot. The department also notes that the additional harvest of spike bucks will not negatively impact the overall population. No changes were made as a result of the comment.

One commenter opposing adoption stated that the rule will result in inferior buck deer by permanently protecting all deer that do not reach the 13-inch standard. The department disagrees with the comment and responds that research data indicate that fewer than 5% of mature buck deer will have less than a 13-inch spread. The intent of the rule is to remove pressure on younger bucks, which will also have the benefit of allowing those bucks to have a longer reproductive life. No changes were made as a result of the comment.

One commenter opposing adoption stated that the department's data from the three-year period the rules have been in effect does not prove the rule to be successful. The department disagrees with the comment and responds that the data indicate that the rule has been extremely successful. In counties where the rule has been implemented, the total buck harvest after two years is near or surpasses pre-rule levels and is composed of mature bucks, which hunters prefer. No changes were made as a result of the comment.

One commenter opposing adoption stated that the department should not dictate trophy regulations to landowners and hunters. The agency disagrees with the comment and responds that the regulations are not aimed at trophy management and do not abrogate any right enjoyed by landowners. The intent of the regulation is to provide an ample reproductive supply of older buck deer by preventing over harvest of young bucks. No changes were made as a result of the comment.

Three commenters opposing adoption stated that the rule will promote "basket" racks. The department disagrees with the comment and responds that harvest data from counties where the rules have been in effect and other research data do not indicate that the rule results in a trend of increasing numbers of basket racks, if what is meant by the term is antlers that never attain a 13-inch inside spread. The intent of the rule is to remove pressure on younger bucks, which will also have the benefit of allowing those bucks to have a longer reproductive life. No changes were made as a result of the comment.

One commenter opposing adoption stated that a person should be allowed to take any deer older than 4.5 years, irrespective of antler characteristics. The department disagrees with the comment and responds that while the rule generally is intended to result in the harvest of most 4.5-year-old bucks, in terms of compliance it is very difficult to determine the age of a buck without some sort of objective standard to act as both a guide and a legal standard. The 13-inch inside spread requirement has proven to be a very reliable indicator that a buck has reached harvestable age. No changes were made as a result of the comment.

Two commenters opposing adoption stated that the rule will decrease hunter opportunity. The department disagrees with the comments and responds that during the first three years the rules were in effect in the six 'experimental' counties, buck harvest and total deer harvest decreased only during the first year, rebounding in subsequent years to surpass the pre-rule harvest numbers. Therefore, if anything, the rules can be expected to increase hunter opportunity. No changes were made as a result of the comments.

One commenter opposing adoption stated that the department's locker plant data is biased because not all harvested deer are taken to locker plants. The department disagrees with the comment and responds that locker plant data is not regarded as an absolutely indicative dataset at fine levels of resolution, but as a general indicator of the morphological characteristics of deer harvested in the areas where the rule has been implemented. The department further notes that succeeding years of locker plant data have been consistent with the predicted trend in buck morphology. No changes were made as a result of the comment.

One commenter opposing adoption stated that the department's mail surveys are not accurate because persons opposed to the proposed rules didn't respond. The department disagrees with the comment and responds that survey data is not regarded as an absolutely indicative dataset at fine levels of resolution, but as a helpful indicator or gauge of the attitudes of hunters and landowners. The department concludes that persons who do not respond to the surveys can be presumed to be ambivalent at best to the rules. No changes were made as a result of the comment.

One commenter opposing adoption stated that implementation of the rule should be at the option of the landowner. The department disagrees with the comment and responds that optional implementation would not be effective. During the years when buck harvest in the affected counties was not restricted other than by the presence of the one-buck bag limit, buck harvest was excessive, especially in younger age classes. Therefore, to protect those age classes, the rule must be applied universally in each county. No changes were made as a result of the comment.

Two commenters opposing adoption stated that the rule will discourage youth, elderly, and new hunters. The department disagrees with the comments and responds that, as noted earlier, since buck harvest and total deer harvest can be expected meet or exceed pre-rule levels within two years of implementation of antler restrictions, hunter opportunity will therefore increase, including opportunity for youth, elderly, and new hunters. No changes were made as a result of the comments.

Once commenter opposing adoption stated that the purpose of the rule is to promote antler hunting for greedy people. The department disagrees with the comment and responds that it has no statutory authority to regulate with the intent of influencing the price of hunting rights negotiated between landowners and hunters. No changes were made as a result of the comment.

The Texas Wildlife Association and the Nails Creek Wildlife Management Association commented in support of adoption of the proposed amendment.

The department received 253 comments supporting adoption of the amendment.

The department received one comment in support of adoption of the amendment to expand the four-deer bag limit for white-tailed deer to the entirety of Upton County and include a muzzleloader-only season countywide.

The department received 89 comments opposing the adoption of the amendments and new section affecting alligators. Several commenters offered a specific reason or reasons for opposition. Those comments and the department's responses, follow.

One commenter opposing adoption stated that Harris and Fort Bend counties should be core counties. The department disagrees with the comment and responds that Harris and Fort Bend counties are heavily urbanized and therefore incompatible with alligator management/hide tag issuance methodologies currently used in core counties. No changes were made as a result of the comment.

One commenter opposing adoption stated that the rules will lead to overhunting. The department disagrees with the comment and responds that the U.S. Fish and Wildlife Service (Service) determines the upper boundary of the annual harvest in Texas, based on population and harvest data provided by the department each year. Additionally, in the core counties (the area of the state where 95% of the state's alligator population resides) harvest is carefully controlled to maintain sustainability. In the extremely unlikely event that alligator numbers should decline significantly (whether by hunting or other factors), the department and the Service would take appropriate action to stabilize populations. No changes were made as a result of the comment.

Six commenters opposing adoption stated that the rules will result in the waste of meat and hides. The department disagrees with the comment and responds that it believes that persons who choose to hunt an alligator are interested in obtaining meat and hides and will make the effort to do so. No changes were made as a result of the comments.

Four commenters opposing adoption stated that it should be unlawful to shoot free-swimming alligators. The department disagrees with the comment and responds that the provision allowing for the shooting of alligators stipulates that the alligators must be on private property. Typically, water bodies on private property are small and often not very deep, meaning that an alligator can be recovered with relative ease. Public water bodies are generally too large and too deep, which complicates recovery due to physical limits as well as trespass issues. No changes were made as a result of the comments.

One commenter opposing adoption stated that the take of alligators by firearms should be prohibited. The department disagrees with the comment and responds that firearms are a very effective means for taking alligators quickly and lethally. No changes were made as a result of the comment.

Two commenters opposing adoption stated that the season in non-core counties will allow females to be taken off the nest and will lead to juvenile mortality. The department disagrees with the comment and responds that overall harvest is not expected to be large enough to biologically impact alligator populations, and that in fact, a spring season may curb nuisance incidents in urban and rapidly developing areas. No changes were made as a result of the comments.

One commenter opposing adoption stated that there should be one uniform regulatory approach for the whole state. The department disagrees with the comment and responds that the regulatory regime for alligators in the southeastern part of the state has a long history and is necessary to maintain a sustainable commercial alligator industry in the region. The expansion of alligator hunting opportunity into the remainder of the state is impossible under the regime used in the southeastern counties; therefore, a regime appropriate to those counties where alligators are not as abundant and there is no viable commercial industry had to be developed. No changes were made as a result of the comment.

Seven commenters opposing adoption stated that the rule will encourage poaching and gear stealing. The department disagrees with the comment and responds that the vast majority of hunters are law-abiding citizens. No changes were made as a result of the comment.

Two commenters opposing adoption stated that the rules will devastate alligator populations. The department disagrees with the comment and responds that overall harvest is not expected to be large enough to biologically impact alligator populations, and that additionally, in the core counties (the area of the state where 95% of the state's alligator population resides), harvest is carefully controlled to maintain sustainability. In the extremely unlikely event that alligator numbers should decline significantly (whether by hunting or other factors), the department and the Service would take appropriate action to stabilize populations. No changes were made as a result of the comments.

One commenter opposing adoption stated that the rules would prevent landowners in southeast Texas from controlling the number of alligators harvested on their property. The department disagrees with the comment and responds that the total harvest of alligators on every property in Texas has always been established by the department according to evaluations of habitat and population. Under the amendments and new rule this will not change in those southeast Texas counties designated as core counties. Landowners may, of course, allow whomever they would like to enter and hunt, but are not authorized to exceed the harvest stipulated by the department. No changes were made as a result of the comment.

One commenter opposing adoption stated that by dividing the state into two regulatory zones, the rules would allow unscrupulous persons to go to core counties, shoot an alligator, and then return home claiming to have taken the alligator in a non-core county. The department disagrees with the comment and responds that persons engaging in the described behavior would, of course, be breaking several laws. The department believes that its law enforcement function is sufficient to detect and prevent this type of activity. No changes were made as a result of the comment.

One commenter opposing adoption stated that if the department wants to increase hunting opportunity for alligators, it should offer more hunts on wildlife management areas rather than adopting the proposed amendments and new rule. The department

disagrees with the comment and responds that the widespread opportunity to take alligators under a very conservative bag limit is more efficacious. No changes were made as a result of the comment.

One commenter opposing adoption stated that there were only two locations in the entire state that process alligator meat and hides, and that neither of them were open other than during the September 10-30 season in the core counties. Therefore, the commenter stated, meats and hides taken in other counties between April and June would be wasted. The department disagrees with the comment and responds that most if not all outdoorsmen are more than capable of processing their own game. No changes were made as a result of the comment.

The department received four comments supporting adoption of the proposed amendments and new rule.

The Texas Wildlife Association commented is support of adoption of the proposed amendments and new rule.

The department received one comment opposing adoption of the amendment to §65.72 that implements an 18-inch minimum length limit for largemouth bass on Marine Creek Reservoir. The commenter did not offer a specific reason for opposition. No changes were made as a result of the comment. The department received two comments supporting adoption of the proposed amendment.

The department received 235 comments opposing adoption of the amendment to §65.72 that allows the take of certain species of catfish by means of lawful archery equipment. Several of those commenters offered a specific reason or reasons for opposition. Those comments, and the department's responses, follow.

One commenter opposing adoption stated that the rule would make catfish too vulnerable. The department disagrees that a change is necessary on the basis of the comment and responds that anecdotal evidence suggests that there are fewer than 200 persons in the state who would be interested in harvesting catfish by means of archery equipment. Even if the number of persons taking catfish by archery equipment were to increase significantly, due to the distribution of angling effort the department does not believe that the biological impact to catfish populations, on a macro level, will be negative. No changes were made as a result of the comment.

One commenter opposing adoption stated that catfish can be tamed and therefore to take them by means of archery would be unsporting. The department disagrees that a change is necessary on the basis of the comment and responds that there is no research or data indicating that catfish in public waters can be tamed. No changes were made as a result of the comment.

Three commenters opposing adoption stated that the rule will harm catfish populations because the use of archery equipment will increase. The department disagrees that a change is necessary on the basis of the comment and responds that anecdotal evidence suggests that there are fewer than 200 persons in the state who would be interested in harvesting catfish by means of archery equipment. Even if the number of persons taking catfish by archery equipment were to increase significantly, due to the distribution of angling effort the department does not believe that the biological impact to catfish populations, on a macro level, will be negative. No changes were made as a result of the comments.

Five commenters opposing adoption stated that the rule will result in waste, since the use of archery equipment precludes the release of fish. The department disagrees that a change is necessary on the basis of the comment and responds that it is incumbent upon any person who goes fishing to understand and follow the regulations; since catfish are protected by bag and length limits, anglers will have to use judgment and care in deciding which fish to kill. No changes were made as a result of the comments.

Two commenters opposing adoption stated that flathead catfish should be exempt from the applicability of the rule because of their slow growth rate and vulnerability. The department disagrees that a change is necessary on the basis of the comment and responds that anecdotal evidence suggests that there are fewer than 200 persons in the state that would be interested in harvesting any species of catfish by means of archery equipment. Even if the number of persons taking catfish by archery equipment were to increase significantly, due to the distribution of angling effort the department does not believe that the biological impact to catfish populations, on a macro level, will be negative. No changes were made as a result of the comments.

Two commenters opposing adoption stated that the rule would cause the over-harvest of large fish during spawning season. The department disagrees that a change is necessary on the basis of the comment and responds that anecdotal evidence suggests that there are fewer than 200 persons in the state who would be interested in harvesting catfish by means of archery equipment. Even if the number of persons taking catfish by archery equipment were to increase significantly, due to the distribution of angling effort the department does not believe that the biological impact to catfish populations, on a macro level, will be negative. No changes were made as a result of the comments.

Two commenters opposing adoption stated that there is no biological data to suggest that the amendment is warranted, and that the staff recommendation to maintain the status quo should be followed. The department disagrees that a change is necessary on the basis of the comment and responds that department data do not indicate that catfish populations anywhere in the state are in peril under current bag limits, and as noted previously, the overall angler effort with respect to archery equipment, based on the estimated number of persons who use archery equipment, is not expected to exert a significant additive impact on total harvest. No changes were made as a result of the comments.

One commenter opposing adoption stated that the resource should be the main concern, not resource users, particularly a small group of resource users. The department disagrees that a change is necessary on the basis of the comment and responds that Parks and Wildlife Code, §61.055, provides that the commission may amend or revoke rules if there is a danger of depletion or waste, or to provide to the people the most equitable and reasonable privilege to hunt game animals or game birds or catch aquatic animal life. Therefore, absent the threat of depletion or waste to catfish populations, the preferences of user groups of any size may be taken into account by the commission. As noted previously, the overall angler effort with respect to archery equipment, based on the estimated number of persons who use archery equipment, is not expected to exert a significant additive impact on total harvest. No changes were made as a result of the comment.

One commenter opposing adoption stated that allowing the take of catfish by means of archery equipment would create a prece-

dent for allowing other game fish to be taken by means of archery equipment. The department disagrees that a change is necessary on the basis of the comment and responds that the decision to allow the use of archery equipment for the take of catfish is based solely upon the department's determination that the resource is able to withstand the additional harvest pressure resulting from the rule. The implementation of the rule has no other implications. No changes were made as a result of the comment.

One commenter opposing adoption stated that manpower restrictions in the department's law enforcement division mean that size and length limits cannot be enforced at night. The department disagrees that a change is necessary on the basis of the comment and responds that the department's law enforcement effort is sufficient to ensure compliance at any time of the day. No changes were made as a result of the comment.

One commenter opposing adoption stated that the rule will result in increased juvenile delinquency because bowfishing is not for children; thus, children will not go fishing and will be more susceptible to gangs and drugs. The department disagrees that a change is necessary on the basis of the comment and responds that there is no credible data to suggest that angling equipment has any effect on youth crime. No changes were made as a result of the comment.

One commenter opposing adoption stated that the rule will lead to large numbers of fish being killed and left to rot. The department disagrees that a change is necessary on the basis of the comment and responds that it is incumbent upon any person who goes fishing to understand and follow the regulations; since catfish are protected by bag and length limits, anglers will have to use judgment and care in deciding which fish to kill, and to make sure that bag and possession limits are not exceeded. No changes were made as a result of the comment.

The department received 173 comments supporting adoption of the proposed amendment.

Sportsmen Conservationists of Texas and the Coastal Conservation Association commented in opposition to adoption of the proposed amendment.

The Texas Bowfishing Association commented in support of adoption of the proposed amendment.

The department received no comments opposing adoption of the amendment to §65.72 that prohibits of the take of sawfish. The department received four comments supporting adoption of the amendment.

The department received no comments opposing adoption of the amendment to §65.72 that discontinues the requirement for the tarpon tag and replaces it with a minimum length limit. The department received four comments supporting adoption of the amendment.

The department received one comment opposing adoption of the proposed amendment to §65.72 that allows one black drum over 52 inches to be taken per day. The commenter stated that the bag limit for black drum should be reduced because of the increasing human population. The department disagrees and responds that the size and bag limits on black drum are based on continuous sampling of fish populations in the bay systems, as well as on data from creel surveys used to estimate recreational take. Also, commercial harvest of black drum is reported through the aquatic products monthly reports. These surveys suggest that black drum populations are healthy, increasing, and maturing. The growth of the human population is not currently impacting black drum populations sufficiently to warrant further restrictions. No changes were made as a result of the comment. The department received four comments in support of adoption.

The department received one comment opposing adoption of the amendment to §65.72 that made tripletail a game fish and imposed size and bag limits. The commenter did not provide a reason for opposition. No changes were made as a result of the comment. The department received five comments supporting adoption of the amendment.

The department received three comments opposing adoption of the amendment to §65.72 that made the possession limit for flounder equal to the daily bag limit.

One commenter opposing adoption stated that the rule should remain unchanged. The department disagrees with the comment and responds that the 10-per-day flounder limit has been in place in Texas since 1996. Fishermen who take trips spanning the midnight hour have been entitled to possess twice the daily bag limit. This could result in greater overall take of fish and greater directed fishing mortality. Additionally, many of the fish taken by recreational anglers have found their way into the commercial market, which is expressly counter to the intent of the rule. No changes were made as a result of the comment.

One commenter opposing adoption stated that the commercial bag limit should be reduced instead of the recreational bag limit. The department disagrees with the comment and responds that the commercial possession limit was reduced in 1997 so that it would be equal to the commercial daily bag limit. The rule as adopted simply imposes the same regulation on recreational anglers. No changes were made as a result of the comment.

Two commenters opposing adoption stated that the department should regulate by-catch instead of recreational take. While the department agrees that the use of trawls in inside waters generates significant bycatch, current rules require trawls to be equipped with bycatch reduction devices. Additionally, total effort in the shrimp fishery is being significantly reduced through the commercial bay and bait shrimp boat license buyback program. Through this program to date, 45% of the 1996 inshore shrimp fleet has been removed from the fishery. No changes were made as a result of the comments.

The department received three comments supporting adoption of the proposed amendment.

The Texas Wildlife Association commented in support of adoption of all rules.

DIVISION 1. GENERAL PROVISIONS

31 TAC §§65.3, 65.11, 65.24, 65.26, 65.34

The amendments are adopted under the authority of Parks and Wildlife Code, §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species or to other categories of persons; Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion

of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; Chapter 65, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations providing for permit application forms, fees, and procedures; the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator.

§65.11. Lawful Means.

It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) Firearms.

(A) It is lawful to hunt alligators, game animals, and game birds with any legal firearm, including muzzleloading weapons, except as specifically restricted in this section.

(B) Special muzzleloader-only deer seasons are restricted to muzzleloading firearms only.

(C) It is unlawful to use rimfire ammunition to hunt alligator, deer, antelope, or desert bighorn sheep.

(D) It is unlawful to hunt alligators, game animals or game birds with a fully automatic firearm or any firearm equipped with a silencer or sound-suppressing device.

(E) In Angelina, Brazoria, Calhoun, Chambers, Galveston, Hardin, Jackson, Jasper, Jefferson, Liberty, Matagorda, Nacogdoches, Newton, Orange, Polk, Refugio, Sabine, San Augustine, San Jacinto, Trinity, Tyler and Victoria counties, alligators may not be hunted by means of firearms. In all other counties, alligators may by hunted by means of firearms on private property, including private waters, but may not be hunted by means of firearms from, on, in, across, or over public water.

(F) Alligators lawfully caught on a taking device may be dispatched by means of firearms in all counties.

(2) Archery.

(A) A person may hunt by means of lawful archery equipment during any open season; however, no person shall hunt deer by lawful archery equipment or crossbow during a special muzzleloader-only deer season.

(B) Arrows that are treated with poisons or drugs, or that contain explosives are not lawful devices for hunting any species of wildlife resource in this state.

(C) While hunting turkey and all game animals other than squirrels by means of longbow, compound bow, or recurved bow:

(i) the bow must have a minimum peak draw weight of 40 pounds at the time of hunting; and

(ii) the arrow must be equipped with a broadhead hunting point at least 7/8-inch in width upon impact, with a minimum of two cutting edges. A mechanical broadhead must begin to open upon impact and when open must be a minimum of 7/8-inch in width.

(D) It is unlawful to hunt deer or turkey with a broadhead hunting point while in possession of a firearm during an archery-only season.

(E) Special archery-only seasons are restricted to lawful archery equipment only, except as provided in paragraph (3) of this section.

(3) Crossbow. Crossbows are lawful during any general open season. A person having an upper-limb disability may use a crossbow to hunt deer and turkey during an archery-only season, provided the person has in their immediate possession a physician's statement certifying the extent of the disability. When hunting turkey and all game animals other than squirrels by means of crossbow:

(A) the crossbow must have a minimum of 125 pounds of pull;

(B) the crossbow must have a mechanical safety;

(C) the crossbow stock must be not less than 25 inches in length; and

(D) the bolt must conform with paragraphs (2)(B) and (2)(C)(ii) of this section.

(4) Falconry. It is lawful to hunt any game bird or game animal by means of falconry under the provisions of Subchapter K of this chapter (relating to Raptor Proclamation).

(5) Alligator.

(A) Legal devices for taking alligators in the wild are as follows:

(i) hook and line (line set);

(ii) alligator gig;

(iii) lawful archery equipment and barbed arrow;

(iv) hand-held snare with integral locking mechanism; and

(v) lawful firearms, in counties where take by firearm is allowed.

(B) A line of at least 300-pound test shall be securely attached to all taking devices other than firearms used to hunt alligators. Except as provided in this subsection, hook-bearing lines must be attached to a stationary object capable of maintaining a portion of the line above water when an alligator is caught on the line. A line attached to an arrow, snare, or gig must have a float attached when used to take alligators. The float shall be no less than six inches by six inches by eight inches, or, if the float is spherical, no less than eight inches in diameter.

(C) Line-set provisions.

(i) Hook-bearing lines may not be set prior to the general open season and shall be removed no later than sunset of the last day of the open season.

(ii) From sunset to one-half hour before sunrise:

(I) no person shall use any taking device other than line sets to hunt alligators; and

(II) no person shall set any baited line capable of taking an alligator and no person shall remove alligators from line sets.

(iii) On a property for which the department has issued hide tags, no person shall set more than one line per unused hide tag in possession.

(iv) On a property that is not in a county listed in paragraph (1)(E) of this section and for which the department has not issued hide tags, no person shall set more than one line.

(v) Line sets shall be inspected daily, and alligators shall be killed, tagged or documented, and removed immediately upon discovery.

(vi) All line sets on properties for which hide tags have been issued shall be secured at one end on the tract of land specified for the hide tags. All other line sets shall be secured at one end on private property.

(vii) Each baited line shall be labeled with a plainly visible, permanent, and legibly marked gear tag that contains:

(I) the full name and current address of the person who set the line;

(II) the hunting license number of the person who set the line; and

(III) a valid hide tag number, if the line is set on a property for which hide tags have been issued.

(6) Special Provisions.

(A) Desert bighorn sheep. Except as provided in this paragraph, no motorized conveyance of any type shall be used to herd or harass desert bighorn sheep.

(B) Hunting by remote control. It is an offense for any person to hunt a wildlife resource by the means listed in this section if that person is not physically present and personally operating the means of take at the location where the hunting occurs during the time that the hunting occurs.

§65.26. Managed Lands Deer Permits (MLDP)--White-tailed Deer

(a) MLDPs for white-tailed deer may be issued only to a landowner who has a current WMP in accordance with §65.25 of this title (relating to Wildlife Management Plan). In the case that a landowner is otherwise in fulfillment of the provisions of §65.25 of this title but does not have current population data, the department may conditionally authorize partial issuance of MLDPs, not to exceed 30 per cent of the total MLDPs to be issued for that property during the affected license year, with the balance of MLDPs to be issued upon submission of the required population data.

(b) An applicant may request the issuance of any type of MLDP listed in this section.

(1) Level 1. Level 1 MLDPs authorize only the take of antlerless white-tailed deer. A Level 1 permit is valid during any open deer season in the county for which it is issued and the provisions of §65.42(b)(17) of this title (relating to Archery-Only Open Season), §65.42(b)(18) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I apply. There is no bag limit for antlerless deer on properties for which Level 1 permits have been issued; however, the county and statewide bag limits for buck deer apply.

(2) Level 2.

(A) Level 2 MLDPs authorize the take of buck or antlerless white-tailed deer as specified by the permit.

(i) A Level 2 antlerless permit is valid from the Saturday closest to September 30 through the last day in February on the property for which it is issued;

(ii) A Level 2 buck permit is valid:

(I) for spike bucks taken by any lawful means, for all bucks taken by means of lawful archery equipment, and for any buck taken by a hunter 16 years of age or younger during a youth-only open deer season: from the Saturday closest to September 30 through the last day in February on the property for which it is issued; and

(II) for any buck, irrespective of means: from the opening day of the general open deer season in the county for which it is issued through the last day in February on the property for which it is issued.

(B) On all tracts of land for which Level 2 permits have been issued there is no bag limit for buck or antlerless deer and the provisions of §65.42(b)(17) of this title, §65.42(b)(18) of this title, and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I do not apply.

(C) By acceptance of Level 2 permits a landowner agrees to accomplish at least two habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 2 permits are accepted thereafter. A landowner who fails to accomplish at least two habitat management recommendations of the WMP within three years is not eligible for Level 2 permits the following year, but is eligible for Level 1 MLDPs or may choose to cease accepting MLDPs.

(3) Level 3. Level 3 MLDPs authorize the take of buck and antlerless white-tailed deer as specified by the permit. A Level 3 permit is valid from the Saturday nearest September 30 through the last day in February on the property for which it is issued. On all tracts of land for which Level 3 permits have been issued:

(A) there is no bag limit for buck or antlerless deer and the provisions of §65.42(b)(17) of this title, §65.42(b)(18) of this title, and the stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I do not apply.

(B) By acceptance of Level 3 permits a landowner agrees to accomplish at least four habitat management recommendations contained in the WMP within three years of permit issuance, and agrees to maintain the habitat management practices for as long as Level 3 permits are accepted thereafter. A landowner who fails to accomplish at least four habitat management recommendations of the WMP within three years is not eligible for Level 3 permits the following year, but may be eligible for other levels of MLDPs or may choose to cease accepting MLDPs.

(c) The number of MLDPs distributed to a hunter shall be at the discretion of the landowner.

(d) If MLDP antlerless permits have been issued for a property, each antlerless deer harvested on the property must be immediately tagged with a valid MLDP antlerless permit. If MLDP buck permits have been issued for a property, each buck deer harvested on the property must be immediately tagged with a valid MLDP buck permit. If an appropriate MLDP is not attached immediately at the time of kill, the person who killed the deer shall immediately take the carcass to a location on the property where an appropriate MLDP shall be attached.

(e) If a landowner in possession of MLDPs does not wish to abide by the harvest quota or habitat management practices specified by the WMP, the landowner must return all MLDPs to the department by the Saturday closest to September 30.

(f) In the event that unforeseeable developments such as floods, droughts, or other natural disasters make the attainment of recommended habitat management practices impractical or impossible, the department may, on a case-by-case basis, waive the requirements of this section.

(g) The department reserves the right to deny issuance of MLDPs:

(1) for one year for a property upon which the harvest quota specified by the WMP has been exceeded; and

(2) for three years for a property that otherwise is not in compliance with the WMP.

(h) Administratively complete applications received by the department before August 15 of each year shall be approved or denied by October 1 of the same year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §§65.42, 65.49, 65.64

The amendments and new section are adopted under the authority of Parks and Wildlife Code, §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species or to other categories of persons; Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; Chapter 65, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations providing for permit application forms, fees, and procedures; the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator.

§65.42. Deer.

(a) No person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck), except as provided by:

(1) §65.26 of this title (relating to Managed Lands Deer Permits (MLDP)--White-tailed Deer);

(2) §65.34 of this title (relating to Managed Lands Deer Permits (MLDP)--Mule Deer);

(3) §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits);

(4) §65.28 of this title (relating to Landowner Assisted Management Permits (LAMPS));

(5) special permits under the provisions of Subchapter H of this chapter (relating to Public Lands Proclamation); or

(6) special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program.

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Willacy, Zapata, and Zavala counties, there is a general open season.

(A) Open season: the first Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(2) In Bandera, Bexar, Blanco, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Real, Reagan, Runnels, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis (west of Interstate 35), Uvalde (north of U.S. Highway 90) and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: five deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the first Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(D) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(3) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(4) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, Sabine River Authority, and Trinity River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits. On tracts of land for which LAMPS permits have been issued, no LAMPS permit is required for the harvest of antlerless deer during the archery-only or muzzleloader-only open season.

(5) In Bell (west of IH 35), Bosque, Comanche, Coryell, Eastland, Erath, Hamilton, Lampasas, Somervell, and Williamson (west of IH 35) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(6) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Jackson (south if U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(7) In Cass, Harrison, Marion, Nacogdoches, Panola, Sabine, San Augustine, and Shelby, counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLDP, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 16 days of the general season, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(8) In Bowie, Camp, Cherokee, Delta, Fannin, Franklin, Gregg, Hopkins, Houston, Lamar, Morris, Red River, Rusk, Titus, Upshur, and Wood counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two.

(E) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless or LAMPS permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately fol-

lowing Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(9) In Austin, Bastrop, Bell (east of IH 35), Burleson, Caldwell, Colorado, Comal (east of IH 35), De Witt, Fayette, Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of IH 35), Jackson (north of U.S. Highway 59), Karnes, Lavaca, Lee, Leon, Rains, Travis (east of IH 35), Victoria (north of U.S. Highway 59), Waller, Washington, Wharton (north of U.S. Highway 59), Williamson (east of IH 35), and Wilson counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) The provisions of this clause do not apply on properties for which Level 2 or Level 3 MLDPs have been issued. In the counties listed in this paragraph, a legal buck is a buck deer having:

(i) at least one unbranched antler; or

(ii) an inside spread of 13 inches or greater.

(C) Buck bag limit: two bucks, to include no more than one buck with an inside spread of 13 inches or greater.

(D) Antlerless bag limit: two, by MLDP antlerless or LAMPS permit only.

(10) In Archer, Armstrong, Baylor, Borden, Briscoe, Callahan, Carson, Childress, Clay, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Haskell, Hemphill, Hood, Hutchinson, Jack, Jones, Kent, King, Knox, Lipscomb, McLennan, Montague, Motley, Ochiltree, Palo Pinto, Parker, Randall, Roberts, Scurry, Shackelford, Stephens, Stonewall, Swisher, Taylor, Throckmorton, Wheeler, Wise, and Young counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP antlerless permits have been issued for the tract of land.

(11) In Cooke, Hardeman, Hill, Johnson, Wichita, and Wilbarger counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From opening day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless permits have been issued for the tract of land. If MLDP antlerless permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the Monday following Thanksgiving, antlerless deer may be taken only by MLDP antlerless permit.

(12) In Denton and Tarrant counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) During the first 16 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLDP, LAMPS, or USFS antlerless permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 16 days of the general season, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(13) In Brazos, Grayson, Grimes, Madison, and Robertson counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: three deer, no more than one buck and no more than two antlerless.

(C) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLDP antlerless or LAMPS permits have been issued for the tract of land. On USFS, Corps of Engineers, and Sabine River Authority lands, the take of antlerless deer shall be by permit only. If USFS antlerless, MLDP antlerless, or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by USFS antlerless, MLDP antlerless, or LAMPS permits.

(D) Special regulation. In Grayson County:

(i) lawful means are restricted to lawful archery equipment and crossbows only, including MLDP properties; and

(ii) antlerless deer shall be taken by MLDP only, except on the Hagerman National Wildlife Refuge.

(14) In Anderson, Crane, Ector, Ellis, Falls, Freestone, Henderson, Hunt, Kaufman, Limestone, Loving, Midland, Milam, Navarro, Smith, Van Zandt, and Ward counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless or LAMPS permits.

(15) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: one buck, no more than two antlerless. Antlerless deer may be taken only by MLDP antlerless permit.

(16) In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(17) Archery-only open seasons. In all counties where there is a general open season for white-tailed deer, there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: the bag limit in any given county is as provided for that county during the general open season.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(18) Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Brewster, Culberson, Jeff Davis, Pecos, Presidio, Reeves, Terrell, and Upton counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks.

(B) In Angelina, Chambers, Hardin, Harris, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, San Jacinto, Trinity, Tyler, and Walker counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(i) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two spike bucks and no more than two antlerless.

(C) No permit is required to hunt antlerless deer unless MLDP permits have been issued for the property.

(19) Special Youth-Only Seasons. There shall be special youth-only general hunting seasons in all counties where there is a general open season for white-tailed deer.

(A) early open season: the Saturday and Sunday immediately before the first Saturday in November.

(B) late open season: the third weekend (Saturday and Sunday) in January.

(C) Bag limits, provisions for the take of antlerless deer, and special requirements in the individual counties listed in paragraphs (1) - (14) of this subsection shall be as specified for the first two days of the general open season in those counties, except as provided in subparagraph (D) of this paragraph.

(D) Provisions for the take of antlerless deer in the individual counties listed in paragraph (10) of this subsection shall be as specified in those counties for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(E) Licensed hunters 16 years of age or younger may hunt deer by any lawful means during the seasons established by subparagraphs (A) and (B) of this paragraph, except in Grayson County, where legal means are restricted to crossbow and lawful archery equipment.

(F) A licensed hunter 16 years of age or younger may hunt any deer on any property (including MLDP properties) during the seasons established by subparagraphs (A) and (B) of this paragraph.

(G) The stamp requirement of Parks and Wildlife Code, Chapter 43, Subchapter I, does not apply during the seasons established by this paragraph.

(c) Mule deer. The open seasons and annual bag limits for mule deer shall be as follows.

(1) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hutchinson, Kent, King, Lipscomb, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(2) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, there is a general open season.

(A) Open season: last Saturday in November for 16 consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken only by Antlerless Mule Deer or MLD Permits.

(3) In Andrews (west of U.S. Highway 385), Bailey, Cochran, Hockley, Lamb, Terry, and Yoakum counties, there is a general open season.

(A) Open season: Saturday before Thanksgiving for nine consecutive days.

(B) Bag limit: two deer, no more than one buck.

(C) Antlerless deer may be taken by permit only.

(4) In all other counties, there is no general open season for mule deer.

(5) Archery-only open seasons and bag and possession limits shall be as follows. During an archery-only open season, deer may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods). No antlerless permit is required unless MLD antlerless permits have been issued for the property.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Coke, Collingsworth, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Donley, Ector, El Paso, Fisher, Floyd, Foard, Garza, Gray, Hall, Hardeman, Hartley, Hemphill, Hudspeth, Hutchinson, Jeff Davis, Kent, King, Lipscomb, Loving, Midland, Moore, Motley, Ochiltree, Oldham, Potter, Presidio, Randall, Reagan, Reeves, Roberts, Scurry, Stonewall, Swisher, Upton, Val Verde, Ward, and Winkler counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: one buck deer.

(B) In Brewster, Pecos, and Terrell counties, there is an open season.

(i) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(ii) Bag limit: two deer, no more than one buck.

(C) In all other counties, there is no archery-only open season for mule deer.

§65.64. Turkey.

(a) The annual bag limit for Rio Grande and Eastern turkey, in the aggregate, is four, no more than one of which may be an Eastern turkey.

(b) Rio Grande Turkey. The open seasons and bag limits for Rio Grande turkey shall be as follows.

(1) Fall seasons and bag limits:

(A) In Aransas, Atascosa, Bee, Calhoun, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kinney (south of U.S. Highway 90), LaSalle, Live Oak, Maverick, McMullen, Medina (south of U.S. Highway 90), Nueces, Refugio, San Patricio, Starr, Uvalde (south of U.S. Highway 90), Val Verde (in that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a fall general open season.

(i) Open season: first Saturday in November through the third Sunday in January.

(ii) Bag limit: four turkeys, gobblers or bearded hens.

(B) In Brooks, Kenedy, Kleberg, and Willacy counties, there is a fall general open season.

(i) Open season: first Saturday in November through the last Sunday in February.

(ii) Bag limit: four turkeys, either sex.

(C) In Archer, Armstrong, Bandera, Baylor, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brown, Burnet, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Foard, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Howard, Hutchinson, Irion, Jack, Johnson, Jones, Karnes, Kendall, Kent, Kerr, Kimble, King, Kinney (north of U.S. Highway 90), Knox, Lipscomb, Lampasas, Llano, Lynn, Martin, Mason, McCulloch, McLennan, Medina (north of U.S. Highway 90), Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, Sutton, San Saba, Schleicher, Scurry, Shackelford, Somervell, Stephens, Sterling, Stonewall, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde (north of U.S. Highway 90), Ward, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Wise, Val Verde (that portion located north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239), and Young counties, there is a fall general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: four turkeys, either sex.

(2) Archery-only season and bag limits. In all counties where there is a general fall season for turkey there is an open season during which turkey may be taken only as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: from the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: in any given county, the annual bag limit is as provided by this section for the fall general season in that county.

(3) Spring season and bag limits.

(A) In Archer, Armstrong, Aransas, Atascosa, Bandera, Baylor, Bell, Bee, Bexar, Blanco, Borden, Bosque, Brooks, Brewster, Briscoe, Brown, Burnet, Callahan, Calhoun, Cameron, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dawson, Denton, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, Erath, Fisher, Floyd, Foard, Frio, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Hall, Hamilton, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hill, Hood, Howard, Hutchinson, Irion, Jack, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lampasas, LaSalle, Lipscomb, Live Oak, Llano, Lynn, Martin, Mason, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Refugio, Roberts, Runnels, San Saba, San Patricio, Schleicher, Scurry, Shackelford, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Ward, Webb, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Young, Zapata, and Zavala counties, there is a spring general open season.

(i) Open season: Saturday closest to April 1 for 44 consecutive days.

(ii) Bag limit: four turkeys, gobblers only.

(B) In Bastrop, Caldwell, Colorado, De Witt, Fayette, Guadalupe, Jackson, Lavaca, Lee, Milam, and Victoria counties, there is a spring general open season.

(i) Open season: from April 1 through April 30.

(ii) Bag limit: one turkey, gobblers only.

(4) Special Youth-Only Seasons. Only licensed hunters 16 years of age or younger may hunt during the seasons established by this subsection.

(A) There shall be a special youth-only fall general hunting season in all counties where there is a fall general open season.

(i) open season : the weekend (Saturday and Sunday) immediately preceding the first Saturday in November, and the third weekend (Saturday and Sunday) in January.

(ii) bag limit: as specified for individual counties in paragraph (1) of this subsection.

(B) There shall be special youth-only spring general open hunting seasons for Rio Grande turkey in the counties listed in paragraph (3)(A) of this section.

(i) open seasons: the weekend (Saturday and Sunday) immediately preceding the first day of the general open spring season and the weekend (Saturday and Sunday) immediately following the close of the general open spring season.

(ii) bag limit: as specified for individual counties in paragraph (3)(A)(ii) of this subsection.

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Brazoria, Camp, Cass, Cherokee, Delta, Fannin, Fort Bend, Franklin, Grayson, Gregg, Hardin, Harrison, Hopkins, Houston, Hunt, Jasper, Lamar, Liberty, Marion, Matagorda, Montgomery, Morris, Nacogdoches, Newton, Panola, Polk, Rains, Red River, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Titus, Trinity, Tyler, Upshur, Walker, Wharton, and Wood counties, there is a spring season during which both Rio Grande and Eastern turkey may be lawfully hunted.

(1) Open season: from April 1 for 30 consecutive days.

(2) Bag limit (both species combined): one turkey, gobbler only.

(3) In the counties listed in this subsection:

(A) it is unlawful to hunt turkey by any means other than a shotgun, lawful archery equipment, or crossbows;

(B) it is unlawful for any person to take or attempt to take turkeys by the aid of baiting, or on or over a baited area; and

(C) all turkeys harvested during the open season must be registered at designated check stations within 24 hours of the time of kill. Harvested turkeys may be field dressed but must otherwise remain intact.

(d) In all counties not listed in subsection (b) or (c) of this section, the season is closed for hunting turkey.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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DIVISION 3. SEASONS AND BAG LIMITS--FISHING PROVISIONS

31 TAC §65.72, §65.82

The amendments are adopted under the authority of Parks and Wildlife Code, §46.0085, which authorizes the department to issue tags for finfish species allowed by law to be taken during each year or season from coastal waters of the state to holders of licenses authorizing the taking of finfish species or to other categories of persons; Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed; Chapter 65, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations providing for permit application forms, fees, and procedures; the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator.

§65.72. Fish.

(a) General rules.

(1) There are no public waters closed to the taking and retaining of fish, except as provided in this subchapter.

(2) Game fish may be taken only by pole and line, except as provided in this subchapter.

(3) It is unlawful:

(A) to take or attempt to take, or possess fish within a protected length limit, in greater numbers, by other means, or at any time or place, other than as permitted under this subchapter;

(B) while fishing on or in public waters to have in possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters;

(C) to land by boat or person any fish within a protected length limit, or in excess of the daily bag limit or possession limit established for those fish;

(D) to use game fish or any part thereof as bait;

(E) to possess a finfish of any species, except broadbill swordfish, shark or king mackerel, taken from public water that has the head or tail removed until such person finally lands the catch on the mainland, a peninsula, or barrier island not including jetties or piers and does not transport the catch by boat;

(F) to use airboats or jet-driven devices to pursue and harass or harry fish; or

(G) to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish.

(4) Finfish tags: Prohibited Acts.

(A) No person may purchase or use more finfish (red drum) tags during a license year than the number and type authorized by the commission, excluding duplicate tags issued under Parks and Wildlife Code, §46.006.

(B) It is unlawful to:

(i) use the same finfish tag for the purpose of tagging more than one finfish;

(ii) use a finfish tag in the name of another person;

(iii) use a tag on a finfish for which another tag is specifically required;

(iv) catch and retain a finfish required to be tagged and fail to immediately attach and secure a tag, with the day and month of catch cut out, to the finfish at the narrowest part of the finfish tail, just ahead of the tail fin;

(v) have in possession both a Red Drum Tag and a Duplicate Red Drum Tag issued to the same license or salt water stamp holder;

(vi) have in possession both a Red Drum Tag or a Duplicate Red Drum Tag and a Bonus Red Drum Tag issued to the same license or salt water stamp holder;

(vii) have in possession both an Exempt Red Drum Tag and a Duplicate Exempt Red Drum Tag issued to the same license holder; or

(viii) have in possession both an Exempt Red Drum Tag or a Duplicate Exempt Red Drum Tag and a Bonus Red Drum Tag issued to the same holder.

(5) Commercial fishing seasons.

(A) The commercial seasons for finfish species listed in this paragraph and caught in Texas waters shall run concurrently with commercial seasons established for the same species caught in federal waters of the Exclusive Economic Zone (EEZ).

(B) The commercial fishing season in the EEZ will be set by the National Marine Fisheries Service for:

(i) red snapper under guidelines established by the Fishery Management Plan for Reef Fish Resources for the Gulf of Mexico;

(ii) king mackerel under guidelines established by the Fishery Management Plan for Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; and

(iii) sharks (all species, their hybrids and subspecies) under guidelines established by the Fishery Management Plan for Highly Migratory Species).

(C) When federal and/or state waters are closed, it will be unlawful to:

(i) purchase, barter, trade or sell finfish species listed in this paragraph landed in this state;

(ii) transfer at sea finfish species listed in this paragraph caught or possessed in the waters of this state; and

(iii) possess finfish species listed in this paragraph in excess of the current recreational bag or possession limit in or on the waters of this state.

(6) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Kinney, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used or possessed for bait while fishing are common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, golden shiners, Mexican tetra, Rio Grande cichlid, and silversides (Atherinidae family).

(b) Bag, possession, and length limits.

(1) The possession limit does not apply to fish in the possession of or stored by a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or invoice.

(2) There are no bag, possession, or length limits on game or non-game fish, except as provided in these rules.

(A) Possession limits are twice the daily bag limit on game and non-game fish except as provided in these rules.

(B) For flounder, the possession limit is the daily bag limit.

(C) Statewide daily bag and length limits shall be as follows.
Figure: 31 TAC §65.72(b)(2)(C)

(D) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) The following is a figure:
Figure: 31 TAC §65.72(b)(2)(D)(i)

(ii) Bag and possession limits for black drum and sheepshead do not apply to the holder of a valid Commercial Finfish Fisherman's License.

(iii) Fish caught in federal waters in compliance with a federal fishery management plan may be landed in Texas.

(iv) The bag limit for a guided fishing party is equal to the total number of persons in the boat licensed to fish or otherwise exempt from holding a license minus each fishing guide and fishing guide deckhand multiplied by the bag limit for each species harvested.

(c) Devices, means and methods.

(1) In fresh water only, it is unlawful to fish with more than 100 hooks on all devices combined.

(2) Game and non-game fish may be taken by pole and line only in:

(A) community fishing lakes;

(B) sections of rivers lying totally within the boundaries of state parks;

(C) Lake Pflugerville (Travis County);

(D) the North Concho River (Tom Green County) from O.C. Fisher Dam to Bell Street Dam; and

(E) the South Concho River (Tom Green County) from Lone Wolf Dam to Bell Street Dam.

(3) It is unlawful to take, attempt to take, or possess fish caught in public waters of this state by any device, means, or method other than as authorized in this subsection.

(4) In salt water only, it is unlawful to fish with any device that is marked with a buoy made of a plastic bottle(s) of any color or size.

(5) Device restrictions.

(A) Cast net. It is unlawful to use a cast net exceeding 14 feet in diameter.

(i) Only non-game fish may be taken with a cast net.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(B) Dip net.

(i) It is unlawful to use a dip net except:

(I) to aid in the landing of fish caught on other legal devices; and

(II) to take non-game fish.

(ii) In salt water, non-game fish may be taken for bait purposes only.

(C) Gaff.

(i) It is unlawful to use a gaff except to aid in landing fish caught by other legal devices, means or methods.

(ii) Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(D) Gig. Only non-game fish may be taken with a gig.

(E) Jugline. For use in fresh water only. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline. It is unlawful to use a jugline:

(i) with invalid gear tags. Gear tags must be attached within six inches of the free-floating device, are valid for 30 days after the date set out, and must include the number of the permit to sell non-game fish taken from freshwater, if applicable;

(ii) for commercial purposes that is not marked with an orange free-floating device;

(iii) for non-commercial purposes that is not marked with a white free-floating device;

(iv) in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(F) Lawful archery equipment. Only non-game fish, channel catfish, blue catfish, and flathead catfish may be taken with lawful archery equipment or crossbow. After August 31, 2007, only nongame fish may be taken by means of lawful archery or crossbow.

(G) Minnow trap (fresh water and salt water).

(i) Only non-game fish may be taken with a minnow trap.

(ii) It is unlawful to use a minnow trap that exceeds 24 inches in length or with a throat larger than one by three inches.

(H) Perch traps. For use in salt water only.

(i) Perch traps may be used only for taking non-game fish.

(ii) It is unlawful to fish a perch trap that:

(I) exceeds 18 cubic feet in volume;

(II) is not equipped with a degradable panel. A trap shall be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(-a-) the trap lid tie-down strap is secured to the trap by a loop of untreated jute twine (comparable to Lehigh brand #530) or sisal twine (comparable to Lehigh brand # 390). The trap lid must be secured so that when the twine degrades, the lid will no longer be securely closed; or

(-b-) the trap lid tie-down strap is secured to the trap by a loop of untreated steel wire with a diameter of no larger than 20 gauge. The trap lid must be secured so that when the wire degrades, the lid will no longer be securely closed; or

(-c-) the trap contains at least one sidewall, not including the bottom panel, with a rectangular opening no smaller than 3 inches by 6 inches. Any obstruction placed in this opening may not be secured in any manner except:

(-1-) it may be laced, sewn, or otherwise obstructed by a single length of untreated jute twine (comparable to Lehigh brand # 530) or sisal twine (comparable to Lehigh brand # 390) knotted only at each end and not tied or looped more than once around a single mesh bar. When the twine degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-2-) it may be laced, sewn, or otherwise obstructed by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the wire degrades, the opening in the sidewall of the trap will no longer be obstructed; or

(-3-) the obstruction may be loosely hinged at the bottom of the opening by no more than two untreated steel hog rings and secured at the top of the obstruction in no more than one place by a single length of untreated jute twine (comparable to Lehigh brand # 530), sisal twine (comparable to Lehigh brand # 390), or by a single length of untreated steel wire with a diameter of no larger than 20 gauge. When the twine or wire degrades, the obstruction will hinge downward and the opening in the sidewall of the trap will no longer be obstructed.

(III) that is not marked with a floating visible orange buoy not less than six inches in height and six inches in width. The buoy must have a gear tag attached. Gear tags are valid for 30 days after date set out.

(I) Pole and line.

(i) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(ii) Game and nongame fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take nongame fish.

(iii) Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J) Purse seine (net).

(i) Purse seines may be used only for taking menhaden, only from that portion of the Gulf of Mexico within the jurisdiction of this state extending from one-half mile offshore to nine nautical miles offshore, and only during the period of time beginning the third Monday in April through the first day in November each year.

(ii) Purse seines used for taking menhaden may not be used within one mile of any jetty or pass.

(iii) The purse seine, not including the bag, shall not be less than three-fourths inch square mesh.

(K) Sail line. For use in salt water only.

(i) Non-game fish, red drum, spotted seatrout, and sharks may be taken with a sail line.

(ii) Line length shall not exceed 1,800 feet from the reel to the sail.

(iii) The sail and most shoreward float must be a highly visible orange or red color. All other floats must be yellow.

(iv) No float on the line may be more than 200 feet from the sail.

(v) A weight of not less than one ounce shall be attached to the line not less than four feet or more than six feet shoreward of the last shoreward float.

(vi) Reflectors of not less than two square inches shall be affixed to the sail and floats and shall be visible from all

directions for sail lines operated from 30 minutes after sunset to 30 minutes before sunrise.

(vii) There is no hook spacing requirement for sail lines.

(viii) No more than one sail line may be used per fisherman.

(ix) Sail lines may not be used by the holder of a commercial fishing license.

(x) Sail lines must be attended at all times the line is fishing.

(xi) Sail lines may not have more than 30 hooks and no hook may be placed more than 200 feet from the sail.

(L) Seine.

(i) Only non-game fish may be taken with a seine.

(ii) It is unlawful to use a seine:

(I) which is not manually operated.

(II) with mesh exceeding 1/2-inch square.

(III) that exceeds 20 feet in length.

(iii) In salt water, non-game fish may be taken by seine for bait purposes only.

(M) Shad trawl. For use in fresh water only.

(i) Only non-game fish may be taken with a shad trawl.

(ii) It is unlawful to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter.

(iii) A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(N) Spear. Only non-game fish may be taken with a spear.

(O) Spear gun. Only non-game fish may be taken with spear gun.

(P) Throwline. For use in fresh water only.

(i) Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(ii) It is unlawful to use a throwline in Lake Bastrop in Bastrop County, Bellwood Lake in Smith County, Lake Bryan in Brazos County, Boerne City Park Lake in Kendall County, Lakes Coffee Mill and Davy Crockett in Fannin County, Dixieland Reservoir in Cameron County, Gibbons Creek Reservoir in Grimes County, and Tankersley Reservoir in Titus County.

(Q) Trotline.

(i) Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline.

(ii) It is unlawful to use a trotline:

(I) with a mainline length exceeding 600 feet;

(II) with invalid gear tags. Gear tags must be attached within three feet of the first hook at each end of the trotline and are valid for 30 days after date set out, except on saltwater trotlines, a gear tag is not required to be dated;

(III) with hook interval less than three horizontal feet;

(IV) with metallic stakes; or

(V) with the main fishing line and attached hooks and stagings above the water's surface.

(iii) In fresh water, it is unlawful to use a trotline:

(I) with more than 50 hooks;

(II) in Gibbons Creek Reservoir in Grimes County, Lake Bastrop in Bastrop County, Lakes Coffee Mill and Davy Crockett in Fannin County, Fayette County Reservoir in Fayette County, Pinkston Reservoir in Shelby County, Lake Bryan in Brazos County, Bellwood Lake in Smith County, Dixieland Reservoir in Cameron County, Boerne City Park Lake in Kendall County, and Tankersley Reservoir in Titus County.

(iv) In salt water:

(I) it is unlawful to use a trotline:

(-a-) in or on the waters of the Gulf of Mexico within the jurisdiction of this state;

(-b-) from which red drum, sharks or spotted seatrout caught on the trotline are retained or possessed;

(-c-) placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels. No trotline may be fished with the main fishing line and attached hooks and stagings above the water's surface;

(-d-) baited with other than natural bait, except sail lines;

(-e-) with hooks other than circle-type hook with point curved in and having a gap (distance from point to shank) of no more than one-half inch, and with the diameter of the circle not less than five-eighths inch. Sail lines are excluded from the restrictions imposed by this clause; or

(-f-) in Aransas County in Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-Mile Point, past the town of Rockport to a point at the east end of Talley Island, including that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(II) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1:00 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause. Under the authority of the Texas Parks and Wildlife Code, §66.206(b), in the event small craft advisories or higher marine weather advisories issued by the National Weather Service are in place at 8:00 a.m. on Friday, trotlines may remain in the water until 6:00 p.m. on Friday. If small craft advisories are in place at 1:00 p.m. on Friday, trotlines may remain in the water until Saturday. When small craft advisories are lifted by 8:00 a.m. on Saturday, trotlines must be removed by 1:00 p.m. on Saturday. When small craft advisories are lifted by 1:00 p.m. on Saturday, trotlines must be removed by 6:00 p.m. on Saturday. When small craft advisories or higher marine weather advisories are still in place at 1:00 p.m. on Saturday, trotlines may remain in the water through 1:00 p.m. on Sunday. It is a violation to tend, bait, or harvest fish or any other aquatic life from trotlines during the period that trotline removal requirements are suspended under this provision for adverse weather conditions. For purposes of enforcement, the geographic area customarily covered by marine weather advisories will be delineated by department policy.

(III) It is unlawful to fish for commercial purposes with:

(-a-) more than 20 trotlines at one time;

(-b-) any trotline that is not marked with yellow flagging attached to stakes or with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width attached to end fixtures;

(-c-) any trotline that is not marked with yellow flagging attached to stakes or with a yellow buoy bearing the commercial finfish fisherman's license plate number in letters of a contrasting color at least two inches high attached to end fixtures;

(-d-) any trotline that is marked with yellow flagging or with a buoy bearing a commercial finfish fisherman's license plate number other than the commercial finfish fisherman's license plate number displayed on the finfish fishing boat;

(IV) It is unlawful to fish for non-commercial purposes with:

(-a-) more than 1 trotline at any time; or

(-b-) any trotline that is not marked with a floating yellow buoy not less than six inches in height, six inches in length, and six inches in width, bearing a two-inch wide stripe of contrasting color, attached to end fixtures.

(R) Umbrella net.

(i) Only non-game fish may be taken with an umbrella net.

(ii) It is unlawful to use an umbrella net with the area within the frame exceeding 16 square feet.

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 June 16, 2006.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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Proposal publication date: February 24, 2006
For further information, please call: (512) 389-4775

SUBCHAPTER P. ALLIGATOR PROCLAMATION

The Texas Parks and Wildlife Commission adopts the repeal of §§65.354, 65.355, 65.356, and 65.364, and amendments to §§65.351, 65.353, 65.357, 65.358, 65.360 and 65.363, concerning the Statewide Alligator Proclamation, without changes to the proposed text as published in the February 26, 2006, issue of the *Texas Register* (31 TexReg 1215).

Prior to 2005, an alligator hunting license was required to hunt alligators in this state, and all provisions relating to the hunting of alligators were located in 31 TAC Chapter 65, Subchapter P. The passage of House Bill 2026 by the 79th Texas Legislature eliminated the alligator hunting license. As a consequence, the department has determined that it is appropriate to relocate all provisions relating to recreational alligator hunting from Subchapter P to the Statewide Hunting and Fishing Proclamation. The repeals and portions of the amendments effect this change.

The amendments also add references, make housekeeping-type changes, and alter provisions relating to the control of nuisance alligators.

The amendment to §65.351, concerning Application, modifies the applicability of the subchapter by creating an exception for the Statewide Hunting and Fishing Proclamation Chapter 65, Subchapter A). The amendment is necessary because the relocation of all recreational hunting provisions to the Statewide Hunting and Fishing Proclamation means that the Alligator Proclamation is no longer the only repository for regulations governing the take of alligator; therefore, that must be noted.

The amendment to §65.353, concerning General Provisions, also provides an exception for the provisions of the Statewide Hunting and Fishing Proclamation. The amendment is necessary because the new rules for recreational hunting of alligators (which are adopted elsewhere in this issue) provide for the possession of an untagged alligator under certain circumstances. Therefore, §65.353 has been modified to prevent conflict.

The amendment to §65.357, concerning Purchase and Sale of Alligators, eliminates current subsection (a), which governs the sale of alligators taken by recreational hunters. The amendment is necessary because all regulatory provisions governing the recreational take of alligators are being relocated in the Statewide Hunting and Fishing Proclamation.

The amendment to §65.358, concerning Alligator Egg Collectors, corrects the misuse of a term in subsection (b). Technically, the department issues nest collection stamps to egg collectors, who then utilize the stamp. The amendment replaces the term 'issue' with 'utilize.' The amendment is necessary to maintain factually accurate regulations.

The amendment to §65.360, concerning Report Requirements, eliminates subsection (a) and replaces the term 'nuisance alligator hunter' with the term 'control hunter.' The amendment is necessary because the contents of subsection (a) address requirements for recreational hunters and, as noted, the department is relocating all provisions governing the recreational take of alligators to the Statewide Hunting and Fishing Proclamation. The amendment is also necessary because 'control hunter' is the term the department has chosen to describe those persons under contract with the department to remove nuisance alligators.

The amendment to §65.363, concerning Alligator Control, allows political subdivisions and homeowner's associations to contract directly with control hunters for the removal of nuisance alligators. As alligator populations expand and suburban development increasingly encroaches on alligator habitat, human-alligator interactions have increased dramatically. Under the previous rule, each nuisance alligator complaint was investigated by a department employee in order to determine the degree of threat posed to humans and other animals. In recent years, there have been certain areas of the state, primarily subdivisions and recreational areas in the southeastern area of the state, that have been the source of repeated nuisance alligator calls, resulting in multiple visits by department personnel. The department wishes to implement a new approach designed specifically for high-density areas. Following a site visitation and appraisal of the alligator population, a political subdivision (for instance, a town) or homeowners association experiencing repeated nuisance alligator complaints would be able to contract directly with a control hunter or hunters for the removal of a specified number of alligators. The amendment is necessary to reduce the amount

of time spent by department staff in handling multiple individual complaints from the same places.

The repeal of §65.354, concerning Hunting and Tagging, §65.355, concerning Open Season and Bag Limit, §65.356, concerning Means and Methods, and §65.364, concerning Exceptions, eliminates provisions that are no longer necessary or appropriate for the subchapter, as all provisions governing the recreational hunting of alligators are being moved to the Statewide Hunting and Fishing Proclamation. The repeals are necessary to effect that change.

In general, the amendments will function by transferring all provisions for the sport hunting of alligators to Chapter 65, Subchapter A, which has the ultimate effect of restricting Subchapter P to rules governing commercial alligator farming and harvesting. The amendments will also function by creating a mechanism for control hunters, under certain circumstances, to take multiple nuisance alligators without multiple site visits from department personnel.

The amendment to §65.351 will function by making an exception to the rules for the provisions of the Statewide Hunting and Fishing Proclamation.

The amendment to §65.353 also will function by providing for an exception to the rules for provisions of the Statewide Hunting and Fishing Proclamation regarding possession of untagged alligators.

The amendment to §65.357 will function by eliminating provisions governing the sale of alligators taken by recreational hunters.

The amendment to §65.358 will function by providing correct terminology for the use of nest collection stamps by egg collectors.

The amendment to §65.360 will function by standardizing terminology used to describe the take of nuisance alligators and by eliminating provisions governing reporting and recordkeeping with respect to alligators taken by recreational hunters.

The amendment to §65.363 will function by prescribing a mechanism to enable political subdivisions and homeowner's associations to contract directly with control hunters for the removal of nuisance alligators.

The repeals of §§65.354 - 65.356 and 65.364 will function by eliminating provisions governing the recreational hunting of alligators.

The department received one comment opposing adoption of the proposed rules. The commenter stated that the wording of the rule is ambiguous because subsection (c) sets forth the conditions for the removal of nuisance alligators, yet contains an exception for the provisions of subsection (b). The department disagrees with the comment and responds that subsection (c), which has been in effect for 15 years, requires each nuisance alligator complaint to be investigated by a department employee. In cases where multiple calls are received from the same location, department staff expends valuable time returning again and again. Consequently, subsection (b) is promulgated to alleviate burdens to staff as a consequence of repeated nuisance calls by allowing for a single visit at the request of a political subdivision, governmental entity, or homeowners' association to be the basis for the removal of a specified number of alligators without further site visits by the department. No changes were made as a result of the comment.

The Texas Wildlife Association commented in support of adoption of the proposed rules.

31 TAC §§65.351, 65.353, 65.357, 65.358, 65.360, 65.363

The amendments are adopted under Parks and Wildlife Code, Chapter 65, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations providing for permit application forms, fees, and procedures; the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

31 TAC §§65.354 - 65.356, 65.364

The repeals are adopted under Parks and Wildlife Code, Chapter 65, which authorizes the commission to regulate the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators, alligator eggs, or any part of an alligator that the commission considers necessary to manage this species, including regulations providing for permit application forms, fees, and procedures; the periods of time when it is lawful to take, possess, sell, or purchase alligators, alligator hides, alligator eggs, or any part of an alligator; and limits, size, means, methods, and places in which it is lawful to take or possess alligators, alligator hides, alligator eggs, or any part of an alligator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright
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Texas Parks and Wildlife Department
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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER K. SMALL COMMUNITY HARDSHIP PROGRAM

31 TAC §363.1106

The Texas Water Development Board (board) adopts an amendment to 31 TAC §363.1106 concerning Financial Assistance Programs, Subchapter K, relating to the Small Community Hardship Program, to create a waiver from an existing program requirement, without changes to the proposed text as published in the May 5, 2006, issue of the *Texas Register* (31 TexReg 3658) and will not be republished.

The board adopts an amendment to §363.1106(b). Currently, this subsection requires that all applicants receiving grant funds under this program incur debt from another program administered by the board. The board amends §363.1106(b) to allow the board to waive this requirement any time before the loan is closed if the applicant is connecting to an existing service provider which assists the applicant in complying with state regulation, the existing service provider has made financial contributions to connect the applicant's utility system to the service provider, and the existing service provider agrees to assume full ownership of the applicant's utility system upon completion of the project. Even if these conditions are met, the rule amendment will allow, but does not require, the board to waive the loan requirement. The decision to exercise the waiver is left to the sole discretion of the board in order to implement to an important statewide objective. The waiver may be able to encourage regionalization of water and wastewater utility providers, a statewide policy objective, in order to maximize efficiency in this industry. Additionally, the board has determined that to require a loan in this circumstance may serve as a disincentive to regionalization by creating a liability that an existing system will not want to assume. If the request for the waiver meets the conditions set forth in the rule and the board in its sole discretion determines that the waiver meets the objectives and best serves the interest of the state, the board may grant the waiver.

No comments were received on the proposed amendment.

Statutory authority: Water Code, §§6.101, 15.001(11), 15.011, and 15.103.

Cross reference to statute: Water Code, Chapter 15, Subchapter C.

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 June 14, 2006.

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Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
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For further information, please call: (512) 475-2052

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

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

Proposed Rule Reviews

Finance Commission of Texas

Title 7, Part 1

The Finance Commission of Texas files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 1, Chapter 1, Subchapter A (§§1.101 - 1.107), relating to General Provisions; Subchapter B (§1.201), relating to Interpretations and Advisory Letters; Subchapter C (§§1.301 - 1.310), relating to Application Procedures; and Subchapter D (§§1.401 - 1.407), relating to License. This rule review will be conducted pursuant to §2001.039, Texas Government Code. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these subchapters continue to exist. Final consideration of the rules being reviewed under this notice is scheduled for the commission's meeting on October 20, 2006.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in these subchapters continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-200603401
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: June 21, 2006

The Finance Commission of Texas (commission) files this notice of intention to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 7, Part 1, Chapter 1, Subchapter E (§§1.501 - 1.505), relating to Interest Charges on Loans; Subchapter F (§§1.601 and 1.603 - 1.606), relating to Alternate Charges for Consumer Loans; Subchapter G (§§1.701 - 1.708), relating to Interest and Other Charges on Secondary Mortgage Loans; Subchapter H (§§1.751 - 1.752, 1.754 - 1.755, and 1.758 - 1.761), relating to Refunds in Precomputed Loans; and Subchapter I (§§1.801 - 1.811 and 1.814), relating to Insurance. This rule review will be conducted pursuant to §2001.039, Texas Government Code. The commission will accept comments for 30 days following publication of this notice in the *Texas Register* as to whether the reasons for adopting these subchapters continue to exist. Final consideration of the rules being reviewed under this notice is scheduled for the commission's meeting on August 11, 2006.

The Office of Consumer Credit Commissioner, which administers these rules, believes that the reasons for adopting the rules contained in these subchapters continue to exist. Any questions or written comments pertaining to this notice of intention to review should be directed to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by e-mail to laurie.hobbs@occc.state.tx.us. Any proposed changes to the rules as a result of the review will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional 30-day public comment period prior to final adoption or repeal by the commission.

TRD-200603400
Leslie L. Pettijohn
Commissioner
Finance Commission of Texas
Filed: June 21, 2006

Texas State Library and Archives Commission

Title 13, Part 1

The Texas State Library and Archives Commission files this notice of intent to review Title 13 TAC, Part 1, Chapter 9, concerning Talking Book library services for persons who are blind or have a physical impairment, in accordance with Government Code §2001.39, that requires state agencies to review and consider for readoption each of their rules every four years. Notice of the readoption of this chapter was last published in the *Texas Register* on December 13, 2002.

The rules were adopted pursuant to the Human Resources Code, §91.082 that requires the State Library and Archives Commission to establish a central media center for persons unable to use ordinary print materials; Government Code §441.006 that provides the Commission with the authority to govern the Texas State Library; and Government Code §441.112 that authorizes the commission to lend print access aids. The rules are necessary to establish policies under which eligible persons receive services from the Talking Book Program of the Texas State Library and Archives Commission.

Comments on the review of Chapter 9 may be in writing submitted to Ava Smith, Director, Talking Book Program, Box 12927, Austin, Texas 78711-2927; may be faxed to (512) 936-2306; or may be submitted electronically to ava.smith@tsl.state.tx.us. For further information or

questions, concerning this proposal, please contact Ava Smith at (512) 463-5428.

TRD-200603339
Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Filed: June 16, 2006

♦ ♦ ♦

Adopted Rule Review

Texas State Cemetery Committee

Title 13, Part 5

Pursuant to the notice of the proposed rule review published in the July 1, 2005, issue of the *Texas Register* (30 TexReg 3881), the Texas State Cemetery Committee (Committee) has reviewed and considered for readoption, revision, or repeal Title 13 of the Texas Administrative Code, Part 5, Chapter 71, Texas State Cemetery, in accordance with the Texas Government Code §2001.039 (Vernon 2000).

The Committee considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the Committee determined that the rules are still necessary and readopts 13 Texas Administrative Code §§71.1, 71.3, 71.11, 71.13, 71.14, 71.15, 71.17, 71.19, 71.21, and 71.23, because these provisions were promulgated to direct the administration of the Texas State Cemetery and to regulate monuments erected on Cemetery grounds.

However, during the approval process for placement on the Committee Agenda, it was noted that all references to the General Services Commission should be updated to reflect the successor agency name, Texas Building and Procurement Commission.

These rules are readopted under the authority granted to the Committee in Texas Government Code, §2165.256 and §2165.2561 (Vernon Supp. 2005).

Cross reference to Statutes: Texas Government Code, §2165.256.

This completes the Committee's review of 13 Texas Administrative Code Chapter 71, Texas State Cemetery.

TRD-200603285
Ingrid K. Hansen
General Counsel, Texas Building and Procurement Commission
Texas State Cemetery Committee
Filed: June 14, 2006

♦ ♦ ♦

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 22 TAC §329.2(f)(2)(C)

ADDITIONAL EDUCATION REQUIREMENTS FOR LICENSURE APPLICANTS WHO FAIL THE NATIONAL EXAMINATION

Requirements based on: 1) number of failures AND 2) exam score (passing = 600)		Tutorial Hour Requirements	CEU Requirements
A. Applicants who fail the exam 2 or 3 times			
PT......599 – 586	PTA......599 – 584	25 hours tutorial	1.5 CEUs
PT......585 – 566	PTA......583 – 560	40 hours tutorial	2.0 CEUs
PT......565 & below	PTA......560 & below	80 hours tutorial	4.0 CEUs
B. Applicants who fail the exam 4 times			
PT......599 – 586	PTA......599 – 584	50 hours tutorial	3.0 CEUs
PT......585 – 566	PTA......583 – 560	80 hours tutorial	4.0 CEUs
PT......565 & below	PTA......560 & below	160 hours tutorial	8.0 CEUs
C. Applicants who fail the exam 5, 6, or 7 times			
PT......599 – 586	PTA......599 – 584	6.0 CEUs	
PT......585 – 566	PTA......583 – 560	9.0 CEUs	
PT......565 & below	PTA......560 & below	15.0 CEUs	
D. Applicants who fail the exam 8 or more times must repeat an accredited PT or PTA program			

Figure: 22 TAC Chapter 375--Preamble

CAUSE NO. GN204022

TEXAS ORTHOPAEDIC ASSOCIATION, TEXAS MEDICAL ASSOCIATION, and ANDREW M. KANT, Plaintiffs,	§ § § § §	IN THE DISTRICT COURT
v.	§ § §	345th JUDICIAL DISTRICT
TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS, Defendant.	§ § §	TRAVIS COUNTY, TEXAS

FILED 05 AUG 23 AM 11:36

DISTRICT CLERK TRAVIS COUNTY, TEXAS

FINAL JUDGMENT

On the 16th day of August, 2005 came on to be heard the above entitled and numbered cause and came the Plaintiffs in person and by and through their duly authorized representatives and their counsel of record, and also came the Defendant through its board members and their counsel of record and further came the Interveners in person and by and through their duly authorized representatives and their counsel of record and all parties announced ready for trial. A jury was previously demanded. However, all parties announced in open court that they had decided to waive a jury and submit all questions of law and fact to the court.

After hearing the evidence, after taking judicial notice of certain legislative and adjudicative facts, and hearing the arguments of counsel, the court renders the following judgment:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Board's rule, found in 22 TEX. ADMIN. CODE §375.1(2), which provides as follows:

> Foot- The foot is the tibia and fibula in their articulation with the talus, and all bones to the toes, inclusive of all soft tissues (muscles, nerves, vascular structures) that insert into the tibia and fibula in their articulation with the talus and all bones to the toes.

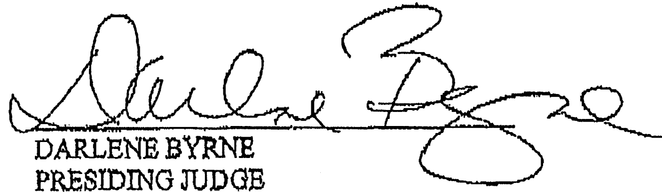
does not exceed the Board's statutory authority under TEX. OCC. CODE § 202.001(a)(4) and § 202.151.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the court declares under the power granted to it under TEX. GOV'T CODE § 2001.038 that the Board's rule is valid.

IT IS FURTHER ORDERED ADJUDGED AND DECREED that Defendant's and Intervenors' costs, pursuant to Tex. R. Civ. P. 131, are taxed against the Plaintiffs, for which let execution issue.

All relief not granted herein is DENIED. This Judgment is final and determinative of all pending claims and is appealable.

SIGNED on August 23, 2005.



DARLENE BYRNE
PRESIDING JUDGE

Texas Orthopedic Assoc., et al. v. Texas State Board of Podiatric Medical Examiners, et al. (GN204022)
Final Judgment
Page 2

TOTAL P.03

Figure: 31 TAC §65.72(b)(2)(C)

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	32	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and Smallmouth bass.		14	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30*
*Special Regulation: One black drum over 52 inches may be retained per day as part of the five-fish bag limit.			
Drum, red.	3*	20	28*
*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.			
Flounder: all species, their hybrids, and subspecies.	10*	14	No limit
*Special Regulation: The daily bag limit of 10 is the possession limit allowed for flounder for those fishing with a recreational license. The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 60 flounder, except on board a licensed commercial shrimp boat.			
Grouper, goliath.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	15	14	No limit
Marlin, blue.	No limit	131	No limit
Marlin, white.	No limit	86	No limit

Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish	No limit	84	No limit
Saugeye	3	18	No limit
Seatrout, spotted.	10	15	25*
*Special Regulation: One spotted seatrout greater than 25 inches may be retained per day.			
Shark: all species, their hybrids, and subspecies.	1	24	No limit
Sheepshead.	5	12	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	4	15	No limit
Snapper, vermilion.	No limit	10	No limit
Snook.	1	24	28
Tarpon.	1	80	No limit.
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Tripletail.	3	17	No limit.
Walleye.	5*	No limit	No limit
*Special regulation: Two walleye of less than 16 inches may be retained per day.			

Figure: 31 TAC §65.72(b)(2)(D)(i)

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lake Texoma (Cooke and Grayson).	5 (in any combination)	14	
In all waters in the Lost Maples State Natural Area (Bandera)	0	No Limit	Catch and release only.
Bass: largemouth and smallmouth			
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with spotted bass)	14	Possession Limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Possum Kingdom (Palo Pinto, Stephens, Young), Proctor (Comanche), and Ratcliff (Houston).	5	16	
Lakes Aquilla (Hill) , Bellwood (Smith), Braunig (Bexar), Bright (Williamson), Brushy Creek (Williamson), Bryan (Brazos), Calaveras (Bexar), Casa Blanca (Webb), Cleburne State Park (Johnson), Cooper (Delta and Hopkins), Fairfield (Freestone), Gilmer (Upshur), Jacksonville (Cherokee), Marine Creek Reservoir (Tarrant), Meridian State Park (Bosque), Old Mount Pleasant City (Titus), Pflugerville (Travis), Rusk State Park (Cherokee), and Welsh (Titus)	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No Limit	Catch and release and only.
Lakes Alan Henry (Garza) and O.H. Ivie (Coleman, Concho, and Runnels).	5	No Limit	It is unlawful to retain more than two bass of less than 18 inches in length.

Purtis Creek State Park Lake (Henderson and Van Zandt), and Raven (Walker).	0	No Limit	Catch and release only except that any bass 21 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the ShareLunker Program.
Lakes Bridgeport (Jack and Wise), Burke-Crenshaw (Harris), Caddo (Marion and Harrison), Davy Crockett (Fannin) , Grapevine (Denton and Tarrant), Georgetown (Williamson), Madisonville (Madison), San Augustine City (San Augustine), and Sweetwater (Nolan)	5	14 - 18 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Athens (Henderson), Bastrop (Bastrop), Buescher State Park (Bastrop), Houston County (Houston), Joe Pool (Dallas, Ellis, and Tarrant), Mill Creek (Van Zandt), Murvaul (Panola), Nacogdoches (Nacogdoches), Pinkston (Shelby), Timpson (Shelby), Town (Travis), and Walter E. Long (Travis).	5	14 - 21 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Gibbons Creek Reservoir (Grimes), Monticello (Titus), and Ray Roberts (Cooke, Denton, and Grayson).	5	14 - 24 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

Lake Fork (Wood, Rains and Hopkins)	5	16 - 24 Inch Slot Limit	It is unlawful to retain largemouth bass between 16 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Alan Henry (Garza), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12 - 15 Inch Slot Limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: spotted			
Lake Alan Henry (Garza)	3	18	
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination with largemouth bass)	No Limit	Possession Limit is 10.
Bass: striped and white bass, their hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No Limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No Limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 10.

Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No Limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Lake Possum Kingdom (Palo Pinto, Stephens, Young) and Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: white			
Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).	25	No Limit	
Catfish: channel and blue catfish, their hybrids, and subspecies.			
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	
North Concho River (Tom Green) from O.C. Fisher Dam to Bell Street Dam, South Concho River (Tom Green) from Lone Wolf Dam to Bell Street Dam	5 (in any combination)	No limit	
Community fishing lakes	5 (in any combination)	No limit	
Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	

Crappie: black and white crappie, their hybrids and subspecies.			
Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	10	Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Coleto Creek Reservoir (Goliad and Victoria), Colorado City (Mitchell), Fairfield (Freestone), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
Nasworthy (Tom Green)	No Limit	No Limit	
Shad: gizzard and threadfin shad.			
The Trinity River below Lake Livingston in Polk and San Jacinto Counties.	500 (in any combination)	No Limit	Possession Limit 1,000 in any combination.
Trout: Rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

IN ADDITION

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

Texas Department of Agriculture

Notice of Acceptance of Applications for Federal Aquaculture Assistance Funds

In accordance with clause (3) of Section 32 of the Agricultural Act of August 24, 1935, the Farm Service Agency of the United States Department of Agriculture (FSA) has provided a grant to the Texas Department of Agriculture (TDA) to distribute to eligible aquaculture producers adversely affected by Hurricane Rita in 2005. On July 1, 2006, TDA will begin accepting aquaculture assistance fund applications from eligible aquaculture producers.

Eligibility Criteria. To be eligible for aquaculture assistance funds the aquaculture producer must meet the following criteria:

1. Must have suffered an aquaculture loss from Sept. 23, 2005 - Nov. 22, 2005, as a direct result of Hurricane Rita;

2. Must have raised aquaculture species in a controlled environment as part of a farming operation during the covered period;

3. Must have had a risk in the production of such aquaculture species; and

4. Must have not received, or receive in the future, assistance under other disaster programs for the same aquaculture loss.

5. Must have had an aquaculture operation suffering losses located in one of the 29 Texas counties that received a presidential or secretarial disaster designation. These counties are: Angelina, Brazoria, Chambers, Cherokee, Fort Bend, Galveston, Gregg, Hardin, Harris, Harrison, Houston, Jasper, Jefferson, Liberty, Marion, Montgomery, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler and Walker.

Covered Losses. Funds can only be paid for documented losses incurred during Hurricane Rita related to the normal production of aquaculture species. These losses include: crop loss, feed loss, equipment and facility damage, generator/diesel fuel costs, water costs to replace water spoiled by the storm, and clean-up costs. No person may receive more than $80,000 in fund payments.

For purposes of this Grant Program, "Aquaculture Species" means aquatic animal organisms including fish, crustaceans, mollusks, reptiles, or amphibians reared or cultured under controlled conditions in an aquaculture facility.

Submitting an Application. Applications will be accepted beginning July 1, 2006. Applications will be mailed to aquaculture producers currently registered with TDA and/or the Texas Parks and Wildlife Department. Applications will also be available on TDA's website at: www.agr.state.tx.us. Applications must be mailed to TDA headquarters in Austin by the deadline provided below. Applications must be certified by the applicant and include supporting documentation for losses claimed. Applicants will also be required to complete an application for a State of Texas Payee ID number, as part of the application for the aquaculture assistance funds, if they do not already have this number on file with the Office of the State Comptroller.

Deadline for Submission of Applications. The postmark deadline for mailing of applications for aquaculture assistance to TDA is **August 14, 2006.**

TDA will distribute funds after all valid applications are processed. In the event that the amount of valid losses exceeds the amount of funds available, funds may be distributed on a pro rata basis.

Further Information. Additional information about the aquaculture assistance program and application process can be found on TDA's website. In addition, aquaculture producers may contact Cary Dupuy, Federal and Trade Specialist, TDA at (512) 936-0761 or cary.dupuy@agr.state.tx.us, for more information.

TRD-200603390
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 21, 2006

Request for Proposals - Wine Quality Assurance Program

Statement of Purpose. The Texas Department of Agriculture (TDA) is issuing this Request for Proposals (RFP) inviting proposals for the development of a quality assurance program for Texas wines. Funding for the development of this program is provided from the Texas Wine Industry Development Fund (WIDF). Section 50B.002 of the Texas Agriculture Code provides that under the direction of TDA and the Commissioner of Agriculture (commissioner), WIDF funds may be used for the development of technologies, strategies, or practices that could benefit the production of grapes and wine in the United States and increasing the economic impact of the Texas wine producing industry.

Additional information on TDA and its marketing programs, including wine, can be found at www.gotexanwine.org and www.agr.state.tx.us.

Eligibility. Funds may be awarded to institutions of higher education or governmental research entities. A proposal may include a request for funding of a project to be conducted by more than one entity.

Objective and Scope of Work. The Texas wine industry is growing at an incredible rate and the need exists to inform the public about the quality of Texas wines. This RFP requests the development of a quality assurance program to create standards by which Texas wines can be acknowledged for meeting specified quality parameters. The program would create a "highest standards" measure to which wineries can score their offerings and winemaking practices. Wineries meeting these standards can then receive acknowledgement of their efforts, providing a way for consumers to quickly determine that quality is assured.

The outcome of this RFP would include, but not be limited to, the following:

1. The development of a set of minimum quality requirements (addressing issues such as production methods and other pertinent quality issues);

2. A structured scoring/grading method and system;

3. Recommendations on ways to encourage buy-in from all levels - wine producers, retailers and restaurateurs;

4. Recommendations on communicating the program to all stakeholders;

5. Recommendations on how the program requirements can be monitored and enforced to ensure that wines claiming the quality designation meet the necessary guidelines;

6. Recommendations on ensuring the program remains flexible and responsive to industry changes;

7. Presentation of the program at a minimum of two Wine Industry Development Advisory Committee meetings; and

8. A final report on the program that includes a short, executive summary (no more than four pages) highlighting the key aspects.

Proposal Limitations. If funding becomes unavailable during the project term and TDA is unable to obtain sufficient funds, the project amount may be reduced or terminated.

Proposal/Funding Revisions. TDA reserves the right to fund proposals partially or fully. Where more than one proposal is acceptable for funding, TDA may request cooperation between grantees or revision/adjustment to a proposal in order to avoid duplication and to realize the maximum benefit to the state.

Submission Requirements. Each proposal must include the following information:

1. A cover sheet with names, titles, addresses, telephone and fax numbers, and email addresses of the principal researchers. Indicate who is designated as the lead point of contact.

2. Identification of the key personnel to be funded and/or involved in operations funded, including information on their experience, such as a brief professional biography and academic background and how it relates to the project for which that key personnel with be associated.

3. Additional information on the submitting entity's unique capabilities and/or resources to complete the tasks outlined in the RFP, any other value-added services that can be offered to further the intent of the outlined tasks, and any additional ideas or input to contribute to the goals of the project.

4. A detailed timeline with dates for specific deliverables. (Note: An initial report of findings must be complete within 60 days of contract award; all project components must be complete within 105 days of contract award.)

5. A detailed, line-item budget that outlines in specific detail costs for staff time, resources and other items.

Reporting Requirements. Operations approved for funding are required to submit the following reports:

1. An initial report of findings must be complete within 60 days of contract award; and

2. A final report on all project components must be complete within 105 days of contract award. Reports must be submitted in a hard copy format and an electronic format on a diskette utilizing Word.

All reports must include an Executive Summary no more than 4 pages long.

General Compliance Information. All awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

Any information or documentation submitted to TDA is subject to disclosure under the Texas Public Information Act.

Awarded projects must remain in full compliance with state and federal laws and regulations or be subject to termination at the discretion of TDA.

Deadline and Submission Information. Proposals should be submitted to Delane Caesar, Senior Policy Advisor for Marketing and Promotion, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. The street address is 1700 North Congress, 11th Floor, Austin, Texas 78701.

Proposals must be received no later than **5:00 p.m., July 19, 2006**. One original and seven copies must be submitted. Fax copies will not be accepted. Please contact Delane Caesar at **(512) 463-7609** or by e-mail at Delane.Caesar@agr.state.tx.us with any questions you may have.

Evaluation and Award Information. All proposals will be subject to evaluation based on the criteria set forth in this RFP. TDA shall not pay for any costs incurred by any entity in responding to this RFP. TDA reserves the right to accept or reject any or all proposals submitted. TDA is under no legal or other obligation to award funds on the basis of this RFP or any other RFP. The Commissioner will make final funding decisions.

Texas Public Information Act. All proposals shall be deemed, once submitted, to be the property of the TDA and are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

TRD-200603394
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 21, 2006

♦ ♦ ♦

Office of the Attorney General

Notice of Agreed Final Judgment

The State of Texas hereby gives notice of the proposed resolution of suit for review and a countersuit for enforcement of an order of the Texas Natural Resource Conservation Commission, now known as the Texas Commission on Environmental Quality. The claims were brought pursuant to the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to Section 7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: *Brownsville Navigation Dist. of Cameron County, Texas v. Texas Natural Resource Conserv. Comm'n, consolidated with SGS Control Servs., Inc., et al. v. Texas Natural Resource Conserv. Comm'n*, No. GN-914, 353rd District Court, Travis County, Texas

Nature of Suit: This is a suit for review and a countersuit for enforcement of an administrative order designating responsible parties for contamination at the Baldwin Waste Oil Site in Robstown, Texas (the "Site") and ordering remediation of the Site. Brownsville Navigation District of Cameron County ("BND") is alleged to be a potentially responsible party for wastes at the Site.

Proposed Agreed Judgment: The proposed Agreed Final Judgment settles all of the claims between BND and the State in the suit. The Agreed Final Judgment awards the State $330,000 for reimbursement of re-

sponse costs at the Site and $20,000 in attorney's fees. In the judgment, BND also agrees to take over the remedial activities at the Site.

The Office of the Attorney General will accept written comments relating to this proposed judgment for thirty (30) days from the date of the publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the judgment and written comments on the proposed judgment should be directed to Jane E. Atwood, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200603286
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 14, 2006

Texas Water Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code (Code). Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. City of West Tawakoni*, Cause No. GV403120; in the 201st Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant operates a wastewater and storm water collection system and a wastewater treatment plant in Hunt County, Texas. During storms, storm water overwhelms the collection system, discharging waste into Lake Tawakoni. Defendant entered an Agreed Order with the Texas Commission on Environmental Quality, which directed the Defendant to upgrade its collection system and to operate the system in compliance with all applicable rules and statutes. Defendant has recently resolved many of the problems and has obtained grant funding to upgrade the collection system. The Defendant has agreed to this judgment.

Proposed Agreed Judgment: The Agreed Final Judgment and Permanent Injunction assesses civil penalties against the Defendant, as well as provides a permanent injunction which orders Defendant to comply with applicable State laws and regulations. Defendant has agreed to pay Plaintiff a civil penalty in the amount of $55,000.00, as well as $25,000.00 in attorney's fees plus all court costs. Of the total amount of civil penalties, $27,500.08 will be deferred and not required to be paid if the Defendant complies with all terms of the Judgment.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment and written comments on the proposed settlement should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200603356
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: June 19, 2006

Brazos Valley Council of Governments

Request for Proposals for Section 8 Inspection Services

The Brazos Valley Council of Governments (BVCOG) hereby solicits proposals for independent inspection services for Section 8 Housing Quality Standards (HQS). A copy of the full Request for Proposals (RFP) may be obtained by downloading it from the BVCOG website at www.bvcog.org or contacting Barry Roberts at (979) 595-2800. A mandatory briefing to orient proposers will be conducted at the Center for Regional Services located at 3991 E. 29th Street, Bryan, Texas on July 7, 2006 at 3:00 p.m.

The RFP must be enclosed in a sealed envelope and labeled as follows:

Michael Parks

Housing Choice Voucher Program

Brazos Valley Council of Governments

P. O. Drawer 4128

Bryan, TX 77805

Proposals must reach the BVCOG no later than 4:00 p.m. (Central Time), Friday July 14, 2006.

Proposals will be held in confidence and not released in any manner until after awarding the contract(s). Proposals will be evaluated on the criteria stated in the RFP. Negotiations may be conducted with contractors who have a reasonable chance of being selected for the award. After evaluation of the proposal revisions, if any, the contract(s) will be awarded to the responsible firm(s) whose qualifications, price, and other factors considered are the most advantageous to the BVCOG. The BVCOG reserves the right to reject any and all proposals.

TRD-200603293
Michael Parks
Assistant Executive Director
Brazos Valley Council of Governments
Filed: June 15, 2006

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) #303-6-11774. TBPC seeks a ten (10) year lease of approximately 5,112 square feet of office space in Williamson County, Texas.

The deadline for questions is July 14, 2006; and the deadline for proposals is July 26, 2006 at 3:00 P.M. The award date is August 31, 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 an 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=65409.

TRD-200603328
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: June 15, 2006

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 9, 2006, through June 15, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 22, 2006. The public comment period for these projects will close at 5:00 p.m. on July 21, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Haynie K. Glasgow; Location: The project is located at 2481 Windy Hill, Ingleside, San Patricio and Nueces Counties, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: PORT INGLESIDE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 674,811; Northing: 3,080,838. Project Description: The applicant proposes to install a walkway and T-head into Ingleside Cove. The applicant proposes to traverse an existing 60-foot-wide boat canal for the purpose of accessing areas that provide better fishing. This will effectively restrict navigation within the small channel. The structure will be built from an existing concrete bulkhead and will consist of a 4- by 145-foot walkway, a 10- by 25-foot T-head, a 3- by 6-foot fish cleaning station (adjacent to the walkway at the existing bulkhead) and a 12- by 12-foot uncovered boatlift (to be located in the channel area). The water depths range from 6 feet in the channel to 3 feet at the terminal end of the proposed structure. Patches of seagrass exist at/near the proposed T-head location. CCC Project No.: 06-0307-F1; Type of Application: U.S.A.C.E. permit application #24207 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Petrus Explorations; Location: The project is located in East Galveston Bay, in State Tract (ST) 344, 6.88 miles easterly of Texas City, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Bolivar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 324928; Northing: 3253453. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling and production activities for Petrus Exploration ST 344 Wells No. 1-1 and 1-2. Such activities include installation of a typical marine barge with single derrick, and 4,356 cubic yards of shell hash for a shell pad. Should the well prove productive, a 200-square-foot production platform, with attendant facilities, and two wellheads will be constructed. Depth at the project site is -17 feet below mean high water. A pipeline is not currently proposed because the applicant is currently in discussions with another operator proposing a tie-in to an existing line. This well is being proposed adjacent to two other proposed wells, in the same ST (Permits 24178 and 24179, on public notices being published concurrently). The applicant has stated that based on directional-drilling engineering mechanics it is not feasible to directionally bore the three wells from one surface location. CCC Project No.: 06-0308-F1; Type of Application: U.S.A.C.E. permit application #24177 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Petrus Explorations; Location: The project is located in East Galveston Bay, in State Tract (ST) 344, 6.88 miles easterly of Texas City, Texas, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Bolivar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 325189; Northing: 3252895. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling and production activities for Petrus Exploration ST 344, Wells No. 2-1 and 2-2. Such activities include installation of a typical marine barge with single derrick, and 4,356 cubic yards of shell hash for a shell pad. Should the well prove productive, a 200-square-foot production platform, with attendant facilities and two wellheads will be constructed. Depth at the project site is -17 feet below mean high water. A pipeline is not currently proposed because the applicant is currently in discussions with another operator proposing a tie-in to an existing line. This well is being proposed adjacent to two other proposed wells, in the same ST (Permits 24177 and 24179, on public notices being published concurrently). The applicant has stated that based on directional-drilling engineering mechanics it is not feasible to directionally bore the three wells from one surface location. CCC Project No.: 06-0309-F1; Type of Application: U.S.A.C.E. permit application #24178 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Petrus Explorations; Location: The project is located in East Galveston Bay, in State Tract (ST) 344, 6.88 miles easterly of Texas City, Texas, in Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Bolivar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 324298; Northing: 3252816. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling and production activities, for Petrus Exploration ST 344, Wells No. 3-1 and 3-2. Such activities include installation of a typical marine barge with single derrick, and 4,356 cubic yards of shell hash for a shell pad. Should the well prove productive, a 200-square-foot production platform, with attendant facilities and two wellheads will be constructed. Depth at the project site is -17 feet below mean high water. A pipeline is not currently proposed because the applicant is currently in discussions with another operator proposing a tie-in to an existing line. This well is being proposed adjacent to two other proposed wells, in the same ST (Permits 24177 and 24178, on public notices being published concurrently). The applicant has stated that based on directional-drilling engineering mechanics it is not feasible to directionally bore the three wells from one surface location. CCC Project No.: 06-0310-F1; Type of Application: U.S.A.C.E. permit application #24179 is being evaluated under §10 of the Rivers and

Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Harris County Public Infrastructure Department; Location: The project site is located in Bob's Gully (HCFCD Unit No, F-210-00-00), east and north of the Barbour's Cut and Wilson Road intersection, in southeast Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: La Porte, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 305933; Northing: 3284005. Project Description: The applicant is requesting authorization to modify a 1,050-foot-long segment of Bob's Gully to improve regional drainage. The project involves the placement two, 8-foot by 6-foot adjoining box culverts within the northern 500 feet of the gully and the replacement of three, existing 5-foot by 3-foot box culverts with two, 8-foot by 8-foot culverts within the southern East Main Crossing of the gully. Within the southern 550-foot-long portion of the drainage, the applicant proposes to excavate and widen 0.20 acre of the gully to increase conveyance. A total of 0.30 acre of waters of the United States would be impacted as a result of the proposed activity. Currently, Bob's Gully provides storm water conveyance to the surrounding upland industrial facilities. The channel is approximately 30 feet wide and is generally 6 feet deep. Vegetation in upland areas along the high banks of the gully consists primarily of a cover of Johnson grass and Bermuda grass. The channel of the gully contains little hydrophytic vegetation. Once the culverts have been installed, the applicant will plant a 3-foot-wide area on either side of the gully at the approximate elevation of the new ordinary high water mark. This effort is intended to replace water quality functions and values that will be impacted as a result of the proposed activity. No net loss to waters of the United States will occur. CCC Project No.: 06-0311-F1; Type of Application: U.S.A.C.E. permit application #24212 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Red Willow Offshore LLC; Location: The project is located approximately 6.7 miles southeast of La Porte in State Tract (ST) 128 of Galveston Bay, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Bacliff, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 314364.99; Northing: 3277869.66. Project Description: The applicant proposes to drill a well in search for oil and gas, install and maintain a production platform, well platform and lay a flowline (not sales line) from the well to the production platform. A well pad comprised of approximately 2,667 cubic yards of fill may be placed under the drilling rig. CCC Project No.: 06-0312-F1; Type of Application: U.S.A.C.E. permit application #24227 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

Applicant: Hydro Gulf of Mexico; Location: The project is located approximately 30.7 miles east of Galveston, Texas, in OCS Federal Waters, Gulf of Mexico. The proposed pipeline will cross a Shipping Safety Fairway in High Island Blocks 205 and 197, Offshore Texas. The project can be located using State Plane Coordinates, Texas South Central Zone in NAD 27 (feet): Pipeline enters Fairway at X=3,483,021.05; Y=495,887.46; Pipeline exits Fairway at X=3,492,945.59; Y=504,324.33. Project Description: The applicant proposes to install, operate and maintain an 8-inch diameter gas/condensate pipeline, measuring 32,214.17 feet long, from the proposed High Island Area Block 205-1 Caisson to High Island Area Block 197-A Platform, offshore Texas. The pipeline would cross a Shipping Safety Fairway in High Island Blocks 205 and 197. The 13,026.02-foot length of pipeline within the fairway would be buried to a minimum depth of 10 feet below the mudline. Outside the fairway the remainder of the pipeline would be buried a minimum depth of 3 feet below the mudline. CCC Project No.: 06-0318-F1; Type of Application: U.S.A.C.E. permit application #24232 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200603399
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
Coastal Coordination Council
Filed: June 21, 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, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/26/06 - 07/02/06 is 18% for Consumer[1]/Agricultural/Commercial[2] credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/26/06 - 07/02/06 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/06 - 07/31/06 is 8.00% for Consumer/Agricultural/Commercial credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of 07/01/06 - 07/31/06 is 8.00% for Commercial over $250,000.

[1]Credit for personal, family, or household use.

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

TRD-200603371
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 19, 2006

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Credit Union Department

Application for Foreign Credit Union to Operate a Branch Office

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

An application was received from Assemblies of God Credit Union, Springfield, Missouri to operate a Foreign (out-of-state) Branch Office at 1200 Sycamore, Waxahachie, Texas.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200603398
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 21, 2006

Application to Amend Articles of Incorporation

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

An application was received from Plus4 Credit Union, Houston, Texas to amend its Articles of Incorporation relating to primary place of business.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200603396
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 21, 2006

Applications to Expand Field of Membership

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

An application was received from CTECU (#1), Houston, Texas to expand its field of membership. The proposal would permit employees of Chevron Phillips Chemical Company LP, who are paid from The Woodlands, Texas, to be eligible for membership in the credit union.

An application was received from CTECU (#2), Houston, Texas to expand its field of membership. The proposal would permit employees of Chevron Corporation and any affiliates, divisions, or subsidiaries that are located within Texas, to be eligible for membership in the credit union.

An application was received from Members Choice Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who worship in and businesses located in its various geographic-based fields of membership, to be eligible for membership in the credit union.

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

TRD-200603395
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 21, 2006

Notice of Final Action Taken

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

Application to Expand Field of Membership--Approved

South Texas Credit Union, Kenedy, Texas--See *Texas Register* issue dated April 28, 2006 (31 TexReg 3621).

Applications to Expand Field of Membership--Withdrawn

City Credit Union (#2), Dallas, Texas--See *Texas Register* issue dated May 26, 2006 (31 TexReg 4499).

City Credit Union (#3), Dallas, Texas--See *Texas Register* issue dated May 26, 2006 (31 TexReg 4499).

Articles of Incorporation--50 Years to Perpetuity--Approved

Union Pacific Employees Credit Union, Beaumont, Texas

Navarro Credit Union, Corsicana, Texas

Texoma Community Credit Union, Wichita Falls, Texas

Paris District Credit Union, Paris, Texas

Houston Highway Credit Union, Houston, Texas

Ada Employees Credit Union, Houston, Texas

Freestone Credit Union, Teague, Texas

Angelina Federal Employees Credit Union, Lufkin, Texas

CTECU, Bellaire, Texas

InvesTex Credit Union, Houston, Texas

TRD-200603397
Harold E. Feeney
Commissioner
Credit Union Department
Filed: June 21, 2006

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not ap-

prove 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 **July 31, 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 July 31, 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: BP Products North America, Inc.; DOCKET NUMBER: 2006-0262-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 116.116(b)(1), New Source Review (NSR) Permit Number 8810/PSD-TX-402M, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $90,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: BP Products North America, Inc.; DOCKET NUMBER: 2006-0196-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), NSR Flexible Air Permit Number 47256/PSD-TX-402M2, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: $62,750; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Shafeeq Khimani dba Broadway Grocery Incorporated; DOCKET NUMBER: 2006-0638-PST-E; IDENTIFIER: RN101876498; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and §334.50(b)(1)(A), by failing to provide corrosion protection and by failing to provide release detection; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Centex Materials L.L.C.; DOCKET NUMBER: 2006-0316-IWD-E; IDENTIFIER: RN102190592; LOCATION: Buda, Hays County, Texas; TYPE OF FACILITY: limestone quarrying and rock crushing; RULE VIOLATED: the Code, §26.121(a), by failing to control an unauthorized discharge of industrial wastewater; PENALTY: $4,050; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(5) COMPANY: Chambers County; DOCKET NUMBER: 2005-1835-IHW-E; IDENTIFIER: RN100922392; LOCATION: Anahuac, Chambers County, Texas; TYPE OF FACILITY: waste processing incinerator; RULE VIOLATED: 30 TAC §335.2(b), by failing to properly dispose of hazardous material at an authorized site; 30 TAC §330.150(1) and Permit Number 2239A, by failing to follow the requirements in the permit regarding sampling frequency for both bottom ash and fly ash; 30 TAC §335.6(a) and (c), by failing to notify the agency as a generator of hazardous waste; and 30 TAC §335.9(a)(2), by failing to report the hazardous waste that was generated in 2004; PENALTY: $4,368; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Chevron Phillips Chemical Company L.P.; DOCKET NUMBER: 2006-0147-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), Air Permit Numbers 1504A, 37063, and PSD-TX-748, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $15,840; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Childress Creek Water Supply Corporation; DOCKET NUMBER: 2006-0336-PWS-E; IDENTIFIER: RN101248904; LOCATION: Clifton, Bosque County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(c)(2) and (e)(4)(A), by failing to ensure that the roof hatch on the ground storage tank (GST) is locked and by failing to provide a full-face self-contained breathing apparatus or supplied air respirator; 30 TAC §290.43(c)(1) and (2), by failing to provide the roof vent on the GST with a screen that is fabricated of corrosion-resistant material that is 16-mesh or finer and by failing to ensure that the gasket used on the roof hatch of the GST makes a positive seal when the hatch is closed; 30 TAC §290.41(c)(3)(B) and (K), by failing to provide a well casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump room or natural ground surface and by failing to provide the well casing vent opening with a 16-mesh or finer corrosion-resistant screen; 30 TAC §290.46(f)(2) and (j)(1)(A) and (B), by failing to keep and make available for commission review, the required records for the water system and by failing to conduct customer service inspections by an individual that is a plumber inspector or water supply protection specialist licensed by the Texas State Board of Plumbing Examiners or by a Customer Service Inspector; 30 TAC §290.44(d), by failing to maintain a minimum of 35 pounds per square inch at all times throughout the distribution system; 30 TAC §290.110(b)(4), by failing to maintain a residual disinfectant concentration in the water within the distribution system at a minimum of 0.2 milligrams per liter (mg/L) free chlorine or 0.5 mg/L chloramine; and 30 TAC §290.45(b)(1)(D)(iii), by failing to provide two or more pumps that have a total capacity of two gallons per minute (gpm) per connection or that have a total capacity of at least 1,000 gpm; PENALTY: $2,920; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: James Bob Childress; DOCKET NUMBER: 2006-0397-PST-E; IDENTIFIER: RN101740116; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: property with underground storage tank (UST); RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.49(a)(1) and the Code, §26.3475(d), by failing to install a corrosion protection system; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Christina

Martinez, (512) 239-0739; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013.

(9) COMPANY: Akber R. Kurji dba Collins Food Store; DOCKET NUMBER: 2006-0215-PST-E; IDENTIFIER: RN101444792; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and (iii)(I), and the Code, §26.3475(c)(1), by failing to monitor USTs for releases, by failing to conduct inventory control reconciliation on a monthly basis, and by failing to conduct daily inventory volume measurements; 30 TAC §334.10(b), by failing to have records immediately available for inspection; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; and 30 TAC §115.242(3) and (3)(A) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system; PENALTY: $6,730; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Cooper; DOCKET NUMBER: 2005-1998-MWD-E; IDENTIFIER: RN101918019; LOCATION: Cooper, Delta County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10449001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for ammonia-nitrogen (NH_3-N), carbonaceous biochemical oxygen demand (CBOD), total suspended solids (TSS), and dissolved oxygen (DO); PENALTY: $5,220; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(11) COMPANY: Coronado Golf and Country Club; DOCKET NUMBER: 2006-0224-PST-E; IDENTIFIER: RN100819820; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: private country club; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain UST records and make immediately available for inspection; and 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(a) and (c)(1), by failing to ensure that a legible tag, label, or marking with tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: $2,736; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(12) COMPANY: Gregory Scott Sharp dba D&G Sprinklers; DOCKET NUMBER: 2006-0280-LII-E; IDENTIFIER: RN103540563; LOCATION: Roanoke, Denton County, Texas; TYPE OF FACILITY: landscape irrigator; RULE VIOLATED: 30 TAC §344.96, by failing to honor the warranty; and 30 TAC §344.94(a) and (b), by failing to include in the written agreement to install an irrigation system the irrigator license number and signature of each party, the name, mailing address, and the telephone number of the commission, and the statement on all written contracts and bills to install irrigation systems, "Irrigation in Texas is regulated by the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087"; PENALTY: $315; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: D & H Pump Service, Inc.; DOCKET NUMBER: 2004-1968-AIR-E; IDENTIFIER: RN100812221; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: environmental contractor; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to dispense gasoline for use as a motor vehicle fuel with an oxygen content of at least 2.7% by weight; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(14) COMPANY: Oscar S. Knowles, Jr. dba Donna's Pak A Sak; DOCKET NUMBER: 2005-0334-PST-E; IDENTIFIER: RN103052221; LOCATION: Slaton, Lubbock County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Steven Mahr, (512) 239-6017; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(15) COMPANY: Dupont Performance Elastomers L.L.C.; DOCKET NUMBER: 2006-0329-AIR-E; IDENTIFIER: RN100218239; LOCATION: Nederland, Jefferson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 556A, and THSC, §382.085(b), by failing to prevent unauthorized emissions of carbon tetrachloride, chlorine, chloroform, hydrogen chloride, and sulfur dioxide; PENALTY: $2,020; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: City of Eagle Pass; DOCKET NUMBER: 2006-0323-PWS-E; IDENTIFIER: RN101182285; LOCATION: Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for total trihalomethanes and by exceeding the MCL for haloacetic acids (HAA5); PENALTY: $2,565; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: Ellinger Sewer and Water Supply Corporation; DOCKET NUMBER: 2006-0255-MWD-E; IDENTIFIER: RN101529022; LOCATION: Ellinger, Fayette County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (4), TPDES Permit Number WQ0010945001, and the Code, §26.121(a), by failing to retain all records at the facility or have them readily available for review and by failing to prevent the discharge and accumulation of sludge in the receiving water; 30 TAC §§317.4(c), 319.4, and 319.11(d), by failing to measure the flow according to the water measurement manual of the United States Department of the Interior Bureau of Reclamation; and 30 TAC §317.4(a)(5), by failing to provide auxiliary power facilities; PENALTY: $7,560; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(18) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2006-0233-AIR-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: oil refining; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 18287, and THSC, §382.085(b), by failing to prevent unauthorized emissions and by failing to maintain hydrogen sulfide blend gas concentrations resulting in unauthorized emissions; PENALTY: $44,600; ENFORCEMENT COORDINATOR: John Muennink, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: City of Frost; DOCKET NUMBER: 2006-0297-MWD-E; IDENTIFIER: RN103138228; LOCATION: Frost, Navarro County, Texas; TYPE OF FACILITY: wastewater treatment; RULE

VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10444001, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for DO, TSS, NH_3-N, and CBOD; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Hexion Specialty Chemicals; DOCKET NUMBER: 2006-0644-WQ-E; IDENTIFIER: RN102201688; LOCATION: Brady, McCulloch County, Texas; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit for storm water; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(21) COMPANY: Hirschfeld Steel Company, Inc.; DOCKET NUMBER: 2006-0263-MLM-E; IDENTIFIER: RN102862679; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: steel fabrication; RULE VIOLATED: 30 TAC §335.262(c)(1) and (2)(A) and (F), and 40 Code of Federal Regulations (CFR) §273.15(c), by failing to clearly label or mark containers and by failing to close containers except when adding or removing wastes; 30 TAC §335.6(c), by failing to update the notice of registration; 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial solid waste; and 30 TAC §324.1 and 40 CFR §279.22(c)(1), by failing to label used oil containers; PENALTY: $3,450; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(22) COMPANY: Hooma Investments, Inc. dba Barton Springs Food Mart; DOCKET NUMBER: 2006-0640-PST-E; IDENTIFIER: RN102362126; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(23) COMPANY: City of Houston; DOCKET NUMBER: 2006-0286-MWD-E; IDENTIFIER: RN102546199; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10495139, and the Code, §26.121(a), by failing to comply with the interim permit effluent limits for TSS and the two-hour peak flow average; PENALTY: $5,328; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Tim Raietparver dba In & Out; DOCKET NUMBER: 2006-0637-PST-E; IDENTIFIER: RN101435006; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Katy Family YMCA; DOCKET NUMBER: 2005-1564-PWS-E; IDENTIFIER: RN101273837; LOCATION: Katy, Fort Bend County, Texas; TYPE OF FACILITY: recreational facility with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and (f)(3) and §290.122(b)(2)(B), by failing to routinely monitor for microbial contaminants and by failing to comply with the MCL for total coliform bacteria; PENALTY: $635; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Lawrence Kindel; DOCKET NUMBER: 2006-0643-WOC-E; IDENTIFIER: RN104916770; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(27) COMPANY: William Goad dba Koyote Ranch Bandera Unit LF; DOCKET NUMBER: 2006-0641-PST-E; IDENTIFIER: RN104281241; LOCATION: Medina, Bandera County, Texas; TYPE OF FACILITY: petroleum storage tank; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Larry Stewart Custom Homes, L.P.; DOCKET NUMBER: 2006-0482-WQ-E; IDENTIFIER: RN104921796; LOCATION: Colleyville, Tarrant County, Texas; TYPE OF FACILITY: construction company; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2006-0236-AIR-E; IDENTIFIER: RN100633650; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Numbers 2993 and 3346, and THSC, §382.085(b), by failing to prevent unauthorized emissions of ethylbenzene and propylene oxide; PENALTY: $14,960; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(30) COMPANY: City of McGregor; DOCKET NUMBER: 2006-0137-PWS-E; IDENTIFIER: RN101387199 and RN101458420; LOCATION: McGregor, McLennan County, Texas; TYPE OF FACILITY: public water supplies; RULE VIOLATED: 30 TAC §290.46(f)(2) and (m)(4), by failing to provide water system records for review at the time of the investigation and by failing to maintain distribution system lines, water storage and pressure maintenance facilities, and related appurtenances in a watertight condition and be free of excessive solids; 30 TAC §290.41(c)(3)(N), by failing to have flow meters; and 30 TAC §290.43(c)(1), (6), (4), and (9), by failing to provide roof vents on the GSTs, by failing to maintain the blow GST in a watertight condition and in accordance with American Water Works Association standards, by failing to provide a liquid level indicator, and by failing to use GSTs that have not been used previously for a nonpotable purpose; PENALTY: $1,606; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(31) COMPANY: Mike Biggers dba Meador Chrysler Jeep; DOCKET NUMBER: 2006-0639-PST-E; IDENTIFIER: RN102050481; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: car dealership; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512)

239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: Charles H. Preddy; DOCKET NUMBER: 2006-0369-PST-E; IDENTIFIER: RN101903953; LOCATION: Ozona, Crockett County, Texas; TYPE OF FACILITY: car body shop; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.49(a)(1) and the Code, §26.3475(d), by failing to install, operate, and maintain a corrosion protection system; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Steven Mahr, (512) 239-6017; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(33) COMPANY: City of Southside Place; DOCKET NUMBER: 2006-0122-MWD-E; IDENTIFIER: RN101384758; LOCATION: Southside Place, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10712001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for flow and NH_3-N; PENALTY: $7,456; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Teresa Gail Allums dba T & A Septic Service; DOCKET NUMBER: 2006-0209-SLG-E; IDENTIFIER: RN104710546; LOCATION: Kennard, Houston County, Texas; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: 30 TAC §312.4(d) and the Code, §26.121(c), by allowing the disposal of septic waste onto a nonpermitted beneficial land use site; and 30 TAC §312.145, by failing to use trip tickets to properly document waste transported and disposed; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(35) COMPANY: Charles E. Tenery, Sr.; DOCKET NUMBER: 2006-0669-MSW-E; IDENTIFIER: RN104928908; LOCATION: Mertzon, Irion County, Texas; TYPE OF FACILITY: municipal solid waste; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license for municipal solid waste; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(36) COMPANY: City of Uvalde; DOCKET NUMBER: 2005-1837-MSW-E; IDENTIFIER: RN104610787; LOCATION: Uvalde, Uvalde County, Texas; TYPE OF FACILITY: municipal solid waste disposal; RULE VIOLATED: 30 TAC §330.5(c), by allowing the dumping of municipal solid waste; PENALTY: $840; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(37) COMPANY: City of Waco; DOCKET NUMBER: 2006-0359-PWS-E; IDENTIFIER: RN101384212; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.42(d)(13)(A), (e)(4)(B), and (m), by failing to properly identify the compressed air line, by failing to properly house gas chlorination equipment and cylinders of chlorine in separate buildings or separate rooms, and by failing to protect all water treatment plants with an intruder-resistant fence; 30 TAC §290.44(d)(1), by failing to properly install air release devices in the distribution system; and 30 TAC §290.46(f)(2), by failing to provide operating reports and records for review during inspections; PENALTY: $1,276; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(38) COMPANY: Wall Co-Operative Gin; DOCKET NUMBER: 2006-0319-AIR-E; IDENTIFIER: RN101912806; LOCATION: Wall, Tom Green County, Texas; TYPE OF FACILITY: cotton burr grinding and storage; RULE VIOLATED: 30 TAC §101.5 and §111.201 and THSC, §382.085(a) and (b), by failing to comply with the general prohibition regarding outdoor burning; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(39) COMPANY: Weatherford International, Inc.; DOCKET NUMBER: 2006-0426-WQ-E; IDENTIFIER: RN102586088; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil and gas field service; RULE VIOLATED: 30 TAC §305.125(1), TPDES General Permit Number TXR050000, and 40 CFR §122.26, by failing to conduct annual storm water discharge sampling for hazardous metals for 2005; PENALTY: $2,940; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200603373
Stephanie Bergeron Perdue
Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: June 20, 2006

Notice of District Petition

Notices mailed during the period June 20, 2006.

TCEQ Internal Control No. 05302006-D03; Jerry A. Argovitz, Trustee (Petitioner) filed a petition for creation of Fort Bend County Municipal Utility District No. 166 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 331.9 acres located within Fort Bend County, Texas; and (4) the proposed District is within Fort Bend County, Texas, and no portion of land within the proposed District is within the extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, 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; 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, 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 $20,200,000.

TCEQ Internal Control No. 06082006-D05; 760 W Lake Houston Pkwy, Joint Venture (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 423 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and

the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District, (3) the proposed District will contain approximately 369.42 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town, or village in Texas. By Ordinance No. 2006-231, effective March 8, 2006, 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) construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, 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; and (4) construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately $23,400,000.

TCEQ Internal Control No. 04182006-D01; Gary G. Gill, Robyn S. Gill, Boardwalk II, Ltd., and Apartment Acquisitions II, Ltd., (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 479 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rule of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Prosperity Bank, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 207.84 acres of land located in Harris County, Texas; and (4) the proposed District is entirely 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 of the State of Texas. By Ordinance No. 2006-290, effective March 29, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) 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; and (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 $15,559,608.

TCEQ Internal Control No. 04272006-D08; KB3, L.C., et al (Petitioners) filed a petition for creation of New Sweden Municipal Utility District No. 2 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, Capital Farm Credit, ACA, and Franklin Bank, S.S.B, on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with a certificate evidencing the lien holders' consent to the creation of the proposed District; (3) the proposed District will contain approximately 426 acres located in Travis County, Texas; and (4) 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. 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 $74,335,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this 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 which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to 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, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200603391
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 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 **July 31, 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 July 31, 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: Adam J. Wood dba Hoover Valley Country Store; DOCKET NUMBER: 2005-1188-PST-E; TCEQ ID NUMBER: RN101383073; LOCATION: 7203 Park Road 4 West, Burnet, Burnet County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: Failure to provide a method of release detection capable of detecting a release from any portion of the underground storage tank (UST) system which contained regulated substances including the tanks, piping, and other underground ancillary equipment, in violation of 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(a) and (c)(1); failed to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as a motor fuel, in violation of 30 TAC §334.48(c); failed to notify the commission within 30 days from the date of the occurrence of any change or addition to the UST system, in violation of 30 TAC §334.7(d)(3). failed to submit to the agency a completed UST registration and self-certification form in a timely manner, in violation of 30 TAC §334.8(c)(4)(A)(vi) and (c)(4)(B); failed to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at the facility, in violation of 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a); PENALTY: $12,330; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Alfred Howard Smith; DOCKET NUMBER: 2005-1220-LII-E; TCEQ ID NUMBER: RN103259586; LOCATION: 5300 and 5304 Maple Court, Flower Mound, Denton County, Texas; TYPE OF FACILITY: landscape irrigation systems; RULES VIOLATED: Failure to obtain an irrigator license prior to advertising or representing to the public to be a holder of an irrigator license, and failed to obtain an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing irrigation systems at the sites, in violation of 30 TAC §30.5(a) and (b) and §344.4(a), and Texas Occupations Code, §1903.251; used or attempted to use the license of someone else who is a licensed irrigator, in violation of 30 TAC §344.58(b); PENALTY: $6,250; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Blas Compean dba The Wright Stop; DOCKET NUMBER: 2004-2077-AIR-E; TCEQ ID NUMBER: RN100814524; LOCATION: 3600 Montana Avenue, El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §114.100(a) and Texas Health and Safety Code (THSC), §382.085(b), by offering for sale gasoline for use as motor vehicle fuel in El Paso County with an oxygen content lower than 2.7% by weight; PENALTY: $1,040; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(4) COMPANY: Henk Post dba Henk Post Farm; DOCKET NUMBER: 2005-1743-MLM-E; TCEQ ID NUMBER: RN103777298; LOCATION: approximately 0.6 miles north of the intersection of County Roads 3110 and 3090, near Mount Vernon, Franklin County, Texas; TYPE OF FACILITY: composting operation; RULES VIOLATED: Failure to properly dispose of municipal solid waste, in violation of 30 TAC §330.5(c); failed to prevent nuisance conditions at the site, in violation of 30 TAC §101.4 and THSC, §382.085(b); failed to comply with the General Prohibition requirements concerning outdoor burning, in violation of 30 TAC §111.201 and THSC, §382.085(b); PENALTY: $14,300; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Imthkn Acquisitions, LLC; DOCKET NUMBER: 2005-1699-IHW-E; TCEQ ID NUMBER: RN100595180; LOCATION: 801 Lee Street, Irving, Dallas County, Texas; TYPE OF FACILITY: inactive paint manufacturing plant; RULES VIOLATED: Failure to obtain a permit for the storage of industrial solid and hazardous wastes, in violation of 30 TAC §335.2(a); failed to prevent the discharge or imminent threat of discharge of industrial solid and hazardous wastes into or adjacent to the waters of the state, in violation of 30 TAC §335.4 and TWC, §26.121(a); failed to conduct a hazardous waste determination and waste classification in violation of 30 TAC §335.62 and 40 Code of Federal Regulations (CFR) §262.11; failed to ensure that each container is labeled with the words, "Hazardous Waste" or with other words that identify the contents of the container in violation of 30 TAC §335.69(f)(4) and 40 CFR §262.34; failed to maintain required aisle space in violation of 30 TAC §335.69(f)(4) and 40 CFR §262.35; PENALTY: $15,750; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: James R. Maib dba Coleto Water Company, Inc. dba H2O Systems Plus, Inc.; DOCKET NUMBER: 2005-1383-PWS-E; TCEQ ID NUMBER: RN102683562; LOCATION: eight miles west of Victoria, off Highway 59 at the Shady Oaks Subdivision, Victoria

County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: Failure to collect routine water samples for bacteriological analysis and failed to post a public notification of the monitoring violations for the months of August, October, November, and December 2003, January, February, July, and December 2004 and January 2005, in violation of 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d); failed to pay public health service fees for TCEQ Financial Administration Account No. 92350036 for Fiscal Years 2003, 2004, and 2005, in violation of 30 TAC §290.51(a)(3) and TWC, §5.702; PENALTY: $3,195; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Kent F. Baltzell dba Oak Hill Acres Mobile Home Subdivision; DOCKET NUMBER: 2005-1861-PWS-E; TCEQ ID NUMBER: RN10223865; LOCATION: 29042 Blueberry Drive, Boerne, Bexar County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: Failure to collect and submit routine bacteriological samples once per month and provide public notice of the failure to comply for the months of April, October, November, and December 2003, and January, March, April, May, October, and December 2004, in violation of 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A); PENALTY: $4,125; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Maria E. Warren dba Peppers Pit Stop; DOCKET NUMBER: 2004-0515-PST-E; TCEQ ID NUMBER: RN101435410; LOCATION: the northwest corner of Highway 175 and Highway 59, Montague, Montague County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: Failure to inspect and test the cathodic protection system for operability and adequacy of protection at least once every three years and failed to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, in violation of 30 TAC §334.49(c)(4) and §334.49(c)(2)(C), and TWC, §26.3475; failed 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, in violation of 30 TAC §37.815(a) and (b); failed to monitor for releases from the facility's UST system at least once per month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods described in 30 TAC §334.50, in violation of 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1); failed to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point near the fill tube that corresponds to the UST identification number listed on the registration and self-certification form, in violation of 30 TAC §334.8(c)(5)(C); failed to conduct effective inventory control procedures for all UST systems at a retail service station; failed to pay a late fee of $7.50 for UST annual facility fee, TCEQ Financial Administration Account No. 0058667U, in violation of 30 TAC §334.22(a) and (b); PENALTY: $19,000; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Naide Enterprises, Inc. dba Big Star Mart; DOCKET NUMBER: 2005-1562-PST-E; TCEQ ID NUMBER: RN102352788; LOCATION: 2803 Vance Jackson Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: Failure to post the facility's delivery certificate in a location clearly visible at all times, in violation of 30 TAC §334.8(c)(5)(A)(iii); failed 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 nonremovable point in the immediate area of the fill tube on each regulated UST at the facility, in violation of 30 TAC §334.8(c)(5)(C); failed to notify the commission within 30 days from the date of the occurrence of any change or addition to the UST system, in violation of 30 TAC §334.7(d)(3); failed to provide corrosion protection for the UST system at the facility, in violation of 30 TAC §334.49(a) and TWC, §26.3475(d); failed to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), in violation of 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1); failed to equip each tank with a valve or other appropriate device designed to either automatically shut off or restrict the flow of regulated substances into the tanks when the liquid level in the tanks reach a preset level, in violation of 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2); failed to demonstrate current 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, in violation of 30 TAC §37.815(a) and (b); PENALTY: $11,550; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(10) COMPANY: Poalson Investments, L.L.C.; DOCKET NUMBER: 2005-1766-PWS-E; TCEQ ID NUMBER: RN101232056; LOCATION: 4319 Hazy Hills Drive, Spicewood, Travis County, Texas; TYPE OF FACILITY: public water supply facility; RULES VIOLATED: Failure to collect routine bacteriological samples at a frequency based on the population served by the system and failed to notify persons served by the system, in violation of 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d); failed to collect additional routine samples following a coliform-positive month, i.e., March 2005, and failed to notify persons served by the system, in violation of 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B); failed to collect repeat samples following a coliform-positive month, i.e., February 2005, and failed to notify persons served by the system, in violation of 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B); failed to pay public health service fees, including late fees, for TCEQ FA Account No. 0092270272 for Fiscal Years 2002, 2003, 2004, and 2005, in violation of 30 TAC §290.51(a)(3) and TWC, §5.702; PENALTY: $4,800; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(11) COMPANY: Sadruddin & Sons, Inc. dba Churchill Grocery; DOCKET NUMBER: 2005-1291-PWS-E; TCEQ ID NUMBER: RN101906204; LOCATION: 4128 Farm-to-Market Road 2611, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: Failure to collect routine water samples for bacteriological analysis for the months of April, September, and December 2003, February, May, June, July, August, and December 2004, and January 2005, in violation of 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d); failed to post a public notification for the months of August and December of 2004 and January 2005, as documented during the TCEQ central office record review investigation conducted on February 1, 2005, in violation of 30 TAC §290.122(c)(2)(B); PENALTY: $3,225; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200603406

Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 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 **July 31, 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 July 31, 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: Benbrook L.L.C. dba Benbrook Village Mobile Home Park Wastewater Treatment Facility; DOCKET NUMBER: 2005-1337-MWD-E; TCEQ ID NUMBER: RN102963238; LOCATION: approximately 0.5 miles south of the intersection of United States Highway 377 and Farm-to-Market Road 1187, approximately 16 miles southwest of Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1); Texas Pollutant Discharge Elimination System (TPDES) Permit No.12723001 Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 6; and TWC, §26.121(a) by failing to comply with the permitted effluent limits from January 2004 to August 2004; 30 TAC §305.125(17) and TPDES Permit No.12723001 Monitoring and Reporting Requirements No. 1 by failing to submit monitoring results at the intervals specified in the permit; 30 TAC §305.125(17) and TPDES Permit No.12723001 Monitoring and Reporting Requirements No. 1 by failing to submit monitoring results at the intervals specified in the permit; 30 TAC §290.51(a)(3) and TWC, §5.702 by failing to pay the public health service late fees for Account No. 9220293, which were due on January 10, 2005; PENALTY: $6,552; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Bluff Springs Food Mart, Inc. dba Mr. MC's Grocery & Market; DOCKET NUMBER: 2005-0403-PST-E; TCEQ ID NUMBERS: 24730 and RN101492379; LOCATION: 2109 Holly Street, Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d) by failing to ensure that the rectifier (impressed current system) and other system components were operating properly by inspecting the rectifier and components at least once every 60 days; 30 TAC §37.815(a) and (b) by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1) by failing to have release detection for the UST system. Specifically, Bluff Springs failed to monitor its USTs for releases at least once per month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c) by failing to conduct inventory control for all of the facility's USTs involved in the retail sale of petroleum substances used as a motor fuel; 30 TAC §334.7(d)(3) by failing to amend, update, or change the UST registration and self-certification information; 30 TAC §334.8(c)(5)(B)(ii) by failing to renew a fuel delivery certificate by timely and proper submission of a new UST Storage Tank Registration and Self-Certification Form to the TCEQ; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a) by failing to make available to a common carrier a valid, current TCEQ fuel delivery certificate before delivery of a regulated substance into the USTs; PENALTY: $16,100; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(3) COMPANY: City of Quinlan; DOCKET NUMBER: 2004-0867-MWD-E; TCEQ ID NUMBER: RN101917565; LOCATION: approximately 2,100 feet southwest of the intersection of State Highway 276 and State Business Highway 34, Quinlan, Hunt County, Texas; TYPE OF FACILITY: municipal wastewater discharge system; RULES VIOLATED: Failure to prevent unauthorized discharges from its collection system, in violation of TPDES Permit No. 13725-001, Permit Conditions Nos. 2(d) and 2(g) and 30 TAC §305.125(1) and §305.535(c)(1); failed to conduct tests and maintain associated records, in violation of 30 TAC §§305.125(1), 319.7(a), and 319.11 and TPDES Permit No. 13725-001, Monitoring and Reporting Requirements No. 3(c); failed to provide discharge and effluent noncompliance notification, in violation of TPDES Permit No. 13725-001, Monitoring and Reporting Requirements No. 7 and 30 TAC §305.125(1); failed to employ an operator with the proper certification level to operate the facility, in violation of TPDES Permit No. 13725-001, Other Requirements No. 1 and 30 TAC §30.350(i); failed to ensure that the facility and all of its systems of collection, treatment, and disposal were properly operated and maintained at all times, in violation of 30 TAC §§305.125(1) and (5), 317.3, and 317.4(a)(5) and (d) and TPDES Permit No. 13725-001, Operational Requirements Nos. 1 and 4; failed to conduct tests and maintain associated records, in violation of 30 TAC §§305.125(1), 319.6, 319.7(a), 319.9, and 319.11 and TPDES Permit No. 13725-001, Monitoring and Reporting Requirements No. 2; failed to ensure that liquid paint filter tests for sludge disposed of in a municipal landfill were recorded, in violation of 30 TAC §305.125(1) and TPDES Permit No. 13725-001, Permit Sludge Provisions No. III.F.(1); failed to comply with the permitted effluent limits for biological oxygen demand (BOD) and total suspended solids (TSS), in violation of TPDES Permit No. 13725-001, Effluent Limitations and Monitoring Requirements No. 1, TWC, §26.121(a), and 30 TAC §305.125(1); failed to comply with the total chlorine residual permitted effluent limitation, in violation of TPDES Permit No. 13725-001, Effluent Limitations and Monitoring Requirements No. 2, TWC, §26.121(a), and 30 TAC §305.125(1);

failed to comply with the minimum default order (DO) permitted effluent limitation, in violation of TPDES Permit No. 13725-001, Effluent Limitations and Monitoring Requirements No. 6, TWC, §26.121(a), and 30 TAC §305.125(1); failed to provide an adequate backflow prevention device and the annual device test report, in violation of 30 TAC §317.4(a)(8) and TPDES Permit No. 13725-001, Permit Condition No. 2.a; PENALTY: $31,950; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: CSA Limited, Inc.; DOCKET NUMBER: 2005-0916-IWD-E; TCEQ ID NUMBERS: 04084 and RN102095882; LOCATION: 16212 State Highway 249, Houston, Harris County, Texas; TYPE OF FACILITY: industrial wastewater treatment system; RULES VIOLATED: TWC, §26.121(a) and 30 TAC §305.125(1) by failing to comply with permitted effluent limits; PENALTY: $3,000; 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.

(5) COMPANY: Golden Horn Corporation dba Cat Corner; DOCKET NUMBER: 2005-0271-PST-E; TCEQ ID NUMBER: RN101765188; LOCATION: 101 East Walker Street, League City, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c) by failing conduct effective manual or automatic inventory control procedures for the UST systems; 30 TAC §334.8(c)(5)(A)(iii) by failing to ensure that a valid, current delivery certificate was posted at the facility; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a) by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance; PENALTY: $6,300; 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.

(6) COMPANY: Hazrat Syed; DOCKET NUMBER: 2005-1374-PST-E; TCEQ ID NUMBER: RN101377984; LOCATION: 2 East Fayle Street, Baytown, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b) by failing to verify proper operation of Stage II equipment at least once every 12 months or upon major system replacement or modification; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2) by failing to install overfill prevention equipment on each UST; 30 TAC §115.242(3)(A) and THSC, §382.085(b) by failing to provide and maintain the Stage II Vapor Recovery System in proper operating condition and free of defects; 30 TAC §334.10(b) by failing to have required UST records maintained, readily accessible, and available for inspection upon request by a representative of the TCEQ; PENALTY: $5,750; 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.

(7) COMPANY: Hung Tran dba Corner Stop Food Mart; DOCKET NUMBER: 2005-0141-PST-E; TCEQ ID NUMBERS: 35272 and RN101446664; LOCATION: 409 South Brooks Street, Brazoria, Brazoria 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: $1,600; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: N.T. Petroleum-Bedford, LLC dba Bedford Chevron; DOCKET NUMBER: 2005-1403-PST-E; TCEQ ID NUMBERS: 69212 and RN101545705; LOCATION: 3800 Cheek Sparger Road, Bedford, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide on or about January 2, 2004, acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: $2,910; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Pirafzal Corporation dba Star Stop 4; DOCKET NUMBER: 2005-1690-PST-E; TCEQ ID NUMBER: RN101734952; LOCATION: 1805 Texas Avenue, Bridge City, Orange 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 and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: $2,400; 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.

(10) COMPANY: Plain-O-Gas, Inc. dba Fina; DOCKET NUMBER: 2005-1646-PST-E; TCEQ ID NUMBER: RN101542512; LOCATION: 1421 North Central Expressway, Plano, Collin 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 storage tanks; PENALTY: $4,200; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: RCF Investments Inc.; DOCKET NUMBER: 2005-1206-PST-E; TCEQ ID NUMBER: RN101555282; LOCATION: 7458 West Interstate 20, Weatherford, Parker 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: $2,850; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Robert Wilson dba Brenham South Mobile Home Park; DOCKET NUMBER: 2004-1387-PWS-E; TCEQ ID NUMBER: RN101202232; LOCATION: 300 Bilski Lane, off of State Highway 36, approximately 3.6 miles south of United States Highway 290, Brenham, Washington County, Texas; TYPE OF FACILITY: public water supply facility; RULES VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration within the farthest reaches of the distribution system at a minimum of 0.2 milligrams per liter free chlorine as required; 30 TAC §290.42(e)(5), by failing to properly seal the hypochlorination solution container to prevent the entrance of dust, insects, and other contaminants; 30 TAC

§290.46(i), by failing to provide a plumbing ordinance or service agreement; 30 TAC §290.41(c)(1)(F), by failing to have the required sanitary control easement covering all property within 150 feet of the well; 30 TAC §290.46(h), by failing to have calcium hypochlorite; 30 TAC §290.46(t), by failing to post a legible sign at the water plant; 30 TAC §290.46(m), by failing to initiate a maintenance program to ensure the reliability and general appearance of all regulated facilities and reduce costly repairs due to a lack of proper maintenance; 30 TAC §290.42(m), by failing to provide each water treatment plant and all appurtenances with an intruder-resistant fence in order to protect the well and pressure tank; 30 TAC §290.46(f)(2), by failing to make water system records accessible for review at the time of the investigation; 30 TAC §290.46(m)(4), by failing to maintain the pressure tank and related piping in a watertight condition; 30 TAC §290.45(b)(1)(A)(i), by failing to provide adequate well production capacity of 1.5 gallons per minute (GPM) per connection; 30 TAC §290.45(b)(1)(A)(ii), by failing to provide adequate pressure tank capacity of 50 gallons per connection; 30 TAC §290.42(1), by failing to provide a plant operation manual; 30 TAC §290.121(a), by failing to maintain adequate up-to-date chemical and microbiological monitoring plan; 30 TAC §290.51(a)(3), and TWC, §5.702, by failing to pay the Public Health Service fee for Fiscal Year 2004, for Financial Administration Account Number 92390047; PENALTY: $2,096; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(13) COMPANY: Sabina Petrochemicals LLC; DOCKET NUMBER: 2005-0456-AIR-E; TCEQ ID NUMBER: RN100216977; LOCATION: 2700 Highway 366, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §101.20(3), and §116.115(b)(2)(F) and (c); Permit No. 41945/ PSD-TX-950/N 018; and THSC, §382.085(b), by failing to maintain a volatile organic compound (VOC) emission rate below the allowable limit for the High Pressure Flare (EPN P-7, Incident No. 38454); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); and Permit No. 41945/ PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), by failing to maintain a VOC emission rate below the allowable emission limit for the Low Pressure Flare (EPN P-6, Incident No. 39496); 30 TAC §101.2(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), by failing to maintain an emission rate below the allowable emission limits for the Low Pressure Flare (EPN P-6, Incident No. 39497); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the Flow Valve at the Crude C4 Line in the C4 Complex (Incident 47680); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No.1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the High Pressure Flare (EPN P-7, Incident 38856); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the High Pressure Flare (EPN P-7, Incident 38862); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the Low Pressure Flare (EPN P-6, Incident 38857); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the Low Pressure Flare (EPN P-6, Incident 38858); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the Low Pressure Flare (EPN P-6, Incident 38860); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the Low Pressure Flare (EPN P-6, Incident 38861); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1, and THSC, §382.085(b) for failure to maintain an emission rate below the allowable emission limits from the Low Pressure Flare (EPN P-6, Incident 43641); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (C); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the Low Pressure Flare (EPN P-6, Incident 43644); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the Low Pressure Flare (EPN P-6, Incident 43650); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the High Pressure Flare (EPN P-7, Incident 56391); 30 TAC §101.20(3) and §116.115(b)(2)(F) and (c); Permit No. 41945/PSD-TX-950/N-018, Special Condition No. 1; and THSC, §382.085(b), for failure to maintain an emission rate below the allowable emission limits from the High Pressure Flare (EPN P-7, Incident 56392); PENALTY: $33,275; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Silverlake Church; DOCKET NUMBER: 2005-1682-PWS-E; TCEQ ID NUMBER: RN101244986; LOCATION: Pearland, Brazoria County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: failed to collect routine water samples for bacteriological analysis and failed to post a public notification, in violation of 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d); PENALTY: $2,398; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Texas H2O, Inc. dba Canyon Creek Addition; DOCKET NUMBER: 2004-0900-PWS-E; TCEQ ID NUMBER: RN101213411; LOCATION: 2406 Christine Drive, Granbury, Hood County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(m) by failing to maintain the facility in a manner so as to prevent conditions that might cause the contamination of the water system; 30 TAC §290.41(c)(1)(F) by failing to have a sanitary control easement covering land within 150 feet of Well. No. 1 (G110070A) and Well. No. 2 (G1110070B); 30 TAC §290.46(f)(3)(E) by failing to maintain Customer Service Inspection reports; 30 TAC §290.109(c)(2)(A) and THSC, §341.033(d) by failing to collect the required number of monthly bacteriological samples; 30 TAC §290.45(b)(1)(D)(i) and THSC, §341.0315(c) by failing to meet the TCEQ's Minimum Water System Capacity Requirements; 30 TAC §290.44(f)(2) by failing to maintain the watertight pipe encasement and to provide shut-off valves on each side of a pipe that was crossing the channel of an intermittent stream near Lot 439 on Creek Drive; 30 TAC §290.44(a)(4) by failing to ensure that the top of a waterline, located near Lot 187 off of Caroline Court, was located below the frost line and no less than 24 inches below ground surface; 30 TAC §290.46(e)(2)(A) and THSC, §341.033(a) by failing to obtain the

guidance and approval of a licensed water works operator prior to repairing production, treatment, storage, pressure maintenance, or distribution facilities and being placed into service; 30 TAC §291.93(3) and TWC, §13.139(d) by failing to submit to the executive director a planning report that clearly explained how the facility would provide the expected service demands within the boundaries of its certificated area; PENALTY: $4,480; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Tulon Murphy, Jr. dba L & J Grocery Store and Leticia Maria Murphy dba L & J Grocery Store; DOCKET NUMBER: 2005-0209-PST-E; TCEQ ID NUMBER: RN102267234; LOCATION: 1501 North Front Street, Fort Stockton, Pecos 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 and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; TWC, §5.702 and 30 TAC §334.22(a), by failing to pay UST fees for TCEQ Account No. 0058847U for the Fiscal Year 2005 and associated late fees; PENALTY: $2,100; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(17) COMPANY: YFZ Land, LLC; DOCKET NUMBER: 2005-1430-MLM-E; TCEQ ID NUMBER: RN104250626; LOCATION: approximately four miles northeast of the intersection of United States Highway 277 and Rudd Road north of Eldorado, Schleicher County, Texas; TYPE OF FACILITY: religious retreat; RULES VIOLATED: 30 TAC §330.5(c) by failing to comply with the general prohibitions involving municipal solid waste; 30 TAC §332.3(a) by failing to comply with the composting requirements; 30 TAC §111.201 and THSC, §382.085(b) by failing to comply with the general prohibitions against outdoor burning; 30 TAC §330.5(a)(1) by failing to properly dispose of municipal solid waste; TWC, §26.121(a)(1) by failing to prevent an unauthorized discharge of wastewater from a wastewater holding tank; 30 TAC §334.51(a)(7) by failing to properly dispose of hydraulic oil; 30 TAC §116.110(a) and THSC, §382.085(b) by failing to obtain authorization prior to construction and operation of a facility that emits air contaminants; PENALTY: $14,140; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

TRD-200603405
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 2006

Notice of Opportunity to Comment on Shutdown Orders

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown Orders (SOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes an SO after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. In accordance with 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 **July 31, 2006** . The commission will consider any written comments received; and the commission may withdraw or withhold approval of an SO if a comment discloses facts or considerations that indicate that the consent to the proposed SO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed SO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed SOs are available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the SO should be sent to the attorney designated for the SO 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 July 31, 2006**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the SOs and/or the comment procedure at the listed phone numbers; however, comments on the SOs should be submitted to the commission in **writing**.

(1) COMPANY: Judy Davis dba Judy's Kountry Kitchen; DOCKET NUMBER: 2006-0063-PST-E; TCEQ ID NUMBER: RN102260767; LOCATION: Highway 75 and Farm-to-Market Road 315, Poyner, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(a)(1)(A), by failing to provide proper release detection for the pressurized piping associated with the USTs at the facility; TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to provide proper release detection for the pressurized piping associated with the USTs at the facility; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once a month for the USTs at the facility; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: Naide Enterprises, Inc. dba Big Star Mart; DOCKET NUMBER: 2005-1562-PST-E; TCEQ ID NUMBER: RN102352788; LOCATION: 2803 Vance Jackson Road, San Antonio, Bexar 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 post the facility's delivery certificate in a location clearly visible at all times; 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 nonremovable point in the immediate area of the fill tube on each regulated UST at the facility; 30 TAC §334.7(d)(3), by failing to notify the commission within 30 days from the date of the occurrence of any change or addition to the UST system; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system at the facility; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to either automatically shut off or restrict the flow of regulated substances into the tanks when the liquid level in the tanks reaches a preset level; and 30 TAC §37.815(a) and

(b), by failing to demonstrate current 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; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(3) COMPANY: Pak Convenience Store, Inc. dba One Stop #15; DOCKET NUMBER: 2005-154-PST-E; TCEQ ID NUMBER: RN102402179; LOCATION: 8460 Denton Drive, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide proper release detection for the USTs at the facility; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200603404
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: June 21, 2006

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (commission) on June 16, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. M & C Enterprises, Inc. fdba Handi Plus 25; SOAH Docket No. 582-06-0335 TCEQ Docket No. 2003-0809-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against M & C Enterprises, Inc. fdba Handi Plus 25 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-200603392
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: June 21, 2006

General Land Office

Notice of Approval of Coastal Boundary Survey

Pursuant to §33.136 of the Natural Resources Code, notice is hereby given that Jerry Patterson, Commissioner of the General Land Office, approved a coastal boundary survey, Aransas County Art. 33.136 Sketch No. 6, submitted by J. L Brundrett Jr., duly elected County Surveyor of Aransas County, Texas, plat dated November 8, 2005, locating the following shoreline boundary:

A PLAT SHOWING SHORELINE SURVEY OF TRACT CALLED 20.0 ACRES OF LAND OUT OF LOT 1, SECTION 46, FIFTH SUBDIVISION OF TAFT FARM LANDS, WILLIAM STEEL SURVEY, ABSTRACT NO. 191, ARANSAS COUNTY, TEXAS RECORDED IN THE CLERK'S FILE NO. 179354, OFFICIAL PUBLIC RECORDS OF ARANSAS COUNTY, TEXAS, WITH SURVEY MADE TO DETERMINE MEAN HIGH WATER.

For a copy of this survey, contact Archives & Records, Texas General Land Office at (512) 463-5277.

TRD-200603355
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: June 19, 2006

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
Arlington	Cardiology Partners LLP	L05999	Arlington	00	06/01/06
Selma	Greene Tweed & Co II LP	L05988	Selma	00	06/02/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	91	06/07/06
Amarillo	Amarillo Heart Group LLP DBA Amarillo Heart Group	L04697	Amarillo	20	06/09/06
Austin	ARA Imaging	L05862	Austin	10	06/12/06
Austin	Austin Positron Emission Tomography LP DBA Austin PET & Imaging Center	L05861	Austin	01	06/01/06
Austin	Austin Radiological Association	L00545	Austin	120	06/12/06
Austin	Capital Cardiovascular Consultants	L05590	Austin	12	06/09/06
Austin	Daughters of Charity Health Services of Austin DBA Brackenridge Hospital	L00268	Austin	90	06/04/06
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Ctr	L04910	Austin	59	06/13/06
Austin	Texas Cardiovascular Consultants PA	L05246	Austin	20	05/30/06
Baytown	Exxonmobil Refining and Supply Company	L01134	Baytown	60	05/30/06
Beaumont	Exxonmobile Oil Corporation	L00603	Beaumont	72	06/01/06
Bedford	Metroplex Surgicare Partners LTD DBA Metroplex Surgicare	L05764	Bedford	02	06/13/06
Borger	Hutchinson County Hospital District DBA Golden Plains Community Hospital	L04369	Borger	10	06/07/06
Cleveland	Cleveland Regional Medical Center LP	L02055	Cleveland	34	06/06/06
Dallas	Tenet Health System Hospitals Dallas Inc DBA RHD Memorial Medical Center	L02314	Dallas	52	05/31/06
Dallas	University of Texas Southwestern Medical Center at Dallas	L05947	Dallas	03	06/14/06
Denton	Daniel W Caldwell MD PA	L05984	Denton	01	06/13/06
Denton	Rocky Mountain Medical Center LP DBA North Texas Hospital	L05936	Denton	01	06/12/06
Denton	TTHR Limited Partnership DBA Presbyterian Hospital of Denton	L04003	Denton	39	06/06/06
Edinburg	Doctors Hospital at Renaissance LTD DBA Doctors Hospital at Renaissance	L05761	Edinburg	12	06/01/06
El Paso	Louis M Alpern MD	L02928	El Paso	06	06/02/06
Ennis	PRHC Ennis LP DBA Ennis Regional Medical Center	L05427	Ennis	04	05/31/06
Fort Worth	Oncology Hematology Consultants PA DBA The Center for Cancer and Blood Disorders	L05919	Fort Worth	05	05/31/06
Garland	Baylor Medical Center at Garland	L01565	Garland	40	06/08/06
Houston	American Diagnostic Tech LLC	L05514	Houston	25	06/07/06
Houston	Cardinal Health	L05536	Houston	17	05/31/06
Houston	Cardiology Associates	L05500	Houston	07	06/05/06
Houston	Gulf Coast MRI & Diagnostic	L05333	Houston	08	06/05/06
Houston	Mallinckrodt Medical Inc	L03008	Houston	73	06/09/06
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Memorial City	L01168	Houston	91	06/14/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Katy	Hector Ubaldo MD PA DBA Physicians of Katy	L05876	Katy	02	06/06/06
La Porte	Rohm and Haas Chemicals LLC	L04368	La Porte	11	06/08/06
Laredo	Laredo Texas Hospital Company LP DBA Laredo Medical Center	L01306	Laredo	52	06/02/06
Liberty	Master Industries Inc	L05872	Liberty	05	06/01/06
Llano	Llano County Hospital Authority DBA Llano Memorial Healthcare System	L04438	Llano	21	06/12/06
Lubbock	Radiation Oncology of the South Plains PA DBA Lubbock Cancer Center	L05484	Lubbock	09	06/05/06
Midland	West Texas Medical Center LLC	L04729	Midland	13	05/26/06
Missouri City	Fort Bend Hospital Inc DBA Fort Bend Medical Center	L03457	Missouri City	27	05/31/06
Mt Vernon	East Texas Medical Center	L05954	Mt Vernon	02	06/08/06
Nacogdoches	Nacogdoches Heart Clinic	L04382	Nacogdoches	13	06/12/06
Odessa	Ector County Hospital District DBA Medical Center Hospital	L01223	Odessa	81	06/13/06
Pasadena	CHCA Bayshore LP DBA Bayshore Medical Center	L00153	Pasadena	79	06/08/06
Pasadena	Nuclear Medicine Associates PA	L05712	Pasadena	05	06/14/06
Plano	North Texas Regional Cancer Center	L05357	Plano	07	06/06/06
Point Comfort	Alcoa World Alumina Atlantic Point Comfort Operations	L05186	Point Comfort	06	06/05/06
Richardson	Siemens Maintenance Services LLP	L05660	Richardson	03	06/05/06
Richmond	Polly Ryon Hospital Authority DBA Oakbend Medical Center	L02406	Richmond	40	06/13/06
San Antonio	Cancer Therapy and Research Center	L01922	San Antonio	85	06/13/06
San Antonio	Schnitzler Cardiovascular Consultants	L05792	San Antonio	03	06/06/06
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	146	05/31/06
San Antonio	University of Texas at San Antonio Environmental Health, Safety and Risk Management	L01962	San Antonio	55	06/13/06
Sugarland	US Imaging Inc	L04459	Sugarland	31	06/09/06
The Woodlands	ADVISYS Inc	L05773	The Woodlands	02	05/31/06
The Woodlands	Advisys Inc	L05773	The Woodlands	03	06/13/06
Tyler	Allens Nutech Inc DBA Nutech Inc	L05511	Tyler	08	06/06/06
Tyler	Cardiovascular Associates of East Texas PA	L04800	Tyler	17	06/09/06
Tyler	Trinity Mother Frances Health System	L01670	Tyler	122	06/09/06
Victoria	Citizens Medical Center	L00283	Victoria	75	06/12/06
Victoria	Victoria of Texas LP DBA Detar Hospital Navarro	L01630	Victoria	42	06/13/06
Waco	Baylor University Department of Risk Management	L00400	Waco	21	06/01/06
Wichita Falls	Bradley E Samuelson MD	L05682	Wichita Falls	02	06/09/06
Wichita Falls	North Texas Surgi Center	L05847	Wichita Falls	02	06/12/06
Throughout Tx	Team Industrial Service Inc	L00087	Alvin	144	06/08/06
Throughout Tx	Lower Colorado River Authority	L02738	Austin	39	06/01/06
Throughout Tx	Texas Department of Transportation Construction Division	L00197	Austin	115	05/31/06
Throughout Tx	Conocophillips Company DBA Borger Refinery and NGL Center	L02480	Borger	45	05/31/06
Throughout Tx	Apex Inspections Inc	L05563	Carrollton	06	06/06/06
Throughout Tx	N-Spec Quality Services Inc	L05113	Corpus Christi	25	06/13/06
Throughout Tx	Landtec Engineers LLC	L05341	Fort Worth	02	06/13/06
Throughout Tx	Bonded Inspections Inc	L00693	Garland	73	06/01/06

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	Varco LP FKA Tubscope Vetco International Inc	L00287	Houston	119	06/05/06
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	222	06/01/06
Throughout Tx	Southern Services Inc DBA Southern Technical Services	L05270	Lake Jackson	45	06/07/06
Throughout Tx	E M Hobbs LP	L05738	Midland	07	05/31/06
Throughout Tx	Dessert Industrial X-Ray LP	L04590	Odessa	51	06/05/06
Throughout Tx	Dessert Industrial X-Ray LP	L04590	Odessa	52	06/08/06
Throughout Tx	Costal Wireline Services Inc DBA Gulf Coast Well Analysis	L04239	Pearland	11	06/05/06
Throughout Tx	Ludlum Measurements Inc	L01963	Sweetwater	76	05/31/06

LICENSE RENEWALS ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Mallinckrodt Medical Inc	L03008	Houston	72	06/01/06
Houston	TH Healthcare LTD DBA Park Plaza Hospital	L02071	Houston	53	06/09/06
Linden	Good Shepherd Medical Center Linden Inc	L02721	Linden	19	06/05/06
Lubbock	Cardiologist of Lubbock PA	L05038	Lubbock	17	06/01/06
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	39	06/08/06
Sherman	Texas Oncology PA DBA Texas Cancer Center Sherman	L05019	Sherman	14	06/12/06
Throughout Tx	The University of Texas at El Paso Radiation Safety Office	L00159	El Paso	52	06/12/06
Throughout Tx	Quantum Technical Services Inc	L03731	Pasadena	27	05/31/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Throughout Tx	City of Abilene	L05254	Abilene	04	06/09/06
Throughout Tx	Zack Burkett Company	L04102	Graham	09	06/14/06

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 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-200603389
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 21, 2006

Notice of Opportunity for Public Comment

The Department of State Health Services (department) is giving notice of the opportunity for public comment on the Fiscal Year 2007 Statewide Substance Abuse Block Grant Plan for continuation of Federal Block Grant Funds at: http://www.dshs.state.tx.us/cpi/saptbg.

Under the authority of the Public Health Service Act (42 USC 300x-21-64), as amended (Title XIX, Part B, Subpart II and Subpart III (for

SAPT)), the department is making application to the Substance Abuse and Mental Health Services Administration (SAMHSA) for funds to continue the Substance Abuse Prevention and Treatment Block Grant (SAPT BG) during federal fiscal year (FFY) 2007. Provisions in the Act require the chief executive officer of each state to comply with specific provisions that include furnishing an annual report of current service activities (funds spent), and a description (state plan) of the intended use of block grant funds in advance of each FFY. A proposal of this description is to be made public within each state in such a manner as to facilitate comments.

Information about the SAPT BG and written comments regarding the SAPT BG Intended Use Plan may be submitted to: http://www.dshs.state.tx.us/cpi/saptbg through August 15, 2006 for the purpose of maintaining and enhancing a quality statewide substance abuse service system and highlighting priority issues related to federally funded substance abuse prevention and treatment services statewide.

Public comments received will be considered in the preparation and development of the FFY07 Continuation Application. In September of 2007, the department will prepare and submit to the Governor and federal government the final FFY 2007 Continuation Application, which includes the Intended Use Plan for SAPT Block Grant funds.

Further information about providing comments on the referenced block grant plan may be obtained from Philander Moore at the department's Mental Health and Substance Abuse Services Division: Philander.Moore@dshs.state.tx.us, telephone (512) 206-5933.

Note: Additional instructions and contact information is provided at the individual website upon selection of the appropriate tab for the block grant on which you wish to comment.

TRD-200603409
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 21, 2006

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Texas Higher Education Coordinating Board

Request for Offers for Consulting Services

The Texas Higher Education Coordinating Board (hereinafter referred to as THECB) is soliciting offers from organizations (hereinafter referred to as Consultant) for consulting services to advise THECB on the Texas Association of Developing Colleges (hereinafter referred to as TADC) Centers for Teacher Education. The ultimate objectives of this Request for Offers (hereinafter referred to as RFO) are to: (1) facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign, and improvement of TExES/ExCET preparation; (2) work in collaboration with the THECB and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development, and improvement of TExES/ExCET preparation; (3) facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of TExES/ExCET preparation; and (4) report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures.

This Request for Offer is being made pursuant to authority granted under Texas Government Code, Chapter 2254, Subchapter B, §2254.026 (relating to contracts with private consultants).

1. GENERAL BACKGROUND:

The Texas Legislature established the Centers for Teacher Education Program during the 74th Legislative Session. The THECB was given the assignment of managing the program and has provided trusteed funds to support the programs at several historically Black Colleges. These institutions collectively form the Texas Association of Developing Colleges (TADC) and include Jarvis Christian College in Hawkins, Paul Quinn College in Dallas, Texas College in Tyler, Huston-Tillotson University in Austin, and Wiley College in Marshall. These colleges are private, general academic, minority-serving institutions; and the funds appropriated are used for the purpose of supporting their centers for teacher education. The purpose of the Centers for Teacher Education at the participating institutions is to: (1) recruit, train and place qualified minorities in the teaching profession; (2) integrate technology into the colleges' teacher preparation programs; and (3) provide and participate in at least one course per semester via distance education technologies.

The THECB retains a small percentage of the appropriations made for the teacher education centers for the costs of on-site monitoring and distribution of funds and uses a portion of the amounts retained to obtain the services of a consultant to facilitate and coordinate the process of curriculum development and program redesign to improve teacher preparation at the participating institutions. The consultant assists with the administrative oversight of the various teacher education activities, coordinates the quarterly meetings that are held in Dallas, and works closely with THECB staff.

2. CONTRACT TERM:

2.1 The contract resulting from this RFO, shall commence on the execution date and shall terminate on August 31, 2007 or upon the completion of the Consultant's work described herein, whichever occurs first, unless terminated earlier pursuant to terms and conditions of the anticipated contract resulting from this RFO.

3. SCOPE OF WORK:

3.1 Overview

Consultant shall facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign, and improvement of TExES/ExCET preparation; work in collaboration with the THECB and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development, and improvement of TExES/ExCET preparation; facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of TExES/ExCET preparation; and report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures. Consultant shall be solely responsible and accountable for managing and completing all activities, tasks, milestones and deliverables in accordance with the Scope of Work and the deliverables commitment of this RFO. Assignment of THECB staff to assist Consultant in its responsibility shall in no way release the Consultant from its responsibility for completing any work or delivering any products set forth in this RFO, its Statement of Work or resulting contract.

3.2 Phase I--Proposal

Consultant shall provide to THECB a proposal of services to be performed, a proposed plan of action to be taken to achieve the goals set forth in this agreement, and an evaluation of the attainment of the goals and objectives set forth by the agreement. The proposal must include specific objectives and timelines for meeting each phase of the plan. The proposal must also include consultant's travel costs to TADC schools named in Section 1 or other sites within Texas, including travel costs of THECB staff to monitor compliance with this contract.

3.2.1 In response to this RFO, the Consultant must:

1. provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase I objectives;

2. propose a detailed description of the tasks, activities, resources, and time lines for performing Phase I objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);

3. provide a brief description of Consultant's qualifications to perform Phase I objectives;

4. describe Consultant's prior experience in performing Phase I type objectives, with an emphasis on prior experience with public sector contracts and describe how organizations responded to Consultant's recommendations; and

5. provide a list of references where Phase I type objectives were met, including for each reference: the name of the organization; the name, title, address and telephone number of a contact person; and a brief description of the services performed.

3.3 Phase II--Progress Reports

3.3.1 Consultant shall submit to THECB a progress report providing information on: (1) all records of evidence of expenditure of funds to assist the TADC school's efforts to improve student recruitment and retention; (2) evidence of professional development activities at the TADC schools to date; (3) report on the extent to which library, mathematics, science, technology laboratories, and other facilities at the TADC schools have been enhanced; (4) evaluation of changes in curricula to better match TExES/ExCET competencies and outcomes at TADC schools; (5) evaluation of the effectiveness of technology integration to date at TADC schools; (6) summary of expenditures for personnel related to improved educator preparation at TADC schools; and (7) summary evidence that library holdings have been enhanced in the areas of certification at TADC schools.

3.3.2 In response to this RFO, the Consultant must:

1. provide a detailed description of Consultant's suggested methodology, approach, and alternatives to meeting Phase II objectives;

2. propose a detailed description of the tasks, activities, resources, and time lines for performing Phase II objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);

3. provide a brief description of Consultant's qualifications to perform the Phase II objectives;

4. describe Consultant's prior experience in performing Phase II type objectives with emphasis on prior experience with public sector contracts; and

5. provide a list of references where Phase II type objectives were met, including for each reference: the name of the organization; the name, title, address and telephone number of a contact person; and a brief description of the services performed.

3.4 Phase III--Final Report

3.4.1 Consultant shall submit a final report to THECB evaluating the effectiveness of the funds for improving teaching education at the TADC schools and detailing their progress to date in achieving the following: (1) improving the TExES/ExCET pass rate for TADC first-time test-takers and retake pass rates; (2) increasing the number of students enrolled in the teacher preparation program at TADC schools; (3) increasing the graduation rate of teacher preparation candidates at TADC schools; (4) integrating existing technology into teacher preparation at TADC schools; and (5) summary evidence that courses are sent per semester via distance education technologies at TADC schools.

3.4.2 In response to this RFO, the Consultant must:

1. provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase III objectives;

2. propose a detailed description of the tasks, activities, resources, and time lines for performing Phase III objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);

3. provide a brief description of Consultant's qualifications to perform the Phase III objectives;

4. describe Consultant's prior experience in performing Phase III type objectives; and

5. provide a list of references where Phase III objectives were met, include for each reference: the name of the organization; the name, title, address and telephone number of a contact person; and a brief description of the services performed.

3.5 Audit

Consultant understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to audit or investigate the expenditure of state funds under this contract. Consultant further agrees to cooperate fully with the State Auditor's Office or its successor, including providing all records requested. Consultant will ensure that this clause concerning authority to audit state funds received indirectly by subcontractors through the Consultant and the requirement to cooperate is included in any subcontract it awards.

3.6 Contract Deliverables

3.6.1 Consultant shall, in a good and satisfactory manner, carry out the tasks necessary to provide analysis, advice, recommendations, performances, and Deliverables as called for in this RFO and in accordance with the Scope of Work. Such performances shall be rendered at schools named in Section 1 or other sites within Texas as hereinafter named by THECB or its designee, unless THECB, or its designee, shall otherwise specify in writing.

3.6.2 Substantive Outlines. As an interim deliverable, Consultant shall produce and present to THECB, for review and approval, a substantive outline for the work and content for: Phase I, Phase II, and Phase III. The substantive content of each outline shall include at a minimum a proposed final report format and a substantive discussion of the approach and methodology for the work to be performed. THECB and Consultant shall adjust or revise the scope of each outline to more clearly define the Scope of Work.

3.6.3 Draft Reports. As an interim deliverable, Consultant shall produce and present to THECB, for review and approval, an interim draft report for: Phase I, Phase II, and Phase III. This deliverable shall include: appendices with statistical data supporting findings, conclusions, and recommendations. Consultant shall also include: charts, graphs, and other visual representations of core findings, conclusions, and recommendations. The Consultant shall make such corrections to substance and content as identified by THECB. The Consultant shall make such adjustments and modifications to draft report as identified by THECB.

3.6.4 Final Reports. As a final contract Deliverable, Consultant shall produce a written report for: Phase I, Phase II, and Phase III. The specific organization and substantive content of each report shall be resolved throughout the project, with emphasis during the interim deliverable stages. Each report shall include the following topics and such other topics, which are specifically agreed upon between THECB, and Consultant and the report must thoroughly resolve the particular issues unique to each deliverable:

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Conclusion

Appendices

3.6.5 Status Reporting. During scheduled bi-weekly meetings, Consultant shall provide oral reports on Project progress and schedule, and a schedule of the next period's activities. Consultant shall document by written minutes of the meetings. Details of the period's activities shall include:

planned schedule versus actual schedule;

any problems encountered and status;

any failures to meet deadlines and proposed solutions; and

any deviations from the Scope of Work;

The Consultant shall disclose at the meeting the impact that any problems, failures, or deviations have on the scheduled completion of tasks and work segments, the Phase, and the entire Project. Bi-weekly meetings may be by telephone conference call.

The Consultant shall submit to THECB a written report of schedule and/or content variances from the Scope of Work for each Phase, at the deliverable, task and activity levels, within five (5) working days from the time of their occurrence.

The Consultant shall submit monthly written reports to THECB that shall encompass:

the overall status of the Project, including unanticipated problems and delays and the impact on Project completion;

the prior month's accomplishments;

any outstanding problems and/or issues and proposed solutions; and

upcoming activities.

At a minimum, Consultant shall illustrate all upcoming activities using work plans specifically identifying tasks, personnel, and begin and end dates.

3.6.6 Consultant and THECB shall develop a tentative schedule for periodic meetings with THECB. The meetings shall be for the purpose of providing information and additional guidance to Consultant in the performance of the Scope of Work. THECB may request interim advice from Consultant at such meetings. If appropriate, such meetings may coincide with regularly scheduled meetings to report status.

3.6.7 The THECB shall have thirty (30) business days following delivery of the interim or final products, Deliverables or Services ("Acceptance Period"), to accept or reject any products, Deliverables or Services ("Deliverable") tendered by Consultant in performance under this RFO or resulting contract. Tendering to THECB a Deliverable for Acceptance constitutes a certification by the Consultant that the Deliverable fully meets all of the requirements in the RFO, Scope of Work and any resulting contract. In the event THECB elects to reject a Deliverable during the Acceptance Period, THECB shall notify Consultant in writing of such rejection.

The THECB shall assist Consultant in identifying the error, type of error or inadequacy of the Deliverable, to permit Consultant to understand the cause of the error or inadequacy and correct the error or inadequacy. Upon Consultant's resolution of any errors or inadequacies, identified during the Acceptance Period, the Deliverable shall be resubmitted to THECB for acceptance or rejection as stated above. Acceptance of the Deliverable(s) shall be in writing by an authorized representative of THECB ("Acceptance").

3.6.8 Time is of the essence in completing the Deliverables Phases I - III Deliverables. Completion for the Deliverables for Phases I - III is required no later than August 3, 2007. Consultant should provide proposed completion dates in the format below in order to meet the project completion date of August 31, 2007.

Phase I:

Substantive Outline: tendered to THECB on or before September 15, 2006;

Interim Draft Report: tendered to THECB on or before October 6, 2006;

Final Report: tendered to THECB on or before October 27, 2006;

Status Reports, according to the schedule;

In-person-report(s).

Phase II:

Substantive Outline: tendered to THECB on or before November 10, 2006;

Interim Draft Report: tendered to THECB on or before January 12, 2007;

Final Report: tendered to THECB on or before March 2, 2007;

Status Reports, according to the schedule;

In-person-report(s).

Phase III:

Substantive Outline: tendered to THECB on or before May 4, 2007;

Interim Draft Report: tendered to THECB on or before June 15, 2007;

Final Report: tendered to THECB on or before August 3, 2007

Status Reports, according to the schedule;

In-person-report(s).

3.6.9 As an additional Deliverable, Consultant shall make "in person" presentations of its findings, analysis, conclusions, and recommenda-

tions on such dates, times, and places in Austin, Travis County, Texas as requested by THECB. Such presentations may include audiences internal or external to THECB. The THECB anticipates that no more than two or three such presentations shall be required. These presentations may occur, within an 18-month time frame following the Acceptance of the final report(s).

4. OFFER PROCESS

4.1 Questions relating to the RFO. Consultant is expected to examine this Request for Offers (RFO) carefully, understand the terms and conditions for providing the pertinent services, and respond completely. Failure to respond completely may result in disqualification. Questions about this RFO shall be directed, in writing only, to the address provided below, on company letterhead or via e-mail. Verbal questions and explanations are not permitted. Electronic submissions by facsimile shall be accepted. The THECB reserves the right to provide or not to provide additional clarification in response to Consultant's questions. To be eligible to receive Consultant questions and responses to this RFO, if any, the Consultant, must file a written letter of interest with THECB no later than 2:00 p.m. on Friday, August 4, 2006. No inquiries or questions shall be answered after 2:00 p.m. on Friday, August 4, 2006 to allow ample distribution time for any changes. Any questions or letters of interest regarding this RFO may be directed to:

Dr. Susan Hetzler, Program Director for Educator Preparation

Academic Affairs and Research Division

Texas Higher Education Coordinating Board

P.O. Box 12788

Austin, Texas 78711

4.2 Delivery of Offer. A signed original and five (5) copies of the offer must be received by THECB, no later than 5:00 p.m., Central Time, August 25, 2006. Any offer received after the specified time and date shall not be considered. Conditioned on THECB's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code, §2254.028, THECB anticipates entering into the resultant contract on or about September 1, 2006. The Consultant's offers shall be delivered to:

Dr. Susan Hetzler, Program Director for Educator Preparation

Academic Affairs and Research Division

Texas Higher Education Coordinating Board

1200 East Anderson Lane

Austin, Texas 78752

P.O. Box 12788, Austin, Texas 78711

4.3 THECB Reservation of Rights. The THECB has sole discretion and the absolute right to reject any and all offers, terminate this Request for Offers or amend, delay or re-issue this Request for Offers. The THECB reserves the right to remedy technical errors in the RFO process, waive any informalities, and irregularities relating to any or all Offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any Offer to THECB. The THECB further reserves the right to accept one or more offers and contract for any grouping or individual Deliverables described in this RFO. The issuance of this Request for Offers does not constitute a commitment by THECB to award any contract. THECB intends any material provided in this Request for Offers only and solely as a means of identifying the scope of services and qualifications sought.

4.4 Expenses for Preparing Offer. The THECB shall not pay any cost incurred by a prospective Consultant in the preparation of a response to this Request for Offers and such costs shall not be included in the budget of the prospective Consultant submitted pursuant to this Request for Offers. The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Offers. In the event that the prospective Consultant is engaged to provide the services contemplated by this Request for Offers, any expenses incurred by the prospective Consultant associated with the negotiation and execution of the contract for the engagement shall remain the obligation of the Consultant.

4.5 Non-responsive Offers. Failure to respond to all required portions of this RFO may result in the Consultant's response being deemed non-responsive. If a Consultant's response is deemed non-responsive by THECB, the response shall be disqualified. Offers must be signed by an officer or principal of the Consultant; however, they may be signed by an agent if accompanied by written evidence of authority.

4.6 Duration of Offer. All provisions in Consultant's Offer, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or if an Offer is selected, throughout the entire term of the Contract. Offers may be withdrawn in writing prior to the date and time set for receipt of Offers.

4.7 Negotiation with Consultant. Preliminary and final negotiations with top-ranked prospective Consultants may be held at the discretion of THECB. The THECB may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective Consultants submitting Offers pursuant to this request. During the negotiation process, THECB and any prospective Consultant(s) with whom THECB chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of THECB. Statements made by a prospective Consultant in the Offer packet or in other appropriate written form shall be binding unless specifically changed by the Consultant, in writing, during final negotiations. A contract award may be made by THECB without negotiations if THECB determines that such an award is in THECB's best interest.

4.8 Selection Criteria. The THECB shall conduct an evaluation of all offers that conform to the requirements of this RFO. In selecting a consultant, THECB shall: (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and (2) if other considerations are equal, give preference to a consultant whose principal place of business is in the State of Texas or who shall manage the consulting contract wholly from an office in the State of Texas. Conforming offers shall be reviewed by a Selection Committee consisting of THECB staff members.

4.9 Award/Contract Subject to Available Appropriations. This Request for Offers and any contract which may result from it are subject to appropriation of State funds, and the Request for Offers and/or contract may be terminated at any time if such funds are not available.

4.10 Public Information. All offers are considered to be public information subsequent to an award of the contract. All information relating to Offers shall be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents shall be presumed to be public unless a specific exception in that Act applies. Prospective Consultants are requested to avoid providing information which is proprietary; but if it is necessary to do so, offers must specify the specific information which the prospective Consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption that the prospective Consultant believes protects that information must be cited. The THECB shall assume that an Offer submitted to THECB contains no

proprietary or confidential information if the prospective Consultant has not marked or otherwise identified such information in the offer at the time of its submission to THECB.

4.11 Negotiation of Contract Terms and Conditions. At any time after the offers are opened, THECB may negotiate contract terms and conditions with one or more of the Consultants. An award of a contract is expressly conditioned upon THECB and Consultant reaching an agreement on contract terms and conditions. The THECB reserves the sole right, in its discretion, to determine if contract terms and conditions are acceptable. If the Consultant and THECB are unable to reach an agreement on the contract terms and conditions, THECB shall disqualify that Consultant, and then THECB shall negotiate contract terms and conditions with the next best Consultant.

4.12 Return of Offers After Selection Process. All offers become property of THECB upon receipt and shall not be returned.

4.13 Ethics Standards. No person shall participate or assume a responsibility in the implementation and execution of this RFO process including, but not limited to, the evaluation of offers and selections of Consultants, when such participation constitutes a conflict of interest as defined by state law or executive order. After the RFO is published, THECB or any employee shall not furnish any technical information, or solicit offers and/or prices for its requirements, or take any type of action which would or could be construed to give a direct or indirect advantage or disadvantage to any potential Consultant.

4.14 Restrictions on Communication. After the RFO has been issued, Consultant is prohibited from communicating with THECB staff regarding the RFO or offers, with the following exceptions:

Dr. Susan Hetzler, in writing;

The Committee, if interviews are conducted;

THECB reserves the right to contact any Consultant for clarification after responses are opened and/or to further negotiate with any Consultant if such is deemed desirable by THECB.

The THECB shall not schedule meetings with representatives of any Consultant to discuss offers; and Consultant should not contact THECB employees to explain, clarify, or discuss their Offers before an award has been made except as set out in this section. Violation of this provision may lead to disqualification from this process.

5. CONTENT OF OFFERS

5.1 All Offers must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered, and bound or stapled together. The name of the prospective Consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

5.2 A Table of Contents must be included with respective page numbers opposite each topic. The Offer must contain the following completed items in the following sequence:

Transmittal Letter: A letter addressed to Dr. Susan Hetzler, Program Director for Educator Preparation, Academic Affairs and Research Division, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 that identifies the person or entity submitting the Offer and includes a commitment by that person or entity to provide the services required by THECB. The letter must specifically identify that this Offer is in reference to THECB Texas Association of Developing Colleges-Centers for Teacher Education RFO. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Offers." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the Offer from further consideration at THECB's discretion. The letter must state, "The Offer enclosed is binding and valid at the discretion of THECB."

Executive Summary: The Offer must include a summary of the contents of the Offer, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information or offer required service deliverables may result in disqualification of the Offer.

Project Offer: The Offer must track and reference each section number in Section 3, Scope of Work. Consultant should provide a substantive description of how Consultant proposes to satisfy each item. If Consultant cannot satisfy a particular item or requirement, then Consultant must clearly identify the items or requirements it cannot satisfy. If Consultant believes it can best meet the needs of THECB by suggesting a modification to the Scope of Work, please suggest alternatives. If an alternative is proposed, please include a separate section identified as "Alternative Offer to Section X.X." The THECB reserves the right to not consider alternative Offers. If a response requires Consultant to assume facts not presented in the RFO, Consultant must clearly identify such assumed facts. If a section requests specific information, please include the requested information.

Cost Offer: The THECB is interested in awarding a fixed fee contract. Because THECB may enter into a contract for all or some of the deliverables, please identify each deliverable and the corresponding fee and include a proposed schedule of payments. Consultant is welcome to suggest alternative fee Offers; but if an alternative is offered, please clearly identify that the fee Offer is an alternative. The THECB reserves the right to not consider alternative Offers.

Qualifications: While THECB is interested in the experience and qualifications of Consultant's firm or company, THECB is particularly interested in the experience of the individual staff Consultant intends to apply to this engagement. Therefore, please include information relating to the firm's or company's experience and qualification; and please attach detailed resumes for each staff that Consultant intends to apply to this engagement. The resumes should identify the specific experience, projects, and assignments for each staff offered. Emphasis should be placed on similar projects within the public sector and/or higher education.

References: Prospective Consultants shall provide the names of at least three (3) different references meeting the following criteria:

1. The reference company or entity must have engaged the prospective Consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Offers.

2. The services must have been provided by the prospective Consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Offers.

3. The reference company or entity must not be affiliated with the prospective Consultant in any ownership or joint venture arrangement.

4. References must include the company or entity name, address, contact name, and telephone number for each reference. The THECB may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective Consultant throughout the performance of the engagement and who can address questions about the performance of the prospective Consultant from personal experience. References shall accompany the Offer.

5. For each such reference, the prospective Consultant shall provide a signed release from liability in the form of a letter addressed to the ref-

erence company or individual signed by Consultant for each reference provided in response to this requirement. The release from liability shall absolve the specified reference company or entity from liability for information provided to THECB concerning the prospective Consultant's performance of its engagement with the reference.

Financial Condition: As part of any Offer submission, the prospective Consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective Consultant's current financial condition. All offers shall include the Consultant's State of Texas vendor identification number or federal tax identification number. The THECB reserves the right to request such additional financial information as it deems necessary to evaluate the prospective Consultant; and by submission of an Offer, the prospective Consultant agrees to provide same. The prospective Consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective Consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective Consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

Certifications/Affirmations/Disclosures: By signing the transmittal letter and submitting an Offer, Consultant makes and agrees to make the following certifications, affirmations, and disclosures. If any explanation or qualification is required for any certification, affirmation, or disclosure, you must include such explanation or qualification in your transmittal letter. A false statement or misleading statement in this section is a material breach of contract and shall void the submitted Offer or any resulting contracts. Please restate each of the following certifications, affirmations or disclosures in this section of your Offer.

1. The Consultant has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer.

2. The Consultant is not currently delinquent in the payment of any franchise tax owed the State of Texas.

3. Neither the Consultant nor the firm, corporation or partnership or institution represented by the Consultant or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly the Offer made to any competitor or any other person engaged in such line of business.

4. The Consultant has not received compensation for participation in the preparation of the specification for this Offer.

5. Pursuant to Texas Family Code, §231.006 (relating to delinquent child support), the Consultant certifies that the individual or business entity named in this Offer is not ineligible to receive a specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

6. An Offer must include the names and Social Security Numbers of each person with at least a 25% ownership of the business entity submitting this Offer.

7. Pursuant to §2155.004, Government Code (relating to issuance of warrants to persons indebted to the State or who owe delinquent taxes to the State), the Consultant certifies that the individual or business entity named in this Offer is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

8. Consultant acknowledges and agrees that, to the extent Consultant owes any debt or delinquent taxes to the State of Texas, in accordance with §403.055(h), Government Code, any payments Consultant is owed under this Agreement shall be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Consultant owes the State of Texas until the debt or delinquent taxes are paid in full.

9. Pursuant to Article 2.45 of the Texas Business Corporation Act, Consultant must certify that it is not delinquent in a tax owed to the State under Chapter 171 of the Texas Tax Code. Any Consultant who is delinquent may not be awarded a contract by the State.

10. With respect to all services, if any, purchased pursuant to this RFO, Consultant represents and warrants that it shall buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

11. Consultant certifies that, if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in 1 TAC §111.2.

12. If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

13. If the Consultant is an individual who has previously been employed by THECB or any other Texas state agency at any time during the two years preceding their Offer, the Consultant must disclose the following:

the nature of the previous employment with THECB or any other state agency;

the date the employment was terminated;

the annual rate of compensation for the employment at the time of the Consultant's termination.

If a Consultant is subject to this disclosure and fails to make such a disclosure, the Offer shall be disqualified.

TRD-200603284
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: June 14, 2006

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Houston-Galveston Area Council

Request for Proposal

On Wednesday, July 5, 2006, the Houston-Galveston Area Council will issue a Request for Proposals for Hurricane Katrina and Rita Services. We are soliciting projects that provide social services or health care to hurricane-affected individuals who live in the 13-county Houston-Galveston area. Prospective bidders may download a proposal package at http://h-gac.com beginning at 12:00 noon Central Daylight Time on July 5th. H-GAC will also fill telephone, mail or email requests for hard copies of the proposal package at that time. We will not hold a bidder's conference. Submit completed proposals to H-GAC by 12:00 noon on Wednesday, July 26, 2006. We will not accept late proposals, and we will not make exceptions. Direct questions about getting a proposal package to Carol Kimmick at (713) 627-3200 or ckimmick@h-gac.com.

TRD-200603384
Jack Steele
Executive Director
Houston-Galveston Area Council
Filed: June 20, 2006

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by STATE AUTOMOBILE MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Columbus, Ohio.

Application for admission to the State of Texas by FIRST GUARANTY INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Ashdown, Arkansas.

Application for incorporation to the State of Texas by AMERICAN RISK INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within 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-200603393
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 21, 2006

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Texas Lottery Commission

Instant Game Number 681 "Turtle Tripler"

1.0 Name and Style of Game.

A. The name of Instant Game No. 681 is "TURTLE TRIPLER". The play style is "match 3 of 6 with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 681 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 681.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $3.00, $6.00, $9.00, $18.00, $27.00, $100, $1,000, $3,000 or 3X 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. 681 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$6.00	SIX$
$9.00	NINE$
$18.00	EGHTN
$27.00	TWYSVN
$100	ONE HUND
$1,000	ONE THOU
$3,000	THR THOU
3X	TRIPLE

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. 681 - 1.2E

CODE	PRIZE
ONE	$1.00
THR	$3.00
SIX	$6.00
NIN	$9.00
EHT	$18.00

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

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

G. Low-Tier Prize - A prize of $1.00, $3.00, $6.00, $9.00 or $18.00.

H. Mid-Tier Prize - A prize of $27.00, $100 or $300.

I. High-Tier Prize - A prize of $3,000.

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 (681), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 681-0000001-001.

L. Pack - A pack of "TURTLE TRIPLER" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 and 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

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

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TURTLE TRIPLER" Instant Game No. 681 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 "TURTLE TRIPLER" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals three (3) matching amounts, the player wins that amount. If a player reveals three (3) matching amounts plus a "3X" symbol, the player wins three (3) times that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

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

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

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

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

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

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

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

2.2 Programmed Game Parameters.

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

B. No four or more like play symbols on a ticket.

C. No more than 2 pairs of like play symbols on a ticket.

D. The tripler symbol will appear according to the prize structure and will only appear once on a ticket.

E. When the tripler symbol appears on a winning ticket, there will be no more than three like play symbols.

2.3 Procedure for Claiming Prizes.

A. To claim a "TURTLE TRIPLER" Instant Game prize of $1.00, $3.00, $6.00, $9.00, $18.00, $27.00, $100 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $27.00, $100 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TURTLE TRIPLER" Instant Game prize of $3,000, 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 "TURTLE TRIPLER" 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 "TURTLE TRIPLER" 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 "TURTLE TRIPLER" 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 12,000,000 tickets in the Instant Game No. 681. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 681 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,440,000	8.33
$3	768,000	15.63
$6	96,000	125.00
$9	96,000	125.00
$18	48,000	250.00
$27	11,000	1,090.91
$100	2,550	4,705.88
$300	1,750	6,857.14
$3,000	25	480,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.87. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

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

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 681 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. 681, 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-200603288

Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 15, 2006

Instant Game Number 686 "Triple Win"

1.0 Name and Style of Game.

A. The name of Instant Game No. 686 is "TRIPLE WIN". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 686 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 686.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, $$$ SYMBOL, $1.00, $2.00, $3.00, $4.00, $5.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100, $300, and $3,000.

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

Figure 1: GAME NO. 686 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
$$$ SYMBOL	TRP
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$4.00	FOUR$
$5.00	FIVE$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$60.00	SIXTY
$100	ONE HUND
$300	THR HUND
$1,000	ONE THOU
$3,000	THR THOU

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

Figure 2: GAME NO. 686 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FOR	$4.00
SIX	$6.00
TEN	$10.00
TWN	$20.00

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

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

The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $4.00, $6.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $60.00, $100, or $300.

I. High-Tier Prize - A prize of $3,000.

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 (686), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 686-0000001-001.

L. Pack - A pack of "TRIPLE WIN" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

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

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TRIPLE WIN" Instant Game No. 686 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 "TRIPLE WIN" Instant Game is determined once the latex on the ticket is scratched off to expose 10 (ten) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the prize shown for that number. If a player reveals a "$$$" play symbol, the player wins TRIPLE the prize shown for 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 10 (ten) 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 10 (ten) 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 10 (ten) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 10 (ten) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

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

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

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

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

2.2 Programmed Game Parameters.

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

B. No duplicate non-winning prize symbols.

C. No duplicate non-winning play symbols.

D. A non-winning prize symbol will never be the same as the winning prize symbol(s).

E. The tripler symbol will appear according to the prize structure and will only appear once on a ticket.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE WIN" Instant Game prize of $1.00, $2.00, $3.00, $4.00, $6.00, $10.00, $20.00, $30.00, $60.00, $100, or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $60.00, $100, or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE WIN" Instant Game prize of $3,000, 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. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

D. 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 "TRIPLE WIN" 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 "TRIPLE WIN" 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 12,000,000 tickets in the Instant Game No. 686. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 686 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,008,000	11.90
$2	1,200,000	10.00
$3	96,000	125.00
$4	72,000	166.67
$6	60,000	200.00
$10	48,000	250.00
$20	36,000	333.33
$30	10,000	1,200.00
$60	5,500	2,181.82
$100	1,250	9,600.00
$300	1,000	12,000.00
$3,000	200	60,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.73. 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. 686 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. 686, 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.

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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 19, 2006

Instant Game Number 723 "Set For Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 723 is "SET FOR LIFE". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 723 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 723.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, STAR SYMBOL, LIFE SYMBOL, $1.00, $2.00, $3.00, $5.00, $10.00, $20.00, $50.00, $100, $200, $500, $1,000, $2,500 and $5,000/WK.

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. 723 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	AUTO
STAR SYMBOL	WINX10
LIFE SYMBOL	WIN
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$

$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$200	TWO HUND
$500	FIV HUND
$1,000	ONE THOU
$2,500	25 HUND
$5,000/WK	5TH/WK

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. 723 - 1.2E

CODE	PRIZE
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅ 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 format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $200 or $500.

I. High-Tier Prize - A prize of $1,000, $2,500 or $5,000/WK ($5,000 per week not to exceed $5,000,000 total).

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 (723), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001and end with 050 within each pack. The format will be: 723-0000001-001.

L. Pack - A pack of "SET FOR LIFE" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

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 "SET FOR LIFE" Instant Game No. 723 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 "SET FOR LIFE" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) play symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player will win prize shown for that number. If a player reveals a COIN SYMBOL, the player wins prize shown instantly. If a player reveals a STAR SYMBOL, the player wins ten (10) times the prize shown. If the player reveals a LIFE play symbol, the player wins $5,000 per week (not to exceed $5,000,000 total). 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 44 (forty-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 44 (forty-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 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

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

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

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

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

2.2 Programmed Game Parameters.

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

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

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

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. The STAR (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. The LIFE play symbol will only appear with the $5,000/WK prize symbol and both symbols will only appear on the two winning tickets as dictated by the prize structure.

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

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

I. Top prizes are to be approximately evenly distributed throughout the game.

2.3 Procedure for Claiming Prizes.

A. To claim a "SET FOR LIFE" Instant Game prize of $10.00, $20.00, $50.00, $100, $200 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, $200 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 2.3.C of these Game Procedures.

B. To claim a "SET FOR LIFE" Instant Game prize of $1,000 or $2,500, 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 "SET FOR LIFE" Instant Game prize of $10.00, $20.00, $50.00, $100, $200, $500, $1,000 or $2,500, 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. When claiming a "SET FOR LIFE" Instant Game prize of $5,000 per week, (not to exceed $5,000,000 total), the claimant must choose one of the following four (4) payment options for receiving the prize:

1. Weekly via direct deposit to the winner's account. With this plan, upon validation of the prize, 52 weekly payments of $5,000, less any taxes and/or other offsets or mandatory withholdings required by law, will be made each Wednesday up to $260,000 per year. Additional payment(s) may be made to reach the total maximum payment of $5,000,000. *NOTE: The investment is based on 52 weeks per year. Some years may have 53 weeks per year, however, only 52 weeks per year will be paid. On years with 53 weeks, no payment will be made on the last Wednesday in December.

2. Monthly via direct deposit to the winner's account. With this plan, upon validation of the prize, an initial payment of $21,674 less any taxes and/or other offsets or mandatory withholdings required by law, will be made each year on the first business day of the month of the claim. A payment of $21,666 less any taxes and/or other offsets or mandatory withholdings required by law, will be made on the first business day for the remaining eleven months of each year for a combined total of up to $260,000 per year. Monthly payments will be made for a period 231 months with the final payment of $16,660 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of $5,000,000.

3. Quarterly via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $65,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made four times a year on the first business day of the first month of each calendar quarter (January, April, July, October) for a total of $260,000 per year. Quarterly payments will be made for approximately 19 years for a total of 77 quarters with the final quarterly payment of $60,000 less any taxes and/or other offsets or mandatory withholdings required by law, to reach the total maximum payment of $5,000,000.

4. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of $260,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 19 years or a total of 19 annual payments. One additional payment of $60,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made to reach the total maximum payment of $5,000,000.

5. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

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

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

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

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

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

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

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

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SET FOR LIFE" 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 "SET FOR LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

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

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

3.0 Instant Ticket Ownership.

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

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

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 723. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 723 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	1,447,200	5.56
$20	603,000	13.33
$50	140,700	57.14
$100	107,200	75.00
$200	17,420	461.54
$500	2,345	3,428.57
$1,000	201	40,000.00
$2,500	134	60,000.00
$5K/WK/LIFE	2	4,020,000.00

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

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

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 723 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. 723, 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-200603338
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 16, 2006

Public Utility Commission of Texas

Announcement of Amendment to Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on June 13, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Charter Communications VI, L.L.C., d/b/a Charter Communications, for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 32818 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 32818.

TRD-200603292
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 15, 2006

Announcement of Amendment to Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on June 16, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Rapid Acquisition Company, LLC to Amend to its State-Issued Certificate of Franchise Authority, Project Number 32835 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 32835.

TRD-200603383

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2006

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On June 14, 2006, Looking Glass Networks, Incorporated (Applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60372. Applicant intends to reflect a change in ownership/control whereby Level 3 Communications, Incorporated will acquire the Applicant's corporate parent, and thereby obtain ultimate indirect control of the Applicant.

The Application: Application of Looking Glass Networks, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32822.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 6, 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 32822.

TRD-200603337
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 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 (commission) on June 15, 2006, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated, §14.101 and §39.158 (Vernon 1998 & Supp. 2005) (PURA).

Docket Style and Number: Joint Application of Cap Rock Energy Corporation and GEUS for Transfer of Facilities and Certificated Areas in Hunt County, Texas, Docket Number 32832.

The Application: The proposed transaction involves the transfer of approximately 109 customer meters southwest of the City of Greenville from Cap Rock Energy Corporation (CRE) to GEUS (formerly, Greenville Electric Utility System). Additionally, the certificated rights to a small area north of the City of Greenville will be transferred from GEUS to CRE. CRE and GEUS seek regulatory approval to permit them to transfer to each other portions of their certificated service area rights in Hunt County, Texas. The City of Greenville will be affected by this transfer; however, no other utilities other than CRE and GEUS will be affected by the transfer. All of CRE's existing distribution facilities within the affected areas southwest of the City of Greenville, except for certain facilities, will be transferred from CRE to GEUS.

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 32832.

TRD-200603345
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2006

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 15, 2006, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151-54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of XPANCE BROADBAND, LTD. for a Service Provider Certificate of Operating Authority, Docket Number 32827 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private Line, Switch 56 KBPS, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by AT&T Texas, Verizon Communications, and Sprint.

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 July 6, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32827.

TRD-200603381
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2006

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Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on June 20, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule 26.214. The Applicant will file the LRIC study on July 7, 2006.

Docket Title and Number: Application of Sugar Land Telephone Company for Approval of LRIC Study for New Residential Custom Calling Bundles Pursuant to P.U.C. Substantive Rule 26.214, Docket Number 32847.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 32847. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text tele-

phones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 32847.

TRD-200603402
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 21, 2006

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

Notice is given to the public of Coleman County Telephone Cooperative, Incorporated (Coleman) application filed with the Public Utility Commission of Texas (commission) on May 19, 2006, for approval of a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Docket Title and Number: Application of Coleman County Telephone Cooperative, Incorporated for Approval of Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171; Docket Number 32735.

The Application: Coleman filed an application to change the rates for Premises Visits and Line Connections and to introduce a new charge of $20.00 for Returned Checks. The proposed effective date for the proposed rate changes is August 22, 2006. The estimated annual revenue increase recognized by Coleman is $747.96 or less than 5% of Coleman's gross annual intrastate revenues. Coleman has 2,335 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by the lesser of 5% or 1,500 of the affected local service customers to which this application applies by July 24, 2006, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by Monday, July 24, 2006. Requests to intervene should be mailed to the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 32735.

TRD-200603336
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 16, 2006

Notice of Petition for Waiver of Denial of Request for Number Block

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on June 15, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Southwestern Bell Telephone, L.P. d/b/a AT&T Texas' (AT&T Texas) request for additional numbering resources on behalf of its customer, Baylor Regional Medical Center.

Docket Title and Number: AT&T Texas Request for Waiver of Denial of Numbering Resources - Grapevine Rate Center. Docket Number 32833.

The Application: AT&T Texas requested four 1,000 blocks of consecutive DID numbers with metro calling capability in the Grapevine rate center on behalf of its customer.

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 July 6, 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 32833.

TRD-200603382
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 20, 2006

Texas Residential Construction Commission

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

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

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for 21 days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

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

McCollum & Associates, Inc., 14919 Woodbriar Drive, Dallas, Texas 75248. McCollum & Associates, Inc., holds TRCC builder registration #6852. The applicant's registered agent is Scott McCollum.

Oiram, Inc., dba Oiram Builders, 13325 Rebecca Creek Road, Spring Branch, Texas 78070. Oiram, Inc., holds TRCC builder registration #10735. The applicant's registered agent is Mario Aguilar.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144. Comments regarding this application will be accepted for 21 days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200603385

Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: June 20, 2006

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Texas Department of Transportation

Request for Proposal-Outside Counsel

The Texas Department of Transportation (department) requests proposals from attorneys or law firms interested in developing instructional material and providing training for legal aspects and consequences of harassment based on existing department policy, procedures, and processes. This request for proposals (RFP) is issued for the purpose of identifying qualified attorneys and law firms able to provide training that will inform employees of EEO laws, directives, and regulations, will assist them in determining harassment, and will provide procedures for handling harassment and corrective action programs. The department will retain the intellectual property rights of the developed materials. Selection of outside counsel will be made by the department's General Counsel. The Office of the Attorney General must approve the General Counsel's selection before a contract with the selected outside counsel may be approved.

Description: The department is a state agency with the responsibility for providing harassment training to its supervisors and lead workers in order to be proactive in reducing and responding to complaints and actions in this area. The department intends to engage outside counsel to provide instructional material and provide the training. Accordingly, the department invites responses to this RFP from attorneys and firms that are qualified to perform these legal services. Proposers must have considerable prior experience with, as well as extensive knowledge of, these subjects.

Responses: Responses to the RFP may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the RFP should include at least the following information: (1) a description of the firm's qualifications for performing the described work; the names, experience, and expertise of the attorneys who will be assigned to work on the project; and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of this service; (2) the submission of fee information and billable expenses; (3) 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 Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (4) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the Texas Transportation Commission, and the Attorney General of the State of Texas.

Note: The department is particularly concerned with issues of any conflict of interest(s). Respondents are admonished to make all practicable efforts to fully investigate, disclose, and address such conflicts.

Format: Two copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered, and either stapled or bound together. It should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, telephone the Office of General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m., on July 31, 2006.

TRD-200603403
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 21, 2006

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Request for Qualifications and Proposals Contract Number CBC4704-00-620

The Texas Department of Transportation (department), an agency of the state of Texas, is issuing this **REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/RFP)** to select from prospective qualified Design-Build Firms who can provide a 10-12 acre site (**PROPOSED SITE**) and construct a design/build department maintenance facility in or near Eagle Pass, Maverick County, Texas (**PROJECT**), in exchange for the existing Eagle Pass Maintenance Facility located at 2440 Main Street (US 277), Eagle Pass, Maverick County, Texas.

The department is issuing this RFQ/RFP in accordance with Transportation Code, §201.1055, Agreements with Private Entities, "that authorizes the department and a private entity that offers the best value to the state to enter into an agreement for the acquisition, design, construction, renovation, including site and site development, of a building or other facility required to support department operations."

A **Pre-Submittal Conference** is scheduled for **Wednesday, August 30, 2006 at 1:00 PM** local time at the Texas Department of Transportation, Eagle Pass Maintenance Facility, **2440 Main Street (US 277), Eagle Pass, Maverick County, Texas**. The conference agenda will include a presentation of the proposed PROJECT, a question and answer session, and guided tour of property proposed for exchange. Attendance at the Pre-Submittal Conference is optional.

A complete RFQ/RFP with description of the PROJECT, requirements, evaluation, forms, and attachments can be found at the following web site: **http://www.dot.state.tx.us/MNT/contract/rfp.htm**. The notice is also provided at **http://marketplace.state.tx.us** (contract number CBC4704-00-620). A printed copy of the RFQ/RFP can be mailed if a request is received by FAX (512) 416-3080 and is available at the Laredo District Headquarters, 1817 Bob Bullock Loop, Laredo, Texas 78043, Telephone (956) 712-7483 or FAX (953) 712-7472.

DEADLINE: Sealed proposals must be received and time stamped by Monday, September 25, 2006 at 2:30 PM local time, at the Texas Department of Transportation, Laredo District Headquarters, 1817 Bob Bullock Loop, Laredo, Texas 78043, ATTN: Rosa Trevino.

TRD-200603408
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 21, 2006

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Request for Qualifications and Proposals Contract Number CBC4704-00-682

The Texas Department of Transportation (department), an agency of the state of Texas, is issuing this **REQUEST FOR QUALIFICATIONS AND PROPOSALS (RFQ/RFP)** to select from prospective qualified Design-Build Firms who can provide a 10-12 acre site (**PRO-**

POSED SITE) and construct a design/build TXDOT maintenance facility in or near Rio Grande City, Starr County, Texas (**PROJECT**), in exchange for the existing Rio Grande City Maintenance Facility located at 3939 East US 83, Rio Grande City, Starr County, Texas.

The department is issuing this RFQ/RFP in accordance with Transportation Code, §201.1055, Agreements with Private Entities, "that authorizes the department and a private entity that offers the best value to the state to enter into an agreement for the acquisition, design, construction, renovation, including site and site development, of a building or other facility required to support department operations."

A **Pre-Submittal Conference** is scheduled for **Thursday, August 31, 2006 at 1:00 PM** local time at the Texas Department of Transportation, Rio Grande City Maintenance Facility, **3939 East US 83, Rio Grande City, Starr County, Texas**. The conference agenda will include a presentation of the proposed PROJECT, a question and answer session, and guided tour of property proposed for exchange. Attendance at the Pre-Submittal Conference is optional.

A complete RFQ/RFP with description of the PROJECT, requirements, evaluation, forms, and attachments can be found at the following web site: **http://www.dot.state.tx.us/MNT/contract/rfp.htm**. The notice is also provided at **http://marketplace.state.tx.us** (contract number CBC4704-00-682). A printed copy of the RFQ/RFP can be mailed if a request is received by FAX (512) 416-3080 and is available at the Pharr District Headquarters, 600 West US 83 Expressways, Pharr, Texas 78577, Telephone (956) 702-6100 or FAX (953) 782-2511.

DEADLINE: Sealed proposals must be received and time stamped by Monday, September 25, 2006 at 2:30 PM local time, at the Texas Department of Transportation, Pharr District Headquarters, 600 West, US 83, Pharr, Texas 78577, ATTN: Luana M. Gonzalez.

TRD-200603407
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: June 21, 2006

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).