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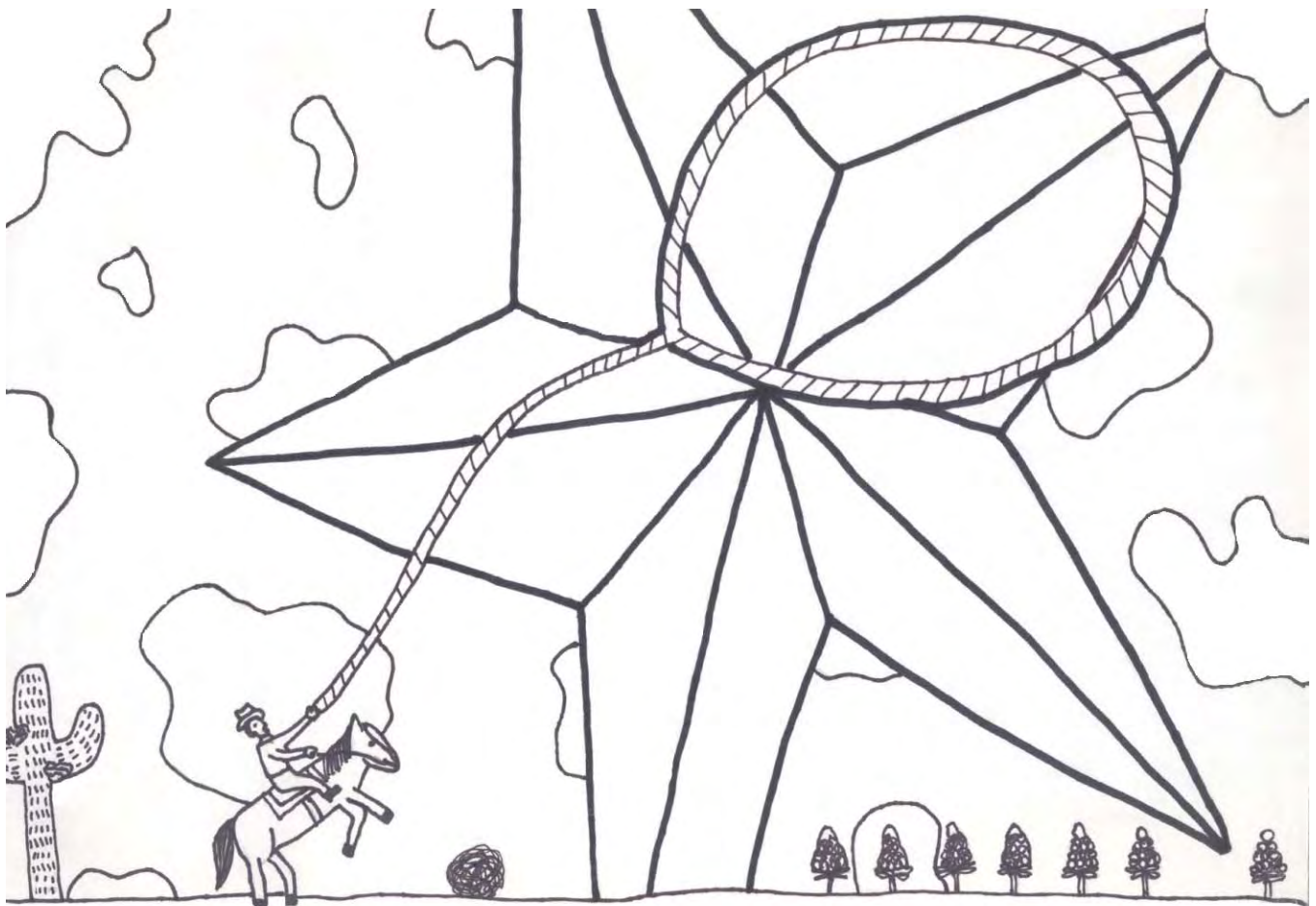
# TEXAS REGISTER

*Volume 35 Number 8*

*February 19, 2010*

*Pages 1385 – 1522*

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*Elena Rodriguez.*

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

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# TEXAS REGISTER

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# Open Meetings

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

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

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: [register@sos.state.tx.us](mailto:register@sos.state.tx.us)

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

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

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

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

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

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

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

# THE GOVERNOR

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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.

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Appointments

Rick Perry, Governor

**Appointments for February 4, 2010**

TRD-201000636

Appointed as Presiding Judge of the Third Administrative Judicial Region for a term to expire four years from the date of qualification, Billy Ray Stubblefield of Georgetown. Judge Stubblefield is replacing Judge B. B. Schraub who retired.



# THE ATTORNEY GENERAL

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

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

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

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

## Request for Opinion

**RQ-0855-GA**

### Requestor:

Mr. Robert Scott  
Commissioner of Education  
Texas Education Agency  
1701 North Congress Avenue  
Austin, Texas 78701-2548

Re: Educator salaries in lieu of recent amendments to section 21.402,  
Texas Education Code (RQ-0855-GA)

### Briefs requested by March 11, 2010

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

TRD-201000633  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: February 10, 2010



## Opinions

**Opinion No. GA-0757**

The Honorable John Mark Cobern  
Titus County Attorney  
Titus County Courthouse  
100 West First Street  
Mount Pleasant, Texas 75455

Re: Whether the Behavioral Health Unit of the Titus Regional Medical  
Center is a "private facility" for purposes of section 118.055, Local  
Government Code (RQ-0795-GA)

## S U M M A R Y

A court would likely conclude that the Behavioral Health Unit of the  
Titus Regional Medical Center, as part of the Titus County Hospital  
District, is not a "private facility" for purposes of section 118.055, Local  
Government Code.

### Opinion No. GA-0758

The Honorable Rene O. Oliveira  
Chair, Committee on Ways & Means  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether the South Texas Water Authority may adopt an effective  
tax rate under the provisions of chapter 26 of the Tax Code (RQ-0815-  
GA)

## S U M M A R Y

Pursuant to subsection 49.107(g) of the Water Code, the Legislature  
has prohibited the South Texas Water Authority from utilizing the pro-  
cedures and calculations in sections 26.04, 26.05, and 26.07 of the Tax  
Code to adopt its tax rate.

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

TRD-201000634  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: February 10, 2010





# 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 8. TEXAS JUDICIAL COUNCIL

#### CHAPTER 174. INDIGENT DEFENSE POLICIES AND STANDARDS

##### SUBCHAPTER C. POLICY MONITORING REQUIREMENTS

##### DIVISION 2. POLICY MONITORING PROCESS AND BENCHMARKS

###### 1 TAC §174.28

The Task Force on Indigent Defense (Task Force) is a permanent Standing Committee of the Texas Judicial Council. The Task Force proposes amendments to §174.28, concerning policy monitoring program benchmarks and processes. The policy monitoring program is designed to promote compliance by counties with the requirements of state law and Task Force policies and standards relating to indigent defense. The amendments to §174.28(c) are proposed to establish benchmarks for when a jurisdiction is in substantial compliance with each of three core requirements. The amendment to §174.28(c)(1)(C) would establish a presumption of substantial compliance if magistration in at least 98% of the monitor's sample occurs within 48 hours of arrest. The amendment to §174.28(c)(4)(C) would establish a presumption of substantial compliance with the prompt appointment requirements if indigence determinations are timely in at least 90% of the monitor's sample for each level of proceedings (felony, misdemeanor, juvenile cases). The amendment to §174.28(c)(5)(C) would establish a presumption of substantial compliance with the fair attorney selection process if the top 10% of appointed attorneys receive less than 30% of appointments at each level of proceedings (felony, misdemeanor, juvenile cases).

The amendment proposed to §174.28(d)(3) would set a 30 day time limit for a county to respond to a follow-up monitoring report with the opportunity to request an extension of up to 30 more days. The amendment proposed in §174.28(d)(4) would establish a procedure to address a county's failure to timely respond to a policy monitoring report by directing staff to send a certified letter to several local officials notifying them that all further payments will be withheld if no response to the report is received by the Task Force within 10 days of receipt of the letter. If funds are withheld under the section, then the funds will not be reinstated until the Task Force or the Policies and Standards Committee approves the release of the funds.

Glenna Rhea Bowman, Chief Financial Officer of the Office of Court Administration, has determined that for each year of the first five years the proposed amendments are in effect, enforcing

or administering the amended sections will have no fiscal impact on state or local governments.

Ms. Bowman has determined that there will be no material economic costs to persons who are required to comply with the amendments, nor do the proposed amendments have any anticipated adverse effect on small or micro-businesses.

Jim Bethke, Director of the Task Force, has also determined that for each of the first five-years the amendments are in effect the public benefit will be an improvement in the quality of indigent defense services by setting a threshold standard for three of the core requirements of the Fair Defense Act. Strengthening the process for timely receiving responses to policy monitoring reports will also speed the implementation of corrective actions taken by local jurisdictions to more fully meet the requirements of state law related to the provision of indigent defense services.

Comments on the proposed amendments may be submitted in writing to Wesley Shackelford, Special Counsel, Task Force on Indigent Defense, P.O. Box 12066, Austin, Texas 78711-2066, or by fax to (512) 475-3450 no later than 30 days from the date that this proposal is published in the *Texas Register*.

The amendments are proposed under Texas Government Code §71.060, which directs the Task Force to develop policies and standards governing the provision of the indigent defense services. The amended rule is also proposed under §71.062, which directs the Task Force to distribute funds based on a county's policy compliance with standards developed by the task force and the county's demonstrated commitment to the requirements of state law relating to indigent defense. The section also directs the Task Force to monitor grants and enforce policy with grant terms. The amended rule is also proposed under §71.061(a), which requires the Task Force to monitor the effectiveness of the county's indigent defense policies, standards, and procedures and to ensure compliance by the county with the requirements of state law relating to indigent defense.

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

###### §174.28. *On-Site Monitoring Process.*

(a) Purpose. The process promotes local compliance with the requirements of the Fair Defense Act and Task Force rules and provides technical assistance to improve processes where needed.

(b) Monitoring Process. The policy monitor examines the local indigent defense plans and local procedures and processes to determine if the jurisdiction meets the statutory requirements and rules adopted by the Task Force. The policy monitor also attempts to randomly select samples of actual cases from the period of review by using a 15% confidence interval for a population at a 95% confidence level.

(c) Core Requirements. On-site policy monitoring focuses on the six core requirements of the Fair Defense Act and related rules.

This rule establishes the process for evaluating policy compliance with a requirement and sets benchmarks for determining whether a county is in substantial policy compliance with the requirement.

(1) Prompt and Accurate Magistration.

(A) The policy monitor shall review the local indigent defense plans and determine if they require:

(i) Magistration within 48 hours of arrest;

(ii) That the right to counsel be communicated to the arrestee, the arrestee be provided an opportunity to request counsel, and both be recorded; and

(iii) Transmittal of the request for appointed counsel to the appointing authority within 24 hours of request.

(B) The policy monitor shall check for documentation indicating that the magistrate or county has:

(i) Informed and explained to an arrestee the rights listed in Article 15.17(a), Code of Criminal Procedure, including the right to counsel;

(ii) Maintained a process to magistrate arrestees within 48 hours of arrest;

(iii) Maintained a process for magistrates not authorized to appoint counsel to transmit requests for counsel to the appointing authority within 24 hours of the request; and

(iv) Maintained magistrate processing records required by Article 15.17(a), (e), and (f), Code of Criminal Procedure, and records documenting the time of arrest, time of magistration, whether the person requested counsel, and time for transferring requests for counsel to the appointing authority.

(C) A county is presumed to be in substantial compliance with the prompt magistration requirement if magistration in at least 98% of the policy monitor's sample is conducted within 48 hours of arrest.

(2) Indigence Determination. The policy monitor shall review the local indigent defense plans and determine if they:

(A) Specify procedures and standards for determining whether a defendant is indigent;

(B) Apply the procedures and standards to each defendant in the county equally, regardless of whether the defendant is in custody or has been released on bail; and

(C) In the case of juveniles, specify that the income and assets of the parent or other person responsible for the juvenile shall be considered in determining the indigence of the child.

(3) Minimum Attorney Qualifications. The policy monitor shall review the local indigent defense plans and documentation to determine if they:

(A) Specify objective qualifications that attorneys must meet to be eligible for appointment, including the continuing legal education (CLE) requirements set out in §§174.1 - 174.4 of this title and annually track attorney CLE hours;

(B) Require each attorney applying to be on an appointment list be approved by a majority of the judges who try criminal cases at the felony or misdemeanor offense level, respectively, or by a majority vote of the juvenile board in juvenile cases; and

(C) In the case of juveniles, recognize the differences in qualifications and experience necessary for appointments for different offense levels as required by Texas Family Code §51.102(b)(2).

(4) Prompt Appointment of Counsel.

(A) The policy monitor shall review the local indigent defense plans and determine if they require:

(i) Counsel to be appointed for indigent defendants within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties;

(ii) For juveniles not represented at the initial detention hearing, either immediate appointment of counsel or an order requiring the person having custody over the child to retain counsel if the person with custody is not found to be indigent;

(iii) For juveniles, that counsel to be appointed within five working days of the service on the child of the petition if the child's custodian is found indigent.

(B) The policy monitor shall check for documentation indicating that:

(i) Counsel was appointed for arrestees within one working day of receipt of the request for counsel in counties with a population of 250,000 or more, or three working days in other counties; and

(ii) Counsel was appointed within one day of the detention hearing for in-custody juveniles and within five working days of service of the petition on the juvenile for out-of-custody juveniles.

(C) A county is presumed to be in substantial compliance with the prompt appointment of counsel requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), at least 90% of indigence determinations in the policy monitor's sample are timely.

(5) Attorney Selection Process.

(A) The policy monitor shall review the local indigent defense plans and determine if they:

(i) Include an attorney selection method; and

(ii) Specify who is authorized to make appointments, what appointment lists are used, and a description of when an attorney on the list may be skipped, if applicable.

(B) The policy monitor shall check for documentation indicating:

(i) In the case of a contract defender program, that all requirements of §§174.10 - 174.25 of this title are met;

(ii) That attorney selection process actually used matches what is stated in the indigent defense plans; and

(iii) The number of appointments in the policy monitor's sample per attorney at each level (felony, misdemeanor, juvenile, and appeals) during the period of review, the percentage share of appointments represented by the top 10% of attorneys accepting appointments.

(C) A county is presumed to be in substantial compliance with the fair, neutral, and non-discriminatory attorney appointment system requirement if, in each level of proceedings (felony, misdemeanor, and juvenile cases), the percentage of appointments received by the top 10% of recipient attorneys does not exceed 30% of available appointments. If the county can track attorney list changes, the monitor will only examine the distribution of cases for attorneys that were on the appointment list for the entire year.

(6) Payment Process.

(A) The policy monitor shall review the local indigent defense plans and determine if they include:

- (i) An attorney fee schedule;
- (ii) Procedures for paying attorneys, experts, and investigators in accordance with the fee schedule; and
- (iii) Procedures to reimburse expert and investigative expenses incurred without prior court approval when the expenses are reasonable and necessary.

(B) The policy monitor shall check for documentation indicating that the county has established a process for collecting and reporting itemized indigent defense expense and case information.

(d) Report.

(1) Report Issuance. The policy monitor shall issue a report to the program director within 30 days of the on-site monitoring visit to a county, unless a documented exception is provided by the director, with an alternative deadline provided, not later than 90 days from the on-site monitoring visit. The report shall contain each finding of noncompliance.

(2) County Response. Within 60 days of the date the report is issued by the policy monitor, the program director shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 60 days.

(3) Follow-up Visits. The policy monitor shall conduct an additional on-site visit to counties where the report included significant noncompliance findings. The follow-up visit shall occur within 12 months following receipt of a county's response to the report. The policy monitor shall review a county's implementation of corrective actions and shall report to the county and Task Force any remaining issues not corrected. Within 30 days of the date the follow-up report is issued by the policy monitor, the program director shall respond in writing to each finding of noncompliance, and shall describe the proposed corrective action to be taken by the county. The county may request the director to grant an extension of up to 30 days.

(4) Failure to Respond to Report. If a county fails to respond to a monitoring report or follow-up report within the required time, then a certified letter will be sent to the program director, financial officer, county judge, local administrative district court judge, local administrative statutory county court judge, and chair of the juvenile board notifying them that all further payments will be withheld if no response to the report is received by the Task Force within 10 days of receipt of the letter. If funds are withheld under this section, then the funds will not be reinstated until the Task Force or the Policies and Standards Committee approves the release of the funds.

(5) [(4)] Noncompliance. If a county fails to correct any noncompliance findings, the Task Force may impose a remedy under §173.307 of this title.

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

Filed with the Office of the Secretary of State on February 4, 2010.

TRD-201000559

Wesley Shackelford

Special Counsel

Texas Judicial Council

Earliest possible date of adoption: March 21, 2010

For further information, please call: (512) 463-8015

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**TITLE 16. ECONOMIC REGULATION**

**PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION**

**CHAPTER 73. ELECTRICIANS**

**16 TAC §73.25, §73.80**

The Texas Department of Licensing and Regulation ("Department") proposes amendments to the rules at 16 Texas Administrative Code Chapter 73, §73.25 and §73.80 regarding the electricians program.

The proposed amendments implement changes delineated in Senate Bill ("SB") 470 (81st Legislature, Regular Session, 2009). These rule amendments are proposed under the authority of the Texas Occupations Code §1305.102(a) that mandates that the executive director adopt rules for the licensing of electricians, sign electricians, electrical sign contractors, electrical contractors, residential appliance installers, and residential appliance installation contractors.

The proposed amendments to §73.25 mandate four hours of continuing education for apprentice electricians or enrollment in a registered apprenticeship training program based on timely and late renewal. Additionally, proposed amendments to §73.25(g) and (i) expand the current required subject areas for continuing education to include safety as defined in the national Fire Protection Association (NFPA) 70E.

Section 73.25(j) delineates what an apprenticeship training program must do to register with the department and maintain membership as an active program including recordkeeping.

Section 73.80(13) is amended to include a new fee for apprentice training program registration. That fee is one hundred dollars (\$100.00). The substance of these rule changes was recommended by the Electrical Safety and Licensing Advisory Board ("Board") at its meeting on January 12, 2010.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposal.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be added protection for the public health and safety.

There is no anticipated adverse economic effect on small or micro-business or to persons who are required to comply with the rule as proposed. Since the agency has determined that the rule will have no adverse economic effect on small or micro businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin,

Texas 78711, or by facsimile to (512) 475-3032, or electronically to [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51 and Chapter 1305, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Chapter 1305. No other statutes, articles, or codes are affected by the proposal.

*§73.25. Continuing Education.*

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a master electrician, journeyman electrician, master sign electrician, journeyman sign electrician, maintenance electrician, or residential wireman license, a [~~license listed in Texas Occupations Codes, §1305.168(a), an individual~~] licensee must complete four hours of continuing education in courses approved by the department.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within one year prior to the date of renewal.

(d) To timely renew an electrical apprentice license, an electrical apprentice, within the term of the current license, must have:

- (1) been enrolled in a registered apprenticeship training program; or
- (2) completed four hours of approved continuing education.

(e) To late renew an electrical apprentice license, an electrical apprentice, within one year prior to the date of renewal, must have:

- (1) been enrolled in a registered apprenticeship training program; or
- (2) completed four hours of approved continuing education.

(f) [~~(d)~~] A licensee may not receive continuing education credit for attending the same course more than once.

(g) [~~(e)~~] For each [~~annual~~] renewal, a [~~an individual~~] licensee must complete a course, or combination of courses, dedicated to instruction in:

- (1) the National Electrical Code, as adopted under Title 8, Occupations Code §1305.101, or the current version of the National Electrical Code, as approved by the National Fire Protection Association; [~~and~~]
- (2) state law and rules that regulate the conduct of licensees; and[-]
- (3) safety as defined in the National Fire Protection Association (NFPA) 70E.

(h) [~~(f)~~] A licensee shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(i) [~~(g)~~] To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in:

- (1) the National Electrical Code, as adopted under Title 8, Occupations Code §1305.101, or the current version of the National Electrical Code, as approved by the National Fire Protection Association; [~~and/or~~]
- (2) state law and rules that regulate the conduct of licensees; or[-]
- (3) safety as defined in the National Fire Protection Association (NFPA) 70E.

(j) To register an apprenticeship training program, a program must:

- (1) file a completed application in a manner or form approved by the department;
- (2) provide proof to the department that the program is:
  - (A) recognized by the Texas Workforce Commission or the Texas Higher Education Coordinating Board;
  - (B) registered with the United States Department of Labor; or
  - (C) a competency-based standardized craft-training program that meets the training program standards of the United States Department of Labor Office of Apprenticeship; and

(3) pay the required application fee shown in §73.80.

(k) A registered apprentice training program must maintain the following documents for 24 months after a participant is no longer enrolled in the program:

- (1) participant's program application;
- (2) proof of participant's program completion;
- (3) participant's leave of absence, resignation or termination; and
- (4) other documentation effecting participant's enrollment.

(l) A registered apprentice training program must submit to the department proof of a participant's change in enrollment status within two days of the change. The proof must be in a manner or form approved by the department.

(m) A registered apprentice training program must comply with the requirements of the Act and this chapter and must maintain the requirement of subsection (i)(2).

(n) A registered apprentice training program must annually notify the department, in a manner or form approved by the department, of its intention to continue as a registered program.

(o) A registered apprentice training program must immediately notify the department if it ceases to be registered. The notice must be in a manner or form approved by the department.

(p) The provisions listed in subsections (c), (d), and (g)(3) are effective for licenses that expire on or after September 1, 2010.

*§73.80. Fees.*

(a) Application fees:

- (1) Master Electrician--\$50
- (2) Master Sign Electrician--\$50
- (3) Journeyman Electrician--\$35
- (4) Journeyman Sign Electrician--\$35

- (5) Residential Wireman--\$25
- (6) Maintenance Electrician--\$25
- (7) Electrical Contractor--\$115
- (8) Electrical Sign Contractor--\$115
- (9) Electrical Apprentice--\$20
- (10) Electrical Sign Apprentice--\$20
- (11) Residential Appliance Installer--\$35
- (12) Residential Appliance Installation Contractor--\$115
- (13) Apprentice Training Program Registration Fee--\$100

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

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

Filed with the Office of the Secretary of State on February 8, 2010.

TRD-201000605  
 William H. Kuntz, Jr.  
 Executive Director  
 Texas Department of Licensing and Regulation  
 Earliest possible date of adoption: March 21, 2010  
 For further information, please call: (512) 463-7348



## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

##### SUBCHAPTER J. TEXAS CAREER OPPORTUNITY GRANT PROGRAM

###### 19 TAC §§22.181 - 22.188

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§22.181 - 22.188, concerning the Texas Career Opportunity Grant Program. Specifically, House Bill 3519, 81st Texas Legislature, amended the Labor Code by adding §305.003, and mandates that the Coordinating Board and the Texas Workforce Commission shall enter into a Memorandum of Understanding for the coordination and administration of the Texas Career Opportunity Grant Program. The new sections describe the authority and purpose of the program, provide definitions of terms used, outline program award amounts and limits, and set forth requirements whereby students may qualify to receive a grant. The new sections also outline institutional agreement requirements, including annual reports to the Coordinating Board.

Lois Hollis, Special Assistant to the Deputy Commissioner for Business and Finance/Chief Operating Officer, has estimated that for each year of the first five years the new sections are in effect there will be the distribution of approximately \$675,000 of state funds per year to eligible students. There will be no fi-

cal implications for local government as a result of enforcing or administering the rules.

Ms. Hollis has also determined that for each year of the first five years the new sections are in effect the public benefits anticipated as a result of administering the sections will be the provision of state financial assistance to individuals pursuing training in career fields identified as addressing the state's workforce development needs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, lois.hollis@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Labor Code, §305.003, which allows the Coordinating Board to administer the Texas Career Opportunity Grant Program through a memorandum of understanding with the Texas Workforce Commission.

The new sections affect the Labor Code, §§305.001 - 305.029.

###### §22.181. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Labor Code, Title 4, Chapter 305, Subchapters A and B, Texas Career Opportunity Grant (TCOG) Program, and a Memorandum of Understanding entered into by the Texas Higher Education Coordinating Board and Texas Workforce Commission. This subchapter establishes procedures to administer the two subchapters as prescribed in the Texas Labor Code, §§305.001 - 305.029.

(b) Purpose. The purpose of this program is to help ensure a qualified workforce to meet the needs of this state by reducing financial barriers to postsecondary career education and training for economically disadvantaged Texans as set out in Texas Labor Code, §305.001, by providing grants to eligible students attending an eligible career school or college.

###### §22.182. Definitions.

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

- (1) Board--The Texas Higher Education Coordinating Board.
- (2) Career School or College--A school or college identified by the Texas Workforce Commission as meeting the requirements set out in the Texas Education Code, Title 3, Chapter 132, §132.001(1).
- (3) Commission--The Texas Workforce Commission.
- (4) Commissioner--The Commissioner of Higher Education, the Chief Executive Officer of the Board.
- (5) Cost of Attendance--An estimate of the expenses incurred by a typical financial aid student in attending a particular eligible institution approved by Board staff. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).
- (6) Expected Family Contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his or her family, as determined following the federal methodology.
- (7) Financial Need--The cost of attendance at a particular eligible institution less the expected family contribution. The cost of

attendance and family contribution are to be determined in accordance with Board staff guidelines.

(8) Full-time Enrollment--

(A) At least 12 semester hours or 12 quarter hours per academic term in an educational program using a semester, trimester, or quarter system;

(B) At least 24 semester hours or 36 quarter hours per academic year for an educational program using credit hours but not using a semester, trimester, or quarter system, or the prorated equivalent for a program of less than one academic year;

(C) At least 24 clock hours per week for an educational program using clock hours;

(D) A series of courses or seminars equaling at least 12 semester or quarter hours over a maximum of 18 weeks;

(E) For a program that measures credit hours and uses nonstandard terms, the number of weeks of instruction in the term divided by the number of weeks of instruction in the academic year, multiplied by the number of credit hours in the academic year.

(9) Half-time Enrollment--Half of the minimum enrollment levels for Full-time Enrollment.

(10) Program Officer--The individual named by each participating eligible institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(11) Qualified Education Program--A program identified by the Texas Workforce Commission as delivered by an eligible institution; results in a certificate or degree; is at least 30 weeks in length and meets or exceeds 24 semester credit hours, 36 quarter credit hours, or 900 clock hours; and delivers occupational training associated with an occupation included on the Statewide Occupations List compiled by the Texas Workforce Commission.

(12) Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status and Waiver Programs for Certain Nonresident Persons). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(13) State Fiscal Year--A 12-month period beginning September 1 and ending August 31, for which state funding for the TCOG Program is appropriated.

(14) Tuition and Required Fees--Charges that an institution assesses a student as a condition of enrollment at the institution or in a specific course.

§22.183. Eligible Institutions.

(a) Eligibility.

(1) To be eligible to participate in the TCOG Program, a career school or college must be identified by the Texas Workforce Commission as meeting the requirements set out in the Texas Labor Code, Title 4, Chapter 305, §305.002(3).

(2) No eligible institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of the program described in this subchapter.

(3) Each eligible institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) Approval.

(1) Agreement. Each approved eligible institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner.

(2) Approval Deadline. Beginning with spring 2010, an institution must be approved as eligible by the Texas Workforce Commission by June 1 of a given year in order for qualified students enrolled in that institution to be eligible to receive grants in the following fiscal year.

(c) Responsibilities.

(1) Probation Notice. If the eligible institution is placed on public probation by its accrediting agency, it must immediately advise the Board staff and grant recipients of this condition and maintain evidence in each student's file to demonstrate that the student was so informed.

(2) Disbursements to Students.

(A) Documentation. The eligible institution must maintain records to prove the receipt of program funds by the student or the crediting of such funds to the student's school account.

(B) Procedures in Case of Illegal Disbursements. If the Commissioner has reason for concern that an eligible institution has disbursed funds for unauthorized purposes, Board staff will notify the Program Officer and financial aid officer and offer an opportunity for a hearing pursuant to the procedures outlined in Chapter 1 of this title (relating to Agency Administration). Thereafter, if Board staff determines that funds have been improperly disbursed, the institution shall become primarily responsible for restoring the funds to the Board. No further disbursements of grants or scholarships shall be permitted to students at that institution until the funds have been repaid.

(3) Reporting and Refunds.

(A) Requirements/Deadlines. All eligible institutions must meet Board reporting requirements in a timely fashion. Such reporting requirements shall include reports specific to allocation and reallocation of grant funds (including the Financial Aid Database Report) as well as progress and year-end reports of program activities.

(B) Penalties for Late Reports or Refunds.

(i) An institution that postmarks or electronically submits a progress report a week or more after its due date will be ineligible to receive additional funding through the reallocation occurring at that time.

(ii) The Commissioner may penalize an institution by reducing its allocation of funds in the following year by up to 10 percent for each report that is postmarked or submitted electronically more than a week late. The penalty may also be invoked if the report is timely, but refunds owed to the Program by the eligible institution are not made to the Board or the State Comptroller's Office within one week after due.

(iii) The Commissioner may assess more severe penalties against an institution if any report or refund is received by the Board more than one month after its due date.

(iv) The maximum penalty for a single year is 30 percent of the school's allocation. If penalties are invoked in two consecutive years the institution may be penalized an additional 20 percent.

(C) Appeal of Penalty. If the Commissioner determines that a penalty is appropriate, the institution will be notified by certified mail, addressed to the Program Officer, with a copy sent to the financial aid officer. Within 21 days from the time that the Program Officer receives the written notice, the institution must submit a written response appealing the Commissioner's decision, or the penalty shall become final and no longer subject to an appeal. An appeal under this section will be conducted in accordance with the rules provided in Chapter 1 of this title.

(4) Program Reviews. If selected for such by Board staff, participating eligible institutions must submit to program reviews of activities related to the TCOG Program.

§22.184. Eligible Students.

To receive an initial award through the TCOG Program, a student must:

- (1) be a resident of Texas;
- (2) show financial need;
- (3) be enrolled in a qualified education program at a participating eligible institution;
- (4) be enrolled on at least a half-time basis;
- (5) be required to pay more tuition and required fees than the amount required at a public technical institution;
- (6) be charged not less than the regular tuition and required fees paid by other students enrolled at the institution the person attends;
- (7) not be in default on a loan made under the Federal Perkins Loan Program, Federal Family Education Loan Program, or William D. Ford Federal Direct Loan Program; and
- (8) not owe a refund on a grant received under the federal Pell Grant Program or the federal Supplemental Education Opportunity Grant program.

§22.185. Award Amounts and Adjustments.

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, gifts, grants and other funds that are available for this use.

(b) Award Amounts.

(1) The amount of a TCOG Program award may not exceed the least of:

- (A) the maximum grant specified by the Texas Legislature;
- (B) the amount by which the tuition and required fees at the eligible institution exceeds the average amount of tuition and required fees that would be charged at a public technical institute as determined by the Board; or

(C) an amount equal to 50 percent of the average state appropriation in the biennium preceding the biennium in which the grant is made for a full-time student or the equivalent at a public technical institute, as determined by the Board.

(2) The student's award amount shall be calculated based on the following schedule:

- (A) if enrolled for at least full-time status - 100% of the maximum award;
- (B) if enrolled for at least 75% of full-time status - 75% of the maximum award;
- (C) if enrolled for at least 50% of full-time status - 50% of the maximum award;

(D) if enrolled for less than 50% of full-time status - the student is not eligible for an award.

(c) Uses. A person receiving a TCOG Program grant may only use the money to pay any usual and customary cost of attendance incurred by the person at an eligible institution.

§22.186. Allocation and Reallocation of Funds.

(a) Allocations. Funds available for awards will be allocated among participating eligible institutions on an annual basis.

(b) Reallocations. Participating eligible institutions will have until a date specified by Board staff via a policy memo addressed to the Program Officer at the eligible institution to encumber the program funds that have been allocated to them. On that date, participating eligible institutions lose claim to any funds not yet drawn down from the Board for immediate disbursement to students, and the funds released in this manner are available to the Board for reallocation to other participating eligible institutions. If necessary for ensuring the full use of funds, subsequent reallocations may be scheduled until all funds are awarded and disbursed.

(c) Disbursement of Funds to Participating Eligible Institutions. As requested by participating institutions throughout the academic year, Board staff shall forward to each participating eligible institution a portion of its allocation of funds for immediate release to students or immediate application to student accounts at the institution.

(d) Disbursement of Funds to Students. Participating eligible institutions must disburse TCOG Program funds to eligible students or apply the funds to eligible students' outstanding balances at the institution for the current academic year within five working days of the funds' arrival at the eligible institution's fiduciary institution.

§22.187. Dissemination of Information and Rules.

Board staff shall distribute to each eligible institution a copy of the rules adopted under this subchapter. Board staff and the Commission are responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

§22.188. Annual Report.

(a) Each eligible institution participating in the TCOG Program shall report to the Board on a state fiscal year basis:

- (1) the number of students receiving awards, broken down by the race or ethnicity of the recipients; and
- (2) the number of students attending the eligible institution, broken down by race or ethnicity.

(b) The Board shall deliver the information collected from each eligible institution to the Commission annually.

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 February 8, 2010.

TRD-201000606

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: April 29, 2010

For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

## CHAPTER 102. EDUCATIONAL PROGRAMS

### SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING EDUCATOR AWARD PROGRAMS

#### 19 TAC §102.1073

The Texas Education Agency (TEA) proposes an amendment to §102.1073, concerning district awards for teacher excellence. The section establishes procedures and adopts guidelines for the administration of awards for the student achievement program. The proposed amendment would update the rule and incorporate statutory changes resulting from House Bill (HB) 3646, 81st Texas Legislature, 2009.

HB 1, 79th Texas Legislature, Third Called Session, 2006, added the Texas Education Code (TEC), Chapter 21, Subchapter O, establishing a teacher incentive program that provides funding to districts interested in developing local incentive programs. Accordingly, through 19 TAC §102.1073, District Awards for Teacher Excellence, adopted to be effective May 28, 2008, the commissioner exercised rulemaking authority to establish and administer the grant award program.

HB 3646, 81st Texas Legislature, 2009, amended the TEC, Chapter 21, Subchapter O, removing provisions relating to the TEC, Chapter 21, Subchapter N; adding specifications relating to local awards plans; and modifying requirements relating to award payments.

To implement the modifications to the TEC, Chapter 21, Subchapter O, the proposed amendment to 19 TAC §102.1073 would include: (1) updating and adding new definitions; (2) adding references to principals where references are made to individuals impacted by awards; (3) modifying district eligibility criteria; (4) revising specifications for the local awards plan and conditions of operation; (5) removing the school district in-kind match requirement; and (6) clarifying language relating to annual award amounts.

The proposed amendment would update guidelines and procedures for school districts and open-enrollment charter schools to follow in order to apply for and participate in the District Awards for Teacher Excellence grant program. The proposed amendment would eliminate the need for local school districts to maintain documentation of approval by a majority of classroom teachers assigned to a campus selected to participate if the program is not implemented districtwide.

Julie Harris-Lawrence, deputy associate commissioner for student services and GED, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment. The proposed amendment would allow the TEA to award grants from funds appropriated for the program for fiscal years 2010 and 2011. The grant amount appropriated to the TEA for fiscal year 2009 for the program was \$147.5 million. The total grant amount appropriated to the TEA for fiscal years 2010 and 2011 is \$196.5 million. Funding for future years is contingent on appropriations made by the legislature for this purpose. The proposed amendment would result in an economic benefit to local government due to the elimination of the requirement for local school districts to provide 15% matching funds to supplement or support program activities. The estimated savings to school districts and charter schools is \$29,475,000 each year in fiscal years 2010 and 2011.

Ms. Harris-Lawrence 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 amendment would be the positive impact of the program on classroom teaching by rewarding classroom teachers and other school personnel for success in improving student performance. The public would benefit from increasingly improved education for the school children of Texas, which thereby prepares them for success and creates an improved and more highly educated and prepared workforce. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins February 19, 2010, and ends March 22, 2010. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to [rules@tea.state.tx.us](mailto:rules@tea.state.tx.us) or faxed to (512) 463-0028. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on February 19, 2010.

The amendment is proposed under the Texas Education Code, §21.702, which requires the commissioner of education by rule to establish an educator excellence awards program under which school districts, in accordance with local awards plans approved by the commissioner, receive program grants from the agency for the purpose of providing awards to district employees, and §21.707, which requires the commissioner of education to adopt rules necessary to administer the Educator Excellence Awards Program.

The amendment implements the Texas Education Code, §21.702 and §21.707.

§102.1073. *District Awards for Teacher Excellence.*

(a) Establishment of program.

(1) In accordance with the Texas Education Code (TEC), §21.702, the District Awards for Teacher Excellence (DATE) is established as an annual grant program under which a school district may receive a program grant from the Texas Education Agency (TEA) for the purpose of providing awards to classroom teachers, principals, and district employees in the manner provided by the TEC, §21.705. Provisions regarding implementation of the program are described in this section.

(2) Funds from this program will be distributed to each selected school district or open-enrollment charter school that submitted an approved local awards plan developed in accordance with the TEC, §21.704, and subsection (e) of this section.

(b) Definitions.

(1) Awards--Tangible benefits awarded to classroom teachers, principals, and district employees in accordance with the district local awards plan. Awards may be monetary such as checks or deposits with a 401K or similar plan or other forms such as privileges, travel, professional development, equipment, and other valuable considerations.



(2) ~~[(4)]~~ Classroom teacher--As defined in the TEC, §5.001(2).

(3) ~~[(2)]~~ Contingency plan--An outline of alternative strategies to redistribute a school district's remaining grant funds after the school district's approved local awards plan has been implemented.

(4) ~~[(3)]~~ Districtwide--Every campus within the school district.

(5) Grant award--Funds the TEA makes available to districts for grant purposes.

(6) ~~[(4)]~~ Local awards plan--A plan developed by a school district in accordance with the TEC, §21.704, and subsection (e) of this section that sets forth procedures for the school district's use of DATE grant funds.

(7) ~~[(5)]~~ Meaningful, objective performance measures--Quantifiable measures that have a standardized definition and are measured and reported in the same way for every campus/school district and in the same way from year to year.

(8) ~~[(6)]~~ Part I funds--Grant funds used to award classroom teachers and principals who positively impact student academic improvement, growth, and/or achievement.

(9) ~~[(7)]~~ Part II funds--Grant funds used on awards and stipends for classroom teachers, staff, principals, and other activities such as teacher induction and mentoring support to improve student achievement and instructional personnel recruitment and retention.

(10) Principal--The lead administrator at a campus who holds a standard principal certificate, as specified in Chapter 241 of this title (relating to Principal Certificate).

(11) ~~[(8)]~~ School district--For the purpose of this section, the definition of school district includes an open-enrollment charter school.

(12) ~~[(9)]~~ Selected campus--A campus identified by a school district to receive grant funds when the district awards program is not implemented districtwide.

(13) ~~[(10)]~~ Target campus--A selected campus that meets criteria specified in program requirements established by the commissioner of education that designate a campus as having low or underperforming student academic achievement and low student academic improvement rates. Additional criteria may take into account difficulty in finding and retaining qualified and effective teachers relative to the state or district averages. Criteria used for selection of a target campus must relate directly to the goals and performance measures of the local awards plan.

(c) District eligibility.

(1) A school district is eligible to apply for grant funds for the DATE program if the school district:

(A) completes and submits a Notice of Intent to Apply to the TEA by a date established by the commissioner;

(B) complies with all assurances in the Notice of Intent to Apply and grant application;

(C) develops a local awards plan for the district;

(D) participates in the required technical assistance activities established by the commissioner;

(E) agrees to participate for no less than two consecutive grant cycles; and

~~[(F) agrees to complete required activities during a planning year and during implementation year(s) on a timeline set forth in the program requirements established by the commissioner; and]~~

(F) ~~[(G)]~~ complies with any other activities set forth in the program requirements.

(2) An eligible school district must submit an application in a form prescribed by the commissioner.

(A) Each eligible applicant must meet all deadlines, requirements, and assurances specified in the application.

(B) The commissioner may waive any eligibility requirements specified in this subsection. All waiver requests must be submitted, along with a completed application, to the TEA and meet the requirements of the TEC, §7.056.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection to receive a grant under the DATE program.

(e) Local awards plan.

(1) In accordance with the TEC, §21.704, a school district that intends to participate in the DATE program and that meets the requirements specified in the TEC, Chapter 21, Subchapter O, and this section is required to submit a local awards plan to the TEA for approval. The TEA may only approve a local awards plan that meets the program requirements specified in the TEC, §21.705, and this section.

(2) A local awards plan must:

(A) be developed by a district-level committee for a school district that intends to participate in the program [;] such as the district-level planning and decision-making committee established under the TEC, Chapter 11, Subchapter F. The majority of the members must be teachers or principals;

(B) be submitted with evidence of significant teacher involvement in developing the plan demonstrated by, but not limited to, providing the names of the teachers serving on the selected district-level planning and/or decision-making committee[; ~~the campus majority vote count for selected campuses, and an assurance of the vote from the school district superintendent in the completed application;~~]

(C) define the criteria and any formulas for awards computation for qualifying educators ~~[that will be used to identify which teachers, of those eligible, will receive awards]~~. The criteria must be quantifiable and applicable to established meaningful, objective performance measures. The criteria must address student academic improvement, growth, and/or achievement;

~~[(D) establish meaningful, objective performance measures, as defined in subsection (b)(5) of this section, for the school district and the selected campuses. At least one measure must relate to student academic improvement, growth, and/or achievement;]~~

(D) ~~[(E)]~~ identify campus participation districtwide or for selected campuses, as defined in subsection (b) of this section. If the school district identifies selected campuses then more than half of the selected campuses must be target campuses, as defined in subsection (b) of this section; [;]

~~[(i) a majority of classroom teachers assigned to a campus that is selected by the district-level planning and/or decision-making committee to participate in the program must approve participation to be included in the local awards plan; and]~~

~~[(ii) more than half of the selected campuses must be target campuses, as defined in subsection (b) of this section;]~~

(E) ~~[(F)]~~ establish teacher and principal eligibility requirements that are consistent for no less than two consecutive grant cycles. Educators shall not be excluded from awards based on retirement status;

(F) ~~[(G)]~~ make information available to the public on the methodology used to determine award amounts and timelines for the duration of a school district's participation in the grant program; and

(G) ~~[(H)]~~ include a contingency plan designed to redistribute any remaining, unawarded Part I and Part II program funds, in accordance with the percentage distributions specified in the TEC, §21.705, and subsection (h) of this section.

~~[(3) The local school board must approve the local awards plan, changes to the local awards plan, and the grant application prior to submission to the TEA. A school district must act pursuant to its local school board policy for submitting a local awards plan and grant application to the TEA.]~~

~~[(4) A decision by a local school board to approve and submit its local awards plan and grant application may not be appealed to the commissioner.]~~

(3) ~~[(5)]~~ A school district may renew its local awards plan for three consecutive school years without resubmitting a full grant application to the TEA.

(4) ~~[(6)]~~ A school district may amend, with a majority vote by the selected district-level planning and/or decision-making committee and with TEA approval, its local awards plan in accordance with subsections (c) and (h) of this section for each school year the school district receives a program grant.

(f) Conditions of operation.

(1) A school district must identify performance measures in the application for the success of the local awards plan. The performance measures:

(A) must directly relate to the school district goals and criteria for selecting targeted campuses;

(B) must include measures of student academic improvement, growth, and/or achievement;

(C) may relate to improved teacher and principal attrition, migration, and quality;

(D) must include targets for school district performance and specifically for target campuses, if the district program is not districtwide; and

(E) must be in accordance with program guidelines established by the commissioner.

~~[(2) A school district may not reduce the number of previously established performance measures at any time during the school district's participation in the DATE grant.]~~

~~[(3) A school district may not remove a performance measure from the local awards plan earlier than two grant cycles from the time the performance measure was established for the purposes of the grant.]~~

(2) ~~[(4)]~~ Each performance measure must be set at a level that reflects improvement from current performance for the school district and among target campuses.

(3) ~~[(5)]~~ If a school district fails to meet performance measures, the ~~[school district must submit a plan to the TEA for approval by the commissioner addressing how the district will modify its local~~

~~awards plan to meet performance measures. The] commissioner may require the school district to participate in required technical assistance [in modifying its local awards plan].~~

(4) ~~[(6)]~~ If a school district fails to meet performance measures or other TEA requirements, the commissioner may disqualify a school district from receiving a grant award from the DATE program the subsequent grant year.

~~[(7) A school district shall demonstrate and provide information to the TEA, in the application, on the following:]~~

~~[(A) a strategic plan for decreasing dependence on the state funds to assure long-term sustainability of the program after the DATE grant funds expire:]~~

~~[(B) an ongoing process for evaluating the local awards plan and activities to be performed under the DATE grant, including measurement of progress toward the approved goals and measurable objectives to help improve program performance and support sustainability; and]~~

~~[(C) efforts to identify additional cash and in-kind contributions to support and sustain the activities of the local awards plan.]~~

(5) ~~[(8)]~~ A school district must maintain ~~[campus teacher] attendance records, meeting minutes, or other similar evidence of significant [teacher] involvement from participating campuses [required to hold a majority vote for approval of the local awards plan].~~

(g) Amount of grant awards.

(1) In accordance with the TEC, §21.703, each school district with a TEA-approved local awards plan is entitled to a grant award in an amount determined by the commissioner.

(2) In accordance with the TEC, §21.703(a)(2)(B), an award determination will be based on the average daily attendance (ADA) of participating districts in relation to the total number of eligible and applying districts.

(3) Award amounts may vary from one year to the next.

~~[(4) A school district must provide a 15% cash or in-kind match. Matching funds must be used to supplement or support activities identified in the district grant application and local awards plan. The commissioner may disqualify a school district from current and future grant awards for the DATE program and recover allocated grant funds if a school district fails to allocate or provide matching funds. A decision to disqualify a school district or recover funds is final and may not be appealed.]~~

(h) Award payments.

(1) A school district must distribute a specified percentage of its program grant award to eligible classroom teachers and principals districtwide or on selected campuses who meet the local awards plan criteria in accordance with the TEC, §21.705, and this section. Each grant award must be spent in two parts.

(A) Part I funds must make up at least 60% of the total grant allocation and be used to award classroom teachers and principals who meet the local awards plan criteria. Awards under this subsection:

(i) may be used only for classroom teachers and principals that positively impact student academic improvement and/or growth; and

(ii) must be distributed in accordance with the local awards plan developed in accordance with subsection (e) of this section.

(B) Part II funds must make up the remaining amount of the funds, a maximum of 40% of the total grant allocation. In accordance with the TEC, §21.705, Part II funds can be used for other allowable activities as identified in program requirements.

(2) A school district may choose to exclude a teacher or a principal on a selected campus from receiving an award except involuntarily transferred teachers or principals or retired teachers and principals no longer on the selected campus. In such an instance, the local awards plan must reflect the district policies with regard to such a teacher or principal at the program start date. A decision to exclude certain teachers or principals from receiving an award may not be appealed to the commissioner.

(3) Annual award amounts should be valued at ~~[equal to or greater than]~~ \$3,000 or more, unless otherwise determined by the district planning committee. All eligible educators must have the opportunity to earn minimum ~~[local school board. Minimum]~~ awards valued at ~~[must be]~~ no less than \$1,000 per educator ~~[teacher]~~ identified under Part I funds. Local decisions regarding ~~[A local school board decision on]~~ award amounts are ~~[per teacher is]~~ final and may not be appealed to the commissioner.

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

Filed with the Office of the Secretary of State on February 3, 2010.

TRD-201000545

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: March 21, 2010

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



## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 61. CHRONIC DISEASES

##### SUBCHAPTER F. DIABETES REGISTRY

###### 25 TAC §61.91

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §61.91, concerning the establishment of a diabetes pilot project that will create an electronic registry to track glycosylated hemoglobin levels and to govern the format and method of collecting glycosylated hemoglobin data.

###### BACKGROUND AND PURPOSE

New §61.91 that was originally proposed to comply with Chapter 706, uncodified, House Bill (HB) 2132, 80th Legislature, Regular Session, 2007, required the department to establish a diabetes mellitus registry pilot program. Section 61.91 was previously proposed in the January 30, 2009, issue of the *Texas Register* (34 TexReg 509) and was withdrawn on July 16, 2009, because of new legislation in 2009.

The proposed rule is necessary to comply with Chapter 262, uncodified, HB 1363, 81st Legislature, Regular Session, 2009, which modifies the original 2007 legislation. The rule requires a clinical laboratory located in the participating public health district to submit to the district and the department the results of each glycosylated hemoglobin test along with the diagnosis codes that the laboratory performs in which the patient has given prior consent. The rule also requires physicians who order a glycosylated hemoglobin test for a patient, provide the patient with a form developed by the department that allows the patient to opt out of having the patient's information included in the registry and requires physicians to report patient diagnosis codes to the laboratory with the test orders. New §61.91(c) provides language stating that the pilot program will be conducted by the San Antonio Metropolitan Health District.

Not later than December 1, 2010, the department shall submit a report to the Legislature concerning the effectiveness and recommendations for the program. This rule and the statute that supports it expire in September 2011.

###### SECTION-BY-SECTION SUMMARY

New §61.91(a) describes the purpose of the Diabetes Mellitus Registry Pilot Program. New §61.91(b) defines the terms "Diabetes Mellitus" and "Glycosylated hemoglobin test." New §61.91(c) provides language stating that the pilot program will be conducted by the San Antonio Metropolitan Health District, and provides language informing the clinical laboratory staff where to report glycosylated hemoglobin test results. New §61.91(d) provides language stating what information shall be reported for each glycosylated hemoglobin test result and describes the protocol to ensure confidentiality. New §61.91(e) and (f) state when reporting of glycosylated hemoglobin test results shall begin and the date when reporting will end.

###### FISCAL NOTE

Cassandra DeLeon, Diabetes Prevention and Control Branch Manager, Health Promotion and Chronic Disease Prevention Section, has determined that for each year of the first five years that the section will be in effect, there will not be fiscal implications to state government as a result of enforcing or administering the section as proposed because the legislation states that "the participating public health district is solely responsible for the costs of establishing and administering the pilot program." as stated in Chapter 262, uncodified, HB 1363, 81st Legislature, 2009. There are fiscal implications for the San Antonio Metropolitan Health District, who will administer this program. These implications apply only in the next two years of the program because the legislation expires in September 2011 as stated in Chapter 262, uncodified, HB 1363, 81st Legislature, 2009. During this period the estimated cost to the district shall be approximately one full time staff person to administer and implement this program and a contractor to collect and analyze the data, an annual cost of approximately \$200,000.

###### SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT

Ms. DeLeon has also determined that there will be an effect on small businesses or micro-businesses required to comply with the section as proposed. These small businesses would consist of single physician offices or physician group practices that would be required to obtain and maintain patient consent and "opt out" forms and report patient diagnosis codes to the laboratory with the test orders. The physicians primarily would be physicians in the following practices: family practice, general

practice, internal medicine, endocrinology, geriatrics and pediatrics. From data provided by the Texas Medical Board, 942 physicians in these practices are licensed in the county. Neither the Texas Medical Association nor the Texas Workforce Commission have data to estimate the number of small or micro-businesses that would consist of these 942 physicians in the county comprising the health district, but some of these physicians are in large group practices whose income would disqualify them under the definition of "small business" used in the Government Code, §2006.001.

The number of small businesses subject to the proposed rule can only be estimated. Assuming four physicians comprise a single group practice, approximately 236 group medical practices would be located within the health district. Each would be considered a small business.

Health district staff estimate that a person takes approximately five minutes to make a disease report. From their experiences, health district staff believe nurses in medical offices are the primary reporters. Nurses earn an average of \$25 per hour. A single report would cost a business the amount of \$2.08. The estimated total cost to make 418,478 lab reports based on the prevalence of diabetes in and estimating that each individual would have at least 2 glycosylated hemoglobin tests per year would be \$870,434.

According to the San Antonio Metropolitan Health District, the 2007 diabetes prevalence is estimated to be at 10.3% for the San Antonio Metropolitan Statistical Area (MSA). The United States Census population estimates for the San Antonio MSA as of July, 2008 is 2,031,441, the population estimated to be diagnosed with diabetes is 209,239. Assuming each of the possible 236 group medical practices 1,773 glycosylated hemoglobin tests to report, the possible cost per practice would be approximately \$3,688.

All glycosylated hemoglobin tests that have patient consent and the patient diagnosis codes will be reported by clinical laboratories, which are not small businesses or micro-businesses.

Requiring reporting from clinical and hospital laboratories is the only way to accomplish the important public health purpose of Chapter 262, uncodified, HB 1363, 81st Legislature, 2009. The department chose the San Antonio Metropolitan Health District because it was the only district that met the requirements set in §1(c) of the chapter.

#### ECONOMIC COSTS TO PERSONS

There is a cost per report for the clinical laboratory. A major laboratory informed the department that the anticipated economic cost to comply with the section as proposed is up to \$25,000.

#### LOCAL EMPLOYMENT IMPACT

There is no anticipated impact on local employment.

#### PUBLIC BENEFIT

In addition, Ms. DeLeon has also determined that for each year of the first five years that the section is in effect, the public will benefit from adoption of the section. The institutions and individuals responsible for reporting the glycosylated hemoglobin tests will have clear guidance on what is reportable; the public health community will be able to assess methods to promote the prevention and improve control of diabetes; and the general public will be better served by the department as it fulfills its responsibility to monitor, track, and assess the trends and economic burden of diabetes.

#### 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 public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed rule 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 Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Cassandra DeLeon, Director, Texas Diabetes Council/Program, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 458-7111, extension 3549 or by e-mail to [cassandra.deleon@dshs.state.tx.us](mailto:cassandra.deleon@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, Lisa Hernandez, 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 new section is authorized by Chapter 262, uncodified, (HB 1363), 81st Legislature, 2009, which requires the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to implement and govern the format and method of collecting glycosylated hemoglobin data; 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 the health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new section affects Chapter 262, uncodified, (HB 1363), 81st Legislature, 2009; Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§61.91. *Diabetes Mellitus Glycosylated Hemoglobin Test Registry Pilot.*

(a) Purpose. The Diabetes Mellitus Registry Pilot Program, Statute Chapter 262, uncodified (House Bill 1363), 81st Texas Legislature, 2009 requires the establishment of a pilot program for the reporting of glycosylated hemoglobin tests.

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

(1) Diabetes Mellitus--A syndrome characterized by disordered metabolism and abnormally high blood sugar (hyperglycemia)

resulting from insufficient levels of the hormone insulin or reduced insulin sensitivity.

(2) Glycosylated hemoglobin test--A measurement of a form of hemoglobin used primarily to identify the average plasma glucose concentration over prolonged periods of time.

(c) Where to report. The pilot program is being conducted in the San Antonio Metropolitan Health District. This jurisdiction meets the requirements of the statute. A clinical laboratory located in the participating public health district shall submit to the district and the department the results of each glycosylated hemoglobin test that the laboratory performs for each patient that has not chosen to opt out of having their information included in the registry.

(d) Reportable information requirements.

(1) The physician who orders a glycosylated hemoglobin test on or after November 1, 2009 shall submit to the clinical laboratory the patient diagnosis codes along with the patient's sample.

(2) A physician, who orders a glycosylated hemoglobin test for a patient, shall provide the patient with a form, developed by the department, that allows the patient to opt out of having the patient's information included in the registry. If the patient opts out by signing the form, the physician shall keep the form in the patient's medical records; and may not submit to the clinical laboratory the patient's diagnosis codes along with the patient's sample.

(3) The test result information that shall be reported for each glycosylated hemoglobin test performed within the San Antonio Metropolitan Health District service area is as follows: glycosylated hemoglobin value; patient name, address, telephone number, age, date of birth, sex, race and ethnicity; date of test, location of test site, patient diagnosis codes; and physician name, address, and telephone number.

(4) Additional information necessary to determine the trends and public health costs of diabetes control shall also be reported if requested.

(5) Reports, records, and information are confidential and are not subject to disclosure under Government Code, Chapter 552, are not subject to subpoena, and may not otherwise be released. The reports, records, and information obtained are for the confidential use of the department and the persons or public or private entities that the department determines are necessary to carry out the intent of this pilot program.

(e) When to report. Reporting shall begin on the effective date of this rule. Glycosylated hemoglobin test results shall be reported within 5 calendar days.

(f) This rule expires September 1, 2011.

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 February 3, 2010.

TRD-201000546

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 21, 2010

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



## CHAPTER 140. HEALTH PROFESSIONS REGULATION SUBCHAPTER K. DYSLEXIA THERAPISTS AND DYSLEXIA PRACTITIONERS

### 25 TAC §§140.575 - 140.595

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes new §§140.575 - 140.595, concerning the licensing and regulation of dyslexia therapists and dyslexia practitioners.

#### BACKGROUND AND PURPOSE

The new sections are necessary to comply with House Bill 461, 81st Legislature, Regular Session, 2009, codified as Occupations Code, Chapter 403, which requires the department to establish and administer a title-protection licensing and regulatory program for dyslexia therapists and dyslexia practitioners in Texas. The new subchapter and new sections cover all aspects of the new regulatory program, including application procedures, requirements, and fees; requirements for the Dyslexia Licensing Advisory Committee; code of ethics; license renewal and continuing education; and complaints and enforcement.

#### SECTION-BY-SECTION SUMMARY

New §140.575 serves as the introduction to the new subchapter on this topic. New §140.576 sets out definitions that are necessary to interpret and apply the new subchapter. New §140.577 establishes licensing fees in amounts reasonable and necessary to cover the costs of administering the licensing program. New §140.578 references the procedure for rulemaking petitions. New §140.579 sets out requirements and procedures for the Dyslexia Licensing Advisory Committee. New §140.580 establishes license application requirements and procedures. New §140.581 sets out timeframes for application processing by the department. New §140.582 and §140.583 establish qualifications for licensure as a dyslexia therapist and a dyslexia practitioner. New §140.584 sets out requirements for training programs and qualified instructors. New §140.585 addresses the required examination for licensure.

New §140.586 establishes a code of ethics for license holders and sets out the duties and responsibilities of license holders. New §140.587 establishes procedures and requirements for the renewal of licenses. New §140.588 establishes requirements and procedures for changes of name or address. New §140.589 addresses continuing education requirements for license holders. New §140.590 sets out procedures for filing complaints against license holders and complaint investigations. New §140.591 addresses disciplinary action by the department. New §140.592 establishes procedures for informal disposition of complaint cases. New §140.593 addresses formal hearings and new §140.594 establishes the schedule of sanctions. New §140.595 establishes requirements and procedures for licensing of persons with criminal backgrounds.

#### FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in cost to the state of \$152,283 the first year, \$172,572 the sec-

ond year, \$172,542 the third year, \$172,462 the fourth year, and \$172,287 the fifth year, due to the requirement to establish and administer a new licensing program. These costs are offset by an increase in revenue to the state of \$337,500 the first calendar year and \$225,000 each year for years two through five due to the new licensing fees. It is estimated that 500 individuals will obtain a license as a dyslexia therapist and 2,500 individuals will obtain a license as a dyslexia practitioner, resulting in the revenue increase. Implementation of the proposed sections will not result in any fiscal implications for local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no adverse effect on small businesses or micro-businesses as those businesses are not required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices, as the licensing of dyslexia therapists and dyslexia practitioners is of a voluntary, title-protection nature. Occupations Code, Chapter 403, provides for the licensing of individuals and not businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed, as the licensing of dyslexia therapists and dyslexia practitioners is of a voluntary, title-protection nature. Persons who choose to obtain a license so they may use the titles "licensed dyslexia therapist" or "licensed dyslexia practitioner" will be required to pay licensing and renewal fees as described in the proposed rules. There is no anticipated negative impact on local employment.

Government Code, §2006.002, requires an agency to perform an Economic Impact Statement and Regulatory Flexibility Analysis if a proposed rule could have an adverse economic impact on small businesses. Occupations Code, Chapter 403, provides for the licensing of individuals and not businesses. Only individuals may choose to hold a dyslexia therapist or dyslexia practitioner license and be required to pay license and renewal fees. Because Occupations Code, Chapter 403, does not require licensing of businesses or require businesses to pay fees, the proposed sections will have no mandated adverse economic impact on small businesses.

#### PUBLIC BENEFIT

In addition, Ms. Bourland has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to provide a mechanism for the public to be assured that persons who use the titles "licensed dyslexia therapist" or "licensed dyslexia practitioner" have met minimum educational, experience, and examination requirements.

#### 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 public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Stephen Mills, Professional Licensing and Certification Unit, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6628 or by e-mail to [stephen.mills@dshs.state.tx.us](mailto:stephen.mills@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, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The new sections are authorized by Occupations Code Chapter 403; 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.

The new sections affect Occupations Code, Chapter 403; Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

#### §140.575. Introduction.

(a) This subchapter implements the provisions of Occupations Code, Chapter 403, concerning the regulation and licensing of dyslexia therapists and dyslexia practitioners.

(b) This subchapter covers definitions; fees; petition for rule-making; dyslexia licensing advisory committee; application requirements and procedures; application processing; qualifications for licensure as a dyslexia therapist; qualifications for licensure as a dyslexia practitioner; requirements for training programs and qualified instructors; examination for licensure; code of ethics and duties and responsibilities of license holders; renewal of license; changes of name or address; continuing education requirements; filing complaints and complaint investigations; grounds for disciplinary action; informal disposition; formal hearings; schedule of sanctions; and licensing of persons with criminal backgrounds.

#### §140.576. Definitions.

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

- (1) Act--Occupations Code, Chapter 403.
- (2) Administrator--The department employee designated as the administrator of the regulatory activities authorized by the Act.
- (3) Advertising--The direct solicitation for business utilizing the titles "licensed dyslexia therapist" or "licensed dyslexia practitioner."
- (4) Applicant--A person who applies for a license to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner."

(5) Client--A person who is receiving dyslexia services from a license holder.

(6) Commissioner--The commissioner of the Department of State Health Services.

(7) Committee--The Dyslexia Licensing Advisory Committee.

(8) Department--The Department of State Health Services.

(9) License--A license issued under the Act authorizing a person to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner."

(10) License holder--A person who has been granted a license to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner" in accordance with the Act.

(11) Multisensory structured language education--A program described by the International Multisensory Structured Language Education Council for the treatment of individuals with dyslexia and related disorders that provides instruction in the skills of reading, writing, and spelling:

(A) through program content that includes:

(i) phonology and phonological awareness;

(ii) sound and symbol association;

(iii) syllables;

(iv) morphology;

(v) syntax; and

(vi) semantics; and

(B) following principles of instruction that include:

(i) simultaneous multisensory instruction, including visual-auditory-kinesthetic-tactile instruction;

(ii) systematic and cumulative instruction;

(iii) explicit instruction;

(iv) diagnostic teaching to automaticity; and

(v) synthetic and analytic instruction.

(12) Qualified instructor means a person described by §140.584(d) of this title (relating to Requirements for Training Programs and Qualified Instructors).

§140.577. Fees.

(a) For applications postmarked prior to September 1, 2010, the initial licensing fees are as follows:

(1) application and initial license to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner"--\$75 for a license issued to be effective on September 1, 2010 and to expire on August 31, 2011; and

(2) application and initial license to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner"--\$150 for a license issued to be effective on September 1, 2010 and to expire on August 31, 2012.

(b) For applications and renewal applications postmarked on and after September 1, 2010, the licensing fees are as follows:

(1) application and initial license to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner"--\$150 for a license issued for a two-year period;

(2) renewal of a license to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner"--\$150 for a renewal license issued for a two-year period;

(3) late renewal of a license to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner:"

(A) \$210 when renewal is requested 1 - 90 days after expiration; or

(B) \$280 when renewal is requested 91 - 365 days after expiration.

(c) Other licensing fees are as follows:

(1) duplicate license or identification card--\$20;

(2) student loan default reinstatement fee--\$50; and

(3) criminal history evaluation fee--\$50.

(d) For all application and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.

(e) Fees shall be made payable to the Department of State Health Services and may be in the form of a personal check, money order, or cashier's check.

(f) Fees submitted to the department are not refundable.

§140.578. Petition for Rulemaking.

Procedures for the submission, consideration, and disposition of a petition to adopt a rule are set out in 1 TAC §351.2 (relating to Petition for the Adoption of a Rule).

§140.579. Dyslexia Licensing Advisory Committee.

(a) The Dyslexia Licensing Advisory Committee shall be appointed under and governed by the Act and this section. The committee is established under the authority of Occupations Code, §403.051.

(b) Applicable law. The committee is subject to Government Code, Chapter 2110, concerning state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the department regarding the administration of the Act.

(d) Tasks. The committee shall advise the department regarding rules relating to the licensure and regulation of dyslexia therapists and dyslexia practitioners, continuing education requirements, the approved examination for licensure, and the review of training programs. The committee shall also carry out any other tasks assigned by the commissioner.

(e) Review and duration. By September 1, 2013, the department will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of five members appointed by the commissioner of the department. The composition of the committee shall include:

(1) two dyslexia therapists licensed under the Act;

(2) one dyslexia practitioner licensed under the Act; and

(3) two consumer or public members, one of whom must be a person with dyslexia or the parent of a person with dyslexia.

(g) Initial appointments. The initial appointees to the committee are not required to be licensed under the Act, but must attest that

they meet the requirements for licensure. If a person who is appointed under subsection (f)(1) or (2) of this section does not hold the required license by September 1, 2010, the appointment shall be voided and the commissioner shall reappoint a licensed person to fill the vacancy.

(h) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on December 31 of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed by the commissioner to serve the unexpired portion of that term.

(i) Officers. The committee shall elect from among its members a presiding officer and an assistant presiding officer to serve two-year terms to expire on December 31 of each odd-numbered year.

(1) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the department. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(2) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will complete the unexpired portion of the term of the office of presiding officer.

(3) If the office of presiding officer or assistant presiding officer becomes vacant, it shall be filled by vote of the committee at the committee's next regularly scheduled or specially called meeting.

(4) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(5) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(j) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) The committee is not a "governmental body" as defined in the Open Meetings Act, Government Code, Chapter 551. However, in order to promote public participation, each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, with the exception that the provisions allowing executive sessions shall not apply.

(4) Each member of the committee shall be informed in writing of a committee meeting at least ten working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(k) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff in advance if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(l) Staff. Staff support for the committee shall be provided by the department.

(m) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once a quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff. After approval by the committee, the minutes shall be signed by the presiding officer.

(n) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(o) Statements by members.

(1) The department or the committee shall not be bound in any way by any statement or action on the part of any committee member, except when a statement or action is pursuant to specific instructions from the department or the committee.



(2) The committee and its members may not participate in legislative activity in the name of the department or the committee except with department approval. Committee members are not prohibited from representing themselves or other entities in the legislative process.

(3) A committee member should not accept or solicit any benefit that might reasonably tend to influence the member in the discharge of the member's official duties.

(4) A committee member should not disclose confidential information acquired through his or her committee membership.

(5) A committee member should not knowingly solicit, accept, or agree to accept any benefit for having exercised the member's official powers or duties in favor of another person.

(6) A committee member who has a personal or private interest in a matter pending before the committee shall publicly disclose the fact in a committee meeting and may not vote or otherwise participate in the matter. The phrase "personal or private interest" means the committee member has a direct pecuniary interest in the matter but does not include the committee member's engagement in a profession, trade, or occupation when the member's interest is the same as all others similarly engaged in the profession, trade, or occupation.

§140.580. Application Requirements and Procedures.

(a) An applicant for a license must submit all required information on official application forms prescribed by the department and submit the required application and initial license fee.

(b) The application form shall contain the following information:

(1) specific information regarding personal data, including full legal name of individual; date of birth; social security number; information regarding other licenses, registrations, permits, and certifications held by applicant; and information regarding misdemeanor and felony convictions of the applicant;

(2) specific information regarding the person's eligibility for licensure, as described in §140.582 of this title (relating to Qualifications for Licensure as a Dyslexia Therapist), §140.583 of this title (relating to Qualifications for Licensure as a Dyslexia Practitioner), and §140.585 of this title (relating to Examination for Licensure);

(3) a statement that the applicant has read and agrees to comply with the Act and this subchapter;

(4) a statement that the applicant, if issued a license, shall return the license to the department upon revocation or suspension of the license or upon lawful demand;

(5) a statement that the applicant understands that fees and materials submitted in the application process are nonrefundable and nonreturnable;

(6) a statement that the applicant agrees to comply with all state and federal laws and regulations regarding the delivery of dyslexia services;

(7) a statement that the applicant meets the qualifications prescribed by the Act and this subchapter for a license;

(8) a statement that the information contained in the application is truthful and complete; and

(9) the dated signature of the applicant.

§140.581. Application Processing.

The department shall comply with the following procedures in processing applications for licenses and applications for license renewal.

(1) Effective September 1, 2010, the following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. The license may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for a license or notice of deficient application--10 working days;

(B) issuance of license renewal after receipt of all required documentation--10 working days; and

(C) letter of denial of license--15 working days.

(2) In the event an application is not processed in the time periods stated in paragraph (1) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request for reimbursement will be denied.

(3) Good cause for exceeding the time period is considered to exist if the number of applications for licenses and renewals exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(4) If a request for reimbursement under paragraph (2) of this section is denied by the administrator, the applicant may appeal to the commissioner for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(5) Contested cases. The time periods for contested cases related to the denial of licenses or renewals are not included within the time periods stated in paragraph (1) of this section. The time period for conducting a contested case hearing starts from the date the department receives a written request for a hearing and ends when the decision of the department is final and can be appealed.

§140.582. Qualifications for Licensure as a Dyslexia Therapist.

(a) To be eligible for a licensed dyslexia therapist license, an applicant must have:

(1) earned at least a master's degree from a regionally accredited public or private institution of higher education;

(2) successfully completed at least 200 hours of course work in multisensory structured language education from a training program that meets the requirements of §140.584 of this title (relating to Requirements for Training Programs and Qualified Instructors);

(3) completed at least 700 hours of supervised clinical experience in multisensory structured language education;

(4) completed at least 10 demonstration lessons of the practice of multisensory structured language education, each observed by

an instructor from a training program that meets the requirements of §140.584 of this title and followed by a conference with and a written report by the instructor; and

(5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by the Academic Language Therapy Association.

(b) A person who holds current certification as an academic language therapist issued by the Academic Language Therapy Association may be licensed as a dyslexia therapist and is not required to provide documentation to the department that the person meets the requirements of subsection (a)(2) - (5) of this section, unless the person is applying for licensure under subsection (d) of this section. A person who holds current certification as an academic language therapist issued by the Academic Language Therapy Association is required to provide documentation to the department that the person meets the requirements of subsection (a)(1) of this section.

(c) Clinical experience required under subsection (a)(3) of this section must be obtained under the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of §140.584 of this title.

(d) A person who meets the requirements of subsection (a)(2) - (5) of this section may be licensed as a dyslexia therapist if the person applies for a license, including the submission of required documents and fees, under this subsection no later than December 31, 2012, and if the person meets the requirements of subsection (a)(2) - (5) of this section no later than November 30, 2012.

§140.583. Qualifications for Licensure as a Dyslexia Practitioner.

(a) To be eligible for a licensed dyslexia practitioner license, an applicant must have:

(1) earned a bachelor's degree from a regionally accredited public or private institution of higher education;

(2) successfully completed at least 45 hours of course work in multisensory structured language education from a training program that meets the requirements of §140.584 of this title (relating to Requirements for Training Programs and Qualified Instructors);

(3) completed at least 60 hours of supervised clinical experience in multisensory structured language education;

(4) completed at least five demonstration lessons of the practice of multisensory structured language education, each observed by an instructor from a training program that meets the requirements of §140.584 of this title and followed by a conference with and a written report by the instructor; and

(5) successfully completed a national multisensory structured language education competency examination approved by the department and administered by the Academic Language Therapy Association.

(b) A person who holds current certification as an academic language teacher or academic language practitioner issued by the Academic Language Therapy Association may be licensed as a dyslexia practitioner and is not required to provide documentation to the department that the person meets the requirements of subsection (a)(2) - (5) of this section. A person who holds current certification as an academic language teacher or academic language practitioner issued by the Academic Language Therapy Association is required to provide documentation to the department that the person meets the requirements of subsection (a)(1) of this section.

(c) Clinical experience required under subsection (a)(3) of this section must be obtained under the supervision of a qualified instructor or an instructor from an accredited training program that meets the requirements of §140.584 of this title.

§140.584. Requirements for Training Programs and Qualified Instructors.

(a) For purposes of determining whether an applicant satisfies the training requirements for a license under this subchapter, a multisensory structured language education training program completed by the applicant must:

(1) be accredited by a nationally recognized accrediting organization;

(2) have in writing defined goals and objectives, areas of authority, and policies and procedures;

(3) have the appropriate financial and management resources to operate the training program, including a knowledgeable administrative director and standard accounting and reporting procedures;

(4) have a physical site, equipment, materials, supplies, and environment suitable for the training program;

(5) have a sufficient number of instructional personnel who have completed the requirements for certification in multisensory structured language education;

(6) have been reviewed by multisensory structured language education professionals who are not affiliated with the training program;

(7) have developed and followed procedures to maintain and improve the quality of training provided by the program;

(8) have provided direct instruction in the principles and in each element of multisensory structured language education for a minimum of:

(A) 200 contact hours of course work for training program participants who seek a licensed dyslexia therapist license; and

(B) 45 contact hours of course work for training program participants who seek a licensed dyslexia practitioner license;

(9) have required training program participants to complete a program of supervised clinical experience in which the participants provided multisensory structured language education to students or adults, either individually or in small groups for a minimum of:

(A) 700 hours for training program participants who seek a licensed dyslexia therapist license; and

(B) 60 hours for training program participants who seek a licensed dyslexia practitioner license;

(10) have required training program participants to demonstrate the application of multisensory structured language education principles of instruction by completing demonstration lessons observed by an instructor and followed by a conference with and a written report by the instructor; and

(11) have provided instruction based on the Texas Education Agency publication "The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders (2007)," or a revised version of that publication approved by the department.

(b) A training program must require a training program participant who seeks a licensed dyslexia practitioner license to have completed at least five demonstration lessons described by subsection (a)(10) of this section and a participant who seeks a licensed dyslexia

therapist license to have completed at least 10 demonstration lessons described by subsection (a)(10) of this section.

(c) Training programs accredited by the International Multisensory Structured Language Education Council (IMSLEC) meet the requirements of this section. A training program that is not accredited by IMSLEC will be reviewed by the department, in consultation with the advisory committee, to determine whether the training program meets the requirements of this section.

(d) To be considered a qualified instructor as referenced in §140.582(c) of this title (relating to Qualifications for Licensure as a Dyslexia Therapist) and §140.583(c) of this title (relating to Qualifications for Licensure as a Dyslexia Practitioner), a person must:

- (1) be licensed as a dyslexia therapist under the Act;
- (2) have at least 1,400 hours of clinical teaching experience in addition to the hours required to obtain dyslexia therapist licensure; and
- (3) have completed a two-year course of study dedicated to the administration and supervision of multisensory structured language education programs taught by a nationally accredited training program that meets the requirements of this section.

§140.585. Examination for Licensure.

(a) The examination designated and approved by the department for licensure as a dyslexia practitioner is the Alliance National Registration Examination for Multisensory Structured Language Education Associate/Teaching Level administered by the Academic Language Therapy Association.

(b) The examination designated and approved by the department for licensure as a dyslexia therapist is the Alliance National Registration Examination for Multisensory Structured Language Education Therapist Level administered by the Academic Language Therapy Association.

(c) In accordance with the Act, the licensure examination requirement is waived for a person who holds current certification as an academic language teacher, academic language practitioner, or an academic language therapist issued by the Academic Language Therapy Association.

§140.586. Code of Ethics; Duties and Responsibilities of License Holders.

A license holder shall comply with the following requirements in the provision of professional services.

- (1) A license holder shall only provide professional services that are within the scope of the license holder's competence considering level of education, training, and experience.
- (2) A license holder shall ensure a safe therapy or teaching environment for clients.
- (3) A license holder shall not jeopardize a client's safety or well-being by abusive or inattentive behavior.
- (4) A license holder shall maintain objectivity in all matters concerning the welfare of the client.
- (5) A license holder shall terminate a professional relationship when it is reasonably clear that the client is not benefitting from the services being provided or when it is reasonably clear that the client no longer needs the services.
- (6) A license holder shall seek to identify competent, dependable referral sources for clients and shall refer when requested or appropriate.

(7) A license holder shall provide accurate information to clients and the public about the nature and management of dyslexia and about the services rendered.

(8) A license holder shall be knowledgeable of all available diagnostic data and other relevant information regarding each client.

(9) A license holder shall not guarantee, directly or by implication, the results of any therapeutic or teaching services, except that a reasonable statement of prognosis may be made. A license holder shall not mislead clients to expect results that cannot be predicted from reliable evidence.

(10) A license holder shall accurately represent and describe any product created or recommended by the license holder.

(11) A license holder shall not require the exclusive use or purchase of any product created or produced by the license holder as a condition of providing services.

(12) A license holder shall not use his or her professional relationship with a client to promote any product for personal gain or profit unless the license holder has disclosed to the client the nature of the license holder's personal gain or profit.

(13) A license holder shall not misrepresent his or her education, training, credentials, or competence.

(14) A license holder shall fully inform clients of the nature and possible outcomes of services rendered.

(15) A license holder shall obtain written consent from a client or a minor client's parent or legal guardian in order to use the client's data or information for research or teaching activities.

(16) A licensed dyslexia practitioner may practice only in an educational setting, including a school, learning center, or clinic. A licensed dyslexia therapist may practice in a school, learning center, clinic, or private practice setting.

(17) Prior to the commencement of professional services, a license holder in private practice shall provide a client or a minor client's parent or legal guardian with a written agreement for services. The agreement shall contain, at a minimum, a description of the services to be provided, goals, techniques, materials, the cost for services, payment arrangements and policies, hours, cancellation and refund policies, contact information for both parties, and the dated signatures of both parties. Any subsequent modifications to the agreement shall be signed and dated by both parties.

(18) A license holder in private practice shall maintain legible and accurate records of professional services rendered. A license holder practicing in an educational setting, including a school, learning center, or clinic, shall comply with the recordkeeping requirements of the educational setting.

(19) A license holder shall not falsify records.

(20) A license holder in private practice shall maintain records for a minimum of five years following the termination of services. A license holder practicing in an educational setting, including a school, learning center, or clinic, shall comply with the records retention requirements of the educational setting.

(21) Records are the responsibility and property of the entity or individual who owns the practice or the practice setting.

(22) A license holder shall bill a client or third party only for the services actually rendered in the manner agreed to by the license holder and the client or the minor client's parent or legal guardian.

(23) A license holder shall not provide professional services solely by written, telephone, or electronic/video correspondence or communication.

(24) A license holder shall not provide professional services to a client who is receiving services from another license holder, except with the prior knowledge and consent of the other license holder.

(25) A license holder shall not reveal, without authorization, any professional or personal information about a client unless required by law or compelled by a court to do so, or unless doing so is necessary to protect the welfare of the client or of the community. If a license holder reveals professional or personal information about a client without authorization, the information disclosed, the person or entity to whom it was disclosed, and the justification for disclosure shall be documented by the license holder in the client's record.

(26) A license holder shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement upon the written request of a client or the minor client's parent or legal guardian.

(27) A license holder shall not engage in the medical diagnosis or treatment of clients.

(28) A license holder in private practice shall not delegate any service requiring professional competence to a person not competent to provide the service. A license holder in private practice is responsible for the services provided by unlicensed persons employed or contracted by the license holder.

(29) A license holder in private practice shall notify each client or the minor client's parent or legal guardian of the name, address, and telephone number of the department for the purpose of directing complaints to the department by providing notification on a sign prominently placed in the primary place of business or on a written document, such as an agreement or contract for services or an informational brochure provided by a license holder to a client or the minor client's parent or legal guardian.

(30) A license holder in private practice shall display the license certificate with a current renewal card in the primary location of practice, but shall not display a license certificate or renewal card which has been photographically or otherwise reproduced.

(31) A license holder shall report, in accordance with Family Code, §261.101(b), if there is cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person. A license holder shall make the report not later than the 48th hour after the hour that the license holder first suspects that the child has been or may be abused or neglected. A license holder shall not delegate to, or rely on, another person to make the report.

(32) A license holder shall not engage in sexual contact, including intercourse or kissing, sexual exploitation, or therapeutic deception, with a client. Sexual contact and sexual intercourse mean the activities and behaviors described in Penal Code, §21.01. Sexual exploitation means a pattern, practice, or scheme of conduct, which may include sexual contact, which can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. Therapeutic deception means a representation by a license holder that sexual contact with, or sexual exploitation by, the license holder is consistent with, or part of, the professional services being provided to the client.

(33) A license holder shall not use alcohol, or drugs not legally prescribed for the license holder, when the use adversely affects or could adversely affect the provision of professional services.

(34) A license holder shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting clients or patronage.

(35) A license holder shall comply with all provisions of the Act and this subchapter, as well as any other state or federal law or rule that relates to the provision of professional services by, or the regulation of, the license holder.

(36) A license holder shall notify the department of changes of name, address, and telephone number and shall provide documentation of name changes as directed by the department. Notification shall be made to the department within 30 days of such changes, in accordance with §140.588 of this title (relating to Changes of Name or Address).

(37) A license holder shall not obtain a license by means of fraud, misrepresentation, or concealment of a material fact.

(38) A license holder shall not sell, barter, or offer to sell or barter a license.

(39) A license holder shall inform the department of any violations of this subchapter or the Act.

(40) A license holder shall comply with any order issued by the department that relates to the license holder.

(41) A license holder shall not interfere with a department investigation or disciplinary proceeding by willful misrepresentation or omission of facts to the department or by the use of threats or harassment against any person.

(42) A license holder shall cooperate with the department by promptly furnishing required documents and by promptly responding to a request for information from the department.

(43) A license holder shall provide professional services without discrimination based on race, creed, sex, religion, or national origin.

(44) Information used by a license holder in any advertisement or announcement shall not contain information which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements. False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a professional service;

(C) compares a professional's services with another professional's services unless the comparison can be factually substantiated;

(D) causes confusion or misunderstanding as to the credentials, education, or licensing of a professional;

(E) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of client; or

(F) represents in the use of a professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional, unless the license holder

is licensed or otherwise authorized to use the title or professional identification.

§140.587. *Renewal of License.*

(a) The purpose of this section is to set out the rules governing license renewal.

(b) A license holder must renew the license biennially. The renewal date of a license shall be determined by the department.

(c) At least 30 days prior to the expiration date of a license, the department shall send notice of renewal to the license holder's address in the department's records. The notice shall inform the license holder of the impending expiration and of the procedures for renewal.

(d) The renewal process shall require the license holder to provide the preferred mailing address and to disclose misdemeanor or felony convictions during the preceding two-year period. The license holder shall also be required to attest that the continuing education requirements for renewal have been met and shall provide documentation if requested or if audited by the department.

(e) A license holder has applied for renewal of the license when the license holder has mailed the fully completed renewal form and the required renewal fee to the department prior to the expiration date of the license. The postmark date shall be considered the date of mailing. If renewing electronically, the license holder has applied for renewal of the license upon successful completion of the online renewal process.

(f) After review of the renewal application, the department shall issue a renewed license to a license holder who has met all requirements for renewal.

(g) Each license holder is responsible for renewing the license 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 license shall not excuse failure to file for timely renewal.

(h) A person whose license has expired may not use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner."

(i) A person whose license has been expired for 90 days or less may renew the license by paying to the department a renewal fee that is equal to one and one-half times the normally required renewal fee.

(j) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the department a renewal fee that is equal to two times the normally required renewal fee.

(k) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license.

(l) A license holder whose check for a licensing 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 license holder's receipt of the department's notice. If proper payment is not received, the license shall not be renewed. If a renewed license has already been issued, it shall be ineffective.

(m) If a license holder fails to timely renew his or her license because the license holder is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the license holder may renew the license pursuant to this subsection.

(1) Renewal of the license may be requested by the license holder, the license holder's spouse, or an individual having power of attorney from the license 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 license. License 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 license 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 license 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.

(n) The department shall not renew a license if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(o) The department shall not renew a license 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 for failure to comply with a court order providing for the possession of or access to a child.

§140.588. *Changes of Name or Address.*

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes by a license holder.

(b) The license holder shall notify the department of changes in name or preferred mailing address within 30 days of such change(s).

(c) Notification of address changes shall be made in writing or by telephone. Notification of name changes shall be in writing. Notification of name changes shall include the former and present name, license number, former and present mailing address, and a copy of the legal name change document, such as a marriage license, court order or divorce decree.

(d) Before a replacement license will be issued by the department, the license holder shall return any previously issued document(s).

(e) It is the responsibility of the license holder to comply with the provisions of this section. Notice of complaints, violations, disciplinary action, or other correspondence sent to the address in the department's records are deemed received by the license holder.

(f) A new license certificate and identification card shall not be issued until the license holder has submitted the duplicate license fee as set out in §140.577(c)(1) of this title (relating to Fees).

§140.589. *Continuing Education Requirements.*

(a) The purpose of this section is to establish the continuing education requirements a license holder shall meet to maintain licensure. The requirements are intended to maintain and improve the quality of services provided to the public by licensed dyslexia therapists and licensed dyslexia practitioners. Continuing education experiences are programs beyond the basic education required to obtain licensure which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of the practices of licensed dyslexia therapists and licensed dyslexia practitioners, thus improving dyslexia services provided to the public.

(b) Hours required for continuing education. A license holder must complete 20 clock-hours of continuing education during each two-year licensure period.

(c) Continuing education credit undertaken by a license holder for renewal shall be acceptable if the experience falls in one or more of the following categories and meets the requirements of subsection (d) of this section:

(1) academic courses at a regionally accredited college or university;

(2) in-service educational programs, training programs, institutes, seminars, workshops and conferences;

(3) instructing or presenting education programs or activities at an academic course, in-service educational programs, training programs, institutes, seminars, workshops and conferences not to exceed five clock-hours each continuing education period;

(4) publishing a book or an article in a peer review journal not to exceed five clock-hours each continuing education period; or

(5) successful completion of a self-study program, not to exceed ten clock-hours each continuing education period.

(d) Continuing education credit undertaken by a license holder shall be in one or more of the following content areas:

(1) basic language and/or learning disorders;

(2) applied multisensory practice and methodology;

(3) curricula in academic language therapy;

(4) related research in medicine, psychology, education, or linguistics; or

(5) professional practice, including relevant laws, rules, and ethics of practice.

(e) Continuing education experience shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of ten clock-hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (c)(2) or (3) of this section shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education experience.

(3) A clock-hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(4) Continuing education programs as described in subsection (c)(2) and (3) of this section must be offered or approved by the Academic Language Therapy Association.

(5) Successful completion of continuing education experiences as described in subsection (c)(2) and (3) of this section is evidenced by a certificate of completion or attendance that is issued by the approved sponsoring organization of the course.

(6) Successful completion of continuing education experiences as described in subsection (c)(4) of this section is evidenced by a submission of a copy of the publication.

(7) Successful completion of continuing education experiences described in subsection (c)(5) of this section is evidenced by a certificate of completion presented by the sponsoring organization of the self-study program.

(f) The department shall employ an audit system for continuing education reporting. The license holder shall be responsible for

maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of continuing education hours are not to be forwarded to the department at the time of renewal unless the license holder has been selected for audit.

(g) The audit process shall be as follows.

(1) The department shall select for audit a random sample of license holders for each renewal month. License holders will be notified of the continuing education audit when they receive their renewal documentation.

(2) All license holders selected for audit will furnish documentation such as official transcripts, certificates, diplomas, an affidavit identifying the continuing education experience satisfactory to the department, or any other documentation requested by the department to verify having earned the required continuing education hours. The documentation must be provided to the department with the renewal form and payment.

(3) Failure to timely furnish this information or knowingly providing false information during the audit process or the renewal process are grounds for disciplinary action against the license holder.

(h) A license holder who has failed to complete the requirements for continuing education may be granted a 180-day extension to the continuing education period.

(1) The request for an extension of the continuing education period must be made in writing.

(2) The subsequent continuing education period shall end two years from the date the previous continuing education period expired or upon the expiration of the license, not the date of the end of the extension period.

(3) Credit earned during the extension period may only be applied to the previous continuing education period.

(4) A license may be renewed upon completion of the required continuing education within the given extension period, submission of the license renewal form, and payment of the applicable late renewal fee.

(i) A person who fails to complete continuing education requirements for renewal and fails to request an extension to the continuing education period may not renew the license. The person may obtain a new license by complying with the current requirements and procedures for obtaining a license.

(j) The department may not grant continuing education credit to any license holder for:

(1) education incidental to the regular professional activities of a license holder such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (b) or (h) of this section; or

(4) performance of duties that are routine job duties or requirements.

§140.590. Filing Complaints and Complaint Investigations.

(a) Complaints alleging that a person has violated the Act or this subchapter may be filed with the department on a department complaint form or in writing by regular mail, facsimile, or electronic mail.

(b) Upon receipt of a written complaint, the department shall send the complainant an acknowledgment letter.

(c) The department shall notify the license holder that a complaint has been filed and shall request the license holder's response to the allegations, unless the department determines that notification to the license holder could jeopardize the investigation of the complaint.

(d) The department shall periodically notify the complainant and the license holder of the status of the complaint until its final disposition.

(e) Anonymous complaints may be investigated by the department if there is a sufficient basis and documentation to proceed.

(f) The department may investigate the complaint and may recommend that the license be revoked, suspended, placed on probation, reprimanded or that other appropriate action as authorized by law be taken.

(g) If the department determines that the complaint is not within the department's jurisdiction, the complainant will be notified. The complaint may be referred to another governmental agency for review.

(h) If the department determines that there are insufficient grounds to support the complaint, the complaint shall be dismissed. Written notice of the dismissal will be provided to the license holder and the complainant.

#### §140.591. Disciplinary Action.

(a) The department may deny a license application; refuse to renew a license; suspend or revoke a license; place a license holder on probation; or issue a reprimand for a violation of the Act or this subchapter.

(b) Prior to institution of formal proceedings to deny an application, refuse to renew a license, revoke or suspend, place on probation, or issue a reprimand, the department shall give written notice to the license holder by certified mail, return receipt requested, of the facts or conduct alleged to warrant the proposed action, and the license holder shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this subchapter.

(c) If disciplinary action of a license holder is proposed, the department shall give written notice by certified mail, return receipt requested, that the license holder must request, in writing, a formal hearing within 10 calendar days of receipt of the notice, or the right to a hearing shall be waived and the action shall be taken.

(d) The department may request the attorney general to bring an action for an injunction to prohibit a person from violating the Act or this subchapter.

(e) A person who violates the Act or this subchapter is liable for a civil penalty not to exceed \$500 for each occurrence. The department may request the attorney general to bring an action to recover a civil penalty authorized under the Act.

(f) If it appears to the department that a person who is not licensed under the Act is violating the Act or this subchapter, the department may, after notice and an opportunity for a hearing, issue a cease and desist order prohibiting the person from engaging in the activity. A violation of an order constitutes grounds for imposing a civil penalty as authorized by the Act.

(g) In addition to other disciplinary action authorized by the Act, the department may require that a license holder who violates this subchapter attend continuing education programs.

(h) Monitoring of license holder. A license holder who is placed on probated suspension may be required to complete additional continuing education, to be monitored or supervised for a period of time by another license holder, or other requirements appropriate to the circumstances of the violation. Department staff shall monitor a license holder's compliance with probationary requirements. A license holder may be required to report periodically to the department regarding the license holder's progress during the probationary period.

(i) A person may apply for reinstatement of a revoked license on or after the first anniversary of the date of revocation. The department may accept or reject the application and may require an examination as a condition for reinstatement of the license.

#### §140.592. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a license holder or an applicant for a license may be made through an informal conference held to determine whether an agreed settlement order may be secured.

(b) An informal conference shall be voluntary.

(c) A conference shall be informal and shall not follow the procedures for contested cases and formal hearings.

(d) The license holder, the license holder's attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate. The department's legal counsel shall attend the informal conference.

(e) The complainant shall not be considered a party in the informal conference, but shall be given an opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the informal conference.

(f) At the conclusion of the informal conference, department staff may:

(1) recommend informal disposition of the complaint or contested case;

(2) recommend any disciplinary action authorized by the Act;

(3) conclude that the department lacks jurisdiction;

(4) conclude that a violation of the Act or this subchapter has not been established;

(5) order that the investigation be closed; or

(6) refer the matter for further investigation.

#### §140.593. Formal Hearings.

A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

#### §140.594. Schedule of Sanctions.

(a) When the department determines that sanctions are appropriate, proposals for imposition of sanctions and disciplinary actions shall be made in accordance with the Act.

(b) This schedule of sanctions is intended to be utilized by the department as a guide in assessing sanctions for violations of the Act or this subchapter. The schedule is also intended to serve as a guide to administrative law judges, and as a written statement of applicable rules or policies of the department pursuant to Government Code, §2001.058(c). The failure of an administrative law judge to follow the schedule may serve as a basis to vacate or modify an order pursuant to

Government Code, §2001.058(e). This schedule is not intended as a substitute for thoughtful consideration of each individual disciplinary matter. Instead, it should be used as a tool in that effort.

(c) Sanctions shall be determined by the following:

- (1) the seriousness of the violation(s);
- (2) previous compliance history;
- (3) the severity level necessary to deter future violations;
- (4) efforts to correct the violation; and
- (5) any other extenuating circumstances.

(d) Relevant factors. When a license holder has violated the Act or this subchapter, three general factors combine to determine the appropriate sanction, which include: the culpability of the license holder; the harm caused or posed; and the requisite deterrence. It is the responsibility of the license holder to bring exonerating factors to the attention of the department or the administrative law judge. Specific factors to be considered are set forth as follows.

(1) Seriousness of violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety and welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations, or a single violation, and the period of time over which the violations occurred.

(2) Nature of the violation. The following factors are identified:

(A) the vulnerability of the person harmed, or exposed to harm;

(B) the moral culpability of the license holder, such as whether the violation was intentional or premeditated; due to blatant disregard or gross neglect; or resulted from simple error or inadvertence; and

(C) the extent to which the violation evidences lack of character or honesty.

(3) Personal Accountability. The following factors are identified:

(A) admission of wrong or error, and acceptance of responsibility;

(B) degree of remorse or concern;

(C) efforts to ameliorate the harm or make restitution;

(D) efforts to ensure future violations do not occur; and

(E) cooperation with any investigation or request for information.

(4) Deterrence. The following factors are identified:

(A) the sanction required to deter future similar violations by the license holder;

(B) sanctions necessary to ensure compliance by the license holder of other provisions of the Act or this subchapter; and

(C) sanctions necessary to deter other license holders from such violations.

(5) Miscellaneous Factors. The following factors are identified:

(A) age and experience at time of violation;

(B) presence or absence of prior or subsequent violations;

(C) conduct and work activity prior to and following the violation;

(D) character references; and

(E) any other factors justice may require.

(e) Violations are categorized by one of the following severity levels:

(1) severity level I--violations that have had or may have an adverse impact on the health or safety of a client to include serious harm or permanent injury to a client and may result in revocation of the license or license suspension;

(2) severity level II--violations that have had or may have an adverse impact on the health and safety of a client but less serious than level I and may result in suspension or probated suspension of the license;

(3) severity level III--violations that have had or may have a minor health or safety significance, or flagrant or repeated violations of the Act and/or this subchapter and may result in probated suspension of the license or reprimand;

(4) severity level IV--violations that have had or may have less than minor significance, but if left uncorrected, could lead to more serious circumstances and may result in reprimand; and

(5) severity level V--violations that are minor infractions and may result in a reprimand or a formal advisory letter.

(f) Other actions. The department may also resolve pending complaints by issuance of formal advisory letters informing license holders of their duties under the Act or this subchapter, and whether the conduct or omission complained of appears to violate such duties. Such advisory letters may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the advisory letters. The department may also issue informal reminders to license holders regarding compliance with minor licensing matters. The license holder is not entitled to a hearing on the matters set forth in formal advisory letters or informal reminders, but may submit a written response to be included with such letters in the department's licensing records.

§140.595. Licensing of Persons with Criminal Backgrounds.

(a) The provisions of Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) and Occupations Code, §403.204, govern the licensing of persons with criminal backgrounds.

(b) The department may deny a license application or a license renewal application, or revoke, suspend, or place on probation an existing license if an applicant or license holder has been convicted of:

(1) an offense (felony or misdemeanor) that directly relates to the duties and responsibilities of a licensed dyslexia therapist or licensed dyslexia practitioner;

(2) an offense (felony or misdemeanor) that does not directly relate to the duties and responsibilities of a licensed dyslexia therapist or licensed dyslexia practitioner and that was committed less



than five years before the date the person applies for the license or for license renewal;

(3) an offense listed in Code of Criminal Procedure, Article 42.12, §3g; or

(4) a sexually violent offense, as defined by Code of Criminal Procedure, Article 62.001.

(c) The factors and evidence listed in Occupations Code, Chapter 53, Subchapter B (relating to Ineligibility for License) shall be considered in determining eligibility for an original or renewal license.

(d) In considering whether a criminal conviction directly relates to the profession of licensed dyslexia therapist or licensed dyslexia practitioner, the department shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to use the title "licensed dyslexia therapist" or "licensed dyslexia practitioner;"

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a license holder.

(e) The department may consider a person to have been convicted of an offense regardless of whether the proceedings were dismissed and the person was discharged as described by Occupations Code, §53.021(c), if, after consideration of the factors described by Occupations Code, §53.022 and §53.023(a), the department determines that:

(1) the person may pose a continued threat to public safety;  
or

(2) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

(f) The following felonies and misdemeanors directly relate to the duties and responsibilities of a license holder because they indicate an unwillingness or a tendency to be unable to perform the duties and discharge the responsibilities of a licensed dyslexia therapist or a licensed dyslexia practitioner:

(1) an offense involving moral turpitude;

(2) the misdemeanor of failing to report child abuse or neglect;

(3) a misdemeanor involving deceptive business practices;

(4) the offense of assault or sexual assault; or

(5) a misdemeanor and/or a felony offense under various titles of the Penal Code:

(A) concerning Title 5 offenses against the person;

(B) concerning Title 7 offenses against property;

(C) concerning Title 8 offenses against public administration;

(D) concerning Title 9 offenses against public order and decency; or

(E) concerning Title 10 offenses against public health, safety, and morals.

(g) In accordance with Occupations Code, §53.102, a person may request the department to issue a criminal history evaluation letter regarding the person's eligibility for a license if the person:

(1) is enrolled or planning to enroll in an educational program that prepares a person for an initial license or is planning to take an examination for an initial license; and

(2) has reason to believe that the person is ineligible for the license due to a conviction or deferred adjudication for a felony or misdemeanor offense.

(h) A person making a request for issuance of a criminal history evaluation letter shall complete and submit the request on a form prescribed by the department, accompanied by the criminal history evaluation fee.

(i) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The letter shall be issued not later than the 90th day after the date the department received the request.

(j) If the department determines that the requestor is ineligible for a license, the department shall issue a letter setting out each basis for potential ineligibility and the department's determination as to eligibility. The letter shall be issued not later than the 90th day after the date the department received the request. In the absence of new evidence known to but not disclosed by the requestor or not reasonably available to the department at the time the letter is issued, the department's ruling on the request determines the requestor's eligibility with respect to the grounds for potential ineligibility set out in the letter.

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 February 4, 2010.

TRD-201000560

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: March 21, 2010

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



## CHAPTER 289. RADIATION CONTROL SUBCHAPTER G. REGISTRATION REGULATIONS

### 25 TAC §289.302

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department) proposes new §289.302, concerning registration and radiation safety requirements for use of laser hair removal devices.

#### BACKGROUND AND PURPOSE

The new rule is developed to implement House Bill (HB) 449 that adds a new Subchapter M to Health and Safety Code, Chapter 401, and Appropriations Bill §17.32 Contingency Rider of the 81st Legislature, Regular Session, 2009, relating to registration and radiation safety requirements for use of laser hair removal devices.

## SECTION-BY-SECTION SUMMARY

The new rule establishes requirements for the registration of laser hair removal facilities and the certification of persons who perform or attempt to perform laser hair removal procedures. HB 449 requires all laser hair removal facilities and individuals who perform laser hair removal procedures to be registered and certified by the department by September 1, 2010. In addition, the new rule establishes requirements for laser hair removal facility operations, training of persons performing laser hair removal procedures, customer notification, use of a consulting physician, enforcement, penalties, fees for certificates of laser registration, fees for individual laser hair removal certificates, and responsibilities of the registrant, laser safety officer, consulting physician, and certified individuals. To facilitate a sufficient number of certified persons in the laser hair removal field during the first four months of the program, the department has modified the application requirements for certification for those who meet the requirements outlined in §289.302(j)(8), (12), and (16), prior to September 1, 2010 and apply not later than December 31, 2010.

### FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the section is in effect, there will be fiscal implications to the state as a result of enforcing and administering the new section as proposed due to costs for new full-time-equivalent positions, equipment, software configuration, and generating other resources needed to operate the laser hair removal certification program. The costs to the department will be approximately \$1,254,254 for the first year that the new section is in effect \$1,404,205 for year two, \$1,489,421 for year three, \$1,441, 839 for year four, and \$1,569,540 for year five.

Health and Safety Code, §401.511, allows the department to adopt a system under which certificates and licenses expire on various dates during the year. For purposes of this new section, the department considers licensure and registration to be equivalent terms. The department believes it is a good business practice to stagger the expiration dates of those facilities and individuals requiring registration or certification. Therefore, during the first year, approximately half of the 2000 estimated facilities and half of the 4000 estimated individuals will receive one-year registrations/certifications and half will receive two-year registrations/certifications. All renewals will be for a period of two years. New registrations and certifications issued after the first year will be for a period of two years. Therefore, in the first year the new section is in effect, the department will experience an increase in revenue of approximately \$630,000 generated by fees assessed from about 1,000 applications for a one-year laser hair removal facility registration. Additionally, for the first year the new section is in effect, the department will collect fees in the amount of approximately \$1,260,000 for an estimated 1,000 applications for a two-year laser hair removal facility registration.

For the second and third years, the department will experience an increase in revenue of approximately \$1,890,000 for nearly 500 new and 1,000 renewal applications for a two-year laser hair removal facility registration.

For years four and five, the department will collect approximately \$2,520,000 from fees for an estimated 500 new and 1,500 renewal applications for a two-year laser hair removal facility registration.

Additionally, the department will experience an increase in revenue generated by fees for applications of the following cate-

gories/types of individual laser hair removal certificates: (1) laser hair removal professional; (2) senior laser hair removal technician; (3) laser hair removal technician; and (4) laser hair removal apprentice-in-training.

Regarding laser hair removal professional certificates, the department will collect an estimated \$37,500 in the first year the new section is in effect for an approximate 500 applications for a one-year certificate. In the first year the new section is in effect, the department will also collect about \$75,000 for an estimated 500 applications for a two-year laser hair removal professional certificate.

For years two and three, the department will experience an increase in revenue of about \$75,000 for approximately 250 new and 500 renewal applications for a two-year laser hair removal professional certificate.

For the fourth and fifth years, the department is expected to collect nearly \$112,500 for an approximate 250 new and 750 renewal applications for a two-year laser hair removal professional certificate.

Regarding senior laser hair removal certificates, the department will collect approximately \$25,000 in the first year the new section is in effect for about 500 applications for a one-year certificate. Additionally, in the first year the new section is in effect, the department will collect nearly \$50,000 for an estimated 500 applications for a two-year senior laser hair removal certificate.

The department will experience an increase in revenue estimated at \$50,000 in years two and three for approximately 250 new and 500 renewal applications for a two-year senior laser hair removal certificate.

For years four and five, the department will collect approximately \$75,000 for about 250 new and 750 renewal applications for a two-year senior laser hair removal certificate.

Regarding laser hair removal technician certificates, the department will collect nearly \$17,500 in the first year the new section is in effect for approximately 500 applications for a one-year certificate. Additionally, in the first year the new section is in effect, the department will collect an estimated \$35,000 for about 500 applications for a two-year laser hair removal technician certificate.

For the second and third years, the department will experience an increase in revenue of approximately \$35,000 for nearly 250 new and 500 renewal applications for a two-year laser hair removal technician certificate.

The department is expected to collect an estimated \$52,500 in the fourth and fifth years for about 250 new and 750 renewal applications for a two-year laser hair removal technician certificate.

Regarding laser hair removal apprentice-in-training certificates, the department is expected to collect about \$12,500 in the first year the new section is in effect for approximately 500 applications for a one-year certificate. In the first year the new section is in effect, the department will also collect approximately \$25,000 for nearly 500 applications for a two-year laser hair removal apprentice-in-training certificate.

Additionally, for the second and third years, the department will experience an increase in revenue of nearly \$25,000 for an estimated 250 new and 500 renewal applications for a two-year laser hair removal apprentice-in-training certificate.

For years four and five, the department is expected to collect approximately \$37,500 for about 250 new and 750 renewal applications for a two-year laser hair removal apprentice-in-training certificate.

Implementation of the proposed new section will not result in any foreseeable fiscal implications for local governments.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be an effect on persons and small businesses or micro-businesses required to comply with the new section as proposed. For those 2000 estimated businesses that apply for a certificate of laser registration for the use of laser hair removal devices, the fee will be \$630 for a one-year registration for approximately half of the facilities applying in the first year the new section is in effect and \$1,260 for a two-year registration for approximately half of the facilities applying in the first year the new section is in effect. After the first year the new section is in effect, the cost for a new or renewal two-year registration application will be \$1,260. Facilities are required to have a contract with a consulting physician. The cost of the contract will vary from facility to facility based upon the terms of the contract and will be negotiated between the facility and the consulting physician.

For the 1000 estimated individuals choosing to apply for a one-year laser hair removal professional certificate, the cost is \$75 for approximately half of the individuals applying in the first year the new section is in effect and \$150 for a two-year certificate for approximately half of the individuals applying in the first year the new section is in effect. After the first year the new section is in effect, the cost for a new or renewal two-year certificate application will be \$150. To obtain a laser hair removal professional certificate, the individual must meet requirements that include passing an examination approved by the agency and becoming certified by a certification entity approved by the agency. The cost of an exam ranges from an estimated \$200 to \$350. The estimated cost of certification ranges from \$1,400 to \$4,500. Some certifying entities provide the exam as a part of the cost of certification.

The cost for a one-year senior laser hair removal certificate application is \$50 for approximately half of the 1000 estimated individuals applying in the first year the section is in effect and \$100 for a two-year certificate application for approximately half of the individuals applying in the first year the section is in effect. After the first year the new section is in effect, the cost for a new or renewal two-year certificate application will be \$100.

For the 1000 estimated individuals choosing to apply for a one-year laser hair removal technician certificate application, the fee is \$35 for approximately half of the individuals applying in the first year the new section is in effect and \$70 for a two-year certificate application for approximately half of the individuals applying in the first year the new section is in effect. The fee to be paid for a new or renewal two-year certificate application after the first year the new section is in effect is \$70.

The cost for a one-year laser hair removal apprentice-in-training certificate application is \$25 for approximately half of the 1000 estimated individuals applying in the first year the section is in effect and \$50 for a two-year certificate for approximately half of the individuals applying in the first year the section is in effect. After the first year the new section is in effect, the cost for a new or renewal two-year certificate application will be \$50. To obtain a laser hair removal apprentice-in-training certificate, the individual must complete a combined 40 hours of training as

specified in rule. The estimated cost of obtaining the required training ranges from \$1,700 to \$5,000.

The holders of individual laser hair removal certificates will also incur costs to obtain continuing education credits required for renewal of the certificate. The cost of obtaining continuing education credits will vary depending upon which training source the individual chooses and whether the training is obtained online or in the classroom. The estimated cost of the continuing education ranges from \$300 to \$1,000.

There is no anticipated negative impact on local employment.

#### REGULATORY FLEXIBILITY ANALYSIS

HB 449 establishes a new subchapter under Health and Safety Code, Chapter 401 concerning laser hair removal facilities and individuals performing laser hair removal procedures. HB 449 directs the department to adopt rules to implement the provisions of the bill. The department collects fees to recover the costs of implementing the radiation control regulatory program, in accordance with Chapter 401 of the Health and Safety Code, and is directed to recover 100% of those regulatory costs. To allow exceptions to the fees for small or micro-businesses would cause the department to fail to collect 100% of regulatory costs and Chapter 401 makes no exceptions from the permitting requirements based on business size of the entity. Furthermore, HB 449 and its requirements of providing for public health and safety do not authorize or justify any exceptions from other facility requirements such as a contract with a consulting physician, the presence of a laser hair removal professional or licensed health professional, the use of United States Food and Drug Administration approved equipment, or consumer notices and protective eyewear. Therefore, small and micro-businesses will incur the costs of complying with the new subchapter.

#### PUBLIC BENEFIT

In addition, Ms. Tennyson 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 new section. The public benefit anticipated as a result of enforcing or administering the section is to ensure adequate training and experience are obtained by individuals responsible for performing or attempting to perform laser hair removal procedures and that facilities and individuals are subject to a comprehensive regulatory program including permitting, inspection, and enforcement.

#### 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 public health and safety of a state or a sector of the state.

#### TAKINGS IMPACT ASSESSMENT

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, TX 78714-9347, (512) 834-6770, extension 2239, or by email to [Cindy.Cardwell@dshs.state.tx.us](mailto:Cindy.Cardwell@dshs.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Austin, Texas. The meeting date and specific location will be posted on the Radiation Control website ([www.dshs.state.tx.us/radiation](http://www.dshs.state.tx.us/radiation)). Please contact Cindy Cardwell at (512) 834-6770, extension 2239, or [Cindy.Cardwell@dshs.state.tx.us](mailto:Cindy.Cardwell@dshs.state.tx.us) if you have questions.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, 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 new section is authorized by Health and Safety Code, §401.301, which allows the department to collect fees for radiation control licenses and registrations that it issues; Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; 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.

The new section affects the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.302. Registration and Radiation Safety Requirements for Use of Laser Hair Removal Devices.

##### (a) Purpose.

(1) This section establishes requirements for radiation safety in the use of lasers or pulsed light devices for hair removal procedures. This section includes requirements for laser hair removal (LHR) facility operations, training and qualifications for persons performing LHR procedures, customer notification, consulting physicians, enforcement, penalties, and responsibilities of the registrant, laser safety officer (LSO), certified individuals, and consulting physicians.

(2) This section establishes requirements for the registration of LHR facilities and the certification of individuals who perform or attempt to perform LHR procedures. No person may operate a LHR facility except as authorized in a certificate of LHR registration issued by the agency in accordance with the requirements of this section. No person may perform or attempt to perform LHR except as authorized in a certificate issued by the agency in accordance with this section.

(3) This section establishes fees and fee payment requirements for certificates of LHR registration for LHR facilities and individual LHR certificates for individuals who perform or attempt to perform LHR procedures. The fees and fee payment requirements apply

to applications and renewals of certificates of LHR registration and individual LHR certificates.

##### (b) Scope.

(1) Except as otherwise specifically provided, this section applies to all persons who operate a location that provides LHR procedures using LHR devices and to all persons who perform or attempt to perform LHR procedures using LHR devices. This section does not apply to the manufacture of LHR devices.

(2) A LHR device used for nonablative hair removal procedures shall meet the applicable performance standards for light-emitting products specified in Title 21, Code of Federal Regulations (CFR), §1040.10 and §1040.11.

(3) Except for consulting physicians, this section does not apply to a physician or to a physician's employee or delegate acting under Occupations Code, Chapter 157.

(4) A certificate issued in accordance with subsection (k) of this section only authorizes a person to perform nonablative cosmetic LHR. The certificate issued in accordance with subsection (k) of this section does not authorize an individual to diagnose, treat, or offer to treat any client for any illness, disease, injury, defect or deformity of the human body.

(5) This section applies only to LHR devices used for nonablative hair removal. Lasers or pulsed light devices used for any other purpose shall comply with the requirements of §289.301 of this title (relating to Registration and Radiation Safety Requirements for Lasers and Intense-Pulsed Light Devices).

(6) A person who receives, possesses, uses, owns, or acquires LHR devices prior to receiving a certificate of LHR registration is subject to the requirements of this section.

(7) A health professional licensed under another law is not required to hold a certificate to perform laser hair removal procedures issued in accordance with this section if the performance of laser hair removal is within the scope of that professional's practice as determined by the professional's licensing board.

(8) The qualifications for eligibility for an applicant for a senior LHR technician certificate who is a licensed health professional shall be established by the entity that issues licenses for that health profession.

(9) Training programs complying with the requirements of subsection (j)(20) of this section are also subject to certain requirements of §289.226 of this title (relating to Registration of Radiation Machine Use and Services).

##### (c) Prohibitions.

(1) The agency may prohibit the use of LHR devices that pose a significant threat or endanger occupational or public health and safety, in accordance with subsections (z) and (ee) of this section.

(2) A person shall not operate a LHR facility unless the person holds a certificate of LHR registration issued by the agency in accordance with subsection (k) of this section.

(3) An individual shall not use LHR devices to perform or attempt to perform LHR procedures unless the person holds the individual LHR certificate issued by the agency in accordance with subsection (k) of this section.

(4) An individual shall not operate a laser hair removal device with the intent to treat an illness, disease, injury, or physical defect or deformity unless the individual is:

(A) a physician;

(B) acting under a physician's order; or

(C) authorized under other law to treat the illness, disease, injury, or physical defect or deformity in that manner.

(5) A person who violates paragraph (4) of this subsection is practicing medicine in violation of Occupations Code, Title 3, Subtitle B, and is subject to the penalties under that subtitle and under Health and Safety Code, §401.522.

(6) A person shall not operate a LHR facility from a person's living quarters. A LHR facility shall be separated from living quarters by complete floor to ceiling partitioning and shall contain no access to living quarters.

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

(1) Act--Texas Radiation Control Act, Health and Safety Code, Chapter 401.

(2) Administrative penalty--Monetary penalty assessed by the agency in accordance with the Texas Radiation Control Act (Act), §401.384 and §401.522, to emphasize the need for lasting remedial action and to deter future violations.

(3) Adverse event--Any death or serious injury, as that term is defined in Title 21, CFR, §803.3, to a client or employee of a LHR facility that is a result of use, misuse, or failure of LHR devices or LHR safety equipment.

(4) Agency--The Department of State Health Services or its successor.

(5) Applicant--A person seeking a certificate of LHR registration or individual LHR certificate, issued in accordance with the provisions of the Act and the requirements in this section.

(6) Certificate of LHR registration--A form of permission given by the agency to a LHR facility applicant who has met the requirements for LHR registration certification set out in the Act and this section. For purposes of this section, "certificate of LHR registration" is an equivalent term for "facility license" as specified in Health and Safety Code, §401.510.

(7) Certified individual--Any individual issued an individual LHR certificate by the agency in accordance with the Act and this section.

(8) Commissioner--The commissioner of the Department of State Health Services.

(9) Consulting physician--A physician who has a contract with a LHR facility in accordance with subsection (i)(13) of this section.

(10) Contract--A written legal document between a consulting physician and the operator of a LHR facility.

(11) Direct supervision--Direct observation by a senior LHR technician or a LHR professional of LHR procedures performed by a LHR technician or a LHR apprentice-in-training. The senior LHR technician or LHR professional shall be available to give immediate assistance if required.

(12) Director--The director of the radiation control program in accordance with the agency's jurisdiction.

(13) Hearing--A proceeding to examine an application or other matter before the agency in order to adjudicate rights, duties, or privileges.

(14) Informal conference--A meeting held by the agency with a person to discuss the following:

(A) safety, safeguards, or environmental problems;

(B) compliance with regulatory or certificate of LHR registration condition requirements;

(C) proposed corrective measures including, but not limited to, schedules for implementation; and

(D) enforcement options available to the agency.

(15) Individual LHR certificate--A form of permission given by the agency to an individual applicant who has met the requirements for individual LHR certification set out in the Act and this section. The term includes certificates issued by the agency for a LHR professional, a senior LHR removal technician, a LHR technician, and a LHR apprentice-in-training.

(16) Inspection--An official examination and/or observation by the agency that includes, but is not limited to, records, tests, surveys, photographs, and monitoring to determine compliance with the Act and rules, orders, requirements, and conditions of the agency.

(17) Laser hair removal--The use of a laser or pulsed light device for nonablative hair removal procedures. For purposes of this section, "laser hair reduction" is an equivalent term.

(18) Laser hair removal facility--A business location that provides laser hair removal.

(19) Laser hair removal procedure--Each separate appointment with a LHR facility by a client during which an assessment of the client is made in accordance with the LHR facility's protocols.

(20) Laser or pulsed light device--A device approved by the United States Food and Drug Administration (FDA) for laser hair removal or reduction. For purposes of this section, "LHR device" is an equivalent term.

(21) Laser safety officer (LSO)--An individual who has knowledge of and the authority and responsibility to apply appropriate laser radiation protection rules, standards, and practices, and who shall be specifically authorized on a certificate of LHR registration.

(22) LHR--An acronym for laser hair removal.

(23) Licensed health professional--An individual licensed in accordance with Occupations Code, Title 3.

(24) Living quarters--Any area used as a place of abode with provisions for sleeping, cooking, and sanitation.

(25) Mobile LHR facility--A business location self-contained within a vehicle that provides LHR procedures within the vehicle and meets all the requirements of this section.

(26) Nonablative hair removal procedure--A hair removal procedure using a LHR device that does not remove the epidermis.

(27) Notice of violation--A written statement prepared by the agency of one or more alleged infringements of a legally binding requirement.

(28) Operator--The owner of a LHR facility, an agent of an owner, or an independent contractor of a LHR facility.

(29) Order--A specific directive contained in a legal document issued by the agency.

(30) Person--Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, local government, any other state or political subdivision or agency thereof, or any other legal entity, and any legal successor, representative, agent, or agency of the foregoing.

(31) Physician--An individual who meets the definition in Occupations Code, Title 3, Subtitle, B, Chapter 151.

(32) Preliminary report--A document prepared by the agency containing the following:

(A) a statement of facts on which the agency bases the conclusion that a violation has occurred;

(B) recommendations that an administrative penalty be imposed on the person charged;

(C) recommendations for the amount of that proposed penalty; and

(D) a statement that the person charged has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

(33) Registrant--Any facility issued a certificate of LHR registration by the agency in accordance with the Act and this section. For purposes of this section, "certificate of LHR registration" is an equivalent term for "facility license" as specified in Health and Safety Code, §401.510.

(34) Rule--Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures.

(35) Severity level--A classification of violations based on relative seriousness of each violation and the significance of the effect of the violation on the occupational or public health or safety or the environment.

(36) Supervision--The physical presence of a senior LHR technician or LHR professional at the LHR facility.

(37) Termination--A release by the agency of the obligations and authorizations of the LHR registrant or certified LHR individual under the terms of the certificate of LHR registration or the individual LHR certificate. It does not relieve a person of duties and responsibilities imposed by law.

(38) Violation--An infringement of any rule, registration, or individual certificate condition, order of the agency, or any provision of the Act.

(e) Additional requirements. The agency may, by rule, order, or condition of certificate of laser registration, impose upon any registrant such requirements in addition to those established in this chapter as it deems appropriate or necessary to minimize danger to public health and safety or property or the environment.

(f) Communications.

(1) Except where otherwise specified, all communications and reports concerning this section and applications filed under it should be addressed to the Radiation Control Program, Department of State Health Services, Mail Code 1987, P.O. Box 149347, Austin, Texas, 78714-9347. Communications, reports, and applications may be delivered in person to the agency's office located at 8407 Wall Street, Austin, Texas.

(2) Documents transmitted to the agency will be deemed submitted on the date sent according to the postmark, telegram, telefacsimile, or electronic media transmission.

(g) Interpretations. Except as specifically authorized by the agency in writing, no interpretation of the meaning of this section by any officer or employee of the agency other than a written legal interpretation by the agency, will be considered binding upon the agency.

(h) Open records. All records are subject to the requirements of the Texas Public Information Act, Government Code, Chapter 552.

(i) Application requirements for a certificate of LHR registration.

(1) A separate LHR application shall be submitted for each LHR facility. A separate certificate of LHR registration is required for each LHR facility.

(2) A certificate of LHR registration for a LHR facility, issued in accordance with subsection (k) of this section, is not required for the following:

(A) a facility owned or operated by a physician for the practice of medicine;

(B) a licensed hospital; or

(C) a clinic owned or operated by a licensed hospital.

(3) A certificate of LHR registration, issued in accordance with subsection (k) of this section, is required for a facility owned or operated by a physician that performs only LHR procedures. A certificate of LHR registration is not required for a facility owned or operated by a physician for both the practice of medicine and LHR procedures.

(4) A certificate of laser registration issued in accordance with §289.301 of this title may be required for the entities specified in paragraph (2)(A) - (C) of this subsection that own, possess, or use lasers for purposes other than LHR.

(5) Application for a certificate of LHR registration shall be completed on forms prescribed by the agency and shall contain all the information required by the form and accompanying instructions.

(6) A LSO shall be designated on each application form. The qualifications of that individual shall be submitted to the agency with the application. The LSO shall meet the requirements of subsection (n) of this section and carry out the responsibilities of subsection (o) of this section.

(7) A LHR professional(s) shall be designated on each application form. The LHR professional shall meet the applicable requirements of subsection (j)(6) of this section and carry out the responsibilities of subsection (q)(4) of this section.

(8) Each application shall be accompanied by a completed RC Form 226-1 (Business Information Form).

(9) Each application for a certificate of LHR registration shall be accompanied by the appropriate fee prescribed in subsection (ff) of this section.

(10) The agency may, at any time after filing of the original application, require further statements in order to enable the agency to determine whether the certificate of LHR registration should be granted or denied.

(11) Applications and documents submitted to the agency may be made available for public inspection, except that the agency may withhold any document or part thereof from public inspection in accordance with subsection (h) of this section.

(12) An application for a LHR facility shall be signed by an operator. The LHR application shall also be signed by the LSO if the LSO is someone other than the operator.

(13) Each application for a certificate of LHR registration shall be accompanied by copy of a written contract with a consulting physician. The contract shall be between the LHR facility applicant and the consulting physician and shall include the following:

(A) proper protocols for the services provided by the consulting physician at the facility as specified in subsection (m)(5) and (6) of this section;

(B) a provision for the consulting physician to audit the LHR facility's protocols and operations in accordance with subsection (m)(2) of this section;

(C) a commitment that the consulting physician shall be available for emergency consultation with the LHR facility as appropriate to the circumstances, including, if the physician considers it necessary, an emergency appointment with the client; and

(D) a designated physician who shall be available for the consultation with the LHR facility relating to care for the client if the consulting physician is unavailable.

(j) Application requirements for an individual LHR certificate.

(1) Application for an individual LHR certificate shall be completed on forms prescribed by the agency and shall contain all the information required by the form and accompanying instructions.

(2) Each application for an individual LHR certificate shall be accompanied by the appropriate fee prescribed in subsection (ff) of this section.

(3) The agency may, at any time after filing of the original application, require further statements in order to enable the agency to determine whether the individual LHR certificate should be granted or denied.

(4) Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection in accordance with subsection (h) of this section.

(5) An application for an individual LHR certificate shall be signed by the individual seeking certification.

(6) An applicant for a LHR professional certificate shall meet the following requirements:

(A) be certified by a certification entity approved by the agency;

(B) meet the requirements for a senior LHR technician certificate in accordance with paragraph (10) of this subsection; and

(C) pass an examination approved by the agency.

(7) Written documentation of completion of the requirements in paragraph (6)(A) - (C) of this subsection shall be submitted with each LHR professional certificate application.

(8) An applicant for a LHR professional certificate who has met the requirements of paragraph (6)(A) and (C) of this subsection prior to September 1, 2010, is not required to meet the requirements of paragraph (6)(B) of this subsection.

(9) Written documentation of the requirements in paragraph (6)(A) and (C) of this subsection completed prior to September 1, 2010, shall be submitted to the agency with each LHR professional certificate application. Written documentation submitted in

accordance with this paragraph will be accepted by the agency if postmarked, hand-delivered, or electronically submitted by December 31, 2010.

(10) An applicant for a senior LHR technician certificate shall meet the following requirements:

(A) meet the requirements for a LHR technician certificate in accordance with paragraph (14) of this subsection; and

(B) have directly supervised at least 100 LHR procedures within 12 months, as audited by a LHR professional. An individual shall not supervise LHR procedures without audit by a LHR professional until:

(i) 100 LHR procedures within 12 months have been supervised, as audited by a LHR professional; and

(ii) an individual LHR professional certificate has been issued by the agency in accordance with subsection (k) of this section.

(11) Written documentation of completion of the requirements in paragraph (10)(A) and (B) of this subsection shall be submitted with each LHR professional certificate application.

(12) An applicant for a senior LHR technician certificate who has met the following requirements prior to September 1, 2010, is not required to meet the requirements of paragraph (10) of this subsection:

(A) performed 100 LHR procedures within 12 months;

(B) supervised 100 LHR procedures within 12 months; and

(C) has met the requirements of paragraph (18)(A), (B), and (D) of this subsection.

(13) Written documentation of the requirements in paragraph (12) of this subsection completed prior to September 1, 2010, shall be submitted to the agency with each senior LHR technician certificate application. Written documentation submitted in accordance with this paragraph will be accepted by the agency if postmarked, hand-delivered, or electronically submitted by December 31, 2010.

(14) An applicant for a LHR technician certificate shall meet the following requirements:

(A) meet the requirements for a LHR apprentice-in-training certificate in accordance with paragraph (18) of this subsection; and

(B) have performed at least 100 LHR procedures within 12 months under the direct supervision of a senior LHR technician or a LHR professional. An individual shall not perform LHR procedures unsupervised until:

(i) 100 LHR procedures within 12 months have been performed under the supervision of a senior LHR technician or LHR professional; and

(ii) an individual LHR technician certificate has been issued by the agency in accordance with subsection (k) of this section.

(15) Written documentation of completion of the requirements in paragraph (14)(A) and (B) of this subsection shall be submitted with each LHR professional certificate application.

(16) An applicant for a LHR technician certificate who has met the following requirements prior to September 1, 2010, is not required to meet the requirements of paragraph (14) of this subsection:

and (A) performed 100 LHR procedures within 12 months;

(B) has met the requirements of paragraph (18)(A), (B), and (D) of this subsection.

(17) Written documentation of the requirements in paragraph (16) of this subsection completed prior to September 1, 2010, shall be submitted to the agency with each LHR technician certificate application. Written documentation submitted in accordance with this paragraph will be accepted by the agency if postmarked, hand-delivered, or electronically submitted by December 31, 2010.

(18) An applicant for a LHR apprentice-in-training certificate shall meet the following requirements:

(A) have at least 24 hours of training in:

- (i) LHR device safety;
- (ii) laser physics;
- (iii) skin typing;
- (iv) skin reactions;
- (v) treatment protocols;
- (vi) burns;
- (vii) eye protection;
- (viii) emergencies; and
- (ix) post-treatment protocols;

(B) have an additional 16 hours of training in:

- (i) cardio-pulmonary resuscitation;
- (ii) assessment of client's pre-existing conditions;
- (iii) assessment of client's previous hair removal procedures by another modality;
- (iv) assessment of client's current medications;
- (v) proper signage and posting;
- (vi) use of a LHR device; and
- (vii) anesthesia used in conjunction with LHR procedures.

(C) shall work under the direct supervision of a senior LHR technician or a LHR professional; and

(D) shall be at least 18 years of age.

(19) Written documentation of completion of the requirements in paragraph (18)(A) - (D) of this subsection shall be submitted with each LHR professional certificate application.

(20) Training required by paragraph (18)(A) and (B) of this subsection shall be obtained from an agency-accepted training program registered with the agency in accordance with.

(A) An agency-accepted training program is defined as a radiation service in accordance with §289.226(b)(10)(D) of this title. A radiation service shall be registered in accordance with §289.226(j) of this title. A training program specified in this paragraph shall meet the requirements of §289.226(a), (j)(1), (j)(2), (j)(3)(C), (k), (l), (m)(1)(A), (m)(4) - (7), (o) - (r), and (t)(1)(A) of this title. For purposes of this section, the responsibilities of a radiation safety officer specified in §289.226(j) of this title may be fulfilled by a LSO.

(B) An application submitted to the agency for an agency-accepted training program shall include the following:

(i) course syllabus, including topics covered and time allotted for each topic;

(ii) qualifications of instructors;

(iii) verification that exam(s) are administered to assess the student's knowledge of material presented;

(iv) the criteria for successful completion of the course;

(v) a copy of the certificate that will be issued upon successful completion of the training program; and

(vi) verification that the training program is in compliance with applicable state laws, including Texas Education Code, Chapter 132.

(k) Issuance of a certificate of LHR registration and an individual LHR certificate.

(1) A certificate of LHR registration application or individual LHR certificate application will be approved if the agency determines that the application meets the requirements of the Act and this section. A certificate of LHR registration and an individual LHR certificate authorizes the activity in such form and contains such conditions and limitations as the agency deems appropriate or necessary.

(2) The agency may incorporate in the certificate of LHR registration or individual LHR certificate at the time of issuance, or thereafter by amendment, such additional requirements and conditions with respect to the registrant's or individual's possession, use, and transfer of LHR devices subject to this section as it deems appropriate or necessary in order to:

(A) minimize danger to occupational and public health and safety;

(B) require additional reports and the keeping of additional records as may be appropriate or necessary; and

(C) prevent loss or theft of LHR devices subject to this section.

(3) The agency may request, and the registrant or certified individual shall provide, additional information after the certificate of LHR registration or individual LHR certificate has been issued to enable the agency to determine whether the certificate of LHR registration or individual LHR certificate should be modified in accordance with subsection (z) of this section.

(l) Specific terms and conditions of certificates of LHR registration and individual LHR certificates.

(1) Each certificate of LHR registration and individual LHR removal certificate issued in accordance with this section shall be subject to the applicable provisions of the Act, now or hereafter in effect, and to the applicable rules and orders of the agency.

(2) No certificate of LHR registration or individual LHR certificate issued or granted under this section shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, to any person unless the agency authorizes the transfer in writing.

(3) Each person registered by the agency for use of LHR devices in accordance with this section shall confine use and possession of the LHR devices to the location and purpose authorized in the certificate of LHR registration.

(4) In making a determination whether to grant, deny, amend, renew, revoke, suspend, or restrict a certificate of LHR registration or individual LHR certificate, the agency may consider the technical competence and compliance history of an applicant or holder



of a certificate of LHR registration or individual LHR certificate. After an opportunity for a hearing, the agency shall deny an application for, an amendment to, or a renewal of a certificate of LHR registration or individual LHR certificate if the applicant's compliance history reveals that at least three agency actions have been issued against the applicant, within the previous six years, that assess administrative or civil penalties against the applicant, or that revoke or suspend the certificate of laser registration or individual laser hair removal certificate. An exception to this requirement may be made by the agency if it finds that the recurring pattern of conduct does not demonstrate a consistent disregard for the regulatory process because the applicant's overall conduct shows steady and significant improvement.

(m) Responsibilities of a consulting physician.

(1) The consulting physician shall be available for emergency consultation with the facility as appropriate to the circumstances, including, if the physician considers it necessary, an emergency appointment with the client. If the consulting physician is unavailable for an emergency consultation, another designated physician shall be available for the consultation with the facility relating to care for the client. The consulting physician and designated physician shall have a primary practice site located within 60 miles of the LHR facility that the physician has contracted with.

(2) The consulting physician shall conduct audits of the registrant's LHR facility to ensure that operations are being conducted in accordance with the protocols established by the contract specified in subsection (i)(13) of this section. The audits shall be unannounced, shall be conducted at the physical site of the LHR facility, and shall be conducted at least quarterly.

(3) The consulting physician shall make records of audits conducted under the terms of the contract. The consulting physician audit records shall be maintained in accordance with subsection (nn) of this section for inspection by the agency. The record of the audit shall include at least the following:

(A) date audit was performed;

(B) name of the LHR facility audited;

(C) assessment of the LHR facility's performance of the protocols established by the written contract; and

(D) signature of the consulting physician and the LHR facility operator.

(4) The consulting physician shall be responsible for reviewing all adverse events and for determining whether such events are reportable in accordance with Title 21, CFR, Part 803.

(5) The protocols required in accordance with subsection (i)(13) of this section shall be:

(A) written instructions agreed upon and signed and dated by the consulting physician and the LHR facility operator;

(B) maintained at the LHR facility; and

(C) reviewed and signed by the consulting physician and LHR operator at least annually.

(6) The protocols required in accordance with subsection (i)(13) of this section shall include at least the following:

(A) which LHR procedures require a particular level of individual LHR certification;

(B) the circumstances or conditions under which each procedure is to be performed;

(C) specific instructions to be followed for individual LHR certificate holders who are working under direct supervision or who are giving direct supervision; and

(D) conditions under which emergency consultation is required.

(7) The requirements in paragraph (1) of this subsection do not relieve a consulting physician or another health care professional from complying with applicable regulations prescribed by a state or federal agency.

(n) Requirements for LSOs. LSO qualifications shall be submitted to the agency with the application and shall include at least the following:

(1) educational courses related to laser radiation safety or a laser safety officer course; or

(2) familiarity with and experience in the use of LHR devices; and

(3) knowledge of potential laser radiation hazards and laser emergency situations.

(o) Responsibilities of LSOs. Specific duties of the LSO include, but are not limited to, the following:

(1) ensuring that users of LHR devices are trained in laser safety;

(2) assuming control and having the authority to institute corrective actions, including shutdown of operations when necessary, in emergency situations or if unsafe conditions exist;

(3) ensuring that maintenance and other practices required for safe operation of the LHR devices are performed;

(4) ensuring the proper use of protective eyewear and other safety measures;

(5) ensuring compliance with the requirements in this section and with protocols specified by the registrant;

(6) ensuring audits required in accordance with subsections (m)(2) and (q)(7) of this section are conducted;

(7) maintaining records as required by this section; and

(8) ensuring that personnel are adequately trained, certified, and complying with this chapter, the conditions of the certificate of LHR registration, and the protocols of the registrant.

(p) Responsibilities of LHR facility registrant.

(1) The registrant shall notify the agency in writing of any changes that would render the information contained in the application for LHR registration or the certificate of LHR registration inaccurate. Notification is required within 30 days of the following:

(A) change in business name of the LHR facility;

(B) change in physical location of the LHR facility;

(C) change in street address where LHR devices will be used;

(D) change in LSO;

(E) loss or change of the LHR facility's LHR professional; or

(F) loss or change of the LHR facility's consulting physician.

(2) The registrant shall comply with the adverse reporting requirements for device user facilities in Title 21, CFR, Part 803 - Medical Device Reporting. Copies of all reports of adverse events submitted in accordance with Title 21, CFR, Part 803 shall be submitted to the agency within 24 hours of their initial submission to the manufacturer, FDA or both as determined by the consulting physician in accordance with subsection (m)(4) of this section.

(3) If the registrant loses the services of the consulting physician or fails to have a valid written contract with a consulting physician, the registrant shall immediately cease LHR procedures until the registrant establishes a contractual relationship with a consulting physician as required by subsection (i)(13) of this section.

(4) No person shall make, sell, lease, transfer, or lend laser hair removal devices unless such devices, when properly placed in operation and use, meet the applicable requirements of this section.

(5) Each registrant shall conduct a physical inventory of all LHR devices in its possession at an interval not to exceed 1 year. Records of the inventories shall be made and maintained in accordance with subsection (nn) of this section for inspection by the agency, and shall include:

(A) LHR device manufacturer's name;

(B) model and serial number of the LHR device;

(C) specific location of the LHR device (for example, room number);

(D) name, title, and signature of the person performing the inventory; and

(E) date the inventory was performed.

(6) Each registrant shall maintain records of receipt, transfer, and disposal for each LHR device in accordance with subsection (nn) of this section, for inspection by the agency. The records shall include the following information:

(A) LHR manufacturer's name;

(B) model and serial number of the LHR device;

(C) date of the receipt, transfer, or disposal;

(D) name and address of person LHR devices were received from, transferred to, or disposed of with; and

(E) name of the individual recording the information.

(7) The following applies to voluntary or involuntary petitions for bankruptcy.

(A) Each registrant shall notify the agency, in writing, immediately following the filing with the court of a voluntary or involuntary petition for bankruptcy by the registrant or its parent company.

(B) A copy of the petition for bankruptcy, as filed with the court, shall be submitted to the agency along with the written notification.

(8) A LHR facility operator is responsible for maintaining the LHR facility's compliance with the requirements of this Act and the rules of this section relating to LHR devices used for hair removal procedures.

(9) A LHR facility operator shall not claim, advertise, or distribute promotional materials that claim that laser hair removal is free from risk or provides any medical benefit.

(10) A LHR facility operator shall not produce false or misleading advertising regarding the services offered at the facility.

(q) Operating requirements.

(1) A LHR device used in a LHR facility shall comply with all applicable federal and state laws and regulations.

(2) A person who adulterates or misbrands a LHR device violates Health and Safety Code, §431.111 or §431.112. The agency may investigate a person accused of adulterating or misbranding a laser of pulsed light device.

(3) A LHR device shall not be used for LHR procedures unless:

(A) the LHR device is approved for laser hair removal or reduction by the FDA for that purpose; and

(B) the LHR device is operated only at the settings expected to safely remove hair.

(4) Except as provided by paragraph (5) of this subsection, a LHR facility shall have a LHR professional or a licensed health professional present to provide direct supervision of the LHR procedures performed at the facility during the facility's operating hours.

(5) A LHR facility may continue to perform LHR procedures after the facility's LHR professional leaves the facility or is continuously absent for up to 44 days if a senior LHR technician is present to perform or directly supervise each procedure. Not later than the 45th day after the date the facility's LHR professional leaves or is continuously absent from the facility:

(A) the facility's senior LHR technician shall become certified as a LHR professional in accordance with subsection (j) of this section; or

(B) the facility shall hire a new LHR professional.

(6) A LHR technician or a LHR apprentice-in-training shall not perform LHR procedures unless under the direct supervision of a senior LHR technician or a LHR professional. Direct supervision shall include the following:

(A) the physical presence of senior LHR technician or LHR professional at the LHR facility;

(B) the availability of the senior LHR technician or LHR professional to give immediate assistance if required; and

(C) the direct observation by the senior LHR technician or LHR professional of LHR procedures performed by a LHR technician or LHR apprentice-in-training.

(7) The registrant shall ensure that the direct supervision provided by a senior LHR technician for procedures being performed by a LHR technician or a LHR apprentice-in-training is audited by a LHR professional. The audit shall ensure that the requirements of this section, the conditions of the certificate of LHR registration, and protocols are followed by individuals performing LHR procedures.

(8) Individuals operating each laser presently being used or listed on the registrant's current inventory, shall be provided with written instructions for safe use, including clear warnings and precautions to be taken when using the LHR device. Each individual receiving the instructions shall document that they have read and understand the instructions. The instructions and the documentation that each individual has read and understands the instructions shall be maintained in accordance with subsection (nn) of this section for inspection by the agency.

(9) A controlled area shall be established in any room in which LHR devices are used. The controlled area shall be posted as required by paragraphs (17) and (18) of this subsection.

(10) Each LHR device shall incorporate a key-actuated or computer-actuated master control. The key shall be removable and the LHR device shall not be operable when the key is removed. When the LHR device is not being prepared for operation or is unattended, the controlled area shall be secured to prevent unauthorized access.

(11) Protective eyewear shall be worn by all individuals using a LHR device or all individual present, including clients, in the room where a LHR device is being used. Protective eyewear devices shall meet the following requirements:

(A) provide a comfortable and appropriate fit all around the area of the eye;

(B) be in proper condition to ensure the optical filter(s) and frame provide the required optical density or greater at the desired wavelengths, and retain all protective properties during its use;

(C) be suitable for the specific wavelength of the laser and be of optical density adequate for the energy involved;

(D) have the optical density or densities and associated wavelength(s) permanently labeled on the filters or eyewear; and

(E) be examined, at intervals not to exceed 12 months, to ensure the reliability of the protective filters and integrity of the protective filter frames. Unreliable eyewear shall be discarded. Documentation of the examination shall be made and maintained in accordance with subsection (nn) of this section for inspection by the agency.

(12) The registrant shall secure LHR devices from unauthorized removal.

(13) The registrant shall give each client a written statement outlining the relevant risks associated with LHR procedures, including a warning that failure to use the eye protection provided to the client by the LHR facility may result in damage to the eyes.

(14) Compliance with the written statement requirement specified in paragraph (13) of this subsection does not affect the liability of the LHR facility operator or a manufacturer of a LHR device.

(15) The registrant shall display the certificate of LHR registration issued in accordance with subsection (k) of this section in an open public area of the LHR facility.

(16) Each certified individual shall display the individual LHR certificate issued in accordance subsection (k) of this section in an open public area of the LHR facility. Copies of an individual's certification document issued by the agency may be made for display in multiple facilities.

(17) The registrant shall post a warning sign in a conspicuous location that is readily visible to a person entering the LHR facility. The warning sign shall meet the following requirements:

(A) be of a size with dimensions at least 8 and 1/2 inches by 11 inches;

(B) contain wording with a font size no smaller than size 26;

(C) contain at least the following wording:

(i) Laser hair removal devices emit electromagnetic radiation that is considered to be an acute hazard to the skin and eyes from direct and scattered radiation. Laser hair removal procedures provide no medical benefit and may result in adverse effects.

(ii) To make a complaint, contact the Department of State Health Services at this toll-free number: 1-888-899-6688.

(18) The LHR controlled area shall be conspicuously posted with signs or labels as designated by the following:

(A) Title 21, CFR, §1040.10;

(B) ANSI Z136.1-2000, Safe Use of Lasers; and

(C) IEC standards 60825-1 and 60601-2-22.

(19) Signs required by paragraphs (17) and (18) of this subsection shall be clearly visible, legible, and securely attached to the facility.

(20) Records shall be made of each audit conducted as specified in paragraph (7) of this subsection. The records shall be maintained in accordance with subsection (nn) of this section for inspection by the agency. The records shall include, but not be limited to, the following:

(A) name of the LHR professional;

(B) name(s) of the individual(s) being audited;

(C) date of the procedure; and

(D) evaluation of the items specified in paragraph (7) of this subsection.

(21) Records shall be made of each LHR procedure and maintained in accordance with subsection (nn) of this section for inspection by the agency. Each record shall include, but not be limited to, the following:

(A) client identification;

(B) date of the LHR procedure;

(C) indication that the client was given the notification specified in paragraph (4) of this subsection;

(D) name of the individual performing the LHR procedure;

(E) type of individual LHR certificate possessed by the individual performing the LHR procedure;

(F) name of the senior LHR technician or LHR professional providing direct supervision, if applicable; and

(G) manufacturer, model number, and serial number of the LHR device used to perform the procedure.

(r) Continuing education requirements.

(1) Each individual who holds an individual LHR certificate issued by the agency shall obtain continuing education.

(2) The certified individual shall obtain 8 hours of continuing education units to include, but not be limited to, the following:

(A) refresher training in the topics specified in subsection (j)(18)(A) and (B) of this section;

(B) LHR technology updates;

(C) applicable regulatory changes; and

(D) other health and safety related topics.

(3) The continuing education units shall be obtained within the two-year period beginning with the issuance date of the individual LHR certificate and ending with the expiration date specified in the individual LHR certificate. The requirements for continuing education units specified in paragraph (2) of this subsection shall be met for each two-year period for which the individual LHR certificate is renewed. For certificates issued for 1 year in accordance with subsection (t)(1)(A) of this section, 4 hours of continuing education units shall be

obtained within the one-year period beginning with the issuance of the individual LHR certificate and ending with the expiration date specified in the individual LHR certificate.

(s) General provisions for records.

(1) All records required by this chapter shall be current, accurate, and factual. These records shall be maintained by the registrant in accordance with subsection (nn) of this section for inspection by the agency.

(2) Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated.

(3) Each record required by this chapter shall be legible throughout the specified retention period.

(4) The record shall be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period.

(5) The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period.

(6) The registrant shall maintain adequate safeguards against tampering with and loss of records.

(7) Except as provided by paragraph (8) of this subsection, the registrant or any other person may not disclose a client record required to be kept by the agency.

(8) The registrant or any other person may disclose a client record if:

(A) the client or a person authorized to act on behalf of the client requests the record;

(B) the agency, the Texas Medical Board, a health authority, or an authorized agency requests the record;

(C) the client consents in writing to disclosure of the record to another person;

(D) the client is a victim, witness, or defendant in a criminal proceeding and the record is relevant to that proceeding;

(E) the record is requested in a criminal or civil proceeding by court order or subpoena; or

(F) disclosure is otherwise prohibited by law.

(t) Expiration of certificates of LHR registration and individual LHR certificates.

(1) A certificate of LHR registration or individual LHR certificate issued between the effective date of these rules and August 31, 2011, is valid for:

(A) 1 year and expires on the expiration date specified on the certificate of LHR registration or individual LHR certificate, if the birth year of the applicant (or the birth year of the LHR facility operator if the applicant is not an individual) is an odd number; or

(B) 2 years and expires on the expiration date specified on the certificate of LHR registration or individual LHR certificate, if the birth year of the applicant (or the birth year of the LHR facility operator if the applicant is not an individual) is an even number.

(2) Each certificate of LHR registration or individual LHR certificate issued on or after September 1, 2011, is valid for 2 years and expires on the expiration date specified on the certificate of LHR registration or individual LHR certificate.

(3) Each application for renewal of a certificate of LHR registration or individual LHR certificate shall be accompanied by the renewal fee specified in subsection (ff) of this section. A certificate of LHR registration or individual LHR certificate issued in accordance with paragraph (1)(A) of this subsection shall submit one-half of the appropriate fee as specified in subsection (ff) of this section. A certificate of LHR registration or individual LHR certificate issued in accordance with paragraphs (1)(B) or (2) of this subsection shall submit the full amount of the appropriate fee as specified in subsection (ff) of this section.

(4) If a registrant does not submit an application for renewal of the certificate of LHR registration in accordance with subsection (v) of this section, the registrant shall on or before the expiration date specified in the certificate of LHR registration:

(A) terminate use of all LHR devices; and

(B) submit to the agency a record of the disposition of the LHR devices, and if transferred, to whom the devices were transferred.

(5) Expiration of the certificate of LHR registration does not relieve the registrant of the requirements of this section. Expiration of the individual LHR certificate does not relieve the individual of the requirements of this section.

(u) Termination of certificates of LHR registration. When a registrant decides to terminate all activities involving LHR devices authorized under the certificate of LHR registration, the registrant shall immediately do the following:

(1) request termination of the certificate of LHR registration in writing; and

(2) submit to the agency a record of the disposition of the LHR devices, and if transferred, to whom the devices were transferred.

(v) Renewal of certificate of LHR registration and individual LHR certificates.

(1) An application for renewal of a certificate of LHR registration shall be filed in accordance with subsection (i) of this section. An application for renewal of an individual LHR certificate shall be filed in accordance with subsection (j) of this section.

(2) Written documentation of successful completion of the continuing education requirements in subsection (r) of this subsection shall be submitted with each application for renewal of an individual LHR certificate.

(3) If a registrant or an individual files an application for a renewal in proper form before the existing certificate of LHR registration or individual LHR certificate expires, such existing certificate of LHR registration or individual LHR certificate shall not expire until the application status has been determined by the agency.

(w) Inspections.

(1) The agency may enter public or private property at reasonable times to determine whether, in a matter under the agency's jurisdiction, there is compliance with the Act, the agency's rules, certificate of LHR registration conditions, and orders issued by the agency.

(2) Each registrant shall afford the agency, at all reasonable times, opportunity to inspect LHR devices and the premises and facilities wherein such LHR devices are used or stored.

(3) Each registrant shall make available to the agency for inspection, upon reasonable notice, records made and maintained in accordance with this section.

(4) Inspection of LHR facilities.

(A) Routine inspections by agency personnel will be made no more frequently than every 2 years.

(B) Notwithstanding the inspection intervals specified in subparagraph (A) of this paragraph, the agency may inspect registrants more frequently due to:

(i) the persistence or severity of violations found during an inspection;

(ii) investigation of an incident or complaint concerning the facility;

(iii) a request for an inspection by a worker(s) in accordance with subsection (ll) of this section; or

(iv) a mutual agreement between the agency and registrant.

(x) Training for agency inspectors of LHR devices and facilities. A person who inspects LHR devices and facilities will have training in the design and uses of the devices.

(y) Denial of an application for a LHR certificate or individual LHR.

(1) When the agency contemplates denial of an application for a LHR certificate of registration or individual LHR certificate, the applicant, LHR registrant, or individual LHR certificate holder shall be afforded the opportunity for a hearing. Notice of the denial shall be delivered by personal service or certified mail, addressed to the last known address, to the applicant, LHR registrant, or individual LHR certificate holder.

(2) Any applicant, LHR registrant, or individual LHR certificate holder against whom the agency contemplates an action described in paragraph (1) of this subsection may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing shall contain the following:

(i) statement requesting a hearing; and

(ii) name and address of the applicant, LHR registrant, or individual LHR certificate holder.

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(z) Compliance procedures for LHR facility registrants, individual LHR certificate holders, and other persons.

(1) A LHR registrant, individual LHR certificate holder, or other person who commits a violation(s) will be issued a notice of violation. The person receiving the notice shall provide the agency with a written statement and supporting documentation. The agency may require responses to notices of violation to be under oath. The written statement and supporting documentation shall be submitted to the agency by the date stated in the notice, describing the following:

(A) steps taken by the person and the results achieved;

(B) corrective steps to be taken to prevent recurrence;  
and

(C) the date when full compliance was or is expected to be achieved.

(2) The terms and conditions of all certificates of LHR registration and individual LHR certificates shall be subject to amendment

or modification. A certificate of LHR registration, or individual LHR certificate may be modified, suspended, or revoked by reason of amendments to the Act, or for violation of the Act, the requirements of this section, a condition of the certificate of LHR registration or individual LHR certificate, or an order of the agency.

(3) Any certificate of LHR registration, or individual LHR certificate may be modified, suspended, or revoked in whole or in part, for any of the following:

(A) any material false statement in the application or any statement of fact required in accordance with provisions of the Act;

(B) conditions revealed by such application or statement of fact or any report, record, or inspection, or other means that would warrant the agency to refuse to grant a certificate of LHR registration, or individual LHR certificate on an original application;

(C) violation of, or failure to observe any of the terms and conditions of the Act, this section, or of the certificate of LHR registration, or individual LHR certificate or order of the agency; or

(D) existing conditions that constitute a substantial threat to the public health or safety or the environment.

(4) Each certificate of LHR registration or individual LHR certificate revoked by the agency ends at the end of the day on the date of the agency's final determination to revoke the certificate of LHR registration or individual LHR certificate, or on the revocation date stated in the determination, or as otherwise provided by the agency order.

(5) If another state or federal entity takes an action such as modification, revocation, or suspension of the certificate of LHR registration or individual LHR certificate, the agency may take a similar action against the LHR registrant, or certified LHR individual.

(6) When the agency determines that the action provided for in paragraph (9) of this subsection or subsection (bb) of this section is not to be taken immediately, the agency may offer the LHR registrant, or certified LHR individual an opportunity to attend an informal conference to discuss the following with the agency:

(A) methods and schedules for correcting the violation(s); or

(B) methods and schedules for showing compliance with applicable provisions of the Act, the rules, LHR registration or individual LHR certificate conditions, or any orders of the agency.

(7) Notice of any informal conference shall be delivered by personal service, or certified mail, addressed to the last known address. An informal conference is not a prerequisite for the action to be taken in accordance with paragraph (9) of this subsection or subsection (bb) of this section.

(8) Except in cases in which the occupational and public health, or safety requires otherwise, no certificate of LHR registration or individual LHR certificate shall be modified, suspended, or revoked unless, prior to the institution of proceedings, facts or conduct that may warrant such action shall have been called to the attention of the LHR registrant, or certified LHR individual in writing, and the LHR registrant or certified LHR individual shall have been afforded an opportunity to demonstrate compliance with all lawful requirements.

(9) When the agency contemplates modification, suspension, or revocation of the certificate of LHR registration or individual LHR certificate, the LHR registrant or certified LHR individual shall be afforded the opportunity for a hearing. Notice of the contemplated action, along with a notice of violation, shall be given to the LHR registrant or certified LHR individual by personal service or certified mail, addressed to the last known address.

(10) Any applicant, LHR registrant, or certified LHR individual against whom the agency contemplates an action described in paragraph (9) of this subsection or subsection (bb) of this section may request a hearing by submitting a written request to the director within 30 days of service of the notice.

(A) The written request for a hearing shall contain the following:

(i) statement requesting a hearing; and

(ii) name, address, and identification number of the LHR registrant or certified LHR individual against whom the action is being taken.

(B) Failure to submit a written request for a hearing within 30 days will render the agency action final.

(aa) Violations. A court injunction or agency order may be issued prohibiting any violation of any provision of the Act or any rule or order issued thereunder. Any person who violates any provision of the Act or any rule or order issued thereunder may be subject to civil and/or administrative penalties. A person who intentionally or knowingly violates any provision of the Act or any rule or order issued thereunder may also be guilty of a misdemeanor and upon conviction, may be punished by fine or imprisonment or both, as provided by law.

(bb) Assessment of administrative penalties.

(1) When the agency determines that monetary penalties are appropriate, proposals for assessment of and hearings on administrative penalties shall be made in accordance with the Act, §401.384 and §401.522, applicable provisions of the Administrative Procedure Act, Government Code, Chapter 2001, 1 Texas Administrative Code (TAC) Chapter 155, and applicable sections of the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title (relating to the Texas Board of Health).

(2) Assessment of administrative penalties shall be based on the following criteria:

(A) the seriousness of the violation(s);

(B) previous compliance history;

(C) the amount necessary to deter future violations;

(D) efforts to correct the violation; and

(E) any other mitigating or enhancing factors.

(3) Application of administrative penalties. The agency may impose differing levels of penalties for different severity level violations.

(A) Administrative penalties may be imposed for severity level I and II violations. Administrative penalties may be imposed for severity level III, IV, and V violations when they are combined with those of higher severity level(s) or for repeated violations.

(B) The maximum amount for an administrative penalty per violation is \$5,000.

(C) The following table shows the percentages of the maximum amount that may be used by the agency in making adjustments in accordance with subparagraph (D) of this paragraph. Figure: 25 TAC §289.302(bb)(3)(C)

(D) Adjustments to the percentages of base amount in the table of subparagraph (C) of this paragraph may be made for the presence or absence of the following factors:

(i) prompt identification and reporting;

(ii) corrective action to prevent recurrence;

(iii) compliance history;

(iv) prior notice of similar event;

(v) multiple occurrences; and

(vi) negligence that resulted in or increased adverse effects.

(4) The department may conduct settlement negotiations.

(cc) Severity levels of violations for LHR registrants, certified LHR individuals, or other persons.

(1) Violations for LHR registrants, certified LHR individuals, or other persons shall be categorized by one of the following severity levels.

(A) Severity level I are violations that are most significant and may have a significant negative impact on occupational and/or public health and safety or on the environment.

(B) Severity level II are violations that are very significant and may have a negative impact on occupational and/or public health and safety or on the environment.

(C) Severity level III are violations that are significant and which, if not corrected, could threaten occupational and/or public health and safety or the environment.

(D) Severity level IV are violations that are of more than minor significance, but if left uncorrected, could lead to more serious circumstances.

(E) Severity level V are violations that are of minor safety or environmental significance.

(2) Criteria to elevate or reduce severity levels.

(A) Severity levels may be elevated to a higher severity level for the following reasons:

(i) more than one violation resulted from the same underlying cause;

(ii) a violation contributed to or was the consequence of the underlying cause, such as a management breakdown or breakdown in the control of LHR activities;

(iii) a violation occurred multiple times between inspections;

(iv) a violation was willful or grossly negligent;

(v) compliance history; or

(vi) other mitigating factors.

(B) Severity levels may be reduced to a lower level for the following reasons:

(i) the LHR registrant or certified LHR individual identified and corrected the violation prior to the agency inspection;

(ii) the LHR registrant's or certified LHR individual's actions corrected the violation and prevented recurrence; or

(iii) other mitigating factors.

(3) Examples of severity levels. Examples of severity levels are available upon request to the agency.

(dd) Impoundment of a LHR device.

(1) In the event of an emergency, the agency shall have the authority to impound or order the impounding of LHR devices pos-

sessed by any person not equipped to observe or failing to observe the provisions of the Act, or any rules, LHR registration or individual certification conditions, or orders issued by the agency. The agency shall submit notice of the action to be published in the *Texas Register* no later than 30 days following the end of the month in which the action was taken.

(2) At the agency's discretion, the impounded LHR devices may be disposed of by:

(A) returning the LHR devices to a properly registered facility operator, who did not cause the emergency, upon proof of LHR facility ownership;

(B) releasing the LHR devices as evidence to police or courts;

(C) returning the LHR devices to a LHR registrant after the emergency is over and any compliance action is settled; or

(D) sale, destruction or other disposition within the agency's authority.

(3) If agency action is necessary to protect the public health and safety, no prior notice need be given the owner or possessor. If agency action is not necessary to protect the public health and safety, the agency will give written notice to the owner and/or the possessor of the impounded LHR device of the intention to dispose of the LHR device. Notice shall be the same as provided in subsection (z)(9) of this section. The owner or possessor shall have 30 days from the date of personal service or mailing to request a hearing in accordance with Government Code, Chapter 2001, 1 TAC Chapter 155, and the Formal Hearing Procedures, §§1.21, 1.23, 1.25, and 1.27 of this title, and in accordance with subsection (z)(10) of this section, concerning the intention of the agency. If no hearing is requested within that period of time, the agency may take the contemplated action, and such action is final.

(4) Upon agency disposition of a LHR device, the agency may notify the owner and/or possessor of any expense the agency may have incurred during the impoundment and/or disposition and request reimbursement. If the amount is not paid within 60 days from the date of notice, the agency may request the Attorney General to file suit against the owner/possessor for the amount requested.

(5) If the agency determines from the facts available to the agency that an impounded LHR device is abandoned, with no reasonable evidence showing its owner or possessor, the agency may make such disposition of the LHR device as it sees fit.

(ee) Emergency orders.

(1) When an emergency exists requiring immediate action to protect the public health or safety or the environment, the agency may, without notice or hearing, issue an order citing the existence of such emergency and require that certain actions be taken as it shall direct to meet the emergency. The agency shall, no later than 30 days following the end of the month in which the action was taken, submit notice of the action for publication in the *Texas Register*. The action taken will remain in full force and effect unless and until modified by subsequent action of the agency.

(2) An emergency order takes effect immediately upon service.

(3) Any person receiving an emergency order shall comply immediately.

(4) The person receiving the order shall be afforded the opportunity for a hearing on an emergency order. Notice of the action, along with a complaint, shall be given to the person by personal ser-

vice or certified mail, addressed to the last known address. A hearing shall be held on an emergency order if the person receiving the order submits a written request to the director within 30 days of the date of the order.

(A) The hearing shall be held not less than 10 days nor more than 20 days after receipt of the written application for hearing.

(B) At the conclusion of the hearing and after the proposal for decision is made as provided in the Texas Administrative Procedure Act, Texas Government Code, Chapter 2001, the commissioner shall take one of the following actions:

(i) determine that no further action is warranted;

(ii) amend the certificate of LHR registration or individual LHR certification;

(iii) revoke or suspend the certificate of LHR registration, or individual LHR certification;

(iv) rescind the emergency order; or

(v) issue such other order as is appropriate.

(C) The application and hearing shall not delay compliance with the emergency order.

(ff) Fees.

(1) Each application for a certificate of LHR certification shall be accompanied by a nonrefundable fee specified in paragraph (6) of this subsection. Each application for an individual LHR certificate shall be accompanied by a nonrefundable fee specified in paragraph (7) of this subsection.

(2) No application will be accepted for filing or processed prior to payment of the full fee amount specified.

(3) A nonrefundable renewal fee for a certificate of LHR registration, as specified in paragraph (6) of this subsection, shall be paid every 2 years, based on the month listed as the expiration month on the certificate of LHR registration, and shall be paid in full on or before the last day of the expiration month. A nonrefundable renewal fee for an individual LHR certificate, as specified in paragraph (7) of this subsection, shall be paid every 2 years based on the month listed as the expiration month on the certificate, and shall be paid in full on or before the last day of the expiration month.

(4) Fee payments may be made by cash, by check, or by money order made payable to the Department of State Health Services. The payments may be made by personal delivery to the Exchange Building, Radiation Control, Department of State Health Services, 8407 Wall Street, Austin, Texas or to the central office, 1100 West 49th Street, Austin, Texas, or mailed to Radiation Control, Department of State Health Services, Mail Code 2003, P.O. Box 149347, Austin, Texas, 78714-9347.

(5) Renewal payments may be processed through Texas Online or another electronic payment system specified by the agency. For all types of electronic fee payments, the agency will collect additional fees, in amounts determined by the Texas Online Authority or the agency, to recover costs associated with electronic payment processing.

(6) The two-year application fee and two-year renewal fee for a certificate of LHR registration is \$1,260.

(7) The two-year application fees and two-year renewal fees for an individual LHR certificate are as follows:

(A) LHR professional--\$150;

(B) senior LHR technician--\$100;

(C) LHR technician--\$70; and

(D) LHR apprentice-in-training--\$50.

(gg) Reports of stolen, lost, or missing LHR devices.

(1) Each registrant shall report to the agency by telephone a stolen, lost, or missing LHR device within 72 hours after its occurrence becomes known to the registrant.

(2) Each person required to make a report in accordance with paragraph (1) of this subsection shall, within 30 days after making the telephone report, make a written report to the agency that includes the following information:

(A) a description of the LHR device involved, including the manufacturer, model, serial number, and class;

(B) a description of the circumstances under which the loss or theft occurred;

(C) a statement of disposition, or probable disposition, of the LHR device involved;

(D) actions that have been taken, or will be taken, to recover the LHR device; and

(E) procedures or measures that have been taken to prevent the loss or theft of LHR devices in the future.

(3) Subsequent to filing the written report, the registrant shall also report additional substantive information on the loss or theft within 30 days after the registrant learns of such information.

(hh) Posting of notices to workers.

(1) Each laser registrant shall post current copies of the following documents:

(A) the requirements in this section;

(B) the certificate of LHR registration, the individual's LHR certificate of registration, conditions or documents incorporated into the certificate of LHR registration by reference, and amendments thereto;

(C) any notice of violation involving radiological working conditions associated with use of a LHR device issued in accordance with subsection (z)(1) of this section or order issued in accordance with subsection (ee) of this section.

(2) If posting of a document specified in paragraph (1) of this subsection is not practicable, the registrant shall post a notice that describes the document and states where it may be examined.

(3) The following form, Radiation Control (RC) Form 302-1, "Notice to Employees," or an equivalent document containing at least the same wording as RC Form 302-1, shall be posted by each registrant as required by this section. Figure: 25 TAC §289.302(hh)(3)

(4) Documents, notices, or forms posted in accordance with this subsection shall:

(A) contain current information;

(B) appear in a sufficient number of places to permit individuals engaged in work under the certificate of LHR registration to observe them on the way to or from any particular work location to which the document applies;

(C) be conspicuous; and

(D) be replaced if defaced or altered.

(ii) Presence of representatives of LHR registrants and workers during inspection.

(1) Each registrant shall afford to the agency at all reasonable times an opportunity to inspect LHR devices, activities, facilities, premises, and records in accordance with this section.

(2) During an inspection, agency inspectors may consult privately with workers as specified in subsection (jj) of this section. The registrant may accompany agency inspectors during other phases of an inspection.

(3) If, at the time of inspection, an individual has been authorized by the workers to represent them during agency inspections, the registrant shall notify the inspectors of such authorization and shall give the workers' representative an opportunity to accompany the inspectors during the inspection of physical working conditions.

(4) Each workers' representative shall be routinely engaged in work under control of the registrant.

(5) Different representatives of registrants and workers may accompany inspectors during different phases of an inspection if there is no resulting interference with the conduct of the inspection. However, only one registrant's and one workers' representative at a time may accompany the inspectors.

(6) With the approval of the registrant's and the workers' representative, an individual who is not routinely engaged in work under control of the registrant, for example, a consultant to the registrant or to the workers' representative, shall be afforded the opportunity to accompany agency inspectors during the inspection of physical working conditions.

(7) Notwithstanding the other provisions of this section, agency inspectors are authorized to refuse to permit accompaniment by any individual who deliberately interferes with a fair and orderly inspection. With regard to any area containing proprietary information, the workers' representative for that area shall be an individual previously authorized by the registrant to enter that area.

(jj) Consultation with workers during inspections.

(1) Agency inspectors may consult privately with workers concerning matters of occupational laser safety and protection and other matters related to applicable provisions of agency regulations and certificates of LHR registration to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection.

(2) During the course of an inspection any worker may bring privately to the attention of the inspectors, either orally or in writing, any past or present condition which that individual has reason to believe may have contributed to or caused any violation of the Act, the requirements in this section, or certificate of LHR registration conditions. Any such notice in writing shall comply with the requirements of subsection (kk)(1) of this section.

(kk) Requests by workers for inspections.

(1) Any worker or representative of workers who believes that a violation of the Act, the requirements of this section, or certificate of LHR registration conditions exists or has occurred in work under a certificate of LHR registration with regard to working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the agency. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the registrant by the agency no later than at the time of inspection. Upon the request of the worker giving such notice, the agency will evaluate whether the worker's name and the name(s) of



individual(s) referred to in such copy or on any record published, released, or made available by the agency, may be withheld.

(2) If, upon receipt of such notice, the agency determines that the request meets the requirements set forth in paragraph (1) of this subsection, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, an inspection shall be made as soon as practicable to determine if such alleged violation exists or has occurred. Inspections performed in accordance with this section need not be limited to matters referred to in the request.

(3) No registrant, contractor or subcontractor of a registrant shall discharge or in any manner discriminate against any worker because such worker:

(A) has filed any request or instituted or caused to be instituted any proceeding under this section;

(B) has testified or is about to testify in any such proceeding; or

(C) on behalf of that individual or others, has exercised any option afforded by this section.

(ll) Inspections not warranted.

(1) If the agency determines, with respect to a request made in accordance with subsection (kk)(1) of this section, that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the agency shall notify the requestor in writing of such determination.

(2) If the agency determines that an inspection is not warranted because the procedural requirements of subsection (kk)(1) of this section have not been met, the agency shall notify the requestor in writing of such determination. Such determination shall be without prejudice to the filing of a new request meeting the requirements of subsection (kk)(1) of this section.

(mm) Criteria for certifying entities, certification programs, and examinations.

(1) To be approved by the agency, a certifying entity shall meet the following requirements:

(A) be a non-governmental organization such as a society or association, whose members participate in, or have an interest in, the field of laser hair removal;

(B) make its membership available to the general public nationwide that is not restricted because of race, color, religion, age, national origin or disability;

(C) have a certification program open to nonmembers, as well as members;

(D) be an incorporated, nationally recognized organization in good standing, that is involved in setting national standards of practice within its fields of expertise;

(E) have an adequate staff, a viable system for financing its operations, and a policy- and decision-making review board;

(F) have a set of written organizational by-laws and policies that provide adequate assurance of lack of conflict of interest and a system for monitoring and enforcing those by-laws and policies;

(G) have a committee, whose members can carry out their responsibilities impartially, to review and approve their certification guidelines and procedures, and to advise the organization's staff in implementing the certification program;

(H) have a committee, whose members can carry out their responsibilities impartially, to review complaints against certified individuals and to determine appropriate sanctions;

(I) have written procedures describing all aspects of its certification program, maintain records of the current status of an individual's certification and the administration of its certification program;

(J) have procedures to ensure that certified individuals are provided due process with respect to the administration of a certification program, including the process of becoming certified and any sanctions imposed against certified individuals;

(K) have procedures for proctoring examinations, including qualifications for proctors. These procedures shall ensure that the individuals proctoring each examination are not employed by the same company or corporation (or a wholly-owned subsidiary of such company or corporation) as any of the examinees;

(L) exchange information about certified individuals with the agency and other certifying entities and allow periodic review of its certification program and related records by the agency; and

(M) provide a description to the agency of its procedures for choosing examination sites and for providing an appropriate examination environment.

(2) To be approved by the agency, a certification program shall meet the following requirements:

(A) require applicants for certification to:

(i) receive training in the topics specified in subsection (j)(18) of this section; and

(ii) satisfactorily complete a written examination covering these topics.

(B) require applicants for certification to provide documentation that demonstrates that the applicant has:

(i) received training in the topics specified in subsection (j)(18) of this section; and

(ii) satisfactorily completed a minimum period of on-the-job training.

(C) include procedures to ensure that all examination questions are protected from disclosure;

(D) include procedures for denying an application and revoking, suspending, and reinstating a certificate;

(E) provide a certification period of not less than 3 years nor more than 5 years;

(F) include procedures for renewing certifications and, if the procedures allow renewals without examination, require evidence of recent full-time employment and continuing education units as specified in subsection (r) of this section;

(G) provide a timely response to inquiries, by telephone or letter, from members of the public, about an individual's certification status.

(3) To be approved by the agency, an examination administered or used by a certifying entity shall be designed to test an individual's knowledge and understanding of at least the topics specified in subsection (j)(18) of this section.

(4) Documentation shall be submitted to the agency showing how the certifying entity meets the requirements of paragraphs (1) - (3) of this subsection.

(nn) Time requirements for record keeping. The following are time requirements for record keeping.  
Figure: 25 TAC §289.302(nn)

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 February 8, 2010.

TRD-201000607

Lisa Hernandez  
General Counsel

Department of State Health Services

Earliest possible date of adoption: March 21, 2010

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



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 1. ORGANIZATION AND ADMINISTRATION

##### SUBCHAPTER C. PERSONNEL AND EMPLOYMENT POLICIES

###### 37 TAC §1.43

The Texas Department of Public Safety (the department) proposes new §1.43, concerning Personnel and Employment Policies. This new rule is required by House Bill 1043, 81st Legislature, 2009, which added Texas Government Code, Chapter 672, requiring the department to set up a procedure for the Public Safety Commission to handle employment preference appeals for former foster children.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has also determined that for each year of the first five-year period the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be current and updated rules.

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

state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to Norma Cortez, Texas Department of Public Safety, Human Resources, P.O. Box 4087, Austin, Texas 78773-0251, (512) 424-5901.

The new section is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for control of the department.

Texas Government Code, §411.004(3) and §411.006(4) are affected by this proposal.

###### §1.43. Former Foster Child's Preference Grievance Procedure.

(a) Complaints regarding former foster child's preference should be addressed to: Human Resources Director, Human Resources, 5805 North Lamar Blvd., P.O. Box 4087, Austin, TX 78773-0251, who has been designated by the Public Safety Commission (the commission) to receive complaints and coordinate compliance efforts. The human resources director shall respond in writing to the complaint not later than 15 business days after the date the department receives the complaint. The written response shall explain that the complainant can request consideration of the case by the commission at the next available public meeting and instructions on how to request the consideration before the commission. The request for consideration should be made within 15 business days of the date the response is mailed to the complainant.

(b) All former foster child's preference complaints shall be reported to the commission and those requesting consideration will be placed on the agenda of the next available meeting as personnel issues. The commission may render a different employment decision than the decision that is the subject of the complaint if the commission determines that the former foster child's preference was not properly applied. Those individuals requesting consideration by the commission will receive written notice of the commission's decision.

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

Filed with the Office of the Secretary of State on February 5, 2010.

TRD-201000599

Stuart Platt  
General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: March 21, 2010

For further information, please call: (512) 424-5848



## SUBCHAPTER R. ACCOUNTING PROCEDURES

### 37 TAC §1.232, §1.233

The Texas Department of Public Safety (the department) proposes new §1.232 and §1.233, concerning Accounting Procedures. New sections are being added pursuant to Texas Government Code, §2107.002, which requires that a state agency that collects delinquent obligations owed to the agency to establish procedures by rule for collecting a delinquent obligation and a reasonable period for collection. These procedures must conform to the guidelines established by the Office of Attorney General as set out in 1 TAC §59.2.

Cheryl MacBride, Assistant Director, Finance, has determined that for each year of the first five-year period the new sections are in effect there will be no fiscal implications for state or local government or local economies.

Ms. MacBride also has determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the new sections as proposed. There is no anticipated economic costs to individuals who are required to comply with the new sections as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. MacBride has also determined that for each year of the first five-year period the new sections are in effect, the public benefit anticipated will be conformity of the department's debt collection rules with the Office of Attorney General guidelines, as provided in 1 TAC §59.2, and an understanding of the department's procedures for the collection of delinquent obligations.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these new sections. Accordingly, the department is not required to complete a takings impact assessment regarding these new sections.

Comments on the proposal may be submitted to Isaac C. Galvan, Accounting - Reconciliations, Texas Department of Public Safety, P.O. Box 4087 (MSC 405), Austin, Texas 78773-0525, (512) 424-5333.

The new sections are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §2107.002(b), requiring state agencies to adopt rules that establish procedures for collecting a delinquent obligation; and 1 TAC §59.2 which sets out guidelines for state agencies to collect a delinquent obligation.

Texas Government Code, §411.004(3) and §2107.002(b); and 1 TAC §59.2 are affected by this proposal.

§1.232. Collection of Debts.

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

(1) Attorney general--The Office of the Attorney General of Texas.

(2) Debtor--Any person liable for an obligation owed to the department or against whom a claim or demand for payment has been made.

(3) Delinquent--Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(4) Department--The Texas Department of Public Safety.

(5) District--A subdivision of the department responsible for the day-to-day operations of the department in a specific geographically defined area.

(6) Division--An organizational unit in the department's Austin headquarters. The term includes an organizational unit that is designated as an office.

(7) Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, or charge.

(8) Person--An individual, corporation, organization, business trust, estate, trust, partnership, association, and any other legal entity.

(9) Security--Any right to have property owned by an entity with an obligation to the department sold or forfeited in satisfaction of the obligation, and any instrument granting a cause of action in favor of the department against another entity or that entity's property, such as bond, letter of credit, or other collateral that has been pledged to the department to secure an obligation.

(b) Collection from contractors. If an obligation of a contractor of the department is delinquent and the department owes payment to that contractor, the department will subtract the amount of the obligation from the payment if practical.

(c) Notification of obligation and demand letters.

(1) The division responsible for determining that an obligation is owed to the department will send to the debtor written notice of the obligation that contains the amount owed and the date payment is due.

(2) If no satisfactory response is received within 30 days after the date the first notice is sent under paragraph (1) of this subsection, the obligation becomes delinquent on the 31st day after the date that notice is sent. The division will send a second demand letter not later than the 30th day after the date on which the obligation becomes delinquent.

(3) The second demand letter will include a deadline by which the debtor must respond and, if the department determines in accordance with subsection (e) of this section that the obligation should be referred to the attorney general, a statement that the obligation, if not paid, will be referred to the attorney general.

(4) Each demand letter will set forth the nature and amount of the obligation owed to the department and will be mailed by first class United States mail, in an envelope bearing the notation "address correction requested." If an address correction is provided by the United States Postal Service, the division or district will resend the demand letter to that address prior to referral to the attorney general.

(d) Records. The department will retain records of a delinquent obligation. A record shall contain documentation of the following information:

(1) the identity of each person liable on all or any part of the obligation;

(2) the physical address of the debtor's place of business;

(3) the physical address of the debtor's residence, where applicable;

(4) a post office box address where it is impractical to obtain a physical address, or when the post office box address is in addition to a correct physical address;

(5) attempted contacts with the debtor;

(6) the substance of communications with the debtor;

(7) efforts to locate the debtor and the assets of the debtor;

(8) notices of bankruptcy, proofs of claim, dismissals and discharge orders received from the United States bankruptcy courts; and

(9) other information relevant to collection of the delinquent account.

(e) Referrals of a delinquent obligation to the attorney general.

(1) Prior to referral of a delinquent obligation greater than \$2,500 to the attorney general, the department will:

(A) verify the debtor's address and telephone number;

(B) send a first and second demand letter to the debtor in accordance with subsection (c) of this section;

(C) verify that the obligation is not considered uncollectible under paragraph (2) of this subsection;

(D) prepare and file a proof of claim in the case of a bankruptcy unless the department is represented by the attorney general; and

(E) file a claim in the probate proceeding if the debtor is deceased unless the department is represented by the attorney general.

(2) The department will consider a delinquent obligation uncollectible and will make no further effort to collect if the obligation:

(A) has been dismissed or discharged in bankruptcy;

(B) is subject to an applicable limitations provision that would prevent collection as a matter of law;

(C) is owed by a corporation which has been dissolved, is in liquidation under Chapter 7 of the United States Bankruptcy Code, has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked unless circumstances indicate that the account is nonetheless collectible or that fraud was involved;

(D) is owed by an individual who is located out-of-state, or outside the United States, unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of department funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified;

(E) is owed by a debtor who is deceased, where probate proceeding have concluded, and where there are no remaining assets available for distribution; or

(F) is owed by a debtor whose circumstances demonstrate a permanent inability to pay or make payments toward the obligation.

(3) In making a determination of whether to refer a delinquent obligation to the attorney general, no later than 120 days after the second demand letter is sent, the department will consider:

(A) the expense of further collection procedures;

(B) the size of the debt;

(C) the existence of any security;

(D) the likelihood of collection through passive means such as the filing of a lien;

(E) the availability of resources to collect the obligation; and

(F) policy reasons or other good cause.

(4) The department will refer a delinquent obligation to the attorney general for further collection efforts if the department determines in accordance with this subsection that the delinquent obligation should be referred.

(f) Supplemental and alternative collection procedures.

(1) Liens. The department, unless represented by the attorney general, will record a lien securing the delinquent obligation in the appropriate records of the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law as soon as is practicable. Unless the delinquent obligation has been paid in full, any lien securing the indebtedness may not be released without the approval of the attorney representing the department after the matter has been referred to the attorney general.

(2) Warrants. The department will utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by Texas Government Code, §403.055, to ensure that no treasury warrants are issued to debtors until the debt is paid.

§1.233. Charges for Dishonored Checks.

(a) Purpose. Texas Business and Commerce, §3.506, authorizes the holder of a dishonored check seeking collection of the face value of the check to charge the drawer or endorser of the check a reasonable processing fee, not to exceed \$30. This section prescribes policies and procedures for the processing of dishonored checks made payable to the department and the collection of fees because of the dishonor of a check made payable to the department.

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

(1) Department--The Texas Department of Public Safety.

(2) Dishonored check--A check, draft, order, or other instrument that is drawn or made upon a bank or other financial institution, and that is not honored upon presentment because the account upon which the instrument has been drawn or made does not exist or is closed, or does not have sufficient funds or credit for payment of the instrument in full.

(c) Processing of dishonored checks. Upon receipt of notice from a bank or other financial institution of refusal to honor a check made payable to the department, the department will process the returned check using the following procedures:

(1) The department will send a written notice by certified mail, return receipt requested, to the drawer or endorser at the drawer or endorser's address as shown on:

(A) the dishonored check;

- or
- (B) the records of the bank or other financial institution;
  - (C) the records of the department.

(2) The written notice will notify the drawer or endorser of the dishonored check and will request immediate payment of the face amount of the check and a \$30 processing fee. The written notice will also contain the statement required by Texas Penal Code, §32.41(c)(3).

(3) The face amount of the check and the processing fee must be paid to the department with a cashier's check or money order, made payable to the Texas Department of Public Safety.

(4) If payment is not received within 31 days after the date of receipt of the notice, the obligation will be considered delinquent and will be processed in accordance with §1.232 of this title (relating to Collection of Debts).

(d) Supplemental collection procedures. In addition to the procedures described in §1.232 of this title, the department may notify appropriate credit bureaus or agencies if the drawer or endorser fails to pay the face amount of a dishonored check and the processing fee, or may refer the matter for criminal prosecution.

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 February 5, 2010.

TRD-201000598

Stuart Platt

General Counsel

Texas Department of Public Safety

Earliest possible date of adoption: March 21, 2010

For further information, please call: (512) 424-5848



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION**

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to Subchapter B, Definitions, §19.101, concerning definitions; Subchapter D, Facility Construction, §19.330, concerning construction and initial survey of completed construction; and new §19.220, concerning expedited life safety code and physical plant inspection fees, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

#### **BACKGROUND AND PURPOSE**

The purpose of the amendments is to comply with House Bill (HB) 2972, 81st Legislature, Regular Session, 2009. HB 2972 amends Texas Health and Safety Code Chapter 242 to require DADS to give nursing facilities the option of obtaining an ex-

pedited Life Safety Code inspection and to authorize DADS to charge a fee based on the size and type of institution to recover the cost of the expedited inspection. In response, DADS proposes new §19.220, Expedited Life Safety Code and Physical Plant Inspection Fees. In addition, proposed amendments to §19.330, Construction and Initial Survey of Completed Construction, adds new language to state that an applicant may obtain an expedited Life Safety Code inspection by sending DADS a written request after submitting a complete application and submitting the appropriate Life Safety Code fee listed in new §19.220.

HB 2972 also amends the definition of "controlling person" in Texas Health and Safety Code §242.0021 to clarify that a shareholder or lender of a publicly traded corporation is not included in the definition. The proposed amendment to §19.101 revises the definition as authorized by §242.0021.

#### **SECTION-BY-SECTION SUMMARY**

The proposed amendment to §19.101 revises the definitions of a "controlling person," in accordance with HB 2972. The revised definition of a "controlling person" clarifies that neither a shareholder nor a lender of a publicly traded corporation is included in the definition.

Proposed new §19.220 adds new information and a table of fees relating to the expedited Life Safety Code inspection fees.

The proposed amendment to §19.330 states that an applicant may obtain an expedited Life Safety Code inspection by sending DADS a written request after submitting a complete application as required in §19.201(b) and §19.204 and submitting the appropriate Life Safety Code inspection fee listed in proposed new §19.220. Amendments in §19.330 also change references to the Texas Department of Human Services to DADS to reflect the change in the agency name.

#### **FISCAL NOTE**

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, there are foreseeable implications relating to costs or revenues of state government. There are no foreseeable implications relating to costs or revenues of local governments.

The effect on state government for the first five years the proposed amendments and new section are in effect is an estimated additional cost of \$8,944 in fiscal year (FY) 2010; \$7,791 in FY 2011; \$7,791 in FY 2012; \$7,791 in FY 2013; and \$7,791 in FY 2014, for conducting the expedited inspection.

#### **SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS**

DADS has determined that the proposed amendments and new section will not have an adverse economic effect on small businesses or micro-businesses, because the expedited inspection fee is optional for a facility.

#### **PUBLIC BENEFIT AND COSTS**

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public benefit expected as a result of enforcing the amendments and new section is that the expedited Life Safety Code inspection process will allow providers to obtain a license more quickly. In addition, the proposed rules will benefit the public by clarifying existing terminology.

Ms. Durden anticipates there will not be an economic cost to persons who are required to comply with the amendments and new section because the expedited inspection fee is optional for a facility. The amendments and new section will not affect a local economy.

#### TAKINGS IMPACT ASSESSMENT

DADS 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 Texas Government Code, §2007.043.

#### PUBLIC COMMENT

Questions about the content of this proposal may be directed to Jennifer Morrison at (512) 438-4624 in DADS' Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-9R010, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, TX 78751; faxed to (512) 438-5759; or e-mailed to [rulescomments@dads.state.tx.us](mailto:rulescomments@dads.state.tx.us). To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS' last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 9R010" in the subject line.

### SUBCHAPTER B. DEFINITIONS

#### 40 TAC §19.101

##### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendments implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 242.

##### §19.101. Definitions.

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

(1) Abuse--Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental/psychological, or physical abuse, including corporal punishment, involuntary seclusion, or any other actions within this definition.

(A) "Involuntary seclusion"--Separation of a resident from others or from his room against the resident's will or the will of the resident's legal representative. Temporary monitored separation

from other residents will not be considered involuntary seclusion and may be permitted if used as a therapeutic intervention as determined by professional staff and consistent with the resident's plan of care.

(B) "Mental/psychological abuse"--Mistreatment within the definition of "abuse" not resulting in physical harm, including, but not limited to, humiliation, harassment, threats of punishment, deprivation, or intimidation.

(C) "Physical abuse"--Physical action within the definition of "abuse," including, but not limited to, hitting, slapping, pinching, and kicking. It also includes controlling behavior through corporal punishment.

(D) "Sexual abuse"--Any touching or exposure of the anus, breast, or any part of the genitals of a resident without the voluntary, informed consent of the resident and with the intent to arouse or gratify the sexual desire of any person and includes but is not limited to sexual harassment, sexual coercion, or sexual assault.

(E) "Verbal abuse"--The use of any oral, written, or gestured language that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability.

(2) Act--Chapter 242 of the Texas Health and Safety Code.

(3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.

(4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter [###] (relating to Activities).

(5) Addition--The addition of floor space to an institution.

(6) Administrator--Licensed nursing facility administrator.

(7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.

(8) Affiliate--With respect to a:

(A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(9) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(10) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(11) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(12) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(13) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(14) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, faceshields, and protective clothing for purposes of infection control.

(15) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(16) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid and/or Medicare programs.

(17) CFR--Code of Federal Regulations.

(18) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(19) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(20) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(21) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(22) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the following needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter [title] (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and/or

(D) assisting in the development of appropriate coping mechanisms.

(23) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, and/or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(24) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility; ~~and~~

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this definition but does not include a shareholder or lender of the publicly traded corporation; and

(D) ~~[(C)]~~ any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(25) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(26) DADS--The Department of Aging and Disability Services.

(27) Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(28) Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(29) Department--Department of Aging and Disability Services.

(30) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(31) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the American Dietetic Association; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(32) Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

(A) assessment of the resident's health care status;

(B) planning for the resident's care;

(C) assignment of duties to achieve the resident's care;

(D) nursing intervention; and

(E) evaluation and change of approaches as necessary.

(33) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(34) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this definition. It does not include devices or their components, parts, or accessories.

(35) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(36) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(37) Exploitation--The illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

(38) Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secretions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood, and all body fluids when it is difficult or impossible to differentiate between body fluids.

(39) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in §19.2500 of this chapter [title] (relating to Preadmission Screening and Resident Review (PASARR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(40) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(41) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(42) Fiduciary agent--An individual who holds in trust another's monies.

(43) Free choice--Unrestricted right to choose a qualified provider of services.

(44) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(45) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(46) HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(47) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(48) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I.

(49) HIV--Human Immunodeficiency Virus.

(50) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(51) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(52) Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(53) Interdisciplinary care plan--See the definition of "comprehensive care plan."

(54) IV--Intravenous.

(55) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(56) Licensed health professional--A physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(57) Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(58) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(59) Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and



Structures, Standard 101, of the National Fire Protection Association (NFPA).

(60) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(61) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter [title] (relating to Advance Directives)).

(62) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(63) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(64) Long-term care-regulatory--DADS' Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(65) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(66) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(67) MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(68) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(69) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(70) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(71) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(72) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(73) Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(74) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(75) Medical-social care plan--See Interdisciplinary Care Plan.

(76) Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(77) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(78) Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(79) Neglect--A deprivation of life's necessities of food, water, or shelter, or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury, or harm or death to the resident.

(80) NHIC--Formerly, this term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(81) Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(82) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing and/or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(83) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(84) Nurse practitioner--A person licensed by the Texas Board of Nursing as a registered professional nurse, authorized by the Texas Board of Nursing as an advanced practice nurse in the role of nurse practitioner.

(85) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(86) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(87) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to

licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(88) Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(89) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, orderlies, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(90) Objectives--See definition of "goals."

(91) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(92) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(93) Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(94) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(95) PASARR--Preadmission Screening and Resident Review.

(96) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(97) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(98) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(99) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(100) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a physician, dentist, or podiatrist.

(101) Physical restraint--See Restraints (physical).

(102) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(103) Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(104) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(105) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a physician, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(106) Practitioner--A physician, podiatrist, dentist, or an advanced practice nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(107) PRN (pro re nata)--As needed.

(108) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(109) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(110) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(111) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(112) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS' Regulatory Services Division.

(113) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(114) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(115) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(116) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(117) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(118) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(119) Resident--Any individual residing in a nursing facility.

(120) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Resident Assessment Protocols (RAPS).

(121) Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(122) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(123) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(124) Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(125) Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(126) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(127) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(128) Seclusion--See the definition of "involuntary seclusion" in paragraph (1)(A) of this section.

(129) Secretary--Secretary of the U.S. Department of Health and Human Services.

(130) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or periodic nursing observation, assessment, and intervention in all areas of resident care.

(131) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(132) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(133) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(134) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(135) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(136) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(137) State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(138) Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of a nurse practitioner providing services in a nursing facility.

(139) Supervision--General supervision, unless otherwise identified.

(140) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(141) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(142) Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the licensed and/or qualified person providing the supervision.

(143) *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The *Texas Register* was established by the Administrative Procedure and Texas Register Act of 1975.

(144) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(145) Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(146) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(147) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(148) Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(149) Title XVIII--Medicare provisions of the Social Security Act.

(150) Title XIX--Medicaid provisions of the Social Security Act.

(151) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(152) UAR--HHSC's Utilization and Assessment Review Section.

(153) Uniform data set--See Resident Assessment Instrument (RAI).

(154) Universal precautions--The use of barrier and other precautions by long-term care facility employees and/or contract agents to prevent the spread of blood-borne diseases.

(155) Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(156) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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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Kenneth L. Owens  
General Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-3734



## SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

### 40 TAC §19.220

#### STATUTORY AUTHORITY

The new rule is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The new rule implements Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 242.

§19.220. Expedited Life Safety Code and Physical Plant Inspection Fees.

(a) DADS charges a fee for expedited Life Safety Code and physical plant inspections for new buildings, additions, conversion of

buildings not licensed by DADS, or remodeling of existing licensed facilities.

(b) Table of Expedited Life Safety Code and Physical Plant Inspection Fees.

Figure: 40 TAC §19.220(b)

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 February 3, 2010.

TRD-201000555

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Proposed date of adoption: June 1, 2010

For further information, please call: (512) 438-3734



## SUBCHAPTER D. FACILITY CONSTRUCTION

### 40 TAC §19.330

#### STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

The amendments implement Texas Government Code, §531.0055; Texas Human Resources Code, §161.021; and Texas Health and Safety Code, Chapter 242.

*§19.330. Construction and Initial Survey of Completed Construction.*

#### (a) Construction phase.

(1) ~~DADS [The Texas Department of Human Services (DHS), Long Term Care-] Regulatory Services Division~~ in Austin, Texas, must be notified in writing of construction start.

(2) All construction must be done in accordance with minimum licensing requirements. It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction of a new facility or remodeling of an existing facility. Contract documents for additions and remodeling and for the construction of an entirely new facility must be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must bear the seal of the architect. Certain parts of final plans, designs, and specifications must bear the seal of a registered professional engineer approved by the Texas Board of Professional Engineers [State Board of Registration for Professional Engineers] to operate in Texas. These certain parts include sheets and sections covering structural, electrical, mechanical, and sanitary engineering.

(A) Remodeling is the construction, removal, or relocation of walls and partitions, the construction of foundations, floors,

or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems), or the conversion of space in a facility to a different use.

(B) General maintenance and repairs of existing material and equipment, repainting, applications of new floor, wall, or ceiling finishes, or similar projects are not included as remodeling, unless as a part of new construction. DADS [DHS] must be provided flame spread documentation for new materials applied as finishes.

#### (b) Contract documents.

(1) Site plan documents must include grade contours; streets (with names); north arrow; fire hydrants; fire lanes; utilities, public or private; fences; unusual site conditions, such as ditches, low water levels, other buildings on-site; and indications of buildings five feet or less beyond site property lines. Site plan documents for nursing facilities may include the developed landscaping plan for resident use as called for in §19.332(f) of this ~~chapter~~ ~~[title]~~ (relating to Location and Site).

(2) Foundation plan documents must include general foundation design and details.

(3) Floor plan documents must include room names, numbers, and usages; resident care areas; doors (numbered) including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; and kitchen basic layout; and identification of all smoke barrier walls (outside wall to outside wall) or fire walls.

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8-1/2 inch by 11 inch sheet.

(5) Schedules must include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.

(6) Elevations and roof plan must include, but is not limited to, exterior elevations, including material note indications and any roof top equipment, roof slopes, drains, and gas piping, and interior elevations where needed for special conditions.

(7) Details must include wall sections as needed (especially for special conditions); cabinet and built-in work, basic design only; cross sections through buildings as needed; and miscellaneous details and enlargements as needed.

(8) Building structure documents must include structural framing layout and details (primarily for column, beam, joist, and structural frame building); roof framing layout (when this cannot be adequately shown on cross section); cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design, also calculated design loads.

(9) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system (exit signs and emergency egress lighting); emergency electrical provisions (such as generators and panels); fire alarm and similar systems (such as control panel, devices, and alarms); a nurse call system; and sizes and details sufficient to assure safe and properly operating systems.

(10) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) Heating, ventilation, and air-conditioning (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(12) Sprinkler system documents must include plans and details of National Fire Protection Association (NFPA) designed systems; plans and details of partial systems provided only for hazardous areas; electrical devices interconnected to the alarm system.

(13) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project; including plans covering private water or sewer systems must be reviewed by the local health or wastewater authority having jurisdiction.

(14) Specifications must include installation techniques, quality standards and/or manufacturers, references to specific codes and standards, design criteria, special equipment, hardware, painting, and any others as needed to amplify drawings and notes.

(c) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility, including additions or remodeled areas, is required to be performed by DADS [~~DHS~~] architectural inspecting surveyor prior to occupancy. A minimum of three weeks advance notice is needed. The completed construction must have the written approval of the local authorities having jurisdiction, including the fire marshal and building inspector.

(2) The inspection described in paragraph (1) of this subsection may be obtained on an expedited basis. An applicant may obtain an expedited Life Safety Code inspection by sending a written request to DADS after:

(A) submitting a complete application as required in §19.201(b) of this chapter (relating to Criteria for Licensing ) and §19.204 of this chapter (relating to Application Requirements); and

(B) submitting the appropriate Life Safety Code fee listed in §19.220 of this chapter (relating to Expedited Life Safety Code and Physical Plant Inspection Fees).

(3) [(2)] After the completed construction has been surveyed by a representative of DADS [~~DHS~~] architectural section and found acceptable, this information will be conveyed to the licensing officer as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, parking, and grounds must be essentially 100% complete at the time of this initial survey visit for occupancy approval and licensing, including basic furnishings and operational needs.

(4) [(3)] A copy of the following documents must be provided to DADS [~~DHS~~] architectural inspecting surveyor at the time of the survey of the completed building:

(A) written approval of local authorities as called for in paragraph (1) of this subsection;

(B) written certification of the fire alarm system by the installing agent (the Texas State Fire Marshal's Fire Alarm Installation Certificate);

(C) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating

including, but not limited to, special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), and rated ceilings. This must include a signed letter from the installer verifying that the material installed, such as carpeting, is the same material named in the laboratory test document;

(D) approval of the completed sprinkler system installation by the Texas Department of Insurance or the designing engineer. A copy of the material list and test certification must be available;

(E) service contracts for maintenance and testing of systems, including, but not limited to, alarm systems and sprinkler systems;

(F) a copy of gas test results of the facility's gas lines from the meter;

(G) a written statement from an architect and/or engineer stating that he certifies that the building was constructed to meet NFPA 101, Life Safety Code, and all locally applicable codes, and that the facility is in substantial conformance with minimum licensing requirements; and

(H) the contract documents specified in subsection (b) of this section.

(d) Nonapproval of new construction.

(1) If, during the survey of completed construction, the surveyor finds certain basic requirements not met, DADS [~~DHS~~] will not license the facility or approve it for occupancy. Such basic items may include the following:

(A) construction which does not meet minimum code or licensure standards for basic requirements such as corridor widths being less than eight feet clear width, ceilings installed at less than the minimum seven feet six inches height, resident bedroom dimensions less than required width, and other similar features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(B) no written approval by local authorities;

(C) fire protection systems not completely installed or not functioning properly including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems;

(D) required exits are not all usable according to Life Safety Code requirements;

(E) telephone not installed or not properly working;

(F) sufficient basic furnishings, essential appliances and equipment are not installed or not functioning; and

(G) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, encounters which in his judgment would preclude safe and normal occupancy by residents on that day.

(2) If the surveyor encounters deficiencies that do not affect the health and safety of the residents, licensure may be recommended based on an approved written plan of correction by the facility's administrator.

(3) Copies of reduced size floor plan on an 8-1/2 inch by 11 inch sheet must be submitted in duplicate to DADS [~~DHS~~] for record and/or file use and for the facility to use in evacuation planning and fire alarm zone identification. The plan must contain basic legible information such as overall dimensions, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

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

Filed with the Office of the Secretary of State on February 3, 2010.

TRD-201000556

Kenneth L. Owens  
General Counsel  
Department of Aging and Disability Services  
Proposed date of adoption: June 1, 2010  
For further information, please call: (512) 438-3734



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

##### SUBCHAPTER A. GENERAL PROVISIONS

###### 19 TAC §4.11

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §4.11 concerning General Provisions without changes to the proposed text as published in the October 16, 2009, issue of the *Texas Register* (34 TexReg 7174). Specifically, rules governing the Common Admission Application were previously housed in Chapter 5, Subchapter A, §5.6. Chapter 5, however, pertains only to public universities and/or health-related institutions. Senate Bill 502, 79th Texas Legislature, amended the Texas Education Code, §51.762, to include junior college districts, public state colleges, and public technical institutes. Therefore, rules for the Common Admission Application would be more properly housed in Chapter 4, Subchapter A, which pertains to all public institutions of higher education in Texas. The repeal of §5.6 is being simultaneously adopted along with new §4.11.

New §4.11 outlines guidelines for the use and payment of the common admission application system. New §4.11 includes language that states that public junior colleges, public state colleges, and public technical institutes are to be represented on the advisory committee in addition to general academic teaching institutions; and that they are to accept applications submitted through the electronic common admission application system.

No comments were received regarding the new section.

The new section is adopted under the Texas Education Code, §51.762, which provides the Coordinating Board with the authority to adopt rules for the common admission application.

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 February 2, 2010.

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Bill Franz  
General Counsel  
Texas Higher Education Coordinating Board  
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For further information, please call: (512) 427-6114



#### SUBCHAPTER E. APPROVAL OF DISTANCE EDUCATION, OFF-CAMPUS, AND EXTENSION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

###### 19 TAC §§4.101 - 4.108

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §§4.101 - 4.108, concerning Approval of Distance Education, Off-Campus, and Extension Courses and Programs for Public Institutions, without changes to the proposed text as published in the December 18, 2009, issue of the *Texas Register* (34 TexReg 9076). Specifically, this repeal allows Board staff to revise and clarify the information in the current sections by proposing two new subchapters which incorporate all the information from these sections.

No comments were received regarding the repeal of these sections.

The repeal is adopted under the Texas Education Code, Chapter 61, Subchapter C, §61.051(j), which provides the Coordinating Board with the authority to approve courses for credit, distance education, and existing programs.

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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Bill Franz  
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Texas Higher Education Coordinating Board  
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For further information, please call: (512) 427-6114





## SUBCHAPTER P. APPROVAL OF DISTANCE EDUCATION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

### 19 TAC §§4.255 - 4.264

The Texas Higher Education Coordinating Board adopts new §§4.255 - 4.264, concerning Approval of Distance Education Courses and Programs for Public Institutions, without changes to the proposed text as published in the December 18, 2009, issue of the *Texas Register* (34 TexReg 9076).

Specifically, the new sections provide clarification and changes to the rules governing the approval of distance education courses and programs at public institutions of higher education.

The following comments were received concerning the new sections:

Comment: The University of Texas System commented that the reporting requirements in §4.260(5) may prove to be difficult and expensive for institutions to fulfill and asked that the Commissioner consider what the institutions will have to do to meet that requirement versus the usefulness of the collected data.

Response: No change is necessary. Staff notes that reporting requirements for the CBM reports have been in place for several years. Institutions have been reporting enrollments, courses and graduates associated with distance education and self-supporting course offerings.

Comment: The University of Texas System commented that §4.262(7) as written, is vague and unclear.

Response: Staff believes that the current language is appropriate. The language allows the Commissioner or the Coordinating Board to set standards for distance education degree programs in fields and/or other conditions such as degree levels that might require special consideration. No change is needed.

Comment: Stephen F. Austin State University commented that clarification of "certain subject area disciplines or other conditions" in §4.262(7) was needed.

Response: Staff believes that the current language is appropriate. The language allows the Commissioner or the Coordinating Board to set standards for distance education degree programs in fields and/or other conditions such as degree levels that might require special consideration. No change is needed.

Comment: Collin College commented that §4.257(25) (definition of "credit hour") works for face-to-face courses but does not translate to distance education courses and suggested that a separate definition of credit hour for distance education be created.

Response: Staff agreed that the definition should be re-examined; however, this definition is found elsewhere in Board rules. Revisions will have to be considered by several committees, both internal and external. Staff will not make changes to §4.257(25) at this time, but will consider doing so at a later date.

The new sections are adopted under the Texas Education Code, Chapter 61, Subchapter C, §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

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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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

### 19 TAC §§4.270 - 4.279

The Texas Higher Education Coordinating Board adopts new §§4.270 - 4.279, concerning Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions. Section 4.278 is adopted with changes to the proposed text as published in the December 18, 2009, issue of the *Texas Register* (34 TexReg 9079). Sections 4.270 - 4.277 and §4.279 are adopted without changes and will not be republished.

Specifically, these new sections provide clarification and changes to the rules governing the approval of off-campus and self-supporting courses and programs at public institutions of higher education.

The following comments were received concerning these new sections:

Comment: The University of Texas TeleCampus commented that §4.278(i) indicates that entering into an agreement to offer lower-division dual credit courses is optional. The statute (Texas Education Code §28.009) says institutions shall enter into an agreement if such a request is made.

Response: Staff agreed and have added clarifying language to §4.278(i).

Comment: The University of Texas System commented that the reporting requirements in §4.274(5) may prove to be difficult and expensive for institutions to fulfill and asked that the Commissioner consider what the institutions will have to do to meet that requirement versus the usefulness of the collected data.

Response: No change is necessary. Staff notes that reporting requirements for the CBM reports have been in place for several years. Institutions have been reporting enrollments, courses and graduates associated with distance education and self-supporting course offerings.

Comment: The University of Texas System commented that §4.276(2) as written, is vague and unclear.

Response: Staff believes that the current language is appropriate. The language allows the Commissioner or the Coordinating Board to set standards for distance education degree programs in fields and/or other conditions such as degree levels that might require special consideration. No change is needed.

Comment: The University of Texas System and the Texas Association of Community Colleges commented that §4.278(j)

recommends that institutions notify impacted Higher Education Regional Councils when planning to offer requested dual credit courses in Council's service area, and would rather have that notification be required.

Response: Staff agreed and have made the change to §4.278(j).

Comment: Stephen F. Austin State University suggested the addition of the words "off-campus" to §4.278(j).

Response: Staff agreed and have added clarifying language to §4.278(j).

Comment: Stephen F. Austin State University suggested that the words "off-campus" be added to §4.278(i).

Response: Staff disagreed. Adding "off-campus" would seem to indicate that only off-campus dual credit courses offered by institutions would not have to be taken to the Higher Education Regional Councils and that is not the case. No change is needed.

Comment: Collin College commented that the wording in §4.272(16) and (18) is unclear and needs revision.

Response: No change is recommended. Staff does not believe the definitions, as vetted through the Distance Education Advisory Committee, need revision.

Comment: Collin College commented that §4.276(5) is worded in such a way that allows universities, higher education centers, etc. to offer lower-division courses in a community college's service area without notification, and seems to contradict other sections of Subchapter Q.

Response: Staff does not believe the rules are contradictory. Section 4.276 clearly states that "The (following) provisions apply to all courses covered under this subchapter, unless otherwise specified." Further, §4.278 outlines the functions of the Higher Education Regional Councils and §4.278(j), as amended, requires institutions to notify those Regional Councils when planning to offer requested dual credit courses. No change is required.

Comment: Collin College commented that Higher Education Regional Councils only review plans and should not be part of the appeal process as outlined in §4.278(a) - (d). The rules do not give the Regional Councils any decision making authority.

Response: Staff disagrees and no change is needed. Section 4.278(b) states that Regional Councils "shall resolve disputes regarding plans for lower-division courses and programs proposed by public institutions" and §4.278(c) clearly defines the appeal process. With the exception of lower-division distance education dual credit offerings, there have been no revisions to the Higher Education Regional Councils responsibilities or authority.

Comment: South Texas College commented that §4.278(i) as currently written could allow major universities to take over all dual enrollment course offerings of a service area, without informing the service area community college or the Regional Council, which could virtually threaten the functionality of that community college.

Response: Staff disagrees. Section 4.278(i) allows universities, public technical colleges, and Lamar state colleges to offer requested lower-division dual credit courses without Higher Education Regional Council approval. Section 4.278(h) requires Regional Council review, which would be considered notification. No change is required.

The new sections are adopted under the Texas Education Code, Chapter 61, Subchapter C, §61.051, which provides the Coordinating Board with the authority to coordinate institutions of higher education.

*§4.278. Functions of Regional Councils.*

(a) Regional Councils shall advise the Commissioner on appropriate policies and procedures for effective state-level administration of off-campus lower-division instruction.

(b) With the exception of subsections (e) and (i) of this section, Regional Councils in each of the ten Uniform State Service Regions shall make recommendations to the Commissioner and shall resolve disputes regarding plans for lower-division courses and programs proposed by public institutions.

(c) With the exception of subsections (e) and (i) of this section, for any dispute arising from off-campus delivery of lower-division courses to groups, any institution party to the disagreement may appeal first to the Regional Council, and then to the Commissioner and then the Board.

(d) Each Regional Council shall make recommendations to the Commissioner regarding off-campus courses and programs proposed for delivery within its Uniform State Service Region in accordance with the consensus views of Council members, except for courses and programs proposed to be offered by public community colleges in their designated service areas and courses and programs governed by the provisions of subsections (e) and (i) of this section.

(e) A public community college may enter into an agreement to offer only a dual credit course with a high school located in the service area of another public community college only if the other public community college is unable to provide the requested course to the satisfaction of the school district and the school district has explicitly invited the institution to do so.

(f) A public community college proposing to offer a dual credit course at a high school outside of the college's service area shall notify the Regional Council in whose service area the high school is located. It must provide a letter from the school district stating that the local community college is not offering the proposed dual credit course to the satisfaction of the school district and that the school district has invited the other community college to offer the course.

(g) Public community colleges shall submit for the appropriate Regional Council's review all off-campus lower-division courses proposed for delivery to sites outside their service areas.

(h) With the exception of subsection (i) of this section, universities, health-related institutions, public technical colleges, and Lamar state colleges shall submit for Regional Council review all off-campus lower-division courses proposed for delivery to sites in the Council's Service Region.

(i) Universities, health-related institutions, public technical colleges, and Lamar state colleges may enter into an agreement to offer lower-division dual credit courses with a school district and/or high school that makes such a request, and regional council approval is not required in order to offer requested lower-division, dual credit courses.

(j) All institutions of higher education shall provide notice to the Higher Education Regional Councils when planning to offer requested off-campus and/or electronic to groups dual credit courses in the Council's service area.

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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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER A. GENERAL PROVISIONS

#### 19 TAC §5.6

The Texas Higher Education Coordinating Board (Coordinating Board) adopts the repeal of §5.6 concerning General Provisions without changes to the proposed text as published in the October 16, 2009, issue of the *Texas Register* (34 TexReg 7175). Specifically, rules governing the Common Admission Application were previously housed in Chapter 5, Subchapter A, §5.6. Chapter 5, however, pertains only to public universities and/or health-related institutions. Senate Bill 502, 79th Texas Legislature, amended the Texas Education Code, §51.762, to include junior college districts, public state colleges, and public technical institutes. Therefore, rules for the Common Admission Application would be more properly housed in Chapter 4, Subchapter A, which pertains to all public institutions of higher education in Texas. New §4.11 is being simultaneously adopted along with the repeal of §5.6.

No comments were received regarding the repeal of this section.

The repeal is adopted under the Texas Education Code, §51.762, which provides the Coordinating Board with the authority to adopt rules for the common admission application.

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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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



### SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC

## UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND ASSESSMENT OF EXISTING DEGREE PROGRAMS

### 19 TAC §5.44

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §5.44, relating to Approval of New Academic programs and Administrative Changes at Public Universities, Health-Related Institutions, and Assessment of Existing Degree Programs, without changes to the proposed text as published in the October 23, 2009, issue of the *Texas Register* (34 TexReg 7290). Specifically, these amendments specify that an institution may not receive approval for a new bachelor's or master's program that the institution previously offered which was closed during the last ten years due to low productivity.

There were no comments received regarding these amendments.

The amendments are adopted under the Texas Education Code, Chapter 61, Subchapter C, §61.051 which provides the Coordinating Board with the authority to coordinate institutions of higher education and §61.051(e) which provides that no new department, school, degree program, or certificate program may be added at any public institutions of higher education except with specific approval of the Board.

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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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

The State Board of Education (SBOE) adopts amendments to §§66.4, 66.7, 66.10, 66.22, 66.24, 66.27, 66.28, 66.30, 66.33, 66.36, 66.42, 66.48, 66.54, 66.57, 66.60, 66.63, 66.66, 66.75, 66.104, and 66.121; new §§66.73, 66.102, and 66.105; and the repeal of §66.110, concerning instructional materials. The amendments to §§66.4, 66.7, 66.10, 66.22, 66.24, 66.27, 66.28, 66.30, 66.33, 66.36, 66.42, 66.48, 66.54, 66.57, 66.60, 66.63, 66.66, 66.75, and 66.121; new §§66.73, 66.102, and 66.105; and the repeal of §66.110 are adopted without changes to the proposed text as published in the December 11, 2009, issue of the *Texas Register* (34 TexReg 8913) and will not be republished. The amendment to §66.104 is adopted with changes to the proposed text as published in the December 11, 2009, issue of the *Texas Register* (34 TexReg 8913). The sections address pro-

visions relating to state adoption of instructional materials, local operations, and special instructional materials. The adopted revisions implement changes to the instructional materials review and adoption process resulting from the 81st Texas Legislature, 2009.

At its January 2010 meeting, the SBOE adopted revisions to its rules in 19 TAC Chapter 66 to implement legislative changes, with the exception of proposed new 19 TAC §66.67 relating to the adoption of open-source instructional materials. The SBOE postponed action on the proposed new section until the March 2010 SBOE meeting.

House Bill (HB) 188, 80th Texas Legislature, 2007, made significant changes pertaining to the adoption and distribution of instructional materials. The SBOE approved amendments to Chapter 66 in November 2007. These amendments included adding §66.22, Midcycle Review and Adoption; revising §66.27, Proclamation, Public Notice, and Schedule for Adopting Instructional Materials, to require that proclamations be designated according to the school year in which the materials are intended to be made available in classrooms; and revising §66.36, State Review Panels: Duties and Conduct, to require the state review panel to evaluate all instructional materials to determine if the Texas Essential Knowledge and Skills (TEKS) are covered in the student version as well as in the teacher version of the materials.

HB 2488, 81st Texas Legislature, 2009, requires the SBOE to place an open-source textbook for a secondary-level course submitted for adoption by an eligible institution on the conforming or nonconforming list. HB 2488 also specifies that the SBOE may execute a contract for printing an open-source textbook listed on the conforming or nonconforming list. In addition, each school district and open-enrollment charter school is required to annually certify to the SBOE that each student will be provided with instructional materials that cover all elements of the TEKS.

HB 4294, 81st Texas Legislature, 2009, requires that the SBOE be given an opportunity to comment on the electronic textbook or instructional materials on the list adopted by the commissioner of education. Additionally, school districts and open-enrollment charter schools are required to purchase, at a minimum, a classroom set of textbooks adopted by the SBOE for each subject and grade level in the foundation and enrichment curriculum.

The adopted revisions to 19 TAC Chapter 66 incorporate changes to the instructional materials review and adoption process resulting from the 81st Texas Legislature, 2009. The adopted revisions include amendments to existing rules relating to state adoption of instructional materials, including proclamations, review panel eligibility and appointment, samples, consideration and adoption of instructional materials by the SBOE, and requests for approval of updated editions of state-adopted instructional materials; selection of instructional materials by school districts; and special instructional materials. The adopted revisions include new rules for contracts for printing of open-source textbooks, textbook credits, and certification by school districts. In addition, the adopted revisions repeal an outdated rule relating to a pilot project for certain students enrolled in courses for concurrent high school and college credit.

The adopted revisions also make technical edits throughout the chapter for clarification and consistent use of terminology.

As a result of the revisions, appropriate changes will be incorporated into the Educational Materials and Textbooks (EMAT) online system. The adopted revisions have no new locally maintained paperwork requirements.

In response to public comment, the adopted revisions include changes to 19 TAC §66.104, Selection of Instructional Materials by School Districts. Specifically, subsection (r) was modified to include specific reference to enrichment curricula. Subsection (s) was modified to remove predetermined numbers for classroom sets. New subsection (t) was added to clearly establish that the classroom set requirement begins with Proclamation 2010 and is not retroactive.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code (TEC), §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. The earlier effective date will allow districts to begin preparing for implementation. The effective date is 20 days after filing as adopted.

Following is a summary of public comments received and corresponding responses regarding the proposed revisions to 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials.

**Comment.** A Texas state representative commented regarding HB 4294 provisions relating to the required purchase of a classroom set of materials for both the required and enrichment curricula. The legislator stated his position that the classroom set requirement be implemented as new textbook adoptions become available and are funded and that the requirement is not retroactive. The legislator stated that the classroom set requirement is meant to ensure that districts provide SBOE-approved materials in the classroom before purchasing supplemental instructional materials with state funds. The legislator clarified that the TEC definition of textbook includes an "electronic textbook" and stated that districts and charters are allowed to purchase electronic textbooks that have been adopted by the SBOE to satisfy the classroom set requirement. The legislator also advised that the number of textbooks or e-textbooks that make up a classroom set was purposely left undefined and commented that to stipulate a predetermined number for a classroom set would run counter to legislative intent of allowing flexibility for school districts to decide the format and number of SBOE-approved textbooks that make up a classroom set.

**Response.** The SBOE agrees and took action to modify language in 19 TAC §66.104, Selection of Instructional Materials by School Districts, at adoption. Subsection (r) was modified to include specific reference to enrichment curricula. New subsection (t) was added to clearly establish that the classroom set requirement begins with Proclamation 2010 and is not retroactive. As proposed, and subsequently adopted, subsection (s) allows for districts to select the format of SBOE approved textbooks, which includes SBOE-adopted electronic textbooks, to satisfy the classroom set requirement; however, subsection (s) was modified to remove predetermined numbers for classroom sets.

**Comment.** An individual commented regarding electronic instructional materials. The individual requested that if electronic textbooks become the main mode of instruction, a thorough check be done to ensure every student in every class has his or her own copy of the required textbook and not copies made by teachers.

Response. The SBOE agrees. The comment did not require any action because the amendment to §66.104 includes requirements for classroom sets that address this issue.

## SUBCHAPTER A. GENERAL PROVISIONS

### 19 TAC §§66.4, 66.7, 66.10

The amendments are adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendments implement the Texas Education Code, §7.102(c) and Chapter 31.

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 B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

### 19 TAC §§66.22, 66.24, 66.27, 66.28, 66.30, 66.33, 66.36, 66.42, 66.48, 66.54, 66.57, 66.60, 66.63, 66.66, 66.73, 66.75

The amendments and new section are adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendments and new section implement the Texas Education Code, §7.102(c) and Chapter 31.

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. LOCAL OPERATIONS

### 19 TAC §§66.102, 66.104, 66.105

The new sections and amendment are adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The new sections and amendment implement the Texas Education Code, §7.102(c) and Chapter 31.

§66.104. *Selection of Instructional Materials by School Districts.*

(a) Each local board of trustees of a school district or governing body of an open-enrollment charter school shall adopt a policy for selecting instructional materials. Final selections must be recorded in the minutes of the board of trustees or governing body.

(b) If instructional materials priced above the maximum cost to the state established in the proclamation are selected by a school district or open-enrollment charter school, the school district or open-enrollment charter school is responsible for paying to the publisher the portion of the cost above the state maximum.

(c) If instructional materials for subjects in the enrichment curriculum that are not on the conforming or nonconforming lists adopted by the State Board of Education (SBOE) are selected by a school district or open-enrollment charter school, the state shall be responsible for paying the district an amount equal to the lesser of:

(1) 70% of the cost to the district of the instructional materials. The applicable quota for adopted materials in the subject shall be the basis for determining instructional materials needed by the district; or

(2) 70% of the maximum cost to the state established for the subject. The applicable quota for adopted materials in the subject shall be the basis for determining instructional materials needed by the district.

(d) A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects is responsible for the portion of the cost of the materials not eligible for payment by the state under subsection (c) of this section. The minutes of the board of trustees or governing body meeting at which such a selection is ratified shall reflect the agreement of the school district or open-enrollment charter school to bear responsibility for the portion of the cost not eligible for payment by the state. A school district or open-enrollment charter school that selects non-adopted instructional materials for enrichment subjects also bears responsibility for providing braille and/or large type versions of the non-adopted instructional materials.

(e) Funds paid by the state under subsection (c) of this section shall be used only for purchasing the non-adopted instructional materials selected and ratified by the board of trustees or governing body.

(f) Non-adopted instructional materials selected and purchased under subsection (c) of this section shall be used by the school district or open-enrollment charter school during the contract period for conforming and nonconforming instructional materials adopted by the SBOE in the subject area.

(g) A report listing instructional materials selected for use in a school district or open-enrollment charter school shall be transmitted to the Texas Education Agency (TEA) no later than April 1 each year.

(h) Only instructional materials ratified by the board of trustees or governing body shall be furnished by the state for use in any school district or open-enrollment charter school. Selections certified to the TEA shall be final and, therefore, shall not be subject

to reconsideration during the original contract period or re-adoption contract periods covering the instructional materials selected.

(i) Except as otherwise provided by statute, requisitions submitted before the first day of school shall be approved based on the maximum number of students enrolled in the district or open-enrollment charter school during the previous school year and/or registered to attend the district during the next school year. Requisitions submitted after the first day of school shall be approved based on the actual number of students enrolled in the district when the requisition is submitted. If two or more titles are selected in a subject, requisitions may be made for a combined total of the selected titles.

(j) Instructional materials requisitioned by, and delivered to, a school district or an open-enrollment charter school shall be continued in use during the contract period or periods of the materials. A school district may not return copies of one title to secure copies of another title in the same subject.

(k) If a school district or open-enrollment charter school does not have a sufficient number of copies of a textbook used by the district or school for use during the following school year, and a sufficient number of additional copies will not be available from the publisher's depository or the publisher within ten business days prior to the opening day of school, the school district or school is entitled to be reimbursed from the state textbook fund at a rate not to exceed the actual cost of the used textbook, or the state maximum cost, whichever is less, for the purchase of a sufficient number of used adopted textbooks.

(l) In making a requisition, a school district or open-enrollment charter school may requisition textbooks on the conforming and nonconforming list for grades above the grade level in which the student is enrolled, except that the total quantity of textbooks requisitioned may not exceed a school district's eligibility quota for that subject.

(m) Adopted instructional materials shall be supplied to a pupil in special education classes as appropriate to the level of the pupil's ability and without regard to the grade for which the instructional material is adopted or the grade in which the pupil is enrolled.

(n) A school district or open-enrollment charter school may order replacements for textbooks that have been lost or damaged directly from the textbook depository or the textbook publisher or manufacturer if the textbook publisher or manufacturer does not have a designated textbook depository in this state, in accordance with §66.78(a) of this title (relating to Delivery of Adopted Instructional Materials).

(o) School districts or open-enrollment charter schools shall not be reimbursed from state funds for expenses incurred in local handling of textbooks.

(p) Selection and use of ancillary materials provided by publishers under §66.69 of this title (relating to Ancillary Materials) is at the discretion of each local board of trustees or governing body.

(q) The SBOE shall reduce the approved maximum cost for each nonconforming instructional material according to §66.51(a)(11) of this title (relating to Instructional Materials Purchased by the State). For nonconforming instructional materials, the state shall be responsible for payment to the publisher in an amount only equal to the reduced maximum cost. A school district or open-enrollment charter school ordering nonconforming instructional materials is responsible for the portion of the cost that exceeds the reduced state maximum cost.

(r) A school district or open-enrollment charter school that selects from the commissioner's list as specified in the TEC, §31.0231, must purchase a classroom set of textbooks adopted by the SBOE under the TEC, §31.023 or §31.035, for each subject and grade level in the foundation and enrichment curriculum.

(s) A classroom set shall be defined as the total count of SBOE-adopted textbooks on the conforming or nonconforming list necessary to provide one copy to each student during the class period. A classroom kit that includes materials for every student in the classroom is considered to be a classroom set.

(t) The classroom set requirement shall be implemented as new textbook adoptions become available and are funded. The classroom set requirement will begin with Proclamation 2010.

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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### 19 TAC §66.110

The repeal is adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The repeal implements the Texas Education Code, §7.102(c) and Chapter 31.

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. SPECIAL INSTRUCTIONAL MATERIALS

### 19 TAC §66.121

The amendment is adopted under the Texas Education Code, §7.102(c), which authorizes the SBOE to adopt rules required by the TEC, Chapter 31, and §31.003, which authorizes the SBOE to adopt rules for the adoption, requisition, distribution, care, use, and disposal of textbooks.

The amendment implements the Texas Education Code, §7.102(c) and Chapter 31.

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## CHAPTER 101. ASSESSMENT

### SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

#### 19 TAC §101.23

The State Board of Education (SBOE) adopts the repeal of §101.23, concerning performance standards. The repeal is adopted without changes to the proposed text as published in the October 9, 2009, issue of the *Texas Register* (34 TexReg 6982) and will not be republished. Section 101.23 establishes the level of performance considered to be satisfactory on assessment instruments as determined by the SBOE. The adopted repeal implements the transfer of authority for setting all performance standards on all state-developed assessments to the commissioner of education, in accordance with House Bill (HB) 3, 81st Texas Legislature, 2009.

In June 2009, the 81st Texas Legislature enacted HB 3, which made significant changes to the Texas student assessment program. These legislative changes include the requirement that the commissioner of education determine satisfactory performance levels for assessment instruments. At its November 2009 meeting, the SBOE adopted revisions to its rules in 19 TAC Chapter 101 to align with state and federal law, including the repeal of 19 TAC §101.23. However, the adopted repeal was to be filed at a later date to coordinate the repeal with the adoption of new 19 TAC §101.3004, which establishes in commissioner rule the same scale scores that had been set by the SBOE in §101.23. The notice of adopted new 19 TAC §101.3004 can be found in this issue of the *Texas Register*.

The adopted repeal has no new procedural and reporting implications. The adopted repeal has no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code (TEC), §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. The earlier effective date will ensure rules are consistent with amended statute prior to the beginning of statewide testing in spring 2010. The effective date is 20 days after filing as adopted.

No public comments were received on the proposal.

The repeal is adopted under the Texas Education Code, §39.0241(a), which authorizes the commissioner of education to determine the level of performance considered to be satisfactory on assessment instruments.

The repeal implements the Texas Education Code, §39.0241(a).

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 AA. COMMISSIONER'S RULES CONCERNING THE PARTICIPATION OF LIMITED ENGLISH PROFICIENT STUDENTS IN STATE ASSESSMENTS

#### 19 TAC §§101.1003, 101.1005, 101.1007, 101.1009 - 101.1011

The Texas Education Agency (TEA) adopts amendments to §§101.1003, 101.1005, 101.1007, and 101.1009 and new §101.1010 and §101.1011, concerning assessment. Amendments to §§101.1003, 101.1005, 101.1007, and 101.1009 are adopted without changes to the proposed text as published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7493) and will not be republished. New §101.1010 and §101.1011 are adopted with changes to the proposed text as published in the October 30, 2009, issue of the *Texas Register* (34 TexReg 7493). The sections address the participation of limited English proficient (LEP) students in state assessments. The adopted revisions implement new assessment requirements for certain LEP students in accordance with House Bill (HB) 3, 81st Texas Legislature, 2009.

In June 2009, the 81st Texas Legislature enacted HB 3, which changed the requirements governing the participation of certain LEP students in the state assessment program, including additional provisions for unschooled asylees or refugees. To implement HB 3, the following revisions to 19 TAC Chapter 101, Subchapter AA, are adopted.

Section 101.1003, Role of the Language Proficiency Assessment Committee, was amended to specify additional assessment provisions, including documentation required by the Language Proficiency Assessment Committee (LPAC). As a technical edit, the section was reformatted for clarity.

Section 101.1005, Limited English Proficient Students at the Exit Level, was amended to modify the criteria for postponement of the administration of exit level assessments.

Section 101.1007, Limited English Proficient Students at Grades Other Than the Exit Level, was amended to restrict the adminis-

tration of the Texas Assessment of Knowledge and Skills (TAKS) assessments in Spanish to eligible LEP students in Grades 3-5 instead of Grades 3-6; clarify the number of exemptions and administrations in Spanish allowable for an immigrant LEP student; update provisions relating to requirements of federal law and regulations; and update provisions for a LEP student whose parent or guardian declined bilingual or special language program services to incorporate HB 3 changes.

Section 101.1009, Limited English Proficient Students Who Receive Special Education Services, was amended to specify documentation required by the LPAC and the admission, review, and dismissal (ARD) committee for LEP students served by special education; clarify the provisions for participation in assessments; and update provisions for a student whose parent or guardian declined bilingual or special language program services to incorporate HB 3 changes.

Adopted new 19 TAC §101.1010, Provisions for Unschooled Limited English Proficient Asylees and Refugees, establishes definitions of terms and sets forth provisions such as exclusion of test results for state accountability purposes and administration of linguistically accommodated testing procedures for asylees and refugees.

In response to public comment, subsections (a), (b), and (c) were modified at adoption to clarify that exemption for students who may qualify as asylees and refugees is not necessarily dependent on initial enrollment in a U.S. school and can be applied retroactively. Subsection (c) was also modified to clarify the LEP and exit level postponement period.

Adopted new 19 TAC §101.1011, Student Success Initiative Grade Advancement Requirements, specifies the situations in which LEP students are not subject to grade advancement testing requirements under the Student Success Initiative.

Adopted new 19 TAC §101.1011 was modified at adoption to correct the cross reference to the qualifications for the provisions for unschooled asylees or refugees under §101.1010(c), instead of §101.1010(b).

The adopted revisions have data collection implications. In order to differentiate between unschooled LEP students who receive exemptions due to asylee/refugee status and LEP students who receive exemptions for other reasons, the TEA will require campuses to indicate the status of the LEP student in the Agency Use field on the assessment answer document for the 2009-2010 school year. The TEA will revisit the data implications at a later date to determine the collection method for the 2010-2011 school year. The adopted revisions will have locally maintained paperwork requirements. LPACs will be required to maintain documentation of assessment and accommodation decisions for eligible refugees or asylees.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began October 30, 2009, and ended November 30, 2009. Following is a summary of public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 101, Assessment, Subchapter AA, Commissioner's Rules Concerning the Participation of Limited English Proficient Students in State Assessments.

#### §101.1010, Provisions for Unschooled Limited English Proficient Asylees and Refugees

Comment. Fort Worth Independent School District (ISD) and Northside ISD requested clarification about whether the asylee/refugee provisions under 19 TAC §101.1010 would apply this school year only to eligible students in their first school year in a U.S. school or be retroactive to apply to eligible students within their first five school years in a U.S. school.

Agency Response. The agency provides the following clarification. The revisions to 19 TAC Chapter 101, Subchapter AA, apply, beginning with the 2009-2010 school year, to eligible asylees and refugees who are within their first five school years of enrollment in a U.S. school. In response to public comment, 19 TAC §101.1010 was modified at adoption to clarify that exemption for students who may qualify as asylees and refugees is not necessarily dependent on initial enrollment in a U.S. school and can be applied retroactively.

Comment. Fort Worth ISD and Northside ISD asked for clarification about whether the 19 TAC §101.1010 provisions would apply to an asylee or refugee who took the TAKS last year.

Agency Response. The agency provides the following clarification. English language learner (ELL) asylees and refugees who were required by former commissioner rules to take TAKS will in some cases qualify for the new provisions. The TEA publication titled *LPAC Decision-Making Process for the Texas Assessment Program* will delineate the eligibility criteria for the new provisions.

Comment. Northside ISD requested clarification as to whether asylee/refugees will be eligible for the new provisions authorized by 19 TAC §101.1010 regardless of Texas English Language Proficiency Assessment System (TELPAS) reading levels.

Agency Response. The agency provides the following clarification. The revisions to the commissioner's rules in 19 TAC Chapter 101, Subchapter AA, do not designate a particular TELPAS reading level to use in determining eligibility for the provisions authorized by 19 TAC §101.1010, which apply after the LEP exemption or LEP postponement period of the eligible asylee or refugee. Students who meet the eligibility criteria may qualify for the provisions if they continue to lack the necessary foundation in the Texas essential knowledge and skills.

Comment. Northside ISD asked whether changes will be made in instructions for counting the school year of enrollment of students not enrolled for a full school year.

Agency Response. The agency provides the following clarification. Changes will not be made in instructions for counting the school year of enrollment for students.

Comment. Northside ISD requested clarification about how the asylee/refugee provisions will be coded on the student's test answer document.

Agency Response. The agency provides the following clarification. An appendix will be added to the *2010 District and Campus Coordinator Manual* with coding instructions.

Comment. Northside ISD requested clarification as to whether an eligible asylee/refugee student will participate in the Linguistically Accommodated Testing (LAT) process for five years.

Agency Response. The agency provides the following clarification. Students determined to be eligible would participate in the



LAT process for up to five years in the grades and subjects in which this assessment process is available.

Comment. Northside ISD requested clarification about whether the provisions under 19 TAC §101.1010 for excluding the student's test results would be subject-specific or apply to all subjects assessed at the student's grade level.

Agency Response. The agency provides the following clarification. The exclusion of test results would apply across all subjects assessed at the student's grade level. This information will be included in the updated LPAC and coordinator manuals.

#### §101.1005, Limited English Proficient Students at the Exit Level

Comment. The Association of Texas Professional Educators (ATPE) commented that the proposed language regarding exemptions and postponements of end-of-course examinations of ELLs is contrary to the Texas Education Code (TEC), §39.027, as amended by HB 3. ATPE commented that the use of "may" in the TEC, §39.027(a), "A student may be administered an accommodated or alternative assessment instrument or may be granted an exemption from or a postponement of an assessment instrument," in conjunction with the time period in the TEC, §39.027(a)(2), for up to two years in addition to the one-year exemption in (a)(1), gives discretion to the LPAC to grant exemptions and postponements for three years and does not authorize the commissioner to limit the amount of time exemptions or postponements that are available through rulemaking.

Agency Response. The agency disagrees. The TEC, §39.027(e), requires the commissioner to establish an assessment system to measure the academic progress of LEP students. The permissive "may" language in the TEC, §39.027(a), authorizes the commissioner's assessment system to provide LEP students with exemptions, postponements, accommodated assessments, and/or alternative assessments within time frames that are permissive "for up to one year" and "for up to two additional years." The TEC, §39.027(a), does not address the LPAC's role or authority in granting exemptions. The role of the LPAC is specified in the TEC, §39.023(m), which specifically requires the commissioner to establish rules and procedures for LPACs to follow in determining which students are exempt in order to ensure that students are administered the assessment instruments at the earliest practical date.

As a point of clarification, the revisions to the commissioner's rules in 19 TAC Chapter 101, Subchapter AA, do not yet address end-of-course testing. The end-of-course testing program will not be implemented until the 2011-2012 school year. As such, the commissioner's rules are specific to the current exit level testing program as indicated by the title of §101.1005, Limited English Proficient Students at the Exit Level. Under the TEC, all students are currently required to meet testing requirements for graduation through the exit level TAKS program. The commissioner does not, therefore, have the authority to allow LPACs to grant exemptions. Instead, the commissioner's rules allow for exit level postponements. The time allowable for a postponement is shorter because exit level testing begins in Grade 11.

#### §101.1009, Limited English Proficient Students Who Receive Special Education Services, and §101.1003, Role of the Language Proficiency Assessment Committee

Comment. ATPE commented that any new paperwork requirement imposed under 19 TAC §101.1009(b) and 19 TAC §101.1003(c) should be streamlined and as minimal as is prac-

ticable and designed to collect only the essential information necessary to properly administer the program.

Agency Response. The agency agrees with streamlining paperwork to collect only the essential information necessary to ensure proper administration of the program. For the students to which §101.1009(b) applies, the paperwork requirements are not new but are included to clarify the documentation procedures required for students who are ELLs and receive special education services. These students have both an LPAC and ARD committee. The paperwork requirements for each committee exist elsewhere in state and federal regulations. The new documentation requirements for LPACs under §101.1003(c) are expected to affect a very small number of students in the state.

The amendments and new sections are adopted under the TEC, §39.023, which authorizes the commissioner of education to adopt rules concerning the exemption of limited English proficient students from the administration of assessment instruments. TEC, §39.027, as amended by House Bill 3, 81st Texas Legislature, 2009, includes authorization for additional provisions for unschooled asylees or refugees.

The amendments and new sections implement the TEC, §§28.0211, 39.023, and 39.027.

#### §101.1010. Provisions for Unschooled Limited English Proficient Asylees and Refugees.

(a) The provisions of this subchapter apply to eligible limited English proficient (LEP) students who are unschooled asylees or refugees except as specified in subsection (c) of this section. In accordance with the Texas Education Code (TEC), §39.027(a)(3), "unschooled asylee or refugee" means a student who:

(1) enrolled in a U.S. school as:

(A) an asylee as defined by 45 Code of Federal Regulations, §400.41; or

(B) a refugee as defined by 8 United States Code, §1101;

(2) has a visa issued by the United States Department of State with a Form I-94 Arrival/Departure record, or a successor document, issued by the United States Citizenship and Immigration Services that is stamped with "Asylee," "Refugee," or "Asylum"; and

(3) as a result of inadequate schooling outside the United States, lacks the necessary foundation in the essential knowledge and skills of the curriculum prescribed under the TEC, §28.002, as determined by the language proficiency assessment committee (LPAC) established under the TEC, §29.063.

(b) An eligible student who is enrolled in a U.S. school as an unschooled asylee or refugee and who is beyond the third school year of enrollment in U.S. schools in Grades 3-10 or who is beyond the first 12 months of enrollment in U.S. schools at the exit level is required to participate in assessments of academic skills in all subjects and grades required by state or federal law and regulations.

(c) The test results of an eligible student who is an unschooled asylee or refugee and who is beyond the LEP exemption period in Grades 3-10 or the exit level postponement period may be excluded from the determination of district accreditation and performance ratings under the TEC, Chapter 39, through the student's fifth school year of enrollment in U.S. schools in accordance with LPAC decision-making procedures outlined in the test administration materials. In subjects and grades in which testing is required by federal law and regulations, the student whose test results are excluded shall be administered assessments using linguistically accommodated testing procedures delineated

in the test administration materials. For purposes of LPAC determinations under this subsection, inadequate schooling outside the United States is defined as little or no formal schooling outside the United States such that the student lacked basic literacy in his or her primary language upon enrollment in school in the United States.

*§101.1011. Student Success Initiative Grade Advancement Requirements.*

Limited English proficient (LEP) students are subject to the grade advancement requirements of the Student Success Initiative authorized under the Texas Education Code (TEC), §28.0211, unless the LEP students meet the exemption criteria under §101.1007 of this title (relating to Limited English Proficient Students at Grades Other Than the Exit Level), qualify for the provisions for unschooled asylees or refugees under §101.1010(c) of this title (relating to Provisions for Unschooled Limited English Proficient Asylees and Refugees), or are otherwise not subject to the requirements established for students receiving special education services under §101.2003(d) of this title (relating to Grade Advancement Testing Requirements).

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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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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



## SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING IMPLEMENTATION OF TESTING PROGRAM

### 19 TAC §101.3003, §101.3004

The Texas Education Agency (TEA) adopts an amendment to §101.3003 and new §101.3004, concerning implementation of the testing program. The amendment to §101.3003 and new §101.3004 are adopted without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8435) and will not be republished. Section 101.3003 establishes graduation testing requirements for certain students. The adopted amendment and new section implement requirements of House Bill (HB) 3, 81st Texas Legislature, 2009, relating to performance standards and end-of-course assessment requirements for graduation.

In June 2009, the 81st Texas Legislature enacted HB 3, which made significant changes to the Texas student assessment program. These changes include the transfer of statutory authority to determine satisfactory performance levels for assessment from the State Board of Education (SBOE) to the commissioner of education. HB 3 also addressed requirements for end-of-course assessments. To implement the requirements of HB 3, the adopted revisions to 19 TAC Chapter 101, Subchapter CC, add new 19 TAC §101.3004, Performance Standards, and amend 19 TAC §101.3003, Graduation Requirements, as follows.

Adopted new 19 TAC §101.3004 specifies that responsibility of setting all performance standards on all state-developed assessments belongs to the commissioner of education based on the TEC, §39.0241(a). This commissioner rule replaces 19 TAC §101.23, Performance Standards, which the SBOE took action to repeal at its November 2009 meeting. Adopted new 19 TAC §101.3004 establishes in commissioner rule the same scale scores that had been set by the SBOE. The effective date for the repeal of 19 TAC §101.23 is coordinated with the effective date of adopted new 19 TAC §101.3004 in order to maintain established performance standards. The notice of the adopted repeal of 19 TAC §101.23 can be found in this issue of the *Texas Register*.

The adopted amendment to 19 TAC §101.3003 adds new subsection (g) to specify that students entering Grade 9 or lower in the 2011-2012 school year will be subject to end-of-course testing requirements for graduation, as outlined in the TEC, §39.023 and §39.025. In addition, the section title changed from "Graduation Requirements" to "Assessment Requirements for Graduation."

The adopted amendment and new section will have no new procedural and reporting implications. The adopted amendment and new section will have no new locally maintained paperwork requirements.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposed revisions began November 27, 2009, and ended December 28, 2009. No public comments were received.

The amendment and new section are adopted under the Texas Education Code (TEC), §39.0241, which authorizes the commissioner of education to determine the level of performance considered to be satisfactory on assessment instruments, and the TEC, §39.025, which authorizes the commissioner of education to adopt rules requiring the administration of end-of-course assessment instruments.

The amendment and new section implement the Texas Education Code, §39.0241 and §39.025.

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 110. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR ENGLISH LANGUAGE ARTS AND READING

The State Board of Education (SBOE) adopts the repeal of §§110.1-110.7, 110.21-110.24, and 110.41-110.45 and amendments to §§110.10, 110.17, and 110.30, concerning Texas essential knowledge and skills (TEKS) for English language arts and reading. The repeals and amendments are adopted without changes to the proposed text as published in the December 11, 2009, issue of the *Texas Register* (34 TexReg 8937) and will not be republished. The sections establish the TEKS for English language arts and reading courses in elementary, middle school, and high school. The adopted repeals remove the TEKS adopted to be effective in 1998 for Kindergarten-Grade 8 and English I-IV and related implementation language. The adopted amendments remove references to the repealed rules.

In May 2008, the SBOE adopted revisions to the English language arts and reading TEKS for Kindergarten-Grade 8 and for English I-IV with an implementation date of the 2009-2010 school year. These revisions were to supersede the original TEKS at the time of implementation. The original TEKS were still implemented for the 2008-2009 school year and needed to remain in the Texas Administrative Code for that period of time. With the implementation of the new TEKS for Kindergarten-Grade 8 and for English I-IV in 2009-2010, the original TEKS are no longer needed and may now be repealed. Existing rules were also amended to remove references to the repealed rules.

The adopted rule actions have no new procedural and reporting implications. The adopted rule actions have no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code (TEC), §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. The earlier effective date will immediately repeal rules that have been superseded, as well as amend existing rules referencing the repealed rules, to avoid confusion. The effective date is 20 days after filing as adopted.

No public comments were received on the proposal.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§110.1 - 110.7

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

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

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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### 19 TAC §110.10

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

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

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 B. MIDDLE SCHOOL

### 19 TAC §110.17

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

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

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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### 19 TAC §§110.21 - 110.24

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

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

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. HIGH SCHOOL

### 19 TAC §110.30

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

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

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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### 19 TAC §§110.41 - 110.45

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

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

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 128. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR SPANISH LANGUAGE ARTS AND READING AND ENGLISH AS A SECOND LANGUAGE

The State Board of Education (SBOE) adopts the repeal of §§128.1-128.7, 128.21, 128.22, and 128.41-128.43 and amendments to §§128.10, 128.17, and 128.30, concerning Texas essential knowledge and skills (TEKS) for Spanish language arts and reading and English as a second language. The repeals and amendments are adopted without changes to the proposed text as published in the December 11, 2009, issue of the *Texas Register* (34 TexReg 8940) and will not be republished. The sections establish the TEKS for Spanish language arts and reading and English as a second language courses in elementary, middle school, and high school. The adopted repeals remove the TEKS adopted to be effective in 1998 for Kindergarten-Grade 6 and English for Speakers of Other Languages (ESOL) I and II and related implementation

language. The adopted amendments remove references to the repealed rules.

In September 2008, the SBOE adopted revisions to the Spanish language arts and reading TEKS for Kindergarten-Grade 6 and for ESOL I and II with an implementation date of the 2009-2010 school year. These revisions were to supersede the original TEKS at the time of implementation. The original TEKS were still implemented for the 2008-2009 school year and needed to remain in the Texas Administrative Code for that period of time. With the implementation of the new TEKS for Kindergarten-Grade 6 and ESOL I and II in 2009-2010, the original TEKS are no longer needed and may now be repealed. Existing rules were also amended to remove references to the repealed rules.

The adopted rule actions have no new procedural and reporting implications. The adopted rule actions have no new locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code (TEC), §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. The earlier effective date will immediately repeal rules that have been superseded, as well as amend existing rules referencing the repealed rules, to avoid confusion. The effective date is 20 days after filing as adopted.

No public comments were received on the proposal.

## SUBCHAPTER A. ELEMENTARY

### 19 TAC §§128.1 - 128.7

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

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

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

◆ ◆ ◆  
**19 TAC §128.10**

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

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

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

◆ ◆ ◆  
**SUBCHAPTER B. MIDDLE SCHOOL**

### 19 TAC §128.17

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

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

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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**19 TAC §128.21, §128.22**

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

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

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



**SUBCHAPTER C. HIGH SCHOOL**

**19 TAC §128.30**

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

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

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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**19 TAC §§128.41 - 128.43**

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

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

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 129. STUDENT ATTENDANCE  
SUBCHAPTER B. STUDENT ATTENDANCE  
ACCOUNTING**

**19 TAC §129.21**

The State Board of Education (SBOE) adopts an amendment to §129.21, concerning student attendance accounting. The amendment is adopted without changes to the proposed text as published in the December 11, 2009, issue of the *Texas Register* (34 TexReg 8942) and will not be republished. The section provides requirements for student attendance accounting for state funding purposes. The adopted amendment updates the current rule to reflect statutory changes resulting from the 81st Texas Legislature, 2009, and add clarifying language.

Section 129.21 provides the student attendance accounting requirements school districts must follow and describes the manner in which student attendance is earned. The rule also provides a list of conditions under which a student who is not actually on campus at the time attendance is taken may be considered in attendance. The adopted amendment updates the current rule to reflect statutory changes to the Texas Education Code (TEC), §25.087, resulting from Senate Bill 1134, House Bill (HB) 192, and HB 2542, 81st Texas Legislature, 2009. Specifically, the adopted amendment modifies the rule as follows.

Subsection (h) was amended to clarify that enrollment is based on hours of instruction.

Subsection (k)(4), which addressed student absences to observe holy days or attend a required court appearance, was amended to address only absences related to observing holy days.

New subsection (k)(5) was added to address absences related to attending a required court appearance.

New subsection (k)(6) was added to address student absences to serve as an election clerk.

New subsection (k)(7) was added to address student absences to appear at a governmental office to complete paperwork required in connection with a student's application for United States citizenship.

New subsection (k)(8) was added to address student absences to take part in a United States naturalization oath ceremony.

New subsection (k)(9) was added to address absences of high school students who are juniors or seniors to visit an institution of higher education for the purpose of determining interest in attending the institution.

Subsection (k)(5), renumbered as subsection (k)(10), was amended to specify that students excused to sound "Taps" at a military honors funeral held in Texas for a deceased veteran must be in Grades 6-12.

Subsection (k)(6), renumbered as subsection (k)(11), which excuses certain student absences for documented appointments with health care professionals, was amended to specify that such appointments include an appointment of a student diagnosed with autism spectrum disorder with a health care practitioner to receive a generally recognized service for persons with that disorder.

Other minor corrections in word usage were made throughout subsection (k).

The adopted amendment has no new procedural and reporting implications. The adopted amendment requires school districts to maintain documentation related to the new excused absences.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

In accordance with the Texas Education Code (TEC), §7.102(f), the SBOE approved this rule action for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2010-2011 school year. This earlier effective date is necessary in order to implement the latest policy during the current school year. The effective date is 20 days after filing as adopted.

No public comments were received on the proposal.

The amendment is adopted under the TEC, §42.004, which authorizes the commissioner of education, in accordance with the rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the Foundation School Program.

The amendment implements the Texas Education Code, §42.004 and §25.087.

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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TRD-201000532

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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

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## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 1. GENERAL LAND OFFICE

#### CHAPTER 13. LAND RESOURCES

#### SUBCHAPTER B. RIGHTS-OF-WAY OVER PUBLIC LANDS

##### 31 TAC §13.17

The General Land Office (GLO) adopts amendments to 31 TAC §13.17 (relating to Fees for Right-of-Way Easements) to amend the applicable rates and fees for power, communications, data, and other right-of-way easements over or across public lands and to change the number of and boundaries of the regions that define the geographic limits to which the rates and fees apply. Modifications were also made to allow the commissioner the flexibility to deal with the merits of each easement, as provided for by statutory changes made during the 80th Legislature by Senate Bill 654. The amendment is adopted without changes to the proposal as published in the December 25, 2009, issue of the *Texas Register* (34 TexReg 9348) and will not be republished.

##### BACKGROUND AND REASONED JUSTIFICATION

The adopted amendment to the text of §13.17(e) clarifies that Figure: 31 TAC §13.17(e) applies only to power line right-of-way easements over and across public lands. New Figure: 31 TAC §13.17(e) provides the current fee and rate schedules for power line right-of-way easements. The GLO has increased the processing fees to \$350 per event of application, renewal, assignment, or amendment to better reflect the cost of processing by staff. This amount mirrors the fees for the processing of pipeline right-of-way easements, which were amended in 2008.

Instead of the width of the right-of-way, the rates are now based on the capacity and location of the power line, consistent with industry standards. The rates are based on calculating the value of the 1984 rates adjusted forward to 2009 based on actual inflation (Consumer Price Index) during the 25-year period. The GLO has defined three regions for implementing the applicable rate schedules. These regions are the gulf, coastal counties that include bays and estuaries, and the remainder of the state (all uplands). Because right-of-way easement activities cause the fewest impacts to the gulf region, rates for power line right-of-way easements in this region are the lowest. Rates for power line right-of-way easements in the coastal region are highest due to the greatest impact to natural resources occurring in that location.

Because the new rates will be based on the location of the power line, Figure: 31 TAC §13.17(e) includes a regions map for use in determining the applicable rate. This map is identical to the map that was included with the 2008 amendments to the pipeline right-of-way easement rates and fees. Due to their higher land

value, rates for power line right-of-way easements over or across properties acquired by the Permanent School Fund and properties within a municipality or its extraterritorial jurisdiction (ETJ) will be negotiated based on the appraised value of the property, consistent with industry standards.

Base rates for power line right-of-way easements in the three regions will increase (but not decrease) September 1 of each year according to the Consumer Price Index for All Urban Consumers. The minimum total consideration for a power line right-of-way easement is now \$1,000 per line per 10-year contract term.

Figure: 31 TAC §13.17(e) also adds a fee for damages to each new easement, based on geographical region. This addition mirrors the damages aspect of pipeline right-of-way easement rates, which the GLO added in 2008 to address damages caused by easement activities. Damages assessments are a component of typical utility easement rates industry-wide and are consistent with §51.296(b) of the Texas Natural Resources Code.

The adopted amendment to §13.17(f) provides that fees, rates, and terms for communications, data, and other right-of-way easements will be negotiated because the base rates for power line right-of-way easements are based on the capacity of the line, which cannot be implemented with communications, data, and other right-of-way easements.

The text from the current §13.17(f) is moved to a new §13.17(g). The text has been amended to clarify the types of easements described by that subsection.

The adopted amendments will provide additional revenue for the Permanent School Fund, which ultimately benefits K-12 school children of Texas. Because rates for these easements have not changed since February 1984, the previous rates were way below industry standards and an increase was necessary in order for the Permanent School Fund to receive fair compensation for the use of its land. The increase is consistent with the 2008 increase in pipeline right-of-way easement rates, and fits squarely within the spectrum of rates and fees charged by comparable land owners.

#### TAKINGS IMPACT ASSESSMENT

The GLO has evaluated the adopted rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines, to determine whether a detailed takings impact assessment is required. The GLO has determined that the adopted rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the GLO has determined that the adopted rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The GLO has determined that the adopted rulemaking will not result in a taking of private property and that there are no adverse impacts on private real property interests inasmuch as the property subject to the adopted amendments is owned by the state.

#### ENVIRONMENTAL REGULATORY ANALYSIS

The GLO has evaluated the adopted rulemaking action in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the action is not subject to §2001.0225 because it does not exceed express requirements

of state law and does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule of which the specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect 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. The adopted amendments are not anticipated to 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.

#### CONSISTENCY WITH CMP

The adopted rulemaking is subject to the CMP, 31 TAC §505.11(a)(1) and §505.11(c), relating to the Actions and Rules Subject to the CMP. The GLO has reviewed these proposed actions for consistency with the CMP's goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The applicable goals and policies are found at 31 TAC §501.12 (relating to Goals) and §501.16 (relating to Policies for Construction of Electric Generating and Transmission Facilities), §501.23 (relating to Policies for Development in Critical Areas); and §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Lands). Because all requests for the use of coastal public land must continue to meet the same criteria for GLO approval, the GLO has determined that the adopted actions are consistent with applicable CMP goals and policies.

#### PUBLIC COMMENTS

The GLO did not receive any comments on the adopted amendment.

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Natural Resources Code §§51.291 - 51.307, relating to the commissioner's ability to grant easements or other interests in property for rights-of-way or access across, through and under state public land; and Texas Natural Resources Code §51.014(a), providing that the commissioner may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Chapter 51, Texas Natural Resources Code.

Texas Natural Resources Code §§51.291 - 51.307 are affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 1, 2010.

TRD-201000497

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs  
General Land Office

Effective date: February 21, 2010

Proposal publication date: December 25, 2009

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

### TITLE 34. PUBLIC FINANCE



# PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

## CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER K. HOTEL OCCUPANCY TAX

### 34 TAC §3.163

The Comptroller of Public Accounts adopts an amendment to §3.163, concerning refund of hotel occupancy tax, without changes to the proposed text as published in the December 25, 2009, issue of the *Texas Register* (34 TexReg 9367).

Subsections (b) and (d) are amended to correct punctuation. Subsection (c) is being amended to change reference from sections of the State of Texas Travel Allowance Guide to Government Code, Chapter 403, Subchapter E. Subsection (f) is being amended to update contact information for the comptroller's office and delete reference to the telephone numbers for a Telecommunication Device for the Deaf (TDD).

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, §§156.103, 156.154, 351.006 and 352.007.

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 February 5, 2010.

TRD-201000600

Ashley Harden

General Counsel

Comptroller of Public Accounts

Effective date: February 25, 2010

Proposal publication date: December 25, 2009

For further information, please call: (512) 475-0387



## SUBCHAPTER O. STATE SALES AND USE TAX

### 34 TAC §3.333

The Comptroller of Public Accounts adopts an amendment to §3.333, concerning security services, without changes to the proposed text as published in the December 18, 2009, issue of the *Texas Register* (34 TexReg 9099). This rule is being amended pursuant to House Bill 3155, 76th Legislature, 1999, which enacted the adoption of the Occupations Code, including Private Investigators and Private Security Agencies, Chapter 1702, House Bill 2617, 76th, Legislature, 1999, which changed the title of Private Investigators and Private Security Agencies Act to Private Security Act, House Bill 2812, 77th Legislature, 2001, which amended the Tax Code by changing the definition of a security service to mean a service for which a license is re-

quired under Occupations Code, §1702.101 or §1702.102, Senate Bill 1252, 78th Legislature, 2003, which added a license for providers of electronic access control devices, House Bill 1531, 79th Legislature, 2005, which excepted certain telematics service providers from licensing requirements, Senate Bill 568, 79th Legislature, 2005, which excepted certain personal emergency response systems providers from licensing requirements, House Bill 3140, 79th Legislature, 2005, which added e-commerce to the types of sales which, if performed exclusively, can enable a seller of protective devices to be excepted from licensing requirements, House Bill 808, 79th Legislature, 2005, which excepted accountants from licensing requirements, House Bill 2833, 80th Legislature, 2007, which added locksmith companies and private security consulting companies to those requiring a contractor's license, and House Bill 142 80th Legislature, 2007, which changed the sourcing of local taxes for transit authorities to origin-based sourcing.

Subsection (a) is amended to change licensing authority to Occupations Code, Chapter 1702, to add a new license required under §1702.1025, and to add electronic access control device company, locksmith company and private security consultant company to those requiring a license. Subsection (i) is amended to delete locksmiths from, and to add certain persons who provide telematics services, certain persons who provide personal emergency response systems, accountants, and persons selling alarm systems through e-commerce to the list of persons excepted from the licensing requirements. Subsection (j) is added to exclude from sales tax the use of a slim-jim or similar device to unlock a vehicle. Subsection (m) is amended to reflect change in treatment of local taxes by transit authorities. Subsections (g), (n) and (o) are amended for clarity.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Occupations Code, §§1702.001, 1702.101, 1702.102, 1702.1025, 1702.324, 1702.331 and 1702.332. It implements the repeal of Tax Code, §322.105(d) and §322.107. It also implements Tax Code, §151.0075.

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 February 4, 2010.

TRD-201000562

Ashley Harden

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387



## CHAPTER 9. PROPERTY TAX ADMINISTRATION

## SUBCHAPTER B. PERFORMANCE AUDIT ADMINISTRATION

### 34 TAC §9.301

The Comptroller of Public Accounts adopts new §9.301, concerning appraisal district reviews, without changes to the proposed text as published in the December 18, 2009, issue of the *Texas Register* (34 TexReg 9106). This section implements House Bill 8, 81st Legislature, 2009, effective January 1, 2010. The section establishes administrative and procedural guidelines for reviews of appraisal districts' governance, taxpayer assistance, operating standards, appraisal standards, appraisal procedures, and appraisal methodology at least once every two years.

A submission was received from an individual inquiring as to consequences of failure to comply, provisions for remedial action, and consequences of notification to the Texas Department of Licensing and Regulation. Tax Code, §5.102(d) provides that if an appraisal district fails to timely comply with the comptroller's recommendations and the comptroller finds that the appraisal district's board of directors failed to take remedial action reasonably designed to ensure substantial compliance with each recommendation, the comptroller must notify the Texas Department of Licensing and Regulation, the successor to the Board of Tax Professional Examiners. Pursuant to Tax Code, §5.102(d), the Texas Department of Licensing and Regulation must take action necessary to ensure that the comptroller's recommendations are implemented as soon as practicable. New §9.301 implements Tax Code, §5.102.

This new section is adopted under House Bill 8's amendment to Tax Code, §5.102(a) which allows the comptroller, after consulting with the Comptroller's Property Value Study Advisory Committee, to adopt rules for establishing procedures and standards for conducting and scoring appraisal district reviews.

This new section implements Tax Code, §5.102.

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 February 2, 2010.

TRD-201000503  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387



## SUBCHAPTER C. APPRAISAL DISTRICT ADMINISTRATION

### 34 TAC §9.417

The Comptroller of Public Accounts adopts an amendment to §9.417, concerning applications for charitable organization property tax exemptions, without changes to the proposed text as published in the December 18, 2009, issue of the *Texas Register* (34 TexReg 9107). Tax Code, §11.184(g) authorizes the comp-

troller to adopt rules to implement the section and prescribe the form of an application for a determination letter.

The amendment makes changes to the rule to implement the provisions of House Bill 2555, 80th Legislature, 2009, effective January 1, 2010. The bill repeals Tax Code §11.184(b), to change the exemption for organizations engaged primarily in performing charitable functions from optional to mandatory. The bill also amends Tax Code §11.184(c) and adds subsections (l), (m) and (n) to allow corporations that do not qualify as a charitable organization under §11.18 to qualify for an exemption under this section if they are exempt from federal income taxation under certain provisions of the Internal Revenue Code. The rule, as amended, would also adopt by reference a revised Form 50-299 for application for primarily charitable organization property tax exemption and 501(c)(2) property tax exemptions. The revised rule and form provide revised requirements for an organization to receive the exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §11.184, which allows the comptroller to adopt rules to implement the section.

The amendment implements Tax Code, §11.184.

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 February 2, 2010.

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Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
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For further information, please call: (512) 475-0387



## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

#### CHAPTER 3. TEXAS HIGHWAY PATROL SUBCHAPTER K. PARKING AND TRAFFIC ADMINISTRATION

##### 37 TAC §3.171

The Texas Department of Public Safety (the department) adopts amendments to §3.171, concerning Parking and Traffic Administration, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7944).

Adoption of amendments to §3.171 are necessary in order to update the rule so that it reflects the new raised parking violation fine and late fee provided for by Texas Government Code, §411.067.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department; Texas Government Code, §411.062(d), which authorizes the department to adopt rules relating to the security of persons and property within the Capitol Complex; and Texas Government Code, §411.067 which provides for the assessment of fines.

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 February 5, 2010.

TRD-201000587

Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

### SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

#### 37 TAC §4.1

The Texas Department of Public Safety (the department) adopts an amendment to §4.1 concerning Regulations Governing Hazardous Materials without changes to the proposed text as published in the December 25, 2009, issue of the *Texas Register* (34 TexReg 9372).

The adopted amendment updates §4.1 to reflect January 1, 2010 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter.

No comments were received regarding the adoption of this amendment.

The amendment is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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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TRD-201000571

Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

### 37 TAC §§4.11, 4.12, 4.16, 4.17, 4.19, 4.21

The Texas Department of Public Safety (the department) adopts amendments to §§4.11, 4.12, 4.16, 4.17, 4.19, and 4.21 concerning Regulations Governing Transportation Safety without changes to the proposed text as published in the December 25, 2009, issue of the *Texas Register* (34 TexReg 9373).

The first adopted amendment to §4.11 updates the rule to reflect January 1, 2010 in subsection (a). This amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in this section, reflect all amendments and interpretations issued through that particular date for the subchapter. The second adopted amendment to §4.11 ensures the applicability of the drug and alcohol testing requirements of Title 49, Code of Federal Regulations, Part 382 to all drivers/motor carriers subject to the commercial driver's license requirements of Texas Transportation Code, Chapter 522, regardless of whether they meet all of the requirements of Part 383. This change is necessary because the 81st Texas Legislature enacted Texas Transportation Code, Chapter 522 as the standard for requiring commercial driver's licenses in this state and therefore did not adopt Title 49, Code of Federal Regulations, Part 383. The final adopted amendment to §4.11 is necessary to ensure that any person prohibited from performing safety-sensitive functions due to prohibited conduct, is prohibited from operating any vehicle regulated under this chapter.

The adopted amendment to §4.12 is necessary to clarify the non-applicability of the United States Department of Transportation number requirements of Texas Transportation Code, Chapter 643 for vehicles/motor carriers operating exclusively in intrastate commerce that are excluded from the requirements of Texas Transportation Code, Chapter 643.

The adopted amendment for §4.16 modifies the method used to calculate administrative penalties in certain cases. This amendment is necessary to provide that when a carrier fails to provide credible information regarding the size of its operations, or when a carrier has been penalized repeatedly for the same violation, the maximum penalties may be assessed against the motor carrier. The final adopted amendment to this section is required as a result of legislation passed by the 81st Texas Legislature that transferred the responsibility of the administration of Texas Transportation Code, Chapter 643 from the Texas Department of Transportation to the Texas Department of Motor Vehicles.

The adopted amendment for §4.17 is necessary to provide more flexibility in evaluating informal appeals "informally," by no longer requiring the designee of the director to be a "hearing officer."

The first adopted amendment for §4.19 is necessary to allow a more streamlined procedure for transmitting requests for action if the executive director designates another to accept such requests from the department. The final adopted amendment to this section is required as a result of legislation passed by the 81st Texas Legislature that transferred the responsibility of the administration of Texas Transportation Code, Chapter 643 from the Texas Department of Transportation to the Texas Department of Motor Vehicles.

The adopted amendment for §4.21 is necessary to implement some of the regulations required by SB 481, relating to the regulation of certain contract carriers of railroad employees, passed by the 81st Legislature, effective September 1, 2009.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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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TRD-201000572  
Stuart Platt  
General Counsel  
Texas Department of Public Safety  
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Proposal publication date: December 25, 2009  
For further information, please call: (512) 424-5848



### 37 TAC §4.22

The Texas Department of Public Safety (the department) adopts new §4.22 concerning Regulations Governing Transportation Safety without changes to the proposed text as published in the December 25, 2009, issue of the *Texas Register* (34 TexReg 9381).

The adoption of new §4.22 is necessary to implement some of the regulations required by SB 481, relating to the regulation of certain contract carriers of railroad employees, passed by the 81st Legislature, effective September 1, 2009.

No comments were received regarding the adoption of this new section.

The new section is adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

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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Stuart Platt  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



## CHAPTER 13. CONTROLLED SUBSTANCES SUBCHAPTER A. GENERAL PROVISIONS

### 37 TAC §§13.1, 13.7, 13.10

The Texas Department of Public Safety (the department) adopts amendments to §§13.1, 13.7, and 13.10, concerning General Provisions, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7947).

Adoption of amendments to §13.1 is necessary in order to add new definitions for electronic transmission, health practitioner, locum tenen, temporary controlled substances registration, and stored. Adoption of amendments to §13.1 also reformats the section. Due to reorganization within the department, adoption of amendments to §13.7 and §13.10 are necessary in order to change the address, phone number and name of the bureau responsible for the Controlled Substances Program.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 5, 2010.

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Stuart Platt  
General Counsel  
Texas Department of Public Safety  
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For further information, please call: (512) 424-5848



## SUBCHAPTER B. REGISTRATION

### 37 TAC §§13.21, 13.25, 13.26, 13.28, 13.30

The Texas Department of Public Safety (the department) adopts amendments to §§13.21, 13.25, 13.26, 13.28, and 13.30, concerning Registration, without changes to the proposed text as

published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7949).

Adoption of amendments to §13.21 is necessary to delete words "an annual" and insert "a" registration and require a registration for all registrants engaged in activities covered by the registration provisions of the Act and clarify that the activities performed must be in this state.

Adoption of amendments to §13.25 is necessary to clarify form numbers for different categories of registration.

Adoption of amendments to §13.26 is necessary to add the name of the emergency medical service medical director to the CSR certificate.

Adoption of amendments to §13.28 is necessary to add EMS Provider to fee exemption if qualified.

Adoption of amendments to §13.30 is necessary to establish expiration dates for certain controlled substances registrations.

No comments were received regarding the adoption of these amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, 80th Legislature, 2007; and Texas Health and Safety Code, §481.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201000575

Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER D. TEXAS PRESCRIPTION PROGRAM

### 37 TAC §§13.71 - 13.73, 13.75, 13.76, 13.86 - 13.99

The Texas Department of Public Safety (the department) adopts amendments to §§13.71 - 13.73, 13.75, and 13.76 and new §§13.91 - 13.93 and 13.96 - 13.99, concerning Texas Prescription Program, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7951) and will not be republished. New §§13.86 - 13.90, 13.94, and 13.95 are adopted with changes and will be republished. Changes were made to new §§13.86 - 13.90, 13.94, and 13.95 based on comments the department received from the public which are summarized below.

Adoption of amendments to §13.71 is necessary to add the definition of "prescription" as defined in §481.002(41), Texas Health and Safety Code. No comments were received regarding adoption of these amendments. Section 13.71 is adopted without changes to the proposed text and will not be republished.

Adoption of amendments to §13.72 is necessary to change Official Prescription Program to Official Prescription Form for Schedule II Controlled Substances. No comments were received regarding adoption of these amendments. Section 13.72 is adopted without changes to the proposed text and will not be republished.

Adoption of amendments to §13.73 is necessary to add rules that govern the issuance of multiple prescriptions and change the word "may" to "must" on the use of the official prescription form when dispensing Schedule II controlled substances. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Allen W. Burton, MD representing the Texas Pain Society (TPS). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.73, the TPS recommends that §13.73(e)(3) "must include an 'earliest fill date' on all multiple issued prescriptions" be modified to "must include an 'earliest fill date', ie. Do Not Fill Before (date) on all multiple prescriptions".

RESPONSE: The department utilized language that copies that of the Code of Federal Regulations, 21 Part 1300 to End, §1306.12(a)(ii) regarding this requirement and believes that the language is clear in identifying when, other than the first prescription of multiple prescriptions for a Schedule II controlled substance, can be filled. The department is not in agreement with the TSP's suggestion. Section 13.73 is adopted without changes to the proposed text and will not be republished.

Adoption of amendments to §13.75 is necessary to add rules that govern the filling of multiple prescriptions and that all requirements of §481.074(k), Texas Health and Safety Code are met. No comments were received regarding adoption of these amendments. Section 13.75 is adopted without changes to the proposed text and will not be republished.

Adoption of amendments to §13.76 is necessary to identify the data elements that are required to be submitted to the director. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Mary Staples representing the National Association of Chain Drug Stores and Kathy Barber representing the Texas Federation of Drug Stores. The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.76, "to make the rules addressing the electronic reporting requirements for Schedule II prescriptions consistent with the statute change, we ask that DPS revise 37 TAC §13.76(4) as follows: (4) the date the prescription was issued and filled, or *earliest fill date as appropriate*,"

RESPONSE: Texas Health and Safety Code, §481.074(d-1)(2), added by SB 904, 81st Legislature, 2009, addresses the requirement of a physician to indicate on subsequent official prescription forms the earliest date on which a pharmacy may fill the subsequent prescriptions if multiple prescriptions are written. Section 13.76(4) addresses the requirements of the pharmacist/pharmacy when reporting prescription data to the department and currently the department needs to know when the prescriptions are filled. The department is not in agreement with TFDS' recommendation. Section 13.76 is adopted without changes to the proposed text and will not be republished.

Adoption of new §13.86 sets forth who may obtain prescription forms and the registration requirements for Schedule III through V Controlled Substances. New §13.86 is filed simultaneously

with the repeal of current §13.86 which is being renumbered as new §13.99. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.86, TSBP believes this section is unnecessary because current statute in the Texas Controlled Substances Act (the Act) allows these prescriptions to be communicated to a pharmacist using written, oral, telephonic or electric means.

RESPONSE: The department agrees with TSBP that current statute addresses how a prescription can be communicated to a pharmacist; however, new §13.86 is directed toward physicians, as defined by the Act, and their use of the written prescription for prescribing, and the requirements that the prescribing practitioner must possess a valid registration issued by the director and the Drug Enforcement Administration to prescribe controlled substances. New §13.86 is adopted with non-substantial modifications for clarification and will be republished.

Adoption of new §13.87 provides for the proper use of the prescription form. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP), by Mary Staples representing the National Association of Chain Drug Stores (NACDS), and Kathy Barber representing the Texas Federation of Drug Stores (TFDS). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.87(a), TSBP believes this section is unnecessary because Texas Health and Safety Code, §481.074(k) in the Texas Controlled Substances Act (the Act) allows these prescriptions to be communicated to a pharmacist using written, oral, telephonic or electric means and §13.87(d)(2) of this title indicates that a practitioner "must ensure all information required in §481.074(k) of the Act, which includes the department registration number, is licensed in Texas, is included and is legible, to include the stamped or pre-printed instructions." TSBP states that the language "to include the stamped or pre-printed instructions" should not be in this section and is not part of the requirements of §481.074(k) of the Act.

RESPONSE: The department agrees with TSBP that §481.074(k) of the Act addresses how a prescription can be communicated to a pharmacist; however, this section is directed toward a physician's use of a written prescription presented to a pharmacist. The department agrees with the TSBP in that "to include the stamped or pre-printed instruction" is not part of the requirements of §481.074(k) of the Act and will remove the language from §13.87(d)(2).

COMMENT: Regarding §13.87 by the NACDS and TFDS requested the addition of a §13.87(e) that would require a pharmacist to contact the practitioner or person under the practitioner's direction or supervision to clarify or obtain required information before filling the prescription and that the pharmacist record the information obtained on the original prescription.

RESPONSE: The department disagrees with the addition of §13.87(e) but agrees to modify §13.95 Pharmacy Responsibility--Questionable Prescriptions that accomplishes the same objective.

New §13.87 is adopted with changes to the proposed text and will be republished.

Adoption of new §13.88 provides for the exceptions to use of the form. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.88, TSBP believes this section is unnecessary because current statute in the Texas Controlled Substances Act allows these prescriptions to be communicated to a pharmacist using written, oral, telephonic or electric means.

RESPONSE: The department agrees with TSBP that current statute addresses how a prescription can be communicated to a pharmacist; however, this section is directed toward a physician's use of a written prescription communicated to a pharmacist. New §13.88 is adopted with non-substantial modifications for clarification and will be republished.

Adoption of new §13.89 sets forth the pharmacy general responsibility upon receipt of a prescription. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.89, TSBP believes this section is unnecessary and misleading because current statute in the Texas Controlled Substances Act allows these prescriptions to be communicated to a pharmacist using written, oral, telephonic or electric means. In addition, the TSBP points out that §13.89(a)(4) specifies that a dispensing pharmacist should "sign the prescription" and that there is not such a requirement for Schedule II-V controlled substance prescriptions.

RESPONSE: Again the department agrees with the TSBP that current statute addresses how a prescription can be communicated to a pharmacist; however, §13.89 is directed toward a physician's use of a written prescription communicated to a pharmacist. The department agrees with the TSBP that §13.89(a)(4) "sign the prescription" should not be in §13.89. New §13.89 is adopted with non-substantial modifications for clarification and will be republished.

Adoption of new §13.90 sets forth the pharmacy responsibility for the electronic reporting of the data elements required to be submitted to the director. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP), by Mary Staples representing the National Association of Chain Drug Stores (NACDS), and Kathy Barber representing the Texas Federation of Drug Stores (TFDS). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.90, TSBP recognizes this rule requires pharmacist to submit certain information to the department for Schedule III - V prescriptions. One of the items to be sent is the department registration number. Prescriptions from out-of-state practitioners do not have a department registration number. The TSBP recommends that the requirements in this section be amended to include "if the practitioner is not regis-

tered in Texas, then the DPS registration number should be entered as 90140100".

RESPONSE: The department disagrees with this recommendation. The department has utilized several different "place holders" for this information to indicate an out-of-state prescription. Database changes currently being considered by the department may require a change in this procedure, making a rule with this type of specific recommended information would create issues for the department in the future.

COMMENT: Regarding §13.90(1), TFDS and NACDS recommend that new language "unless the prescription was issued by a practitioner in another state as permitted under §13.96" be added to this section.

RESPONSE: The department agrees with this recommendation and will add the new language for clarification. New §13.90 is adopted with new language for clarification and will be republished.

Adoption of new §13.91 sets forth the electronic compatible devices that may be used to transmit the data elements to the director. No comments were received regarding adoption of this new section. New §13.91 is adopted without changes to the proposed text and will not be republished.

Adoption of new §13.92 provides for a waiver from electronic reporting if certain minimum standards are met and the director approves the waiver. No comments were received regarding adoption of this new section. New §13.92 is adopted without changes to the proposed text and will not be republished.

Adoption of new §13.93 sets forth the pharmacy responsibility for non-electronic reporting. No comments were received regarding adoption of this new section. New §13.93 is adopted without changes to the proposed text and will not be republished.

Adoption of new §13.94 sets forth the pharmacy responsibility for dispensing a Schedule III - V controlled substance in an emergency situation. The department accepted comment on the proposed rules through December 16, 2009. Written comments were submitted by Gay Dodson, R.Ph., Executive Director/Secretary representing the Texas State Board of Pharmacy (TSBP). The substantive comments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.94, TSBP believes this section is unnecessary for prescriptions for Schedule III - V controlled substances since under normal circumstances these prescriptions may be transmitted to a pharmacy in written, oral, telephonic or electronic format.

RESPONSE: The department agrees with TSBP comment as it relates to the various methods of how Schedule III - V prescriptions may be transmitted to a pharmacist in any situation. New §13.94 is adopted with non-substantial changes reflecting that this section addresses oral or telephonic transmission of prescriptions and the pharmacist's responsibility of proper documentation of oral and telephonic prescriptions and will be republished.

Adoption of new §13.95 sets forth the pharmacy responsibility upon receipt of a questionable prescription. No comments were received regarding adoption of this new section; however, due to the comments received regarding §13.87 by the TFDS and NACDS §13.95 was modified to accommodate the requested change in §13.87 and will be republished. The substantive com-

ments, as well as the department's responses thereto, are summarized below:

COMMENT: Regarding §13.87, NACDS and TFDS requested the addition of §13.87(e) requiring a pharmacist to contact the practitioner or person under the practitioner's direction or supervision to clarify or obtain required information before filling the prescription and that the pharmacist records the information obtained on the original prescription.

RESPONSE: The department disagrees with the addition of a §13.87(e) but agrees to modify §13.95 Pharmacy Responsibility--Questionable Prescriptions that would accomplish the same objective. New §13.95 is modified for clarification and will be republished.

Adoption of new §13.96 sets forth the pharmacy responsibility upon receipt of a prescription issued by a practitioner in another state. No comments were received regarding adoption of this new section. New §13.96 is adopted without changes to the proposed text and will not be republished.

Adoption of new §13.97 sets forth the persons to whom the director may release non-statistical information and the requirements that the person must meet. No comments were received regarding adoption of this new section. New §13.97 is adopted without changes to the proposed text and will not be republished.

Adoption of new §13.98 sets forth the circumstances and conditions under which the director may delete or return a Schedule III - V controlled substance to the prescription program. No comments were received regarding adoption of this new section. New §13.98 is adopted without changes to the proposed text and will not be republished.

Adoption of new §13.99 sets forth the procedures and information a person may use to communicate with the director reference the Texas Prescription Program. No comments were received regarding adoption of this new section. New §13.99 is adopted without changes to the proposed text and will not be republished.

In addition, the title of this subchapter is changed to "Texas Prescription Program."

The amendments and new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, 80th Legislature, 2007; Senate Bill 904, 81st Legislature, 2009; and Texas Health and Safety Code, §481.003.

#### §13.86. *Prescription Forms.*

Who may utilize form. A practitioner, as defined in the Act, §481.002(39)(A), (C), (D), may use prescription forms and order forms through individual sources. If a written prescription form is to be used to prescribe a controlled substance the dispensing practitioner must be registered by the director and the DEA under both state and federal law to prescribe controlled substances.

#### §13.87. *Written Form.*

(a) Use. A practitioner may issue, or permit to be issued, by a person under the practitioner's direction or supervision, a Schedule III - V controlled substance on a prescription form for a valid medical purpose and in the course of medical practice.

(b) Refills permitted. Schedule III - V prescriptions may be refilled up to five times within the six months period after date of issuance.

(c) Completion. A practitioner who prescribes any quantity of a Schedule III - V controlled substance must complete the prescription form by legibly filling in all required information.

(d) Other requirements. A practitioner:

(1) may not postdate a prescription form; and

(2) must ensure all information required in the Act, §481.074(k), which includes the department registration number, if licensed in Texas, be included on every prescription.

*§13.88. Exceptions to Use of Written Form.*

(a) Medication order. A prescription form is not required for a medication order written for a patient who is admitted to a hospital at the time the medication order is written and filled.

(1) A practitioner may dispense or cause to be dispensed a controlled substance to a patient who:

(A) is admitted to the hospital; and

(B) will require an emergency quantity of a controlled substance upon release from the hospital.

(2) Under paragraph (1) of this subsection, the controlled substance:

(A) may only be dispensed in a properly labeled container; and

(B) may be an amount as determined appropriate by the attending practitioner as needed for proper treatment of the patient until the patient can obtain access to a pharmacy.

(b) Patient admitted to hospital. Subsection (a) of this section applies to a patient who is admitted to a hospital, including a patient:

(1) admitted to:

(A) a general hospital, special hospital, licensed ambulatory surgical center, surgical suite in a dental school, or veterinary medical school; or

(B) a hospital clinic or emergency room, if the clinic or emergency room is under the control, direction, and administration as an integral part of a general or special hospital;

(2) receiving treatment with a controlled substance from another person, who is:

(A) a member of a life flight aircraft medical team or an emergency medical ambulance crew or a paramedic-emergency medical technician; and

(B) considered an extension of an emergency room of a general or special hospital; or

(3) receiving treatment with a controlled substance while the patient is an inmate incarcerated in a correctional facility operated by the Texas Department of Criminal Justice.

(c) Animal admitted to hospital. Subsection (a) of this section applies to an animal admitted to an animal hospital, including an animal that is a permanent resident of a zoo, wildlife park, exotic game ranch, wildlife management program, or state or federal research facility.

(d) Long-Term Care Facility (LTCF). A prescription form is not required in a long-term care facility if:

(1) an individual administers the substance to an inpatient from the facility's medical emergency kit;

(2) the individual administering the substance is an authorized practitioner or an agent acting under the practitioner's order; and

(3) the facility maintains the proper records as required for an emergency medical kit in an LTCF.

*§13.89. Pharmacy Responsibility--Generally.*

(a) Upon receipt of a properly completed written prescription form or oral, telephonic or electronic prescription, a dispensing pharmacist must:

(1) ensure that all requirements of §481.74(k) of the Act have been met;

(2) ensure that the date the prescription is presented is not later than six months after the date of issuance;

(3) ensure that the prescription presented has not been re-filled more than five times during the six months period after the date the prescription was issued, unless the prescription is renewed by the practitioner;

(4) enter the date filled and the pharmacy prescription number;

(5) indicate whether the pharmacy dispenses to the patient a quantity less than quantity prescribed.

(b) The prescription is void if presented for filling later than six months after issuance or has been filled five times during the six months after issuance. A new prescription is required.

*§13.90. Pharmacy Responsibility--Electronic Reporting.*

Within the time required by the Act, a pharmacy must submit the following data elements from Schedule III - V prescriptions to the director:

(1) the prescribing practitioner's DPS registration number, unless the prescription was issued by a practitioner in another state as permitted under §13.96 of this title (relating to Pharmacy Responsibility--Out-of-State Practitioner);

(2) the patient's (or the animal owner's) name, age (or date of birth), and address (including city, state, and zip code);

(3) the date the prescription was issued and filled;

(4) the NDC # of the controlled substance dispensed;

(5) the quantity of controlled substance dispensed;

(6) the pharmacy's prescription number; and

(7) the pharmacy's DPS registration number.

*§13.94. Pharmacy Responsibility--Oral, Telephonic or Electronic Prescriptions.*

(a) Documentation. If a pharmacy dispenses a Schedule III - V controlled substance pursuant to an orally, telephonically or electronically communicated prescription from a practitioner or the practitioner's designated agent, the pharmacist must promptly reduce the prescription to writing, including the information required by the Act, §481.074(k).

(b) Other requirements. After dispensing a controlled substance orally, telephonically or electronically under this section, the dispensing pharmacy must, within the time required by the Act:

(1) maintain the written record created under subsection (a) of this section in the pharmacy records for two years from the date dispensed;

(2) inform the practitioner in the event of an emergency refill of the prescription; and

(3) send the information required under this subchapter to the director (Texas Prescription Program).



§13.95. *Pharmacy Responsibility--Questionable Prescriptions.*

(a) If a dispensing pharmacist receives a written prescription form that creates a substantial question or doubt in the mind of the dispensing pharmacist that concerns requirements of §481.074(k) of the Act or the authenticity of the prescription, the pharmacist must, before filling the prescription, communicate with the prescribing practitioner in order to resolve the question or doubt.

(b) The pharmacist must document on the prescription the following information:

- (1) Date the change or adding of information was authorized;
- (2) The information that was authorized to be added or changed;
- (3) Name of the prescribing practitioner granting the authorization; and
- (4) Initials of the pharmacist.

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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General Counsel  
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**SUBCHAPTER D. OFFICIAL PRESCRIPTIONS**

**37 TAC §13.86**

The Texas Department of Public Safety (the department) adopts the repeal of §13.86, concerning Communication with Director (Texas Prescription Program), without changes to the proposal as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7955).

Adoption of the repeal is necessary due to the simultaneous filing of a new §13.86. The repealed section has been renumbered as new §13.99 in a simultaneous filing.

No comments were received regarding the adoption of the repeal.

The repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, §481.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**SUBCHAPTER F. APPLICATION**

**37 TAC §§13.131 - 13.134, 13.137**

The Texas Department of Public Safety (the department) adopts amendments to §§13.131 - 13.134 and 13.137, concerning Application, without changes to the text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7956).

Adoption of amendments to §13.131 is necessary to add temporary controlled substances registration (TCSR) to Application definitions.

Adoption of amendments to §13.132 is necessary to add change in temporary business address by locum tenen or health practitioner as information needed to be updated as required by §13.208 and clarify who may act as a supervising physician for a mid-level practitioner in a medical facility.

Adoption of amendments to §13.137 add denial as an option if the modification of a registration does not meet the requirements of this section or violates a ground of denial as described in the Act, §481.063(e).

Due to reorganization within the department, additional amendments are adopted to change the name of the bureau responsible for the Controlled Substances Program.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, §481.003.

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**SUBCHAPTER G. FORFEITURE AND DESTRUCTION**

**37 TAC §13.161**

The Texas Department of Public Safety (the department) adopts an amendment to §13.161, concerning Forfeiture and Destruction, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7958).

Due to reorganization within the department, the amendment is adopted to change the name of the bureau responsible for the Controlled Substances Program.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, §481.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER H. SECURITY

### 37 TAC §13.182

The Texas Department of Public Safety (the department) adopts an amendment to §13.182, concerning Security, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7959).

Amendments to §13.182 are necessary to clarify the manner that an emergency medical locker is to be secured to a conveyance.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, §481.003.

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## SUBCHAPTER I. RECORD KEEPING

### 37 TAC §13.208

The Texas Department of Public Safety (the department) adopts an amendment to §13.208, concerning Record Keeping, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7960).

Adoption of the amendment to §13.208 adds temporary registration holder as a person required to update certain information to the director.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, §481.003.

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## SUBCHAPTER K. INSPECTION

### 37 TAC §§13.233, 13.234, 13.237

The Texas Department of Public Safety (the department) adopts amendments to §§13.233, 13.234 and 13.237, concerning Inspection, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7961).

Adoption of the amendment to §13.233 is necessary in order to include each member of the Narcotics Regulatory Program as a person authorized to inspect a controlled premise.

Adoption of amendments to §13.234 is necessary to reformat the section to add new subsections (b) and (c). The new subsections set forth the time period in which records required to be maintained on site must be produced for inspection by the director and refer to the CFR for off site record keeping requirements.

Due to reorganization within the department, amendment to §13.237 is adopted to change the name of the bureau responsible for the Controlled Substances Program.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, §481.003.

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## SUBCHAPTER L. REPORTING DISCREPANCY, LOSS, THEFT, OR DIVERSION

### 37 TAC §13.253, §13.254

The Texas Department of Public Safety (the department) adopts amendments to §13.253 and §13.254, concerning Reporting Discrepancy, Loss, Theft, or Diversion, without changes to the proposed text as published on November 13, 2009, in the *Texas Register* (34 TexReg 7962).

Due to reorganization within the department, amendments are adopted to change the name of the bureau responsible for the Controlled Substances Program. Adoption of the amendment to §13.254 sets forth the information required to be reported to the director by the practitioner on all lost/replacement official prescriptions.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, §481.003.

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## SUBCHAPTER M. DENIAL, REVOCATION, AND RELATED DISCIPLINARY ACTION

### 37 TAC §§13.272 - 13.276, 13.278

The Texas Department of Public Safety (the department) adopts amendments to §§13.272 - 13.276 and 13.278, concerning Denial, Revocation, and Related Disciplinary Action, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7963).

Adoption of amendments to the sections add "unless otherwise stated in the Act" to each action to be taken in order to more fully comply with the Act and clarify a hearing request upon receiving probation under this section.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, §481.003.

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## SUBCHAPTER N. ADMINISTRATIVE PENALTIES AND HEARINGS

### 37 TAC §13.301, §13.304

The Texas Department of Public Safety (the department) adopts amendments to §13.301 and §13.304, concerning Administrative Penalties and Hearings, without changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7966).

Due to reorganization within the department, the amendments are adopted to change the name of the bureau responsible for the Controlled Substances Program.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Senate Bill 1879, Acts 2007, 80th Leg., R.S.; and Texas Health and Safety Code, §481.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 35. PRIVATE SECURITY SUBCHAPTER C. STANDARDS

### 37 TAC §35.42

The Texas Department of Public Safety (the department) adopts amendments to §35.42, concerning Standards, without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8465).

Adoption of the amendments to §35.42 is necessary in order to provide greater discretion to the Private Security Bureau Manager in applying the rule's guidelines (relating to disqualifying Class B misdemeanors). The rule is also amended in order to modify those guidelines. Adoption of this amendment provides greater guidance to the Bureau staff, the regulated industry, and prospective applicants regarding the Class B misdemeanor offenses considered by the Board to be disqualifying for purposes of licensure under the Private Security Act (Chapter 1702, Texas Occupations Code).

No comments were received regarding the adoption of these amendments.

These amendments are adopted under Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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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### 37 TAC §35.43

The Texas Department of Public Safety (the department) adopts amendments to §35.43, concerning Standards without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8467).

Adoption of the amendments is necessary to conform the guidelines to those provided in adopted new §35.46 of this title (relating to Guidelines for Disqualifying Convictions), and to provide greater discretion to the Private Security Bureau Manager in applying the rule's guidelines. Adoption of these amendments will provide guidance to the Bureau staff, the regulated industry, and prospective applicants regarding the nature of the discharges considered by the Board to be disqualifying for purposes of licensure under the Private Security Act (Chapter 1702, Texas Occupations Code).

No comments were received regarding the adoption of these amendments.

These amendments are adopted under Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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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### 37 TAC §35.46

The Texas Department of Public Safety adopts new §35.46, concerning Standards without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8467).

Adoption of the new section is necessary in order to comply with the 81st Legislature's mandate to adopt rules in compliance with Chapter 53 of the Texas Occupations Code, affected by House Bill 2730, §4.02 (amending §1702.004(b) of the Texas Occupations Code). This new section provides guidance to the Bureau staff, the regulated industry, and prospective applicants regarding the criminal offenses considered by the Board to be related

to the various regulated security fields, for purposes of licensure under the Private Security Act (Chapter 1702, Texas Occupations Code).

No comments were received regarding the adoption of this new section.

This new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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. GENERAL ADMINISTRATION AND EXAMINATIONS

### 37 TAC §35.71

The Texas Department of Public Safety (the department) adopts amendments to §35.71, concerning Operation without Manager, without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8470).

Adoption of amendments is necessary in order to clarify the statutory language of §1702.121 of the Texas Occupations Code recently amended by House Bill 2730. These amendments will provide guidance to the Bureau staff and the regulated industry, by clarifying the point at which the limited period of temporary operation begins, and that the statute's reference to "termination" of the manager is meant to refer only to the termination of managerial duties, not to employment *per se*.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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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### 37 TAC §35.72

The Texas Department of Public Safety (the department) adopts amendments to §35.72, concerning Fingerprint Submissions, without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8471).

Adoption of amendments is necessary in order to eliminate the requirement that fingerprints be submitted on department-provided fingerprint cards and to authorize the submission of electronic fingerprints.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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 February 5, 2010.

TRD-201000591

Stuart Platt

General Counsel

Texas Department of Public Safety

Effective date: February 25, 2010

Proposal publication date: November 27, 2009

For further information, please call: (512) 424-5848



## SUBCHAPTER L. GENERAL REGISTRATION REQUIREMENTS

### 37 TAC §35.182

The Texas Department of Public Safety (the department) adopts the repeal of §35.182, concerning Fingerprints, without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8472).

Adoption of the repeal eliminates provisions rendered redundant by other rule amendments.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which

authorizes the department to adopt rules to administer this chapter.

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 February 5, 2010.

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Stuart Platt

General Counsel

Texas Department of Public Safety

Effective date: February 25, 2010

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For further information, please call: (512) 424-5848



### 37 TAC §35.185

The Texas Department of Public Safety (the department) adopts amendments to §35.185, concerning Registration Deadline, without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8472).

Adoption of amendments is necessary to clarify the statutory language of §1702.230 of the Texas Occupations Code, recently amended by House Bill 2730. Adoption of this amendment provides guidance to the Bureau staff and the regulated industry, by clarifying the required components of an application for registration and ensuring that the department has sufficient information from prospective registrants prior to their being employed in a regulated capacity.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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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Stuart Platt

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



## SUBCHAPTER M. COMPANY RECORDS

### 37 TAC §35.202

The Texas Department of Public Safety (the department) adopts amendments to §35.202, concerning Location of Records, without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8473).

Adoption of amendments is necessary to clarify the statutory language of §1702.110 and §1702.127 of the Texas Occupations Code, as amended by House Bill 2730. The amendments are intended to provide alternatives for out-of-state licensees, pursuant to HB 2730's creation of new §1702.110(b) and §1702.127(d). This rule amendment will provide guidance to the departmental staff and the regulated industry, by clarifying the requirements imposed by these statutory amendments.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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 February 5, 2010.

TRD-201000594

Stuart Platt

General Counsel

Texas Department of Public Safety

Effective date: February 25, 2010

Proposal publication date: November 27, 2009

For further information, please call: (512) 424-5848



## SUBCHAPTER Q. TRAINING

### 37 TAC §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, 35.267

The Texas Department of Public Safety (the department) adopts the repeal of §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, and 35.267, concerning Training, without changes to the proposal as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8474). This repeal is filed simultaneously with an adoption of new Subchapter Q, §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, and 35.267 which promulgates revised provisions for training.

Adoption of the repeal is necessary to address public safety issues and to accommodate industry concerns relating to the training requirements imposed on the private security industry.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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 February 5, 2010.

TRD-201000595

Stuart Platt

General Counsel

Texas Department of Public Safety

Effective date: February 25, 2010

Proposal publication date: November 27, 2009

For further information, please call: (512) 424-5848



**37 TAC §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, 35.267**

The Texas Department of Public Safety (the department) adopts new §§35.251 - 35.253, 35.256, 35.257, 35.260 - 35.265, and 35.267, concerning Training, without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8474).

Adoption of the sections is necessary to address public safety issues and to accommodate industry concerns relating to the training requirements imposed on the private security industry.

No comments were received regarding the adoption of these sections.

These new sections are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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 February 5, 2010.

TRD-201000596

Stuart Platt

General Counsel

Texas Department of Public Safety

Effective date: February 25, 2010

Proposal publication date: November 27, 2009

For further information, please call: (512) 424-5848



**SUBCHAPTER U. LOCKSMITH**

**37 TAC §35.311**

The Texas Department of Public Safety (the department) adopts amendments to §35.311, concerning Exemptions, without changes to the proposed text as published in the November 27, 2009, issue of the *Texas Register* (34 TexReg 8478).

Adoption of the amendments clarifies the scope of the statutory language of Texas Occupations Code, §1702.1056 and

§1702.2227, relating to the definition of locksmith services. The amendment is intended to clarify that installation of a pre-keyed lockset does not constitute locksmith services for purposes of the Private Security Act.

No comments were received regarding the adoption of these amendments.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer this chapter.

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 February 5, 2010.

TRD-201000597

Stuart Platt

General Counsel

Texas Department of Public Safety

Effective date: February 25, 2010

Proposal publication date: November 27, 2009

For further information, please call: (512) 424-5848



**PART 5. TEXAS BOARD OF PARDONS AND PAROLES**

**CHAPTER 145. PAROLE**

**SUBCHAPTER A. PAROLE PROCESS**

**37 TAC §145.3**

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.3, concerning the policy statements relating to parole release decisions by the Board of Pardons and Paroles. The amendment is adopted with changes to the proposed text as published in the November 13, 2009, issue of the *Texas Register* (34 TexReg 7967). Paragraph (4) corrects the references from "subsection" to "section". The text of the rule will be republished.

The amended rule is adopted to include parole commissioner to the language as it relates to the prohibition of any consideration of an offender's litigation activities when determining an offender's parole, supervision or revocation.

No public comments were received regarding adoption of these amendments.

The amended rule is adopted under §508.036 and §508.0441, Texas Government Code. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels; and §508.0441 provides the board with the authority to consider and order release on parole or mandatory supervision.

*§145.3. Policy Statements Relating to Parole Release Decisions by the Board of Pardons and Paroles.*

To aid the Board of Pardons and Paroles in its analysis and research of parole release, the board adopts the following policies.

(1) Release to parole is a privilege, not an offender right, and the parole decision maker is vested with complete discretion to grant, or to deny parole release as defined by statutory law.

(A) Candidates for parole are to be evaluated on an individual basis.

(B) There are no mandatory rules or guidelines that must be followed in every case because each offender is unique. The board and parole commissioners have the statutory duty to make release decisions which are only in the best interest of society. Parole panels use parole guidelines as a tool to aid in the discretionary parole decision process.

(2) The board will reconsider for release an offender other than an offender serving a sentence for an offense listed in §508.149(a), Government Code, as soon as practicable after the first anniversary of the date of denial, provided the decision to deny parole is on or after January 1, 2004, and the offender is otherwise eligible for consideration.

(3) An offender will be considered for parole when eligible and when the offender meets the following criteria with regard to behavior during incarceration.

(A) Other than on initial parole eligibility, the person must not have had a major disciplinary misconduct report in the six-month period prior to the date he is reviewed for parole; which has resulted in loss of good conduct time or reduction to a classification status below that assigned during that person's initial entry into TDCJ-ID.

(B) Other than on initial parole eligibility, at the time he is reviewed for parole the person must be classified in the same or higher time earning classification assigned during that person's initial entry into TDCJ-ID.

(C) If any offender who has received an affirmative vote to parole and following the vote, notification is received that the offender has been reduced below initial classification status or has lost good conduct time, the parole decision will be reviewed and revoted by the parole panel that rendered the decision.

(D) A person who has been revoked and returned to custody for a violation of the conditions of release to parole or mandatory supervision will be considered for release to parole or mandatory supervision when eligible.

(E) An offender who is otherwise eligible for parole and who has charges pending alleging a felony offense committed while in TDCJ, and for which a complaint has been filed with a magistrate of the State of Texas, any facility under its supervision, or a facility under contract with TDCJ will not be considered for release to parole.

(F) An offender who is otherwise eligible for release and meets the criteria for Medically Recommended Intensive Supervision (MRIS) as required by Government Code, §508.146, may be considered for release on parole.

(4) Any consideration by a board member or parole commissioner of an offender's litigation activities when determining an offender's candidacy for parole is strictly prohibited. No offender will be denied the opportunity to present to the judiciary, including appellate courts, his or her allegations concerning violations of fundamental constitutional rights. Any consideration of such legal activity during the parole review, supervision or revocation process is a violation of Board policy. In the event parole is denied in violation of this section, the offender may pursue a remedy under the special review provisions of §145.17 of this title (relating to Action Upon Review--Release Denied). In the event parole or mandatory supervision is revoked in violation

of this section, the offender may pursue a remedy under the motion to reopen hearing provisions of §146.11 of this title (relating to Releasee's Motion to Reopen Hearing or Reinstate Supervision).

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 February 4, 2010.

TRD-201000563

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: February 24, 2010

Proposal publication date: November 13, 2009

For further information, please call: (512) 406-5388



### 37 TAC §145.12

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §145.12, concerning action upon review. The amendment is adopted with changes to the proposed text as published in the December 4, 2009, issue of the *Texas Register* (34 TexReg 8659). The purpose of the change is to remove the Month/Year from voting option FI-6 to be consistent with other voting options without a rehabilitation program. The text of the rule will be republished.

The amended rule is adopted to establish a voting option for placement of offenders into the DWI program.

No public comments were received regarding adoption of these amendments.

The amended rule is adopted under §508.036 and §508.044, Texas Government Code. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels; and §508.044 providing the board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

#### §145.12. Action upon Review.

A case reviewed by a parole panel for parole consideration may be:

- (1) deferred for request and receipt of further information;
- (2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review date (Month/Year) for an offender serving a sentence listed in §508.149(a), Government Code, may be set at any date after the first anniversary of the date of denial and end before the fifth anniversary of the date of denial. The next review date for an offender serving a sentence not listed in §508.149(a), Government Code, shall be as soon as practicable after the first anniversary of the denial;
- (3) denied parole and ordered serve-all, but in no event shall this be utilized if the offender's projected release date is greater than five years for offenders serving sentences listed in §508.149(a), Government Code or greater than one year for offenders not serving sentences listed in §508.149(a), Government Code. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review;
- (4) determined that the totality of the circumstances favor the offender's release on parole, further investigation (FI) is ordered



in the following manner; and, upon release to parole, all conditions of parole or release to mandatory supervision that the parole panel is required by law to impose as a condition of parole or release to mandatory supervision are imposed;

(A) FI-1--Release the offender when eligible;

(B) FI-2 (Month/Year)--Release on a specified future date;

(C) FI-3 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than three months from specified date. Such TDCJ program may include either CHANGES/Lifeskills, Voyager, Segovia Pre-Release Center (Segovia PRC), or any other approved tier program;

(D) FI-4 (Month/Year)--Transfer to a Pre-Parole Transfer facility prior to presumptive parole date set by a board panel and release to parole supervision on presumptive parole date;

(E) FI-4R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than four months from specified date. Such TDCJ program shall be either the Sex Offender Education Program (SOEP) or the Sex Offender Treatment Program (SOTP);

(F) FI-5--Transfer to In-Prison Therapeutic Community Program. Release to aftercare component only after completion of IPTC program;

(G) FI-6--Transfer to a DWI Program. Release to continuum of care program as required by paragraph (5) of this section;

(H) FI-6 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than six months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC), Pre-Release Substance Abuse Program (PRSAP), or In-Prison Therapeutic Community Program (IPTC), or any other approved tier program;

(I) FI-7 R (Month/Year)--Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and not earlier than seven months from the specified date. Such TDCJ program shall be the Serious and Violent Offender Reentry Initiative (SVORI);

(J) FI-18 R (Month/Year)--Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than 18 months from specified date. Such TDCJ program shall be either the Sex Offender Treatment Program (SOTP), or the InnerChange Freedom Initiative (IFI);

(5) any person released to parole after completing a TDCJ program as a prerequisite for parole, must participate in and complete any required post-release program. A parole panel shall require as a condition of release on parole or release to mandatory supervision that an offender who immediately before release is a participant in the program established under §501.0931, Government Code, participate as a releasee in a drug or alcohol abuse continuum of care treatment program; or

(6) any offender receiving an FI vote, as listed in paragraph (4)(A) - (J) of this section, shall be placed in a program consistent with the vote. If treatment program managers recommend a different program for an offender, a transmittal shall be forwarded to the parole panel requesting approval to place the offender in a different program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 4, 2010.

TRD-201000564

Bettie Wells

General Counsel

Texas Board of Pardons and Paroles

Effective date: February 24, 2010

Proposal publication date: December 4, 2009

For further information, please call: (512) 406-5388

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# REVIEW OF AGENCY RULES

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

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

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

## Proposed Rule Review

Texas Real Estate Commission

### Title 22, Part 23

The Texas Real Estate Commission (TREC) proposes to review Chapter 531, Canons of Professional Ethics and Conduct for Real Estate Licensees; Chapter 533, Practice and Procedure; Chapter 537, Professional Agreements and Standard Contracts; and Chapter 541, Rules Relating to the Provisions of the Texas Occupations Code, Chapter 53 in accordance with the Texas Government Code, §2001.039.

Review of the rules under these chapters will determine whether the reasons for adoption of the rules continue to exist. During the review process, TREC may also determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether the rules reflect current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules will also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas*

*Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter 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.

TREC invites comments during the review process for 30 days following the publication of this notice in the *Texas Register*. Any questions or comments pertaining to this notice of intention to review should be directed to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to [general.counsel@trec.state.tx.us](mailto:general.counsel@trec.state.tx.us) within 30 days of publication.

TRD-201000628

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Filed: February 9, 2010



# 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: 25 TAC §289.302(bb)(3)(C)

Percentage of Maximum Amount Based on Severity Level of Violation

Severity Level	Percent of Maximum Amount
I	100
II	80
III	50
IV	15
V	5

Figure: 25 TAC §289.302(hh)(3)

RC FORM 302-1

Department of State Health Services  
1100 West 49th Street  
P.O. Box 149347  
Austin, Texas 78714-9347  
Complaint Reports 1-888-899-6688

# NOTICE TO EMPLOYEES

The Department of State Health Services has established standards for your protection against radiation hazards, in accordance with the Texas Radiation Control Act, Health and Safety Code, Chapter 401 and 25 Texas Administrative Code (TAC) §289.302.

## **YOUR EMPLOYER'S RESPONSIBILITY**

Your employer is required to-

1. Apply these rules to work involving laser hair removal devices.
2. Post or otherwise make available to you a copy of the Department of State Health Services rules, certificate of laser registration, notices of violations, and protocols that apply to your work, and explain their provisions to you.

## **YOUR RESPONSIBILITY AS A WORKER**

You should familiarize yourself with those provisions of the rules and the protocols that apply to your work. You should observe the rules for your own protection and protection of your co-workers.

## **WHAT IS COVERED BY THESE RULES**

1. Operating requirements for use of laser hair removal devices;
2. Warning signs, client notifications;
3. Options for worker participation regarding agency inspections; and
4. Related matters.

## **INSPECTIONS**

All registered activities are subject to inspection by representatives of the Department of State Health Services. In addition, any worker or representative of the workers who believe that there is or may be a violation of the Texas Radiation Control Act, the rules issued thereunder, or the terms of the employer's registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by sending a notice of the alleged violation to the Department of State Health Services. The request must state the specific grounds for the notice, and must be signed by the worker or the representative of the workers. During inspections, agency inspectors may confer privately with workers, and any worker may bring to the attention of the inspectors any past or present condition that the individual believes contributed to or caused any violation as described above.

## **POSTING REQUIREMENT**

Copies of this notice shall be posted in a sufficient number of places in every establishment where employees are employed in activities registered, in accordance with 25 TAC §289.302 (relating to Registration and Radiation Safety Requirements for Use of Laser Hair Removal Devices), to permit employees to observe a copy on the way to or from their place of employment.

25 TAC §289.302 may be reviewed online, at [www.dshs.state.tx.us/radiation/rules.shtm](http://www.dshs.state.tx.us/radiation/rules.shtm). Our certificate of laser hair removal registration and any associated documents, our protocols, and any "Notice of Violation" or order issued by the agency may be reviewed at the following location:

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Figure: 25 TAC §289.302(nn)

Specific Subsection	Name of Record	Time Interval Required for Record Keeping
(m)(3)	Consulting Physician Audits	3 years
(p)(5)	Inventory	3 years
(p)(6)	Receipt, Transfer, and Disposal	Until termination or expiration of Certificate of LHR Registration
(q)(8)	Instruction to Individuals	3 years
(q)(11)	Protective Eyewear Examination	3 years
(q)(20)	Audits by LHR Professional	3 years
(q)(21)	LHR Procedures Performed	3 years
(hh)	Current Certificate of LHR Registration  Current Individual LHR Certificate  Current 25 TAC §289.302  Notice of Violation from Last Inspection, if applicable	Until termination or expiration of Certificate of LHR Registration or Individual LHR Certificate

Figure: 40 TAC §19.220(b)

	New Construction	Additions/Remodel	Alzheimer's Certification
<b>Single Story</b>	\$30 per bed  Minimum: \$3,600	3% of construction cost  Minimum: \$1,500 plus \$30 per bed  Maximum: \$3,000 plus \$30 per bed	\$850 plus \$36 per bed
<b>Multiple Story</b>	\$36 per bed  Minimum: \$4,500	3% of construction cost  Minimum: \$1,500 plus \$36 per bed  Maximum: \$3,000 plus \$36 per bed	\$850 plus \$36 per bed

# 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.

## State Office of Administrative Hearings

### Notice of Public Hearing

The State Office of Administrative Hearings (SOAH) will conduct a public hearing on Friday, February 26, 2010. The hearing will begin at 10:00 a.m. in the SOAH hearing facilities located on the fourth floor of the William P. Clements Building, 300 W. 15th Street (15th and Lavaca), Austin, Texas.

SOAH will hear public comment on a proposed rule amendment at 1 Texas Administrative Code (TAC) Chapter 159 (concerning the rules of procedure for license suspension hearings). The proposed rule amendment was published in the December 4, 2009, issue of the *Texas Register* (34 TexReg 8597); see also <http://www.sos.state.tx.us/texreg/pdf/backview/1204/1204prop.pdf>.

The comment period for the rule amendment closed as of January 3, 2010; however, additional comments will be accepted at the public hearing.

SOAH offers reasonable accommodations for persons attending meetings, hearings, or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, please contact SOAH's Docketing office at (512) 475-3445 a minimum of two days prior to the hearing date.

For further information regarding this notice, you may contact Kerry Sullivan, General Counsel, at (512) 475-4993.

TRD-201000603

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Filed: February 5, 2010



## Texas Department of Agriculture

### Request for Proposals: 2010 - 2011 Urban Schools Agriculture Grant Program

**Statement of Purpose.** Pursuant to the Texas Agriculture Code, §§48.001 - 48.005 and Texas Administrative Code, Title 4, Part 1, Chapter 1, §§1.800 - 1.804, the Texas Department of Agriculture (TDA) hereby requests proposals to establish demonstration agriculture projects or for other projects designed to foster an understanding and awareness of agriculture in elementary and middle school students for the period of September 1, 2010 through August 31, 2011, from certain Texas urban school districts. A total amount of up to \$2,500 may be awarded to an eligible elementary or middle school in a single grant cycle.

Agriculture is defined as the science, art, or practice of cultivating the soil, producing crops, and raising livestock, and in varying degrees the preparation and marketing of the resulting products. TDA encourages schools to consider partnerships with organizations such as a local Master Gardner program, 4-H or FFA clubs. Projects funded must be to establish demonstration agriculture projects or for other projects designed to foster education and/or awareness of agriculture in elementary and

middle school students in certain Urban School districts in Texas and should be designed to improve students' understanding and appreciation of agriculture.

*A non-comprehensive list of project ideas and resources can be found in Attachment 1.*

**Eligibility.** Proposals must be submitted by a Texas public elementary or middle school from an urban school district with an enrollment of at least 49,000 students. According to Texas Education Agency's (TEA) October 2008 records, the eligible school districts are:

Aldine Independent School District;  
Arlington Independent School District;  
Austin Independent School District;  
Cypress-Fairbanks Independent School District;  
Dallas Independent School District;  
El Paso Independent School District;  
Fort Bend Independent School District;  
Fort Worth Independent School District;  
Garland Independent School District;  
Houston Independent School District;  
Katy Independent School District;  
Lewisville Independent School District;  
North East Independent School District;  
Northside Independent School District;  
Pasadena Independent School District;  
Plano Independent School District; and  
San Antonio Independent School District.

If your school district is not listed above and you feel it meets the minimum student enrollment of 49,000 you will need to attach a TEA verification of enrollment to your application.

Please note that TDA will enter into a cost-reimbursement grant agreement with the school district of the applying elementary and/or middle school.

**Funding Parameters.** TDA reserves the right to fund projects partially or fully. TDA reserves the right to negotiate individual elements of any proposal and to reject any and all proposals. 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. Selected projects will receive funding on a cost-reimbursement basis.

All costs directly or indirectly related to preparation of a response to this Request for Proposals (RFP) or any oral presentation required to supplement and/or clarify the RFP which may be required by TDA shall be the sole responsibility of, and shall be borne by the applicant.

**Proposal Requirements.** Each proposal may not exceed six (6) pages, the acceptable font size is 12 point, and all margins must be 1 inch. Forms can be downloaded from the TDA website under the Grants and Funding tab. Proposal must be submitted in a Microsoft Word document.

Proposals must include the following information:

1. **Personnel/Contact Information:** Form ER-308 - Urban Schools Cover Sheet

2. **Project Title and Summary:** Include the title of the project and a summary of 200 words or less.

3 **Scope of Work:** In this section, list the activities that will be completed, how and what the project will accomplish and who will participate in this project. This detailed description should include the role of the students. If more than one grade level is participating, please explain the role of each.

4. **Educational Statement:** A statement of the educational benefits of the project, including how the project will improve the students' understanding of agriculture and the role agriculture plays in their daily lives.

5. **Project Budget:** A project budget including a detailed schedule of anticipated costs for the project.

**Proposal Evaluations:** A panel appointed by the Commissioner of the Texas Department of Agriculture shall review the proposals and make funding recommendations to the Commissioner. The panel shall consist of representatives from the following: the Texas Department of Agriculture, education industry, livestock industry, specialty crop industry, row crop industry, horticulture industry and the Texas AgriLife Extension Service.

Proposals will be evaluated based on the following criteria:

1. Agricultural education component
2. Achievability of the proposed project and objectives
3. Project Budget
4. Sustainability of the project

**Approved Projects:** The announcement of the grant awards will be made by August 2010. All approved projects will have a start date of September 1, 2010 and must be completed by August 31, 2011.

*Funded projects will require the school district to enter into an agreement with TDA.*

**Reporting Requirements.** Approved projects are required to submit the following reports:

1. **Payment Requests.** The Urban School Agricultural Grant Program is administered on a cost reimbursement basis. Funds will be disbursed once a proper payment request, including back-up documentation, has been received by TDA. Payment Requests may be submitted with no greater frequency than monthly.

2. **Project Progress Reports.** These reports are due on a quarterly basis from one to three pages in length detailing accomplishment of project objectives for the time periods specified in the grant agreement.

3. **Final Compliance Report.** These reports are due either thirty (30) days after completion of the project or upon termination of the contract. The final report shall be submitted in a hard copy format and an electronic format should be emailed to the department. The final report shall contain:

a. A project summary - history of the project, its objectives, importance, effort and results of the project;

b. A description of the successes, challenges, and any limitations of the program;

c. A description of future plans, including how the project will continue after the grant is expended and how additional funding might address expansion efforts; and

d. Photographs to document results.

4. **Quarterly Project Budget Reports.** Budget reports are due on a quarterly basis for the time periods specified in the award document that details the grant award spent to date.

5. **Final Budget Report.** The final budget report is due thirty (30) days after the completion of the project or the termination of the contract.

**General Compliance Information.**

1. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature.

2. Any delegation by the Grantee to a subcontractor regarding any duties and responsibilities imposed by the grant award shall be approved in advance by TDA and shall not relieve the Grantee of its responsibilities to TDA for their performance.

3. Any information or documentation submitted to TDA as part of the project grant proposal is subject to disclosure under the Texas Public Information Act.

4. Awarded grant projects must remain in full compliance with state and federal laws and regulations. Noncompliance with such law may result in termination by TDA.

5. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the research project. Records shall be maintained for three years after the completion of the research project or as otherwise agreed upon with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the research project at any time throughout the duration of the agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect the research locations and to obtain from the research team full information regarding all project activities.

6. If the Grantee has a financial audit performed in any year during which Grantee receives funds from TDA, and if TDA requests information about the audit, the Grantee shall provide such information to TDA or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which the Grantee's funds are included.

7. Grant awards to Texas institutions shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: [www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc](http://www.governor.state.tx.us/divisions/stategrants/guidelines/files/UGMS012001.doc)

**Deadline for Submission of Responses.** Responses to this request should be submitted to: Ms. Mindy Weth Fryer, Grants Specialist, Texas Department of Agriculture, e-mail: [grants@TexasAgriculture.gov](mailto:grants@TexasAgriculture.gov).

**Proposal must be submitted in a Microsoft Word document.**

**Submissions must be received no later than 5:00 p.m. on Friday, April 30, 2010.**

TDA will send an acknowledgement receipt by email indicating the response was received.

For questions regarding submission of the proposal and TDA documentation requirements, please contact Ms. Mindy Fryer, Grants Specialist, at (512) 463-6908 or by email at [grants@TexasAgriculture.gov](mailto:grants@TexasAgriculture.gov).

**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.

## ATTACHMENT 1

**Definition of Agriculture.** Agriculture is defined as the science, art, or practice of cultivating the soil, producing crops, and raising livestock, and in varying degrees the preparation and marketing of the resulting products.

If the students in your classroom were asked where hamburger meat, milk, carrots, ham, bread or cereal come from, how would they answer? Would they know that all food comes from farms and ranches or would they answer, "the grocery store!"?

### Project Examples:

School gardens (tomatoes, peppers, radishes, carrots, cilantro, onions, leafy vegetables, etc.) to make homemade salsa.

Classroom projects (herb gardens, hatchery, etc.)

Field trips (Livestock shows, Farmers' Markets, farms and ranches)

Guest speakers

After school projects

Please consider using the following suggested online resources to enhance the agriculture emphasis in your project. This list is also located on TDA's Web site ([www.TexasAgriculture.gov](http://www.TexasAgriculture.gov)) under the grants/funding tab. TDA strives to provide the most up to date information and will be periodically updating this information as needed.

**National 4-H** - [www.4-hmall.org](http://www.4-hmall.org)

**National Cotton Council** - [www.cotton.org/pubs/cottoncounts/resources.cfm](http://www.cotton.org/pubs/cottoncounts/resources.cfm)

**National Peanut Board** - <http://www.nationalpeanutboard.org/>

**Popcorn Board** - [www.popcorn.org](http://www.popcorn.org)

**Texas 4-H** - <http://texas4-h.tamu.edu/>

**Texas Sheep and Goat Raisers Association** - [www.tsg-ra.com/learn.htm](http://www.tsg-ra.com/learn.htm)

**The Texas Farm Bureau** - [www.txfb.org](http://www.txfb.org) or [www.beagsmart.org](http://www.beagsmart.org)

**USDA - Agriculture in the Classroom** - [www.agclassroom.org](http://www.agclassroom.org)

Many teachers have taken the opportunity to use the Urban School Grant Program to teach TEKS in new, exciting and hands-on ways. The following list is not exhaustive, but rather an assimilation of general ideas that you may tailor to your needs or merely use as a starting point for your own unique ideas.

**Animal Care** - Students could select a livestock project, and become responsible for that animal(s)' care, round the clock. This includes duty schedules during weekends and holidays, identifying costs and budget, record maintenance, and preparing the animal(s) for a livestock show or similar forum. As part of the project, they could prepare photographs, video, etc. that focus on the project and lessons learned. The documentation could include visits to farms and ranches to review the scope of large operations and to find lessons that apply to the school project.

**Agriculture and the Environment** - Students can get permission to work on a piece of property in or around their school where soil quality, drainage, topsoil or pollution and litter problems exist. They can arrange a planting project (vegetables, fruit trees, etc.) that will mitigate or improve the existing problem to help make the land productive again. They can study the impact of poor land management, urbanization and pollution, and then suggest improvements.

**Exploring Aquaculture** - An often-overlooked aspect of agriculture is the fish and shellfish industry. Students can develop a project to raise fish, study the nutrient requirements of water for various species, learn about pollution and water quality and study the differences among freshwater and saltwater species. The research could include visits to Aquaculture centers and seafood restaurants to focus on the industry. As part of the project, they could prepare photographs and educational materials that focus on Aquaculture. They could present this to young students through assemblies or by allowing the primary and pre-school students to visit the classroom for a "meet the fish day."

**School Gardens and Land Management** - Students could use a piece of district-owned property on which to plant and maintain a garden. They could include "test" areas to measure the effects of proper land management, drainage, drought, etc. on their produce. Based upon the size and output of the garden, the students could serve the "fruits of their labors" at a school function, as part of a cafeteria meal or donate it to a food bank or other community outlet. If the students elect to do a horticulture project, they could share the plants and flowers with shut-ins, nursing homes, or volunteer organizations. In addition, they could use them for a school ceremony or special recognition.

**Texas Products** - Using resources such as Go Texan and commodity group data, students can study the school cafeteria menu to identify Texas agriculture products. They can do the same at area restaurants. The students then can work with the lunchroom and restaurants to use photography, articles and videos for artistic and informative lobby displays about the products and their Texas sources.

TRD-201000631

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Filed: February 9, 2010

## Office of the Attorney General

Texas Water Code and Texas Health and Safety 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 and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under 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 Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: *State of Texas v. David Friesenhahn*, Cause No. D-1-GV-03-004436, in the 353rd Judicial District Court, Travis County, Texas.

Nature of Defendant's Operations: Defendant owns two parcels of land on which he allowed the disposal, storage, and processing of mainly construction and demolition debris. In addition, the Defendant violated



an Agreed Order issued by the Texas Commission on Environmental Quality by failing to provide a closure plan to remove or mitigate the waste stored at the two parcels of land and also failed to complete a supplemental environmental plan.

Proposed Agreed Judgment: The Agreed Final Judgment orders Defendant to pay civil penalties, and attorney's fees to the State. Defendant agrees to pay Plaintiff \$100,000.00, in civil penalties, \$50,000.00 of which will be deferred on the condition that the Defendant complies with the terms of the injunction set forth in the Judgment. The Defendant agrees to pay attorney's fees to the State in the amount of \$15,000.00.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment 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 Zindia Thomas, Agency Liaison, at (512) 936-9901.*

TRD-201000615  
Stacey Napier  
Deputy Attorney General  
Office of the Attorney General  
Filed: February 9, 2010

## **Brazos Valley Council of Governments**

### **Request for Proposals**

Purchasing Solutions Alliance (PSA), acting on behalf of the Brazos Valley Council of Governments, Central Texas Council of Governments and Heart of Texas Council of Governments is soliciting proposals for an Internet Protocol (IP) Network. Sealed proposals for RFP No. 10-100 will be accepted until 2:00 p.m., Friday, April 30, 2010. Any proposal received after the above closing time will be returned unopened.

A mandatory pre-proposal conference is scheduled at 10:00 a.m. C.S.T., Tuesday, March 2, 2010 in the Board Room located in the BVCOG Office at 3991 East 29th St., Bryan, Texas. Attendance at the pre-proposal meeting is mandatory; all interested vendors must attend in order to facilitate better preparation of their proposals.

Proposal requirements and specifications are on file and may be obtained at the offices of Purchasing Solutions Alliance (a program of the Brazos Valley Council of Governments) located at 3991 East 29th St., Bryan, Texas 77802. For information regarding the RFP, contact Roger Dempsey, C.P.M., A.P.P., Program Manager (979) 595-2801 Extension 2034 or by email at [rdempsey@bvcog.org](mailto:rdempsey@bvcog.org).

PSA reserves the right to reject any or all proposals and to waive informalities and irregularities.

TRD-201000638  
Tom Wilkinson  
Executive Director  
Brazos Valley Council of Governments  
Filed: February 10, 2010

## **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. As required by federal law, the public is given an opportunity to comment on the consistency of proposed actions and activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §506.28, the public comment period for the activity described by this notice mirrors the public notice and comment opportunities provided by the National Environmental Policy Act for the applicable Draft Environmental Impact Statement, and will be open until 5:00 p.m. on March 12, 2010.

#### **FEDERAL AGENCY ACTIVITY:**

**Agency: United States Army Corps of Engineers (U.S.A.C.E.);**  
**Location:** The project is located on the Upper Texas Gulf Coast at the Texas-Louisiana State Boundary, Orange and Jefferson Counties, Texas and Cameron and Calcasieu Parishes, Louisiana. **Project Description:** The Sabine-Neches Waterway Channel Improvement Project would deepen the Sabine-Neches Waterway to a depth of 48 feet for navigation purposes. The project study area is located on the upper Texas Gulf Coast at the Texas-Louisiana state line and includes Sabine Lake and surrounding marshes in Texas and Louisiana, the Neches River channel up to the Neches River Saltwater Barrier, the Gulf Intracoastal Waterway west to Star Bayou and east to Gum Cove Ridge, the Sabine River to Niblett's Bluff, the Gulf shoreline extending to 10 miles either side of Sabine Pass and 35 miles offshore into the Gulf. For additional information, please see <http://www.swg.usace.army.mil/>. CCC Project No.: 10-0048-F2. **Type of Agency Activity:** The U.S.A.C.E. Draft Environmental Impact Statement is being evaluated under and §401 and §404 of the Clean Water Act (33 U.S.C.A. §1341 and §1344).

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 activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether a majority of the council member agency representatives on the interagency coordination team should affirm their concurrence with the federal agency's consistency determination or whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications for inspection, 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](mailto: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-201000632  
Larry L. Laine  
Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council  
Filed: February 10, 2010

## **Comptroller of Public Accounts**

### **Certification of the Average Taxable Price of Gas and Oil**

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period January 2010, as re-

quired by Tax Code, §202.058, is \$61.96 per barrel for the three-month period beginning on October 1, 2009, and ending December 31, 2009. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of January 2010, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period January 2010, as required by Tax Code, §201.059, is \$3.90 per mcf for the three-month period beginning on October 1, 2009, and ending December 31, 2009. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2010, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201000604  
Ashley Harden  
General Counsel  
Comptroller of Public Accounts  
Filed: February 8, 2010

## 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, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/15/10 - 02/21/10 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/15/10 - 02/21/10 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-201000611  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: February 9, 2010

## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 22, 2010**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a

comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 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 March 22, 2010**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bayer MaterialScience, LLC; DOCKET NUMBER: 2009-1666-AIR-E; IDENTIFIER: RN100209931; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: hydrochloric acid absorption plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.115(c), New Source Review (NSR) Permit Number 34017, Special Condition (SC) Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(c) and THSC, §382.085(b), by failing to timely submit the final report for an unauthorized emissions event; PENALTY: \$11,322; Supplemental Environmental Project (SEP) offset amount of \$4,529 applied to Houston Regional Monitoring Corporation - Houston Area Monitoring; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: BURLINGTON NORTHERN SANTA FE CORPORATION; DOCKET NUMBER: 2009-1786-PST-E; IDENTIFIER: RN103050373; LOCATION: Haslet, Tarrant County; TYPE OF FACILITY: service terminal and refueling depot; RULE VIOLATED: 30 TAC §115.248(2) and THSC, §382.085(b), by failing to ensure that at least one station representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system (VRS); and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$4,277; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Comal County; DOCKET NUMBER: 2009-1908-EAQ-E; IDENTIFIER: RN105798151; LOCATION: Comal County; TYPE OF FACILITY: public sports park; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a contributing zone plan; PENALTY: \$750; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Independence Woods, L.L.C.; DOCKET NUMBER: 2009-1608-EAQ-E; IDENTIFIER: RN104509138; LOCATION: Austin, Travis County; TYPE OF FACILITY: commercial land development; RULE VIOLATED: 30 TAC §213.4(j)(4) and Organized Sewage Collection System Plan (OSCSP) Number 11-05011402A Standard Conditions Number 3, by failing to obtain approval of a modification of a OSCSP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; 30 TAC §213.4(k), Water Pollution Abatement Plan (WPAP) Number 11-05011402, SC Number 3, and

OSCSP Number 11-05011402A, SC Number 2, by failing to comply with the terms of the approved Edwards Aquifer Protection Plan; and 30 TAC §213.5(b)(4)(D)(ii)(II) and (c)(3)(D), WPAP Number 11-05011402, SC Number 14, and OSCSP Number 11-05011402A, SC Number 12, by failing to submit certifications to the appropriate regional office; PENALTY: \$9,375; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(5) COMPANY: INEOS USA, LLC; DOCKET NUMBER: 2009-1737-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Permit Number 95/PSD-TX-854-M2, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: J & J NRH 100 Family Limited Partnership; DOCKET NUMBER: 2009-2036-WQ-E; IDENTIFIER: RN105704365; LOCATION: North Richland Hills, Tarrant County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain a construction general permit to authorize the discharge of storm water; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Jefferson County Drainage District 6; DOCKET NUMBER: 2010-0127-WQ-E; IDENTIFIER: RN105834006; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Mid-Tex Properties, LP; DOCKET NUMBER: 2009-1528-WQ-E; IDENTIFIER: RN105431084; LOCATION: McLennan County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §205.5(c) and 40 CFR §122.26(c), by failing to obtain authorization under a Texas Pollutant Discharge Elimination System (TPDES) construction general permit to discharge storm water associated with construction activities; PENALTY: \$9,100; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 425-6010; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: M. J. Sheridan of Texas, Inc.; DOCKET NUMBER: 2010-0101-WR-E; IDENTIFIER: RN105828560; LOCATION: Houston, Harris County; TYPE OF FACILITY: water rights; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(10) COMPANY: Samuel C. Mullin; DOCKET NUMBER: 2009-1662-OSS-E; IDENTIFIER: RN105775464; LOCATION: Desdemona, Eastland County; TYPE OF FACILITY: onsite sewage; RULE VIOLATED: 30 TAC §285.3(b)(1), by failing to obtain authorization to construct an onsite sewage facility (OSSF); PENALTY: \$500; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: Orange County Water Control and Improvement District Number 1; DOCKET NUMBER: 2009-1793-MWD-E; IDENTIFIER: RN102183035; LOCATION: Orange County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010875003, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for five-day carbonaceous biochemical oxygen demand, flow, ammonia nitrogen (NH<sub>3</sub>N), and total suspended solids (TSS); PENALTY: \$1,920; ENFORCEMENT COORDINATOR: Jordan Jones, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(12) COMPANY: Paradise Ranch Landowners' Association, Inc.; DOCKET NUMBER: 2009-1812-PWS-E; IDENTIFIER: RN105817639; LOCATION: Victoria County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.42(e)(3), by failing to provide disinfection equipment so that continuous and effective disinfection can be secured under all conditions; and 30 TAC §290.39(m), by failing to provide notification to the commission of the startup of a new PWS system; PENALTY: \$475; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(13) COMPANY: Paul Schenk, Jr. dba Paul Schenk Jr. Dairy; DOCKET NUMBER: 2009-1699-AGR-E; IDENTIFIER: RN105676340; LOCATION: Windthorst, Archer County; TYPE OF FACILITY: dairy operation; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater runoff from an animal feeding operation; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Carlie Konkol, (512) 239-0735; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(14) COMPANY: Robert A. Phillips; DOCKET NUMBER: 2010-0095-OSI-E; IDENTIFIER: RN105703995; LOCATION: Schleicher County; TYPE OF FACILITY: onsite sewage; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an OSSF; PENALTY: \$175; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(15) COMPANY: PILGRIM'S PRIDE CORPORATION; DOCKET NUMBER: 2009-1337-IWD-E; IDENTIFIER: RN102184041; LOCATION: Titus County; TYPE OF FACILITY: industrial wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of industrial waste to water in the state; 30 TAC §305.125(1), TPDES Permit Number 03017, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a)(1), by failing to comply with permitted effluent limits for NH<sub>3</sub>N and TSS; 30 TAC §305.125(1) and TPDES Permit Number 03017, Monitoring and Reporting Number 7.b, by failing to submit notifications for any noncompliance which is 40% or more over the permitted effluent limit; 30 TAC §305.125(1) and (5) and TPDES Permit Number 03017, Operational Requirements Number 1, by failing to properly operate and maintain all facilities and systems of treatment and control which are installed and used by the permittee to achieve compliance with the conditions of the permit; 30 TAC §305.125(1) and TPDES Permit Number 03017, Other Requirements Number 6, by failing to maintain weekly records of the sludge lagoon level; and 30 TAC §305.125(1) and TPDES Permit Number 03017, Other Requirements Number 2, by failing to maintain records of sludge disposal; PENALTY: \$43,700; ENFORCEMENT COORDINATOR:

Evette Alvarado, (512) 239-2573; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(16) COMPANY: Port Terminal Railroad Association; DOCKET NUMBER: 2009-1740-MWD-E; IDENTIFIER: RN102800356; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and TPDES Permit Number WQ0011773001, Sludge Provisions, by failing to submit the annual sludge report; and 30 TAC §305.125(1), TPDES Permit Number WQ0011773001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS; PENALTY: \$4,810; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: PP & MB CORPORATION dba New Era Food Store; DOCKET NUMBER: 2009-1602-PST-E; IDENTIFIER: RN101876811; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain Stage II records at the station; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II VRS; PENALTY: \$5,064; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(18) COMPANY: Ysmael Corral dba Precision Tile & Design; DOCKET NUMBER: 2009-1607-MSW-E; IDENTIFIER: RN105669014; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent unauthorized disposal of municipal solid waste (MSW); PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(19) COMPANY: Rio Grande Regional Hospital, Inc.; DOCKET NUMBER: 2010-0071-PST-E; IDENTIFIER: RN100680529; LOCATION: McAllen, Hidalgo County; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 1404 West Jefferson Avenue, Harlingen, Texas 78550-5427, (956) 425-6010.

(20) COMPANY: Robroy Industries-Texas, L.P.; DOCKET NUMBER: 2009-1456-AIR-E; IDENTIFIER: RN100213842; LOCATION: Gilmer, Upshur County; TYPE OF FACILITY: electrical conduit and fittings manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and §122.143(4), NSR Permit Number 20805, General Condition Number 8, Federal Operating Permit (FOP) Number 0-02709, General Terms and Conditions (GTC) and Special Terms and Conditions (STC) Number 6, and THSC, §382.085(b), by failing to maintain volatile organic compound (VOC) emissions; PENALTY: \$26,250; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(21) COMPANY: ROSEMIN ENTERPRISES, INC. dba Express Store; DOCKET NUMBER: 2009-1558-PST-E; IDENTIFIER: RN101722247; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by

failing to verify proper operation of Stage II equipment; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS in proper operating condition; PENALTY: \$4,222; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(22) COMPANY: Clarence Schley; DOCKET NUMBER: 2009-1725-MLM-E; IDENTIFIER: RN105696868; LOCATION: Fayetteville, Fayette County; TYPE OF FACILITY: agricultural livestock operation; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of MSW; and 30 TAC §335.4(2), by failing to prevent the disposal of industrial solid waste in such a manner as to cause creation of a nuisance; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(23) COMPANY: Jim R. Scroggins; DOCKET NUMBER: 2010-0096-OSI-E; IDENTIFIER: RN103724480; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: onsite sewage; RULE VIOLATED: 30 TAC §285.61(4), by failing to ensure that an authorization to construct has been issued prior to beginning construction of an onsite sewage facility; PENALTY: \$175; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: STEPHENVILLE MOBILE HOME PARK, LIMITED; DOCKET NUMBER: 2009-1448-MWD-E; IDENTIFIER: RN102183027; LOCATION: Stephenville, Erath County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013966001, Effluent Limitations and Monitoring Requirements A, and the Code, §26.121(a), by failing to maintain compliance with the permit effluent limits of 20 milligrams per liter (mg/L) daily average concentration for biochemical oxygen demand; 30 TAC §305.125(1) and TPDES Permit Number WQ0013966001, Monitoring and Reporting Requirements Number 7.c, by failing to submit noncompliance notification reports for effluent violations that deviated from the permitted effluent limits by more than 40%; 30 TAC §305.125(5) and TPDES Permit Number WQ0013966001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained; and 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0013966001, Special Provisions Number 10, by failing to submit the results of soil sample analyses; PENALTY: \$3,909; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2008-0643-AIR-E; IDENTIFIER: RN102888328; LOCATION: La Porte, Harris County; TYPE OF FACILITY: plastics manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 5572B, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,250; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(26) COMPANY: Swan Oilfield Services, LP; DOCKET NUMBER: 2010-0083-WR-E; IDENTIFIER: RN105836621; LOCATION: Archer County; TYPE OF FACILITY: water rights; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(27) COMPANY: City of Texarkana; DOCKET NUMBER: 2009-1770-MWD-E; IDENTIFIER: RN101613537; LOCATION: Bowie County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010374007, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent requirements for NH<sub>3</sub>-N; PENALTY: \$6,200; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 353-5100.

(28) COMPANY: The Premcor Refining Group, Inc.; DOCKET NUMBER: 2009-0947-AIR-E; IDENTIFIER: RN102584026; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a) and (c)(7), and 122.143(4), Flexible Air Permit Number 6825A/PSD-TX-49, SC Numbers 1 and 5A, FOP Numbers O-01498 and O-02229, GTC and SC Number 15A, and THSC, §382.085(b), by failing to prevent unauthorized emissions; 30 TAC §§101.20(1) and (3), 113.780, 116.715(a) and (c)(7), and 122.143(4), Flexible Air Permit Number 6825A/PSD-TX-49, SC Numbers 3A, 5A, 5B, 7B, and 23B, FOP Number O-01498, GTC, and THSC, §382.085(b), by failing to prevent unauthorized emissions and maintain the sulfur dioxide and hydrogen sulfide concentration below the maximum allowable limits; and 30 TAC §116.115(c) and §122.143(4), Air Permit Number 56546, SC Number 1, FOP Number O-01498, SC Number 18, and THSC, §382.085(b), by failing to maintain the VOC emission limits at eight tanks; PENALTY: \$55,525; SEP offset amount of \$22,210 applied to City of Port Arthur: Port Arthur Alternative Fuel Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(29) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2009-1487-AIR-E; IDENTIFIER: RN100210310; LOCATION: Houston, Harris County; TYPE OF FACILITY: petroleum refinery plant; RULE VIOLATED: 30 TAC §115.725(a)(1) and §122.143(4), FOP Number O-01381, SC Number 11(i), and THSC, §382.085(b), by failing to comply with the operations limitations, relating to three specific sources, that were established during the initial highly reactive VOC performance test; 30 TAC §115.142(1)(G) and §122.143(4), 40 CFR §60.693-2(a)(2), FOP Number O-01381, GTC and STC Number 1A, and THSC, §382.085(b), by failing to operate the American Petroleum Institute Separator without leakage; and 30 TAC §122.143(4) and §122.146(5)(C)(ii), FOP Number O-01381, GTC and STC Number 1A, and THSC, §382.085(b), by failing to submit a deviation report with proper rule citation information; PENALTY: \$23,330; SEP offset amount of \$9,332 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(30) COMPANY: Y S H CORPORATION dba Reino Cleaners dba Park Cleaners dba Reino Cleaners dba Rochelle Cleaners dba Kim Cooper Cleaners; DOCKET NUMBER: 2009-1421-DCL-E; IDENTIFIER: RN103987848, RN103953642, RN103987954, RN103987889, and RN103953626; LOCATION: Grand Prairie, Arlington, and Irving; Dallas and Tarrant Counties; TYPE OF FACILITY: dry cleaning and/or drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration for facility numbers 1, 2, 3, 4, and 5, by completing and submitting the required registration form; 30 TAC §337.20(e)(6)(B), by failing to maintain weekly inspection logs of each secondary containment structure for facility number 1 to ensure that it has not been damaged; 30 TAC §337.72(1), by failing to maintain documentation of the perchloroethylene purchases for facility number 1, 30 TAC §337.72(2), by failing to retain

waste disposal records for facility number 1; PENALTY: \$8,187; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201000613  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: February 9, 2010



### Combined Notice of Declaration of Administrative Completeness and Notice of Completion of Technical Review and Draft Permit License

#### Proposed Radioactive Material License Number RW-0219

APPLICATION AND PRELIMINARY DECISION. Ascend Performance Materials LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment of radioactive material license RW-0219 to authorize transfer of the license from Solutia Inc. - Chocolate Bayou Plant to Ascend Performance Materials LLC. Ascend Performance Materials LLC is a manufacturer of chemical feedstocks and intermediates. Radioactive Material License RW-0219 authorizes on-site disposal of low-level radioactive waste. The facility is located at FM 2917 in Alvin, Texas: latitude 29.255833, longitude -95.210277. The plant is located approximately 8 miles south of intersection of highway 35 and FM 2917, Alvin, Texas in Brazoria County, Texas. The application was submitted to the TCEQ on May 19, 2009. The license application, the Executive Director's technical summary, and draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Alvin Public Library located at 105 South Gordon Street in Alvin, Texas.

COMBINED NOTICE. The Executive Director of the TCEQ has determined that the application is administratively complete and has also completed the technical review of the application and prepared a draft license. The draft license, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this license, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments.

OPPORTUNITY FOR A CONTESTED CASE HEARING. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. The TCEQ may grant a contested case hearing on this application if a written hearing request is timely submitted.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, mailing address, phone number; applicant's name and license number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association,

the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue final approval of the license and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.** All written public comments and requests must be submitted within 30 days from the date of newspaper publication of this notice to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at [www.tceq.state.tx.us/about/comments.html](http://www.tceq.state.tx.us/about/comments.html). If you need more information about this application or the licensing process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-201000640

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 10, 2010



#### Enforcement Orders

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-1315-AIR-E on January 28, 2010 assessing \$51,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Benny Hernandez dba IGM Scrap Tire, Docket No. 2007-1679-MSW-E on January 28, 2010 assessing \$7,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fair Road Properties, Inc., Docket No. 2007-1699-MLM-E on January 28, 2010 assessing \$14,455 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & S Concrete, LLC, Docket No. 2008-0576-MLM-E on January 28, 2010 assessing \$14,544 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry Cathey dba Waco Wood Recycling and Materials, Docket No. 2008-0727-MSW-E on January 28, 2010 assessing \$38,216 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mary Rose Bowles, Independent Executrix of the Herminia G. Bowles Estate, Docket No. 2008-1032-MSW-E on January 28, 2010 assessing \$1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INEOS USA LLC, Docket No. 2009-0089-MLM-E on January 28, 2010 assessing \$34,999 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roy Smalley dba Buck Sanitation, Docket No. 2009-0163-MLM-E on January 28, 2010 assessing \$7,850 in administrative penalties with \$4,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ONEOK Hydrocarbon Southwest, L.L.C., Docket No. 2009-0400-AIR-E on January 28, 2010 assessing \$160,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jimmy P. Grady dba All American Cross Tie, Docket No. 2009-0429-AIR-E on January 28, 2010 assessing \$1,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-0736, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Petrochemicals LLC, Docket No. 2009-0634-AIR-E on January 28, 2010 assessing \$63,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Reed S. Lehman Grain, Ltd., Docket No. 2009-0693-MLM-E on January 28, 2010 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Synthetic Elastomers LP, Docket No. 2009-0699-AIR-E on January 28, 2010 assessing \$27,170 in administrative penalties with \$5,434 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Syed N. Hyder, Docket No. 2009-0850-MWD-E on January 28, 2010 assessing \$42,840 in administrative penalties with \$8,568 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Thomas Enterprises, Inc., Docket No. 2009-0876-EAQ-E on January 28, 2010 assessing \$16,500 in administrative penalties with \$3,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Parks and Wildlife Department, Docket No. 2009-0892-IWD-E on January 28, 2010 assessing \$5,040 in administrative penalties with \$1,008 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Colby Green, Docket No. 2009-0940-LII-E on January 28, 2010 assessing \$1,286 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matrix Metals LLC, Docket No. 2009-0955-AIR-E on January 28, 2010 assessing \$18,750 in administrative penalties with \$3,750 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas H2O, Inc., Docket No. 2009-0982-MWD-E on January 28, 2010 assessing \$9,280 in administrative penalties with \$1,856 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jason B. Orlando, Docket No. 2009-0985-LII-E on January 28, 2010 assessing \$188 in administrative penalties with \$37 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. du Pont de Nemours and Company, Docket No. 2009-1011-AIR-E on January 28, 2010 assessing \$9,350 in administrative penalties with \$1,870 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Lerma, Jr. and Marta Villarreal dba G S I II, Docket No. 2009-1013-AIR-E on January 28, 2010 assessing \$44,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harold Ridlehuber dba J & R Auto, Docket No. 2009-1022-MLM-E on January 28, 2010 assessing \$4,725 in administrative penalties with \$945 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ranger Gas Gathering, L.L.C., Docket No. 2009-1072-AIR-E on January 28, 2010 assessing \$8,875 in administrative penalties with \$1,775 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge Pipelines (East Texas) L.P., Docket No. 2009-1153-AIR-E on January 28, 2010 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vopak Terminal Deer Park, Inc., Docket No. 2009-1181-AIR-E on January 28, 2010 assessing \$10,160 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sandridge CO2, LLC, Docket No. 2009-1379-AIR-E on January 28, 2010 assessing \$13,800 in administrative penalties with \$2,760 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PVR East Texas Gas Processing, LLC, Docket No. 2009-1388-AIR-E on January 28, 2010 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gerrit Lozeman dba Tatamo Dairy, Docket No. 2009-1389-AGR-E on January 28, 2010 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ingram ReadyMix, Inc., Docket No. 2009-1414-IWD-E on January 28, 2010 assessing \$3,420 in administrative penalties with \$684 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FOX TREE & LANDSCAPE NURSERY, INC. dba Mother Earth Landscape Materials, Docket No. 2009-1426-MSW-E on January 28, 2010 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Helena Chemical Company, Docket No. 2009-1433-AIR-E on January 28, 2010 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Explorer Pipeline Company, Docket No. 2009-1434-AIR-E on January 28, 2010 assessing \$3,475 in administrative penalties with \$695 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NB Retail, Ltd., Docket No. 2009-1507-EAQ-E on January 28, 2010 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinity Tank Car, Inc., Docket No. 2009-1513-AIR-E on January 28, 2010 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gulf Marine Fabricators, L.P. (formerly known as G.M. Fabricators, L.P. dba Gulf Marine Fabricators, Docket No. 2009-1534-IWD-E on January 28, 2010 assessing \$4,316 in administrative penalties with \$863 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mineral Technologies, Inc., Docket No. 2009-1592-AIR-E on January 28, 2010 assessing \$8,000 in administrative penalties with \$1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Tom Huu Nguyen aka Huu Tam Nguyen dba Shop-N-Go Superette and Thuy Nga Le Nguyen aka Thuy Nga Le dba Shop-N-Go Superette, Docket No. 2006-1791-PST-E on January 29, 2010 assessing \$6,895 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Chandler, Staff Attorney at (512) 239-0629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ann Robinson dba Beachview Acres Water Association, Docket No. 2008-0103-PWS-E on January 29, 2010 assessing \$3,093 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Schilling Sierra Inc., Docket No. 2008-0531-PST-E on January 29, 2010 assessing \$9,095 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robertina Haro, Docket No. 2008-0534-PST-E on January 29, 2010 assessing \$9,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tarek Khalaf, Docket No. 2008-0789-PST-E on January 29, 2010 assessing \$6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas



Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Texas Water Authority, Docket No. 2008-1016-PWS-E on January 29, 2010 assessing \$4,455 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan G. Rivas dba Exell Auto Service E Fuel, Docket No. 2008-1038-PST-E on January 29, 2010 assessing \$13,071 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Overton, Docket No. 2008-1650-PWS-E on January 29, 2010 assessing \$2,108 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding First Baptist Church of Jonestown, Texas, Docket No. 2008-1880-PWS-E on January 29, 2010 assessing \$5,070 in administrative penalties with \$1,470 deferred.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding STAR FUELS, INC. dba Crest Bell Star Fuels, Docket No. 2008-1886-PST-E on January 29, 2010 assessing \$6,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharea Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Peaster Independent School District, Docket No. 2009-0227-MWD-E on January 29, 2010 assessing \$31,460 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Villa, Docket No. 2009-0370-PWS-E on January 29, 2010 assessing \$31,72 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Mohammed Vasel Ahmed, Docket No. 2009-0720-MWD-E on January 29, 2010 assessing \$2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512)239-0736, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jerico Foster dba Foster Septic, Docket No. 2009-0775-SLG-E on January 29, 2010 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mike Fishburn, Staff Attorney at (512) 239-0635, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kleinwood Joint Powers Board, Docket No. 2009-0783-MWD-E on January 29, 2010 assessing \$18,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EKRAM & NASIR CORPORATION dba Walnut Hill Valero, Docket No. 2009-0832-PST-E on January 29, 2010 assessing \$4,666 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, Staff Attorney at (512) 239-0675, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E Z SPEEDY, INC. dba Speedy Mart, Docket No. 2009-0956-PST-E on January 29, 2010 assessing \$6,375 in administrative penalties with \$1,275 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Follett, Docket No. 2009-0961-MWD-E on January 29, 2010 assessing \$4,160 in administrative penalties with \$832 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAAJ CORPORATION dba Speedo Gas Food Store, Docket No. 2009-0981-PST-E on January 29, 2010 assessing \$3,368 in administrative penalties with \$673 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Chris Xindaris dba Devlyn Construction, Docket No. 2009-1000-WQ-E on January 29, 2010 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-0654, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LONGPOINT ENTERPRISES, INC. dba Amigos Food Mart, Docket No. 2009-1029-PST-E on January 29, 2010 assessing \$20,894 in administrative penalties with \$4,178 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Northwind Properties, LTD. dba Westfield Garden Mobile Home Park, Docket No. 2009-1040-PWS-E on January 29, 2010 assessing \$385 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wellman, Docket No. 2009-1145-MWD-E on January 29, 2010 assessing \$2,725 in administrative penalties with \$545 deferred.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding W & J Investment, Inc. dba Gas N Stuff, Docket No. 2009-1195-PST-E on January 29, 2010 assessing \$3,071 in administrative penalties with \$614 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gregory, Docket No. 2009-1197-WQ-E on January 29, 2010 assessing \$2,100 in administrative penalties with \$420 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Converse, Docket No. 2009-1201-WQ-E on January 29, 2010 assessing \$3,060 in administrative penalties with \$612 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CENTRAL NORTH CONSTRUCTION, LLC, Docket No. 2009-1214-WR-E on January 29, 2010 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Midway, Docket No. 2009-1257-MWD-E on January 29, 2010 assessing \$5,175 in administrative penalties with \$1,035 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding One Tri-State Enterprises, L.L.C. dba J & B Food Mart, Docket No. 2009-1286-PST-E on January 29, 2010 assessing \$5,996 in administrative penalties with \$1,199 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MPA River Oaks Limited Partnership dba River Oaks Apartments, Docket No. 2009-1299-PST-E on January 29, 2010 assessing \$11,295 in administrative penalties with \$2,259 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANCIRA ENTERPRISES INCORPORATED dba Ancira Winton Chevrolet, Docket No. 2009-1357-PST-E on January 29, 2010 assessing \$4,950 in administrative penalties with \$990 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wright City Water Supply Corporation, Docket No. 2009-1363-PWS-E on January 29, 2010 assessing \$347 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Military Highway Water Supply Corporation, Docket No. 2009-1373-MWD-E on January 29, 2010 assessing \$7,200 in administrative penalties with \$1,440 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Reyes Cantu dba Spirit Ranch Cafe, Docket No. 2009-1408-PWS-E on January 29, 2010 assessing \$265 in administrative penalties with \$53 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2009-1436-PWS-E on January 29, 2010 assessing \$5,840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patricia Nelson, Docket No. 2009-1438-MLM-E on January 29, 2010 assessing \$5,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lillie's Kitchen & Store, LLC, Docket No. 2009-1518-PWS-E on January 29, 2010 assessing \$367 in administrative penalties with \$73 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alexander Moulding Mill Company, Docket No. 2009-1553-PWS-E on January 29, 2010 assessing \$4,789 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zia Wahab dba C Store, Docket No. 2009-0946-PST-E on January 29, 2010 assessing \$21,424 in administrative penalties with \$4,284 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BELTWAY 8 INVESTMENTS, LLC dba Courtesy Chevron, Docket No. 2009-1192-PST-E on January 29, 2010 assessing \$12,192 in administrative penalties with \$2,438 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Woden Independent School District Docket No. 2009-0898-MWD-E on January 29, 2010 assessing \$14,225 in administrative penalties with \$2,845 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087

An agreed order was entered regarding Z-Lab, Inc. dba Cypress Valley Canopy Tours, Docket No. 2009-1082-PWS-E on January 29, 2010 assessing \$350 in administrative penalties with \$70 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Flagstone Estates, Docket No. 2009-1657-WQ-E on January 28, 2010 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Southeastern Freight Lines, Inc., Docket No. 2009-1744-WQ-E on January 28, 2010 assessing \$700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Clinton J. Cotton, Docket No. 2009-1769-OSI-E on January 28, 2010 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201000642  
LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: February 10, 2010



#### Notice of Minor Amendment Radioactive Material License

Radioactive Material License No. R04971. Waste Control Specialists LLC, 1 mile north of S.H. 176 at NW9998 on State Line Road, Andrews, Texas, has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment of Radioactive Material License No. R04971. Radioactive Material License No. R04971 authorizes radioactive waste processing and storage. The amendment application requests modifications to license condition #17, which reflects a Nuclear Regulatory Commission (NRC) order exempting Waste Control Specialists (WCS) from requirements of 10 Code of Federal Regulations (CFR) part 70 concerning receipt and possession of special nuclear materials (SNM). The TCEQ Executive Director has completed the technical review of the amendment request and prepared an amended draft license. The draft license (1) changes the date that the NRC order was signed from November 5, 2004 to October 26, 2009, (2) changes the word 'must' to 'shall' in regards to the license 'shall' not exceed the SNM concentrations limits found in license condition #17.A(1), (3) changes the wording that the SNM be distributed throughout the waste from homogeneously to uniformly, (4) changes the requirement that waste must not contain 'pure forms' of chemicals containing carbon, fluorine, bismuth, and magnesium to the new requirement that limits the mass concentration of carbon, fluorine, and bismuth to specific weight percentages determined by the NRC to avoid the danger of criticality occurring, (5) changes the word 'must' to 'shall' in regards to the waste 'shall' not contain total quantities of beryllium, hydrogenous material enriched in deuterium, or graphite above one tenth of one percent of the total weight of the waste, (6) changes the requirement that the waste packages must not contain highly soluble forms of SNM above 350 g of uranium-235, 200 g uranium-233, and 200 g of plutonium to the new requirement that the possession of highly water soluble forms of SNM shall not exceed the amount of SNM of low strategic significance defined in 10 CFR 73.2, (7) changes the definition of uniformity for the spatial distribution of SNM from 'must be uniform' to 'homogeneous' and from information supporting the 'spatial distribution' to 'spatial homogeneity,' (8) removes the requirement for the waste generator and licensee to sample sealed sources, (9) removes the requirement for the waste generator and licensee to sample waste streams to confirm SNM concentration if the SNM concentration is below one-tenth of the SNM limits found in license condition #17.A(1), (10) removes the

requirement of waste generator and licensee to increase the sampling frequency of all waste streams, regardless of SNM concentration, found to be not homogeneous to the frequency of waste which has a SNM concentration higher than one-tenth the SNM concentration limits found in license condition #17.A(1), (11) removes the requirement that the certifications required under license condition #17 shall be made in writing and include the statement that the signer of the certificate understands that this information is required to meet the requirements of the NRC and must be complete and accurate in all material respects, (12) removes the one-time exemption for sealed sources containing SNM from the Waste Isolation Pilot Plant that was granted in amendment number 45 and has since been used; and (13) changes the operational procedure OP-1.2.22 from 'Special Nuclear Material Exemption Certification' to 'SNM Exemption' and from Revision 0 to Revision 6. The license amendment request, the Executive Director's technical summary, and amended draft license are available for viewing and copying at the TCEQ's central office in Austin, Texas and at the Andrews County Library located at 109 Northwest First Street in Andrews, Texas.

**PUBLIC COMMENT/PUBLIC MEETING.** You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ holds a public meeting if the Executive Director determines that there is a significant degree of public interest in the application. A public meeting is not a contested case hearing. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments.

**EXECUTIVE DIRECTOR ACTION.** The Executive Director may issue final approval of the minor amendment after consideration of all timely comments submitted on the application.

**MAILING LIST.** If you submit public comments, you will be added to the mailing list for this specific license to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and license number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 10 days from the issuance of this notice.

**AGENCY CONTACTS AND INFORMATION.** If you need more information about this license application or the licensing process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Further information may also be obtained from Waste Control Specialists LLC at Three Lincoln Center, 5430 LBJ Freeway, Suite 1700, Dallas, TX 75240 or by contacting Mr. Tim Greene at (888) 789-2783. Further information may also be obtained from Ascend Performance Materials LLC at the address stated above or by calling Sam Love, Radiation Safety Officer at (281) 228-4228.

TRD-201000641

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 10, 2010



## Notice of Water Quality Applications

The following notice was issued on January 29, 2010 through February 5, 2010.

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

### INFORMATION SECTION

CITY OF KERRVILLE has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010576001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,500,000 gallons per day. The facility is located at 3650 Loop 534, at the end of Beach Street, on the City Farm, in the southeast section of the City of Kerrville, in Kerr County, Texas 78028.

POPE AND COBB CORPORATION have applied for a renewal of TPDES Permit No. WQ0013366001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,500 gallons per day. The facility is located approximately 1,000 feet east of Farm-to-Market Road 17, 4.5 miles north of the intersection of State Highway 182 and Farm-to-Market Road 17 (City of Alba), between Mustang Bay and Little Mustang Bay of Lake Fork Reservoir in Wood County, Texas 75410.

TOWN OF BAYSIDE has applied for a minor amendment to the TPDES Permit No. WQ0013892001 to authorize addition of a chemical disinfection unit (chlorine contact chamber) at the Bayside Water Reclamation Facilities. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 64,200 gallons per day. The facility is located between Autry Road and Vega Road approximately 1.1 miles southwest of the intersection of 3rd Street and State Route 136 in Refugio County, Texas 78340.

THE SAN ANTONIO RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0014042001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 0.35 mile south on Loop 1604 from the intersection of Interstate Highway 10 and Loop 1604, 600 feet west of Loop 1604 in Bexar County, Texas 78263.

TYNAN WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. WQ0014123001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 45,000 gallons per day. The facility is located approximately 250 feet southeast of State Highway 359 and approximately 500 feet northeast of the intersection of State Highway 359 and Farm-to-Market Road 796 in Bee County, Texas 78391.

MCMULLEN COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 and MCMULLEN COUNTY have applied for a new permit, proposed TPDES Permit No. WQ0014945001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 96,000 gallons per day. The facility was previously authorized under TPDES Permit No. WQ0013543001, which expired May 1, 2009. The facility is located adjacent to the west side of State Highway 16 and immediately south of the intersection of State Highway 16 and Farm-to-Market Road 72 in McMullen County, Texas 78072.

EQUISTAR CHEMICALS LP which operates Equistar Chemicals Matagorda Plant, has applied for a renewal of TPDES Permit No.

WQ0002481000, which authorizes the discharge of treated process wastewater, utility wastewater, storm water runoff, and treated sanitary wastewater at a daily average flow not to exceed 648,000 gallons per day via Outfall 001 and discharge of storm water runoff commingled with potable water, firewater, hydrostatic test water, construction water, cooling tower water, and water from spill cleanup at an intermittent and flow variable basis via Outfall 002. The facility is located on the west side of State Highway 60, approximately three miles south of the City of Wadsworth, Matagorda County, Texas 77414.

COOPER NATURAL RESOURCES INC which operates the Cedar Lake Plant, which produces sodium sulfate from naturally occurring saline brine deposits, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0003642000, which authorizes the discharge of treated process wastewater (e.g., plant floor washwater, condensate from the evaporation processes), spent brine, and storm water at a daily average flow not to exceed 2,000,000 gallons per day via Outfall 001; decanted brine water, floor washdown water, condensate, non-contact cooling water, and storm water on an intermittent and flow variable basis via Outfall 002; and brine water, condensate, tank washdown water, storm water, and overflow from the evaporation pond on an intermittent and flow variable basis via Outfall 003. The facility is located adjacent to Cedar Lake, approximately 8 miles east of the intersection of Farm-to-Market Road 1066 and Farm-to-Market Road 303, south of the Town of Loop, Gaines County, Texas 79342.

THE GOODYEAR TIRE & RUBBER COMPANY which operates the Goodyear Proving Grounds, a tire evaluation facility, has applied for a major amendment to TCEQ Permit No. WQ0003750000 to authorize the removal of irrigation requirements, as irrigation is no longer a means of disposal of wastewater at this facility. The current permit authorizes the onsite disposal of wastewaters from Disposal Sites 1, 2, 5, and 6 via land application and Disposal Sites 3, and 4, via evaporation. The draft permit authorizes the disposal of vehicle wash waters at Disposal Site 4a via evaporation at a daily average flow not to exceed 70 gallons per day. This permit will not authorize a discharge of pollutants into water in the State. The facility is located on the east side of U.S. Highway 277, approximately 7 miles northeast of the intersection of U.S. Highway 67 and U.S. Highway 277, northeast of the City of San Angelo, Tom Green County, Texas 76905.

CALABRIAN CORPORATION which operates Calabrian Inorganic Chemical Plant, has applied for a renewal of TPDES Permit No. WQ0004731000 which authorizes the discharge of non-contact cooling tower blowdown, boiler blowdown, steam condensate, non-contact utility water, washdown water, and treated stormwater at a daily average flow not exceeding 250,000 gallons per day via Outfall 001. The facility is located at 5500 Highway 366, in the City of Port Neches, Jefferson County, Texas 77651.

DIAMOND S CATTLE COMPANY which proposes to operate a facility that quarries stone, processes the quarried materials into aggregate materials for construction use with a portable rock crusher, and maintains stockpiles of finished limestone-based aggregate materials of various sizes and sand, located greater than one mile from a waterbody, within the water quality protection area of the John Graves Scenic Waterway, has applied for a new permit, proposed TPDES Permit No. WQ0004878000, to authorize the discharge of process wastewater, mine dewatering, storm water associated with industrial activity, construction storm water, and certain non-storm water discharges at a daily average flow of effluent that shall not exceed 0.0144 million gallons per day (MGD) and a daily maximum flow that shall not exceed 0.0288 MGD via Outfall 001. The facility is located at on the East side of FM 919, approximately 0.5 mile South of the junction of FM 919 and U.S. Highway 180, Palo Pinto County, Texas, 76484.

CITY OF THREE RIVERS has applied for a renewal of TPDES Permit No. WQ0010301001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 900 feet southwest of the intersection of State Highway 72 and Avenida Seguin in the City of Three Rivers in Live Oak County, Texas 78071.

KENDALL COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0010414001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility is located northeast and adjacent to the intersection of Interstate Highway 10 and Farm-to-Market Road 473, east of Comfort in Kendall County, Texas 78013.

CITY OF ORANGE GROVE has applied for a renewal of TPDES Permit No. WQ0010592001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located on the east side of County Road 351, approximately 0.5 mile south of the City of Orange Grove and approximately 0.9 mile south of the intersection of County Road 351 and Farm-to-Market Road 624 in Jim Wells County, Texas 78372.

PETTUS MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010748001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 105,000 gallons per day. The facility is located approximately 1,400 feet west of U.S. Highway 181 and 2,400 feet south of Farm-to-Market Road 623 in Bee County, Texas 78146.

CITY OF LA COSTE has applied for a renewal of TPDES Permit No. WQ0010889001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at the easterly city limits of the City of La Coste, approximately 0.5 mile east-southeast of the intersection of Farm-to-Market Road 471 and Farm-to-Market Road 2790, 0.30 mile due south of the Southern Pacific Railroad in Medina County, Texas 78039.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201000639

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 10, 2010



### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 8, 2010, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Julius L. Brooks; SOAH Docket No. 582-09-2308; TCEQ Docket No. 2007-1885-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Julius L. Brooks 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 Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201000643

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: February 10, 2010



## Office of the Governor

### Request for Grant Applications for the Residential Substance Abuse Treatment Program for State Prisoners

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that support substance abuse treatment for offenders.

**Purpose:** The purpose of the Residential Substance Abuse Treatment (RSAT) Program is to provide residential substance abuse treatment projects within state and local correctional facilities and jail-based substance abuse projects within jails and local correctional facilities.

#### Requirements:

- (1) RSAT funds must be used for the treatment component only;
- (2) Applicant is responsible for all costs related to housing, meals, snacks, clothing, transportation, dental care and medical treatment for offenders in the program;
- (3) Programs must include urinalysis and/or other proven reliable forms of drug and alcohol testing for program participants, including periodic and random testing, and for former participants while they remain in the custody of the state or local government;
- (4) Projects must focus on the substance abuse problems of the offender using cognitive, behavioral, social, vocational, and other skills to resolve the substance abuse and related problems;
- (5) Individualized treatment plans must be developed for each offender when the offender enters the program;
- (6) Programs must be science based and proven effective;
- (7) Juvenile projects must comply with the Juvenile Justice and Delinquency Prevention Act of 2002 (Public Law 107-273, 42 U.S.C. 5601 et seq., as amended);
- (8) Projects must work with social service and rehabilitation programs to place offenders in appropriate aftercare programs upon completion of the treatment program;
- (9) Programs should be designed to give priority to offenders who have six to twelve months remaining in their term of confinement so that they may be released from jail or prison instead of returning to the general jail or prison population after completing the treatment program;
- (10) No more than ten percent of the award may be used for treatment of parolees for a period not to exceed one year after release from a state correctional facility;
- (11) Programs operated in local, secure correctional or detention facilities must last a minimum of six months and a maximum of twelve months and must provide treatment in a completely separate facility or a dedicated housing unit within a facility for the exclusive use by participating offenders;

(12) Programs offered in jails must last at least three months and make every effort to separate the participants from the general correctional population; and

(13) Applicants must provide quarterly performance data to the Public Policy Research Institute (PPRI) at Texas A & M University.

**Available Funding:** Federal funding is authorized for these projects under the Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. No.103-322, §1901). An estimated amount of \$2.7 million is available for federal fiscal year 2010 under this solicitation.

**Required Match:** Grantees must provide matching funds of at least twenty-five percent (25%) of total project expenditures. This requirement must be met through cash contributions.

**Standards:** Grantees must comply with all statutes, requirements, and guidelines cited in the *Texas Administrative Code* (1 TAC Chapter 3) applicable to this funding. All grantees must provide matching funds of at least twenty-five percent (25%) of the total project expenditures. This requirement must be met in cash.

**Prohibitions:** Grant funds may not be used to support the following services, activities, and costs:

- (1) rent or building leases (except for lease of space for the delivery of treatment services such as offices for counselors, group meeting rooms, etc.);
- (2) utilities;
- (3) building and lawn maintenance;
- (4) insurance;
- (5) medical and dental care;
- (6) vehicle expenses unless used for treatment purposes;
- (7) uniforms for personnel;
- (8) training for continuing education and licensing requirements, unless the grantee pays these costs for all non-RSAT funded personnel;
- (9) administrative costs;
- (10) construction or land acquisition;
- (11) services in a private treatment facility;
- (12) indirect costs;
- (13) aftercare services provided after release from the facility;
- (14) admission fees or tickets to any amusement park, recreational activity or sporting event;
- (15) fundraising;
- (16) lobbying;
- (17) membership dues for individuals;
- (18) overtime pay;
- (19) promotional gifts;
- (20) proselytizing or sectarian worship;
- (21) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
- (22) vehicles or equipment for government agencies that are for general agency use; and
- (23) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting).

**Eligible Applicants:**

- (1) state agencies operating secure correctional facilities;
- (2) counties operating secure correctional facilities; and
- (3) community supervision and corrections departments operating community corrections facilities as defined in §509.001 and §509.006, Texas Government Code.

Project Period: Grant-funded projects will begin on or after October 1, 2010, and will expire on or before September 30, 2011.

Application Process: Applicants can access CJD's eGrants website at <https://cjdonline.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to continuation projects and applicants who provide aftercare services to project participants. Aftercare services include the coordination of services between the correctional treatment program and other human service and rehabilitation programs such as education and job training, parole supervision, halfway houses, and self-help and peer groups that support the continued rehabilitation of the offender.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before April 9, 2010.

Selection Process: Applications are reviewed by CJD staff members or a group selected by the Executive Director of CJD. CJD will make all final funding decisions based on eligibility, strategic approach of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Scott Hutchinson at [scott.hutchinson@governor.state.tx.us](mailto:scott.hutchinson@governor.state.tx.us) or at (512) 463-1919.

TRD-201000644

Kate Fite  
Assistant General Counsel  
Office of the Governor  
Filed: February 10, 2010

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**Office of the Governor, Economic Development and Tourism Division**

**Request for Qualification for Real Estate Appraiser for the Office of the Governor Economic Development Bank and Related Matters**

The Texas Economic Development Bank (Bank), in the Office of the Governor, Economic Development and Tourism Division (EDT), requests qualifications from Industrial Real Estate Appraisers interested in appraising industrial real estate being pledged as collateral for a Bank loan. The Bank seeks qualified Real Estate Appraisers to provide expert assessment and assistance in establishing industrial building appraisal, normal and liquidated, market value, and related activities beginning March 1, 2010.

**General Information:**

Government Code Chapter 489 sets out the Bank's programs, responsibilities, and duties. The finance programs currently include, but not limited to, the following programs: the Texas Small Business Industrial Development Corporation and the Industrial Revenue Bond Program; the Product Development Fund and the Small Business Incubator Fund established under the Government Code; private activity bond allocation for projects that meet the criteria for funding from the Texas Enterprise Fund; and the Texas Leverage Fund. Users of these programs

include but are not limited to businesses, municipalities, and industrial development corporations. Many of the programs are designed to loan funds in the event of creating economic development and or job creation and securing all loans with adequate collateral.

**Scope of services:**

Services primarily involve:

- 1. Assessing and appraising industrial real estate located in a San Antonio industrial park.
- 2. Assessing and appraising industrial real estate located in a Port.
- 3. Valuing large scale industrial park buildings with over 300,000 sq. ft. varying in age and structure including building made of solid concrete, brick, steel, tilt-wall, wood, and other high density building material.
- 4. Valuing industrial building in a current market value and in addition providing estimates for a 90 day quick sale value.
- 5. Assisting in all other matters as necessary or incidental to the valuing of the industrial buildings in relation to the banks loans.

The Bank may require the value report to be provided orally as well as in writing, on an as-needed basis. Requirements are not anticipated to exceed 240 hours between March 1, 2010 and August 31, 2010.

**Responses, and Qualification:**

Responses to this RFP should include at least the following information:

- 1) a description of the firm's or appraising qualifications for performing the services requested, including the firm's prior experience in appraising industrial building in the San Antonio area.
- 2) the names, experience, and qualifications of the individual appraisers who would be assigned to perform services under the contract for performing the services requested,
- 3) current rates for similar service,
- 4) efforts made by the firm to encourage and develop the participation of minorities and women in the provision of the firm's legal services and proposed use of women and minorities in regard to the services required under the contract, if any,
- 5) contact information, including address, telephone and fax number, and the name of the individual who will be the Bank's primary contact on this contract.

Responsive information should be presented in substantially the same order as it is set forth above. An Appraisal firm will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, and compatibility with the goals and objectives of the Bank and the state.

**Delivery of response, deadline for submission:**

Five unbound copies, suitable for reproduction, of the response should be mailed to Office of the Governor, Financial Services, P.O. Box 12878, Austin, Texas 78711-2878 or delivered to 1100 San Jacinto Boulevard, Austin, Texas 78701. Facsimiles and e-mail will not be accepted. The deadline for submission of qualifications is March 5, 2010. Proposals must be received, not postmarked, by that date. Questions regarding this bid may be directed to Mr. Joe Edgar at (512) 936-0291 or [Joseph.Edgar@governor.state.tx.us](mailto:Joseph.Edgar@governor.state.tx.us).

TRD-201000637

Joseph Edgar  
Program Specialist  
Office of the Governor, Economic Development and Tourism Division  
Filed: February 10, 2010



## Texas Health and Human Services Commission

### Notice of Public Hearing on Proposed Medicaid Payment Rate

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on March 15, 2010, at 1:00 p.m. to receive public comment on a proposed rate for Support Consultation Services in the Integrated Care Management (ICM) waiver program operated by the Texas Department of Aging and Disability Services (DADS). The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Meisha Scott by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

**Proposal.** HHSC proposes to adopt a new rate for Support Consultation Services. The proposed rate will be effective March 1, 2010, and was determined in accordance with the rate setting methodology listed below under "Methodology and Justification."

**Methodology and Justification.** The proposed Support Consultation Services hourly rate was modeled as per 1 TAC §355.101 using historical costs of delivering similar services and estimating the basic types and costs of products and services necessary to deliver services meeting federal and state requirements.

**Briefing Package.** A briefing package describing the proposed payment rate will be available on February 26, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Meisha Scott by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at meisha.scott@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

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

TRD-201000629  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: February 9, 2010



### Notice of Public Hearing on Proposed Medicaid Payment Rates

**Hearing.** The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 24, 2010, at 1:30 p.m., to re-

ceive comment on proposed Medicaid payment rates for Clinical Laboratory Services. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and the Texas Administrative Code, Title 1 (1 TAC), §355.201(e) - (f), which require public notice of and hearings on proposed Medicaid reimbursements.

**Proposal.** The proposed payment rates for Clinical Laboratory Services are proposed to be effective April 1, 2010.

**Methodology and Justification.** The proposed payment rates were calculated in accordance with 1 TAC §355.8610, which addresses the reimbursement methodology for clinical laboratory services.

**Briefing Package.** A briefing package describing the proposed payment rates will be available on or after February 19, 2010. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at meisha.scott@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

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

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-201000622  
Steve Aragon  
Chief Counsel  
Texas Health and Human Services Commission  
Filed: February 9, 2010



### Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective March 1, 2010.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for the following services:

#### Physicians and Certain Other Practitioners

The proposed amendment is estimated to result in an annual aggregate savings of \$14,052,234 for the remainder of federal fiscal year (FFY) 2010, with approximately \$(9,815,485) in federal funds and \$(4,236,749) in State General Revenue (GR). For FFY 2011, the estimated aggregate savings is \$24,393,322, with approximately \$(14,923,834) in federal funds and \$(9,469,488) in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care



Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at Dan.Huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201000614  
Steve Aragon  
Chief Counsel

Texas Health and Human Services Commission  
Filed: February 9, 2010

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" 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	Amendment #	Date of Action
El Paso	Carlos A. Velez, M.D., P.A. dba Heart and Vascular Partners	L06296	El Paso	00	01/13/10
Throughout TX	RNLS L.L.C. dba Renegade Services	L06307	Levelland	00	01/25/10

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Abilene Diagnostic Clinic P.L.L.C.	L05101	Abilene	16	01/22/10
Arlington	G.E. Healthcare	L05693	Arlington	09	01/21/10
Corpus Christi	Radiology & Imaging of South Texas L.L.P. dba Alameda Imaging Center	L05182	Corpus Christi	25	01/22/10
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	104	01/21/10
Deer Park	OXY Vinyls L.P.	L03200	Deer Park	16	01/21/10
Denison	Texoma Heart Group	L05208	Denison	12	01/20/10
Denton	Texas Health Presbyterian Hospital - Denton	L04003	Denton	46	01/15/10
Edinburg	Doctors Hospital at Renaissance Ltd.	L05761	Edinburg	22	01/22/10
El Paso	East El Paso Physicians Medical Center L.L.C.	L05676	El Paso	17	01/22/10
El Paso	Western Refining Company L.P.	L02669	El Paso	19	01/20/10
Fort Worth	Radiology Associates	L03953	Fort Worth	53	01/27/10
Harlingen	Texas Oncology P.A. dba South Texas Cancer Center - Harlingen	L00154	Harlingen	38	01/21/10
Houston	Progressive Medical Clinic L.L.P.	L06256	Houston	01	01/22/10
Houston	Memorial Hermann Hospital System dba River Oaks Imaging and Diagnostic	L06181	Houston	08	01/19/10
Houston	Memorial Hermann Hospital System dba Memorial Hospital - Memorial City	L01168	Houston	114	01/19/10
Houston	University of Houston	L01886	Houston	63	01/22/10
Houston	S.J. Medical Center L.L.C. dba St. Joseph Medical Center	L02279	Houston	71	01/25/10
Houston	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	61	01/27/10
Irving	Columbia Medical Center of Las Colinas Inc.	L05084	Irving	17	01/15/10
Katy	Saint Catherine Health and Wellness Center	L05310	Katy	20	01/26/10
Lubbock	Methodist Diagnostic Imaging dba Covenant Diagnostic Imaging	L03948	Lubbock	44	01/27/10
Pasadena	MEMC Pasadena Inc.	L05129	Pasadena	13	01/25/10
Pittsburg	East Texas Medical Center - Pittsburg	L03106	Pittsburg	25	01/22/10
Plainview	Methodist Hospital - Plainview dba Covenant Hospital - Plainview	L02493	Plainview	30	01/28/10
Port Arthur	The Premcor Refining Group Inc.	L04871	Port Arthur	17	01/15/10
Port Arthur	Huntsman Corporation	L06107	Port Arthur	01	01/15/10
Richmond	Oakbend Medical Center	L02406	Richmond	54	01/27/10
San Antonio	Central Cardiovascular Institute of San Antonio	L04892	San Antonio	20	01/20/10
San Antonio	Radiation Oncology of San Antonio P.A.	L05853	San Antonio	09	01/15/10
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	115	01/15/10
San Antonio	Methodist Healthcare System of San Antonio Ltd., L.L.P.	L00594	San Antonio	267	01/25/10
The Woodlands	Memorial Hermann Hospital System dba Memorial Hermann Hospital Woodlands	L03772	The Woodlands	75	01/26/10

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Eagle NDT L.L.C.	L06176	Abilene	15	01/27/10
Throughout TX	Team Industrial Services Inc.	L00087	Alvin	214	01/28/10
Throughout TX	Texas Department of Transportation	L00197	Austin	150	01/25/10
Throughout TX	Professional Services Industries	L04947	Austin	20	01/26/10
Throughout TX	Zetex Enterprise L.L.C.	L06295	Burnet	01	01/28/10
Throughout TX	NQS Inspections Ltd.	L06262	Corpus Christi	02	01/21/10
Throughout TX	Wilson Inspection X-Ray Services	L04469	Corpus Christi	66	01/25/10
Throughout TX	Alliance Geotechnical Group Inc.	L05314	Dallas	14	01/21/10
Throughout TX	Pavetex Engineering and Testing Inc.	L05533	Dripping Springs	11	01/19/10
Throughout TX	Texas OA Services Inc.	L04601	Grand Prairie	26	01/26/10
Throughout TX	Pathfinder Energy Services L.L.C.	L05236	Houston	19	01/22/10
Throughout TX	The Murillo Company	L01373	Houston	20	01/15/10
Throughout TX	HVJ Associates Inc.	L03813	Houston	41	01/27/10
Throughout TX	Material Inspection Technology Inc.	L05672	Houston	34	01/27/10
Throughout TX	Roxar Inc.	L05547	Houston	16	01/22/10
Throughout TX	Marco Inspection Services L.L.C.	L06072	Kilgore	30	01/14/10
Throughout TX	QISI Inc. dba Quality Inspection Services	L06219	Laporte	03	01/13/10
Throughout TX	Hi-Tech Testing Services Inc.	L05021	Longview	84	01/26/10
Throughout TX	American X-Ray & Inspection Service Inc. dba AXIS Inc.	L05974	Midland	24	01/22/10
Throughout TX	American X-Ray & Inspection Services Inc. dba AXIS Inc.	L05974	Midland	23	01/19/10
Throughout TX	Big State X-Ray	L02693	Odessa	78	01/19/10
Throughout TX	T. C. Inspection Inc.	L05833	Oyster creek	40	01/19/10
Throughout TX	Techcorr USA L.L.C. dba AUT Specialists	L05972	Palestine	71	01/20/10
Throughout TX	Conam Inspection & Engineering Inc.	L05010	Pasadena	179	01/15/10
Throughout TX	Conam Inspection & Engineering Inc.	L05010	Pasadena	180	01/22/10
Throughout TX	All American Inspection Inc.	L01336	San Antonio	68	01/27/10
Tyler	Carter Bloodcare	L04826	Tyler	16	01/22/10
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	150	01/21/10
Weslaco	RGV Heart Specialist L.L.P.	L05554	Weslaco	04	01/11/10
Wichita Falls	Kell West Regional Hospital L.L.C.	L05943	Wichita Falls	08	01/20/10

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Beaumont	Metalforms Inc.	L02261	Beaumont	40	01/25/10
Nacogdoches	TH Healthcare Ltd., A Limited Texas Partnership dba Nacogdoches Medical Center	L02853	Nacogdoches	42	01/20/10

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Midland	Texas Oncology P.A. dba Allison Cancer Center	L05614	Midland	08	01/22/10
San Antonio	Jawad Zar Shaikh, M.D.	L06019	San Antonio	03	01/20/10

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, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, TX 78714-9347. For information call (512) 834-6688.

TRD-201000566  
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Filed: February 5, 2010

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## Texas Department of Housing and Community Affairs

### Notice of Public Hearing

#### Residential Mortgage Revenue Bonds

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 221 East 11th Street, Room 109, Austin, Texas, at 12:00 p.m. noon on March 1, 2010, with respect to a plan of financing (the "Plan") that consists of (i) the conversion, on one or more separate dates, to tax-exempt bonds in the maximum aggregate face amount of \$300,000,000 of all or a portion of the Department's Residential Mortgage Revenue Bonds, Series 2009C previously issued as taxable bonds (the "Series 2009C Bonds") (each, a "Conversion"), and (ii) the issuance, on one or more separate dates, of tax-exempt residential mortgage revenue bonds in the maximum aggregate face amount of \$300,000,000 (the "New Money Bonds" and together with the Series 2009C Bonds, collectively, the "Bonds") in connection with a Conversion. Upon Conversion, the Series 2009C Bonds will become "qualified mortgage bonds" within the meaning of §143 of the Internal Revenue Code of 1986, as amended (the "Code"). The New Money Bonds will be issued as "qualified mortgage bonds" under §143 of the Code. The first Bonds delivered under the Plan will be delivered no later than one year following approval of the Plan pursuant to this Notice. All Bonds under the Plan will be delivered no later than three years following such approval.

The proceeds of the Bonds will be used directly to make, or to refund up to \$100,000,000 of the Department's outstanding qualified mortgage bonds the proceeds of which were used to make, single family residential mortgage loans in an aggregate estimated amount of \$600,000,000. All of such single family residential mortgage loans have been or will be made to eligible very low, low and moderate income homebuyers for the purchase of homes located within the State of Texas.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families (a) whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120%

in certain targeted areas) of the area median income, and (b) who have not owned a principal residence during the preceding three years (except in certain cases (Qualified Veterans/Targeted Areas/Eligible Refinancings) permitted under applicable provisions of the Code). Further, residences financed with loans under the programs generally will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal or State law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program, the Conversion of the Series 2009C Bonds and the issuance of the New Money Bonds. Questions or requests for additional information may be directed to Heather Hodnett at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; telephone (512) 475-1899.

Persons who intend to appear at the hearing and express their views are invited to contact Heather Hodnett in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Heather Hodnett prior to the date scheduled for the hearing.

TDHCA WEBSITE: [www.tdhca.state.tx.us/hf.htm](http://www.tdhca.state.tx.us/hf.htm)

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Heather Hodnett at (512) 475-1899 at least three days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of Section 147(f) of the Code regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Bonds.

TRD-201000608  
Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Filed: February 8, 2010

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**Texas Department of Insurance**

Company Licensing

Application for admission to the State of Texas by SUPERIOR VISION INSURANCE, INC., a foreign life company. The home office is in Scottsdale, Arizona.

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

TRD-201000635

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: February 10, 2010

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**Texas Lottery Commission**

Instant Game Number 1267 "Bonus Word Crossword"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1267 is "BONUS WORD CROSSWORD". The play style is "crossword".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1267 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1267.

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 - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, blackened square, \$3.00, \$5.00, \$10.00, \$20.00, \$100, \$500, \$5,000 and \$35,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each 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. 1267 - 1.2D

PLAY SYMBOL	CAPTION
A	
B	
C	
D	
E	
F	
G	
H	
I	
J	
K	
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	
█	
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$100	ONE HUND
\$500	FIV HUND
\$5,000	FIV THOU
\$35,000	35 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) 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: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$100 or \$500.

H. High-Tier Prize - A prize of \$5,000 or \$35,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1267), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1267-0000001-001.

K. Pack - A pack of "BONUS WORD CROSSWORD" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack.

L. 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.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS CASHWORD" Instant Game No. 1267 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 "BONUS WORD CROSSWORD" Instant Game is determined once the latex on the ticket is scratched off to expose 145 (one hundred forty-five) possible play symbols. The player must scratch off the YOUR LETTERS and BONUS play area. The player must use the YOUR LETTERS to form words in the BONUS WORD CROSSWORD puzzle and the player wins the amount shown in the PRIZE LEGEND. The player must use the YOUR LETTERS to form the BONUS WORD and if complete, the player wins the BONUS PRIZE. There will be only one prize per ticket. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within the BONUS WORD CROSSWORD puzzle. Letters combined to form a complete "word" must be revealed in an unbroken horizontal (left to right) sequence within the BONUS WORD area. Only letters within the BONUS WORD CROSSWORD puzzle and BONUS WORD play areas that are matched with the YOUR LETTERS can be used to form a complete "word". Words within a word are not eligible for a prize. For example, all the YOUR LETTERS play symbols "S, T, O, N, E" must be revealed for this to count as one complete "word". TON, ONE or any other portion of the sequence of STONE would not count as a complete "word". A complete "word" must contain at least three letters. 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. One hundred forty-five (145) possible 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, 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;
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 145 (one hundred forty-five) possible 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 145 (one hundred forty-five) possible Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 145 (one hundred forty-five) possible 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 in a pack will not have identical play data, spot for spot.

- B. Each grid will contain exactly the same amount of letters.
- C. Each grid will contain exactly the same amount of words.
- D. No duplicate words on a ticket.
- E. All words used will be from the TEXAS APPROVED WORD LIST CASHWORD/CROSSWORD v.1.0.
- F. All words will contain a minimum of 3 letters.
- G. All words will contain a maximum of 9 letters.
- H. No duplicate YOUR LETTERS play symbols.
- I. There will be a minimum of 3 vowels (A, E, I, O and U) in the YOUR LETTERS play area
- J. A minimum of 15 YOUR LETTERS play symbols will match at least one letter in the crossword grid or the BONUS WORD.
- K. The presence or absence of any letter or combination of letters in the YOUR LETTERS play area will not be indicative of a winning or non-winning ticket.
- L. No consonant play symbol will appear more than 9 times in the crossword grid and no vowel will appear more than 14 times in the crossword grid.
- M. On non-winning tickets, each crossword grid will have at least 2 completed words.
- N. When the BONUS WORD is completed as a winner, there will never be more than one completed word in the crossword grid.
- O. Each non-winning ticket will have at least 5 near wins (word with all but one letter matched).
- P. Words from the TEXAS REJECTED WORD LIST v.2.0 will not appear horizontally, diagonally or vertically in the YOUR LETTERS area.

### 2.3 Procedure for Claiming Prizes.

- A. To claim a "BONUS WORD CROSSWORD" Instant Game prize of \$3.00, \$5.00, \$10.00, \$20.00, \$100 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to, pay a \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.
- B. To claim a "BONUS WORD CROSSWORD" Instant Game prize of \$5,000 or \$35,000, 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 "BONUS WORD CROSSWORD" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

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

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
  2. delinquent in making child support payments administered or collected by the Attorney General; or
  3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
  4. in default on a loan made under Chapter 52, Education Code; or
  5. in default on a loan guaranteed under Chapter 57, Education Code
- E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

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

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BONUS WORD CROSSWORD" 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 "BONUS WORD CROSSWORD" 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 therefor, 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 therefor, 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 therefore. 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 30,000,000 tickets in the Instant Game No. 1267. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1267 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	3,360,000	8.93
\$5	4,320,000	6.94
\$10	600,000	50.00
\$20	360,000	83.33
\$100	61,500	487.80
\$500	12,500	2,400.00
\$5,000	100	300,000.00
\$35,000	46	652,173.91

\*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 3.44. 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. 1267 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. 1267, 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-201000630  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: February 9, 2010

**North Central Texas Council of Governments**

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the September 4, 2009, issue of the *Texas Register* (34 TexReg 6185). The selected consultants will perform technical and professional work to implement a Regional Traffic Signal Retiming Program.

The consultants selected for this project are HDR Engineering, 17111 Preston Road, Suite 200, Dallas, Texas 75248 and Kimley-Horn and Associates, 12700 Park Central Drive, Suite 1800, Dallas, Texas 75251. The maximum amount of each contract is \$1,000,000.

TRD-201000602  
 R. Michael Eastland  
 Executive Director  
 North Central Texas Council of Governments  
 Filed: February 5, 2010

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**Public Utility Commission of Texas**

Notice of a Petition for Declaratory Order

Notice is given to the public of a petition for declaratory order with the Public Utility Commission of Texas on January 29, 2010.

Docket Style and Number: Petition of Texas-New Mexico Power Company for a Declaratory Order Regarding Refund to Correct Billing for Street Lighting Services to City of Pecos, Docket Number 37927.

The Application: Texas-New Mexico Power Company (TNMP) has determined that errors in its billing information resulted in over-billing and under-billing for various street lighting services provided by TNMP to the City of Pecos (City). TNMP stated it is still actively attempting to resolve this matter with the City; however, a dispute has arisen regarding both the manner and the amount of the refund. According to TNMP, based on TNMP's calculations, the City, with interest, is currently entitled to the sum of \$6,354.10. The City disagrees with that amount and the manner in which it was calculated. TNMP seeks a declaratory order from the Commission to determine (1) the manner by which any refund owed to the City should be calculated, and (2) the correct amount of the refund, if any, to be provided to the City by TNMP.

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 Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All correspondence should refer to Docket Number 37927.

TRD-201000569  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 5, 2010

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**Notice of Amended Application for Designation as a Limited Eligible Telecommunications Carrier in the State of Texas**

Notice is given to the public of an amended application filed with the Public Utility Commission of Texas on February 1, 2010, for designation as a limited eligible telecommunications carrier (ETC) in the State of Texas.

Docket Title and Number: Application of Virgin Mobile USA, L.P. for Limited Designation as an Eligible Telecommunications Carrier in the State of Texas. Docket Number 36946.

The Application: The company is requesting limited ETC designation for the limited purpose of providing Lifeline-supported services to qualifying Texas customers. The company filed an amended petition in response to deficiencies in its original application. The company requested ETC designation for its entire Texas service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by March 11, 2010. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 36946.

TRD-201000568

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 5, 2010

◆ ◆ ◆  
**Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider**

Notice is given to the public of an application filed with the Public Utility Commission of Texas on February 2, 2010, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rules §26.417 and §26.418, respectively.

Docket Title and Number: Application of AMA TechTel Communications for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418 and Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 37942.

The Application: The company is requesting ETC/ETP designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.417, the commission designates qualifying common carriers as ETCs and ETPs for service areas designated by the commission. AMA TechTel Communications seeks ETC/ETP designation in the entire service areas of the rural ILEC Windstream Communications Southwest and the non-rural ILECs, AT&T Texas and Verizon Southwest. The company holds Service Provider Certificate of Operating Authority Number 60848.

Persons wishing to intervene or 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 (888) 782-8477. The deadline for intervention in this proceeding is March 11, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 37942.

TRD-201000570  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: February 5, 2010

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**South East Texas Regional Planning Commission**

**Request for Proposal for Environmental Services**

In accordance with the Texas Department of Housing and Community Affairs (TDHCA) guidelines, the South East Texas Regional Planning Commission (SETRPC) is now accepting proposals for the purposes of entering into a contract with a competent Environmental Review Services firm or individuals to assist in providing environmental review services for properties in which rehabilitation, reconstruction, new construction and/or replacement (including elevation, if necessary) of owner-occupied housing units, single family rental housing units and multifamily housing units as required in support of the Hurricane Ike Disaster Relief Program.

To receive an RFP, please contact Jennifer Barclay:  
South East Texas Regional Planning Commission

Disaster Recovery Division  
Attn: Jennifer Barclay  
2210 Eastex Freeway  
Beaumont, TX 77703  
By Phone: (409) 899-8444 ext. 6305  
By Email: jbarclay@setrpc.org  
Or at our website: www.setrpc.org

Complete sealed proposals must be submitted in person, by mail or other carrier by 3:00 p.m. on March 15, 2010.

TRD-201000645  
Jennifer Barclay  
Legal Contract Specialist  
South East Texas Regional Planning Commission  
Filed: February 10, 2010

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**Texas Department of Transportation**

**Public Notice - Deadline Extended for Public Comments**

In the January 1, 2010, issue of the *Texas Register* (35 TexReg 49), the Texas Department of Transportation proposed amendments to §5.58, Calculation of Pass-Through Fares and Tolls, and §5.59, Project Development by Public or Private Entity, and new §5.61, Solicitation of Private Proposals, all concerning pass-through fares and tolls.

The deadline for receipt of comments on the proposed amendments and new section was originally set for February 1, 2010. This notice is to extend the public comment period to 5:00 p.m. on **March 8, 2010**. Additional information may be obtained from Mark A. Marek, Director, Design Division, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-201000601  
Bob Jackson  
General Counsel  
Texas Department of Transportation  
Filed: February 5, 2010

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**Texas State University System**

**Notice of Consultant Contract Award - Indefinite Quantity Facilities Design and Construction Program Management Services**

The Texas State University System (TSUS) announces this Notice of Contract Award in connection with the Request for Qualifications for Indefinite Quantity Facilities Design and Construction Program (RFQ #758-10-00010). In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The Texas State University System furnishes this notice of consultant contract award. The consultant will provide program management services for planning, design and construction of facilities for the Owner's System Office and its components on an hourly fee basis. The total value of the Contract will not exceed \$750,000 per contract year. The Notice of Request for Qualifications (RFQ #758-10-00010) was published in the November 20, 2009, issue of the *Texas Register* (34 TexReg 8422).

TSUS announces that a contract was awarded to Broaddus & Associates, 1301 S. Capital of Texas Highway, Suite A302, Austin, Texas 78746. The beginning date of the contract is January 29, 2010 and the ending date is January 29, 2013.

TRD-201000609  
Peter E. Graves  
Vice Chancellor for Contract Administration  
Texas State University System  
Filed: February 8, 2010

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**The University of Texas System**

**Award of Consultant Contract Renewal Notification**

In November 2007, The University of Texas of the Permian Basin ("University") issued an Invitation for Offers and published a Notice of Intent to Seek Consultant Services in the November 30, 2007, issue of the *Texas Register* (32 TexReg 8979) for support and assistance in creating the Wagner Noël Performing Arts Center. University procured the consulting services to, among other things: (1) provide assistance and support to implement capital campaign and fundraising responsibilities, (2) provide assistance and support to implement operational and business planning responsibilities, and (3) provide assistance and support to implement management planning, staffing, and programming responsibilities, all in connection with the Wagner Noël Performing Arts Center. Pursuant to an award by University, Franks & Associates is currently providing these consulting services to University.

At this time, it is necessary to amend, extend, or renew the contract between University and Franks & Associates. As required by the provisions of Chapter 2254, Texas Government Code, prior to amending, extending, or renewing its contract with Franks & Associates, University extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to University. Unless a better offer (as determined by University) is received in response to this Invitation, University intends to enter into negotiations with Franks & Associates to amend, restate, and extend University's contract with Franks & Associates by replacing the agreement dated effective March 1, 2008, and purchase order numbers 2008M00088, 2009C00023 and 2010C00143, and extending the term of the transaction.

**Historically Underutilized Businesses:**

All agencies of the State of Texas are required to make a good faith effort to assist historically underutilized businesses (HUB) in receiving contract awards. The goal of the HUB program is to promote full and equal business opportunity for all businesses in contracting with state agencies. Pursuant to the HUB program, if under the terms of any agreement or contractual arrangement resulting from this Invitation, the successful consultant subcontracts any of the services, then the successful consultant must make a good faith effort to utilize HUBs certified by the Texas Procurement and Support Services Division (TPSS) of the Texas Comptroller of Public Accounts or any successor agency. Offers that fail to comply with the requirements contained in this Section and the HUB Subcontracting Plan posted at <http://ba.utpb.edu/purchasing/purchasing-forms/> constitute a material failure to comply with advertised specifications and will be rejected by the University as non-responsive. Additionally, compliance with good faith effort guidelines is a condition precedent to awarding any agreement or contractual arrangement resulting from this Invitation. Consultant acknowledges that, if selected by University, its obligation to make a good faith effort to utilize HUBs when subcontracting any of the services will continue throughout the term of all agreements and contractual arrangements resulting from this Invitation. Furthermore, any subcontracting of the services by the successful consultant is subject to review by University to ensure compliance with the HUB program.

University has reviewed this Invitation in accordance with 34 Texas Administrative Code §20.13(a), and has determined that subcontracting opportunities are probable under this Invitation. A HUB Subcontracting Plan (HSP), in the form posted at <http://ba.utpb.edu/purchasing/purchasing-forms/> is required as part of consultant's offer. The HSP will be developed and administered in accordance with University's Policy on Utilization of Historically Underutilized Businesses. Each consultant must complete and return the HSP in accordance with the terms and conditions of this Invitation. Consultants that fail to do so will be considered non-responsive to this Invitation in accordance with §2161.252, Texas Government Code.

The successful consultant will not be permitted to change its HSP unless: (1) the consultant completes a newly modified version of the HSP in accordance with the terms of the HSP that sets forth all changes requested by the consultant, (2) the consultant provides University with such a modified version of the HSP, (3) University approves the modified HSP in writing, and (4) all agreements or contractual arrangements resulting from this Invitation are amended in writing by University and the consultant to conform to the modified HSP.

Consultant must submit one (1) original of the HSP to University at the same time it submits its offer to University. The one (1) original of the HSP must be submitted under separate cover and in a separate envelope (the HSP Envelope). Consultant must ensure that the top outside surface of its HSP Envelope clearly shows and makes visible the "Invitation No. 742-10-003" and the Submittal Deadline, both located in the lower left hand corner of the top surface of the envelope, the name and the return address of consultant, and the phrase "HUB Subcontracting Plan."

#### Scope of Work:

The successful consultant will perform the following services: (1) capital campaign and fundraising services; (2) operational and business planning services; (3) management planning, staffing, and programming services.

#### Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) consultant's legal name, including type of entity (individual, partnership, corporation, etc.), address and other contact information; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earliest date by which the consultant could begin providing the services; (6) a list of five [5] client references, including any complex institutions or systems of higher education for which consultant has provided consulting services; (7) a statement of consultant's approach to the project (i.e., the services described in the Scope of Work section of this Invitation), any unique benefits consultant offers University, and any other information consultant desires University to consider in connection with consultant's offer; (8) information to assist University in assessing consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist University in assessing the consultant's knowledge of event center or performing arts center planning; (10) information to assist University in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (11) information to assist University in assessing whether the consultant will be impartial in the performance of the requested services; (12) information to assist University in assessing whether the consultant will have any conflicts of interest in performing the requested services; (13) information to assist Uni-

versity in assessing the overall cost to University for the requested services to be performed; (14) information regarding any prompt payment discount offered by consultant (University's standard payment terms for services are "Net 30 days."); (15) information to assist University in assessing consultant's capability and financial resources to perform the requested services; (16) information to assist University in assessing consultant's communication skills using all relevant media; (17) a signed and completed original of the Execution of Offer posted at: <http://esbd.cpa.state.tx.us/>; and (18) a signed and completed original of the HUB Subcontracting Plan posted at <http://ba.utpb.edu/purchasing/purchasing-forms/> [for questions contact: Sharon Royall, Director of Purchasing, The University of Texas of the Permian Basin, 4901 E. University Boulevard, Odessa, Texas 79762, [royall\\_s@utpb.edu](mailto:royall_s@utpb.edu), (432) 552-3790 (fax)].

#### Selection Process:

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive sealed proposal process described in this section. After opening of the offers and upon completion of the initial review and evaluation of the offers, University may invite one or more selected consultants to participate in oral presentations. University will use commercially reasonable efforts to avoid public disclosure of the contents of an offer prior to selection of the Successful Offer.

University may make the selection of the Successful Offer on the basis of the offers initially submitted, without discussion, clarification, or modification. In the alternative, University may make the selection of the Successful Offer on the basis of negotiation with any of the consultants. In conducting such negotiations, University will avoid disclosing the contents of competing offers.

At University's sole option and discretion, University may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, University may establish, after an initial review of the offers, a competitive range of acceptable or potentially acceptable offers composed of the highest rated offer(s). In that event, University will defer further action on offers not included within the competitive range pending the selection of the Successful Offer; provided, however, University reserves the right to include additional offers in the competitive range if deemed to be in the best interests of University.

After submission of an offer but before final selection of the Successful Offer is made, University may permit a consultant to revise its offer in order to obtain the consultant's best and final offer. In that event, representations made by consultant in its revised offer, including price and fee quotes, will be binding on consultant. University will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. University is not obligated to select the consultant offering the most attractive economic terms if that consultant is not the most advantageous to University overall, as determined by University.

University reserves the right to (a) enter into a contract for all or any portion of the requirements and specifications set forth in this Invitation with one or more consultants, (b) reject any and all offers and re-solicit offers, or (c) reject any and all offers and temporarily or permanently abandon this selection process, if deemed to be in the best interests of University. Consultant is hereby notified that University will maintain in its files concerning this Invitation a written record of the basis upon which a selection, if any, is made by University. University reserves the right to accept or reject any or all offers, waive any formalities, procedural requirements, or minor technical inconsistencies, and delete any requirement or specification from this Invitation when deemed to be in University's best interest.

**Criteria for Selection:**

The successful offer (Successful Offer), if any, will be the offer submitted in response to this Invitation by the Submittal Deadline that is the most advantageous to University. The criteria to be considered by University in evaluating offers will be those factors listed below:

1. the consultant's demonstrated competence, knowledge, and qualifications; and
2. the reasonableness of the consultant's fee.

In accordance with §2254.027, Texas Government Code, if other considerations are equal, University will give preference to a consultant whose principal place of business is in the State of Texas or who will manage the contract wholly from an office in the State of Texas. Offers will be evaluated by University personnel. The selection of the Successful Offer, if any, will be based on the information provided by consultant in its offer. University may give consideration to any additional information if University deems such information relevant. The consultant submitting the Successful Offer will be required to enter into a contract acceptable to University.

**Consultant's Acceptance of Offer Evaluation Methodology:**

Submission of an offer by a consultant indicates: (1) consultant's acceptance of (a) the Selection Process, (b) the Criteria for Selection, and (c) all other requirements and specifications set forth in this Invitation; and (2) consultant's recognition that some subjective judgments must be made by University during this Invitation process.

**Public Information:**

Consultant is hereby notified that University strictly adheres to all statutes, court decisions and the opinions of the Texas Attorney General with respect to disclosure of public information. University may seek to protect from disclosure all information submitted in response to this Invitation until such time as a final contract is executed. Upon execution of a final contract, University will consider all information, documentation, and other materials requested to be submitted in response to this Invitation, to be of a non-confidential and non-proprietary nature and, therefore, subject to public disclosure under the Texas Public Information Act (§552.001, Texas Government Code). Consultant will be advised of a request for public information that implicates their materials and will have the opportunity to raise any objections to disclosure to the Texas Attorney General. Certain information may be protected from release under §§552.101, 552.110, 552.113, and 552.131, Texas Government Code.

**How to Respond; Submittal Deadline:**

To respond to this Invitation, consultants must submit the information requested in the Specifications section of this Invitation and any other relevant information, in a clear and concise written format to: Sharon Royall, Director of Purchasing, The University of Texas of the Permian Basin, 4901 E. University Boulevard, Odessa, Texas 79762, royall\_s@utpb.edu, (432) 552-2793. Offers must be submitted in an envelope or other appropriate container. "Invitation No. 742-10-003" and the Submittal Deadline must be clearly shown in the lower left-hand corner on the top surface of such envelope or container. In addition, the name and return address of the consultant must be clearly visible.

All offers must be received at the above address no later than 3:00 p.m., March 15, 2010 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

**Questions:**

Questions concerning this Invitation should be directed to Sharon Royall, Director of Purchasing, The University of Texas of the Per-

mian Basin, 4901 E. University Boulevard, Odessa, Texas 79762, royall\_s@utpb.edu, (432) 552-3790 (fax). University may in its sole discretion respond in writing to questions concerning this Invitation. Only University's responses made by formal written addenda to this Invitation will be binding. Verbal and other written interpretations or clarifications will be without legal effect.

TRD-201000616  
Francie A. Frederick  
General Counsel to the Board of Regents  
The University of Texas System  
Filed: February 9, 2010

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**Texas Water Development Board**

**Notice of Hearing**

The Texas Water Development Board (Board) will conduct a public hearing on Thursday, March 18, 2010, in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 to receive public comments on proposed amendments to the 2007 State Water Plan, Water for Texas - 2007, in accordance with Texas Water Code §16.053(r) and 31 TAC §358.3(a). The hearing will be conducted during the Board's regular March 18, 2010, public meeting at 11:00 a.m., in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

After the public hearing, the Board will consider adopting the proposed amendment at its regular Board meeting on March 18, 2010.

The proposed amendment will incorporate into the State Water Plan one amendment to the 2006 Region O Regional Water Plan that had been adopted by the Llano Estacado (Region O) Regional Water Planning Group and approved by the Board. The Region O amendment updates two existing water management strategies which include the Lake Alan Henry Supply Project and the North Fork Diversion Operations Project and adds Post Reservoir as a "recommended" water management strategy for the City of Lubbock.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed amendment. In addition, persons may provide written comments on or before March 9, 2010 by mail to Temple McKinnon at Water Resource Planning and Information, Texas Water Development Board, P.O. Box 13231, Capitol Station, Austin, Texas 78711 or by email to rulescomments@twdb.state.tx.us. Copies of the proposed amendments are available for inspection at the Stephen F. Austin Building from the Water Resources Planning Division, Texas Water Development Board, 1700 North Congress Avenue, Austin, Texas 78701. If you want to view these documents, please call (512) 475-2057 for arrangements to view them. A copy of the proposed amendments will also be available on the Board's web site at <http://www.twdb.state.tx.us>.

The Board offers reasonable accommodations for persons attending meetings, hearings or educational events, as required by the Americans with Disabilities Act. If you require special accommodations, please contact Ms. Leslie Anderson, Public Information Officer, at (512) 463-7855.

TRD-201000561  
Ingrid K. Hansen  
Deputy General Counsel  
Texas Water Development Board  
Filed: February 4, 2010

## 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 35 (2010) is cited as follows: 35 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 "35 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 35 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 at: <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 information, call the Texas Register at (512) 463-5561.

## 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 (800-356-6548), and West Publishing Company (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 *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)