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

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

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In This Issue

**ATTORNEY GENERAL**
Request for Opinion .......................................................... 3139
Opinions ............................................................................... 3139

**EMERGENCY RULES**
**TEXAS EDUCATION AGENCY**
SCHOOL DISTRICTS
19 TAC §61.1201 .................................................................. 3141

**PROPOSED RULES**
**TEXAS HEALTH AND HUMAN SERVICES COMMISSION**
REIMBURSEMENT RATES
1 TAC §355.8058 .................................................................. 3143
1 TAC §355.8060 .................................................................. 3144
1 TAC §355.8061 .................................................................. 3146
1 TAC §355.8063 .................................................................. 3148
1 TAC §355.8069 .................................................................. 3149
1 TAC §355.8070 .................................................................. 3153
1 TAC §355.8071 .................................................................. 3157
1 TAC §355.8071 .................................................................. 3158
1 TAC §355.8072 .................................................................. 3158

**TEXAS EDUCATION AGENCY**
PLANNING AND ACCOUNTABILITY
19 TAC §97.1061 .................................................................. 3174
CHARTERS
19 TAC §100.1015, §100.1017 .............................................. 3176
19 TAC §§100.1021, 100.1022, 100.1027, 100.1033 ................... 3176
19 TAC §100.1047 ................................................................. 3186

**DEPARTMENT OF STATE HEALTH SERVICES**
MATERNAL AND INFANT HEALTH SERVICES
25 TAC §§37.561 - 37.573 ...................................................... 3187
TRAINING AND REGULATION OF PROMOTORES OR COMMUNITY HEALTH WORKERS
25 TAC §§146.1 - 146.12 ......................................................... 3190
25 TAC §146.5 .................................................................. 3201
HEALTH CARE INFORMATION
25 TAC §§421.1, 421.8, 421.9 .................................................. 3201

**TEXAS PARKS AND WILDLIFE DEPARTMENT**
FINANCE

31 TAC §53.9, §53.14 ........................................................... 3206
31 TAC §53.30 .................................................................. 3207

**FISHERIES**
31 TAC §57.125 .................................................................. 3209
31 TAC §57.921 .................................................................. 3209

**WILDLIFE**
31 TAC §65.109 .................................................................. 3212
31 TAC §65.132 .................................................................. 3213
31 TAC §65.603 .................................................................. 3214
31 TAC §65.134, §65.136 ...................................................... 3215
31 TAC §65.608 .................................................................. 3217

**RESOURCE PROTECTION**
31 TAC §69.310 .................................................................. 3218
31 TAC §69.404 .................................................................. 3219

**TEXAS STATE SOIL AND WATER CONSERVATION BOARD**
AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT
31 TAC §523.3 ................................................................. 3219

**COMPTROLLER OF PUBLIC ACCOUNTS**
PROPERTY TAX ADMINISTRATION
34 TAC §9.17 ...................................................................... 3221

**EMPLOYEES RETIREMENT SYSTEM OF TEXAS**
CREDITABLE SERVICE
34 TAC §71.29, §71.31 ........................................................... 3221

**BENEFITS**
34 TAC §§73.2, 73.17, 73.21 .................................................. 3222

**TEXAS BOND REVIEW BOARD**
BOND REVIEW BOARD
34 TAC §181.9 .................................................................. 3223

**TEXAS DEPARTMENT OF CRIMINAL JUSTICE**
SPECIAL PROGRAMS
37 TAC §159.1 ................................................................. 3224
37 TAC §159.15 ................................................................. 3225

**TEXAS JUVENILE PROBATION COMMISSION**
SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES
37 TAC §343.106 ................................................................. 3225
37 TAC §343.272 ................................................................. 3226

EMPLOYMENT, CERTIFICATION AND TRAINING

**TABLE OF CONTENTS** 35 TexReg 3133
TABLE OF CONTENTS  35 TexReg 3134
19 TAC §89.1401 ...................................................................................... 3260
19 TAC §§89.1401, 89.1403, 89.1405, 89.1409, 89.1411, 89.1413, 89.1415, 89.1417, 89.1419 ..................................................... 3260
   BUDGETING, ACCOUNTING, AND AUDITING
19 TAC §109.41 .................................................................................... 3261
   TEXAS ESSENTIAL KNOWLEDGE AND SKILLS
19 TAC §§110.46 - 110.55, 110.57 - 110.66 ........................................ 3262
19 TAC §110.56 .................................................................................. 3278
TEXAS MEDICAL BOARD
   ACUPUNCTURE
22 TAC §183.4, §183.9 ........................................................................ 3279
   PROCEDURAL RULES
22 TAC §187.43 .................................................................................. 3279
22 TAC §187.83, §187.84 .................................................................. 3280
22 TAC §§187.85 - 187.89 ................................................................ 3280
   COMPLIANCE PROGRAM
22 TAC §§189.2, 189.3, 189.8 ............................................................. 3280
   DISCIPLINARY GUIDELINES
22 TAC §190.14 .................................................................................. 3280
   OFFICE-BASED ANESTHESIA SERVICES
22 TAC §§192.1, 192.2, 192.4, 192.5 .................................................. 3281
22 TAC §192.7 .................................................................................... 3281
   PAIN MANAGEMENT CLINICS
22 TAC §§195.1 - 195.4 ..................................................................... 3281
   UNLICENSED PRACTICE
22 TAC §198.3 .................................................................................... 3282
22 TAC §§198.4 - 198.6 ..................................................................... 3282
TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS
   RULES OF PROFESSIONAL CONDUCT
22 TAC §573.51 .................................................................................. 3282
22 TAC §573.69 .................................................................................. 3283
   PRACTICE AND PROCEDURE
22 TAC §575.26 .................................................................................. 3283
22 TAC §575.26 .................................................................................. 3283
   GENERAL ADMINISTRATIVE DUTIES
22 TAC §577.2 ..................................................................................... 3284
22 TAC §577.12 .................................................................................. 3284
TEXAS BOARD OF PROFESSIONAL GEOScientists
   MEDICAL BOARD
22 TAC §§850.100 - 850.105 ............................................................ 3284
   TEXAS BOARD OF PROFESSIONAL GEOScientists LICENSING RULES
22 TAC §§851.40 - 851.46 ................................................................. 3285
22 TAC §§851.80 .............................................................................. 3286
22 TAC §§851.106 ............................................................................ 3286
TEXAS DEPARTMENT OF CRIMINAL JUSTICE
   PRIVATE SECTOR PRISON INDUSTRIES
37 TAC §§154.1 - 154.12 ................................................................. 3286
   PAROLE
37 TAC §195.81 ................................................................................ 3287
   PRIVATE SECTOR PRISON INDUSTRIES OVERSIGHT
AUTHORITY
   GENERAL PROVISIONS
37 TAC §§245.10 - 245.14, 245.20 - 245.23, 245.30, 245.40, 245.41,
245.43, 245.45, 245.47 ................................................................. 3287
TEXAS JUVENILE PROBATION COMMISSION
   GENERAL ADMINISTRATIVE STANDARDS
37 TAC §349.1 .................................................................................... 3288
37 TAC §349.2 .................................................................................... 3288
37 TAC §§349.7 - 349.15 ................................................................. 3288
37 TAC §§349.21 - 349.32 ................................................................. 3288
37 TAC §349.37 ................................................................................ 3289
37 TAC §349.52 ................................................................................ 3289
37 TAC §§349.57 - 349.64 ................................................................. 3289
37 TAC §§349.69 - 349.72 ................................................................. 3289
   GENERAL ADMINISTRATIVE STANDARDS
37 TAC §349.100 .............................................................................. 3290
37 TAC §349.200 .............................................................................. 3290
37 TAC §§349.300, 349.305, 349.310, 349.315, 349.320, 349.325,
349.330, 349.335, 349.340, 349.345, 349.355, 349.360, 349.365,
349.370, 349.375, 349.380, 349.385 ............................................... 3290
37 TAC §349.400, §349.410 ............................................................... 3291
37 TAC §§349.500, 349.510, 349.520, 349.530, 349.540, 349.550,
349.560, 349.570 ................................................................. 3291
DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
   CHILD PROTECTIVE SERVICES
40 TAC §700.1203, §700.1207 .......................................................... 3291
40 TAC §§700.1802 - 700.1807 ......................................................... 3292

TABLE OF CONTENTS  35 TexReg 3135
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>TEXAS DEPARTMENT OF MOTOR VEHICLES</strong></td>
<td></td>
</tr>
<tr>
<td><strong>EMPLOYMENT PRACTICES</strong></td>
<td></td>
</tr>
<tr>
<td>40 TAC §700.1805</td>
<td>3292</td>
</tr>
<tr>
<td><strong>RULE REVIEW</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Agency Rule Review Plans</strong></td>
<td></td>
</tr>
<tr>
<td>General Land Office</td>
<td>3297</td>
</tr>
<tr>
<td>Boards for Lease of State-Owned Lands</td>
<td>3297</td>
</tr>
<tr>
<td>School Land Board</td>
<td>3297</td>
</tr>
<tr>
<td>Texas Veterans Land Board</td>
<td>3297</td>
</tr>
<tr>
<td><strong>Proposed Rule Reviews</strong></td>
<td></td>
</tr>
<tr>
<td>Texas Board of Criminal Justice</td>
<td>3297</td>
</tr>
<tr>
<td><strong>Adopted Rule Reviews</strong></td>
<td></td>
</tr>
<tr>
<td>Texas Board of Veterinary Medical Examiners</td>
<td>3297</td>
</tr>
<tr>
<td><strong>IN ADDITION</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Cancer Prevention and Research Institute of Texas</strong></td>
<td></td>
</tr>
<tr>
<td>Request For Applications R-10-RML-1</td>
<td>3299</td>
</tr>
<tr>
<td><strong>Coastal Coordination Council</strong></td>
<td></td>
</tr>
<tr>
<td>Notice and Opportunity to Comment on Requests for Consistency</td>
<td></td>
</tr>
<tr>
<td>Agreement/Concurrence Under the Texas Coastal Management Program</td>
<td>3299</td>
</tr>
<tr>
<td><strong>Comptroller of Public Accounts</strong></td>
<td></td>
</tr>
<tr>
<td>Notice of Award</td>
<td>3300</td>
</tr>
<tr>
<td>Notice of Contract Award</td>
<td>3300</td>
</tr>
<tr>
<td><strong>Office of Consumer Credit Commissioner</strong></td>
<td></td>
</tr>
<tr>
<td>Notice of Rate Ceilings</td>
<td>3300</td>
</tr>
<tr>
<td><strong>East Texas Council of Governments</strong></td>
<td></td>
</tr>
<tr>
<td>Notice of Request for Proposals</td>
<td>3300</td>
</tr>
<tr>
<td><strong>Texas Commission on Environmental Quality</strong></td>
<td></td>
</tr>
<tr>
<td>Agreed Orders</td>
<td>3301</td>
</tr>
<tr>
<td>Enforcement Orders</td>
<td>3305</td>
</tr>
<tr>
<td>Notice of Opportunity to Comment on Agreed Orders of Administrative</td>
<td></td>
</tr>
<tr>
<td>Enforcement Actions</td>
<td>3309</td>
</tr>
<tr>
<td>Notice of Opportunity to Comment on Default Orders of Administrative</td>
<td></td>
</tr>
<tr>
<td>Enforcement Actions</td>
<td>3310</td>
</tr>
<tr>
<td>Notice of Water Quality Applications</td>
<td>3312</td>
</tr>
<tr>
<td><strong>Texas Ethics Commission</strong></td>
<td></td>
</tr>
<tr>
<td>List of Late Filers</td>
<td>3313</td>
</tr>
<tr>
<td><strong>Office of the Governor</strong></td>
<td></td>
</tr>
<tr>
<td>Correction of Error: Texas Military Defense Preparedness Commission</td>
<td></td>
</tr>
<tr>
<td>Defence Economic Adjustment Assistance Grant Program RFA</td>
<td>3313</td>
</tr>
<tr>
<td>Request for Grant Applications for the Crime Stoppers Assistance Fund</td>
<td></td>
</tr>
<tr>
<td>Program</td>
<td>3314</td>
</tr>
<tr>
<td><strong>Texas Health and Human Services Commission</strong></td>
<td></td>
</tr>
<tr>
<td>Notice of Public Hearing on Proposed Medicaid Payment Rates</td>
<td>3315</td>
</tr>
<tr>
<td>Public Notice</td>
<td>3315</td>
</tr>
<tr>
<td>Public Notice</td>
<td>3316</td>
</tr>
<tr>
<td><strong>Texas Department of Housing and Community Affairs</strong></td>
<td></td>
</tr>
<tr>
<td>Housing Trust Fund Program</td>
<td>3316</td>
</tr>
<tr>
<td><strong>Texas Department of Insurance</strong></td>
<td></td>
</tr>
<tr>
<td>Company Licensing</td>
<td>3317</td>
</tr>
<tr>
<td>Third Party Administrator Applications</td>
<td>3317</td>
</tr>
<tr>
<td><strong>Texas Lottery Commission</strong></td>
<td></td>
</tr>
<tr>
<td>Instant Game Number 1242 &quot;Casino Bingo&quot;</td>
<td>3318</td>
</tr>
<tr>
<td>Instant Game Number 1252 &quot;Cash Vault&quot;</td>
<td>3325</td>
</tr>
<tr>
<td>Instant Game Number 1253 &quot;Spicy Hot 7’s&quot;</td>
<td>3329</td>
</tr>
<tr>
<td>Instant Game Number 1272 &quot;Veterans Cash&quot;</td>
<td>3333</td>
</tr>
<tr>
<td><strong>North Central Texas Council of Governments</strong></td>
<td></td>
</tr>
<tr>
<td>Request for Proposals</td>
<td>3337</td>
</tr>
<tr>
<td><strong>Texas Parks and Wildlife Department</strong></td>
<td></td>
</tr>
<tr>
<td>Notice of Hearing and Opportunity for Comment</td>
<td>3337</td>
</tr>
<tr>
<td>Notice of Proposed Real Estate Transactions</td>
<td>3337</td>
</tr>
<tr>
<td><strong>Public Utility Commission of Texas</strong></td>
<td></td>
</tr>
<tr>
<td>Announcement of Application for Amendment to a State-Issued Certificate</td>
<td>3338</td>
</tr>
<tr>
<td>of Franchise Authority</td>
<td></td>
</tr>
<tr>
<td>Announcement of Application for Amendment to a State-Issued Certificate</td>
<td>3338</td>
</tr>
<tr>
<td>of Franchise Authority</td>
<td></td>
</tr>
<tr>
<td>Announcement of Application for State-Issued Certificate of Franchise</td>
<td>3338</td>
</tr>
<tr>
<td>Authority</td>
<td></td>
</tr>
<tr>
<td>Notice of Application for Retail Electric Provider Certification...</td>
<td>3338</td>
</tr>
<tr>
<td>Public Notice of Workshop</td>
<td>3338</td>
</tr>
<tr>
<td>Public Notice of Workshop on Electric Industry Cyber Security</td>
<td>3339</td>
</tr>
<tr>
<td><strong>South East Texas Regional Planning Commission</strong></td>
<td></td>
</tr>
<tr>
<td>Request for Qualifications</td>
<td>3339</td>
</tr>
<tr>
<td><strong>Texas Department of Transportation</strong></td>
<td></td>
</tr>
<tr>
<td>Notice of Availability - Final Tier One Environmental Impact Statement</td>
<td>3339</td>
</tr>
<tr>
<td>Public Notice of Final Environmental Impact Statement (US 290</td>
<td></td>
</tr>
<tr>
<td>Corridor from FM 2920 to IH 610, Harris County, Texas)</td>
<td>3340</td>
</tr>
<tr>
<td><strong>Stephen F. Austin State University</strong></td>
<td></td>
</tr>
<tr>
<td>Notice of Consultant Contract Availability</td>
<td>3341</td>
</tr>
<tr>
<td><strong>Sul Ross State University</strong></td>
<td></td>
</tr>
<tr>
<td>Request for Proposals</td>
<td>3341</td>
</tr>
</tbody>
</table>

**TABLE OF CONTENTS**  35 TexReg 3136
TABLE OF CONTENTS

Workforce Solutions Capital Area
Request for Proposals ................................................................. 3342

Texas Youth Commission
Request for Proposals ................................................................. 3343
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

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/

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.
Request for Opinion
RQ-0876-GA

Requestor:
The Honorable Paul Johnson
Denton County Criminal District Attorney
Civil Division
Post Office Box 2850
Denton, Texas 76202

Re: Authority of a commissioners court to regulate traffic on roads located in an unincorporated area of the county but within the boundaries of a fresh water supply district (RQ-0876-GA)

Briefs requested by May 10, 2010

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

TRD-201001791
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 14, 2010

Opinions

Opinion No. GA-0766
The Honorable Isidro R. Alaniz
49th Judicial District Attorney
Post Office Box 1343
Laredo, Texas 78042

Re: Whether a city manager of a general-law municipality may simultaneously serve as a member of the board of trustees of an independent school district whose boundaries contain the municipality (RQ-0828-GA)

SUMMARY

The actions of a city manager in a general-law municipality are subject to control by the city council. As a result, the city manager will not be considered to hold an office, and conflicting-loyalties incompatibility will not apply to prevent the city manager from also serving on the board of trustees of a school district whose boundaries contain the city manager’s municipality.

Opinion No. GA-0767
Dr. Carl A. Montoya
Chair, Texas School Safety Center Board
Brownsville Independent School District
1900 Price Road
Brownsville, Texas 78521-2417

Re: Authority of the Board of Directors of the Texas School Safety Center under various provisions of subchapter G, chapter 37, Texas Education Code (RQ-0835-GA)

SUMMARY

The Board of the Texas School Safety Center is authorized to either approve or disapprove a particular budget submitted to it by the Center, as long as it ultimately approves a budget annually as required by the Legislature.

The Board may offer advice to the Center, including advice concerning the organization and design of the Center.

The Board is limited to approving budgets for only those programs that are in furtherance of the Center’s legislatively prescribed purposes and responsibilities and that fall within the Center’s express or necessarily implied powers.

Whether individual members of the Board could be held liable for funds approved for the operation of the Center, and whether the Board itself could be held liable, would depend on factual determinations that cannot be resolved in the opinion process.

Opinion No. GA-0768
Jesse W. Rogers, Ph.D.
President, Midwestern State University
Office of the President
3410 Taft Boulevard
Wichita Falls, Texas 76308

Re: Whether certain endowment funds of a state university may be invested only in investments authorized under the Texas Public Funds Investment Act, chapter 2256, Government Code (RQ-0830-GA)

SUMMARY
A governing board of an institution of higher education, exercising its authority to manage an endowment fund under Education Code section 51.0031(a), is not restricted solely to investments permitted by the Texas Public Funds Investment Act when managing the endowment fund.

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

TRD-201001792
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: April 14, 2010

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

TITLE 19. EDUCATION
PART 2. TEXAS EDUCATION AGENCY
CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER JJ. COMMISSIONER’S RULES
CONCERNING AUTOMATIC COLLEGE ADMISSION
19 TAC §61.1201

The Texas Education Agency is renewing the effectiveness of the emergency adoption of new §61.1201, for a 60-day period. The text of the new section was originally published in the December 25, 2009, issue of the Texas Register (34 TexReg 9275).

Filed with the Office of the Secretary of State on April 6, 2010.
TRD-201001585
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Original Effective Date: December 11, 2009
Expiration Date: June 9, 2010
For further information, please call: (512) 475-1497

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8058

The Texas Health and Human Services Commission (HHSC) proposes to add new §355.8058, concerning Inpatient Direct Graduate Medical Education (GME) Reimbursement. The proposed new rule will supersede the Medicaid GME reimbursement methodology within §355.8063, which is concurrently being repealed, and codify the current Medicaid GME reimbursement for state-owned or state-operated teaching hospitals.

Background and Justification

Proposed new §355.8058 is part of a larger revision to repeal Medicaid inpatient hospital reimbursement language in §355.8063, and replace it with program-specific stand alone rules. This revision includes the proposal of four new rules for language contained in §355.8063 that is not already addressed in other sections of the Texas Administrative Code. The proposed repeal and the four new rules are all published elsewhere in this issue of the Texas Register.

Proposed new §355.8058 describes the reimbursement methodology for Texas Medicaid inpatient direct GME payments. It will supersede the GME methodology within §355.8063. The new rule is proposed to be effective September 1, 2010.

Proposed new §355.8058 will clarify that Medicaid GME payments are only for eligible state-owned or state-operated teaching hospitals. It will also clarify definitions, processes, and timing related to GME reimbursement. The purpose of this proposed new rule is to codify the current reimbursement methodology for state-owned or state-operated teaching hospitals' inpatient direct GME costs for cost-reporting periods beginning with state fiscal year 2009.

The Texas Medicaid reimbursement methodology for state-owned or state-operated teaching hospitals' inpatient direct GME costs is similar to the Medicare reimbursement methodology. The Medicare GME reimbursement methodology, described in 42 C.F.R. §413.76, calculates a teaching hospital's GME payment by multiplying (1) the hospital's base year average per resident amount by (2) the number of current full-time equivalent (FTE) residents by (3) the proportion of the hospital's inpatient days used by Medicare patients (the hospital's Medicare inpatient utilization percentage). However, Texas Medicaid's GME formula differs somewhat from Medicare's GME formula in that it includes the number of nursery days in the calculation of the Medicaid inpatient utilization percentage. The inclusion of nursery days in the Medicaid utilization percentage is a more accurate reflection of actual Medicaid utilization and the most appropriate methodology to compute direct GME costs associated with providing services to Medicaid patients. A hospital's base year average per resident amount was calculated based on its state fiscal year 2007 cost report, which was the most recent audited hospital cost report available.

Section-by-Section Summary

Proposed new §355.8058 introductory paragraph describes the Medicaid inpatient direct GME reimbursement methodology for state-owned or state-operated teaching hospitals.

Proposed new §355.8058(1) clarifies that HHSC may reimburse GME costs for hospital cost reports beginning with state fiscal year 2009 (September 1, 2008).

Proposed new §355.8058(2) describes the reimbursement methodology and the calculation of the GME cost. It also defines the terminology, the applicable cost report sections used to determine the GME cost, the timing of the interim payments, and the reconciliation with final settlement.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed new rule is in effect there will be no fiscal impact to state government as a result of reimbursing state-owned or state-operated teaching hospitals for GME costs. The fiscal impact to state government will be funded through an intergovernmental transfer (IGT) of existing appropriations to the state-owned or state-operated teaching hospitals. The proposed new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposed rule, as they will not be required to alter their business practices as a result of the proposed new rule. There are no anticipated economic costs to persons who are required to comply with the proposed new rule.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed new rule is in
effect, the public will benefit from adoption of the new rule. The anticipated public benefit, as a result of enforcing the proposed new rule, will be to clarify the reimbursement methodology for state-owned or state-operated teaching hospitals for their GME expenses incurred in training interns and resident physicians.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983; or by e-mail to chris.dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

Statutory Authority

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

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

§355.8058. Inpatient Direct Graduate Medical Education (GME) Reimbursement.

Inpatient Direct Graduate Medical Education (GME) cost reimbursement for state-owned or state-operated teaching hospitals.

1. Effective September 1, 2008, the Texas Health and Human Services Commission (HHSC) or its designee may reimburse a state-owned or state-operated teaching hospital with an approved medical residency program the hospital's inpatient direct GME cost for hospital cost reports beginning with state fiscal year 2009.

2. Reimbursement of inpatient direct GME cost:

(A) Inpatient direct GME cost as specified under methods and procedures set out in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248 are calculated under similar methods for each hospital having inpatient direct GME costs on its tentative or final audited cost report.

(B) GME definitions.

(i) Base year average per resident amount--the Medicaid allowable inpatient direct GME cost as reported on CMS Form 2552, Hospital Cost Report ending in state fiscal year 2007; Worksheet B; Part 1; Column 26; Line 95 divided by the un-weighted FTE residents from Worksheet S-3; Part 1; Line 25.

(ii) Current FTE residents—the number of FTE interns, residents, or fellows who participate in a program that is determined by HHSC to be a properly approved medical residency program including a program in osteopathy, dentistry, or podiatry, as required in order to become certified by the appropriate specialty board, as reported on CMS Form 2552, Hospital Cost Report; Worksheet S-3; Part 1; Line 12; Column 5 divided by the hospital’s total inpatient days, as reported on Worksheet S-3; Part 1; Column 6, Lines 12, 14 (subprovider days), and 26 (observation days). Medicaid inpatient days and total inpatient days will include inpatient nursery days.

(C) HHSC calculates the total GME payments for each hospital as follows:

(i) multiplies the base year average per resident amount by the applicable Centers for Medicare and Medicaid Services (CMS) Prospective Payment System Hospital Market Basket index;

(ii) multiplies the results in clause (i) of this subparagraph by the number of current full-time equivalent (FTE) residents; and

(iii) multiplies the results in clause (ii) of this subparagraph by the GME Medicaid inpatient utilization percentage, which results in the total GME payments.

(D) Inpatient direct GME costs are removed from the reimbursement methodology and not used in the calculation of the provider’s inpatient cost settlement.

(E) The GME interim payments will be reimbursed on a quarterly basis only after hospital services have been rendered. The interim payments are payable within 90 days of the receipt of the hospital’s quarterly resident FTE data. Each hospital’s quarterly resident FTE data will be divided by 4 to determine the average resident FTEs for each quarter. The interim payments will be reconciled and settled based on audited final cost report data.

(F) To receive GME payments from HHSC, a state-owned or state-operated teaching hospital must be enrolled as a Medicaid provider with HHSC and provide intergovernmental transfers to HHSC to fund the state portion of reimbursement for GME costs.

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 April 12, 2010.
TRD-201001753
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 424-6900

1 TAC §355.8060
The Texas Health and Human Services Commission (HHSC) proposes to add new §355.8060, concerning Reimbursement Methodology for Freestanding Psychiatric Facilities. The new rule will move the freestanding psychiatric facility reimbursement methodology language currently in subsections (v) and (w) of §355.8063 to new §355.8060. Concurrently, HHSC is repealing §355.8063 in its entirety. The repeal of §355.8063 appears elsewhere in this issue of the Texas Register.

Background and Justification

This new rule will preserve the language now in §355.8063(v) and (w). The repeal of §355.8063 appears elsewhere in this issue of the Texas Register. The purpose of this rulemaking action is to separate the Medicaid reimbursement methodology for freestanding psychiatric facilities into a stand-alone rule to clarify definitions, processes, and timing related to freestanding psychiatric facility reimbursement. The new rule will retain the existing language from §355.8063(v) and (w), with minor, nonsubstantive changes for readability. These changes include a clarification of the terms "facility" and "hospital." "Facility" is used when describing the Medicare prospective payment methodology. "Hospital" is used only when describing a freestanding psychiatric facility that is requesting designation as a children's hospital and, therefore, exemption from the prospective payment methodology. The new rule will become effective for claims approved for payment for admissions in state fiscal year 2010. The requirements in §355.8063(v) and (w) will continue to apply to claims approved for payment through state fiscal year 2009.

Section-by-Section Summary

Proposed new subsection (a) provides a general overview of the rule.

Proposed new subsection (b) describes the Medicaid reimbursement methodology for freestanding psychiatric facilities, which use a prospective facility-specific per diem rate.

Proposed new subsection (c) describes the Medicaid reimbursement methodology for freestanding psychiatric facilities that primarily serve clients under the age of 21. Proposed new §355.8060(c)(1) describes how such a freestanding psychiatric facility may be considered for reimbursement as a children's hospital. The provider must submit data from two hospital fiscal years that show that at least 95 percent of the hospital's total inpatient days were paid as services to individuals under the age of 21. Proposed new §355.8060(c)(2) requires each freestanding psychiatric hospital that is reimbursed as a children's hospital to annually submit documentation showing that it continues to meet the 95 percent threshold.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed new rule is in effect there will be no fiscal impact to state government. The proposed new rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

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

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed new rule is in effect, the public will benefit from adoption of the new rule. The anticipated public benefit, as a result of the new rule, will be to provide a separate rule allowing the Medicaid reimbursement methodology for freestanding psychiatric facilities to be more easily understood.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Andrew Wolfe, Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail to: andrew.wolfe@mailto:hhsc.state.tx.us.

Statutory Authority

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

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

§355.8060 Reimbursement Methodology for Freestanding Psychiatric Facilities.

(a) Introduction. The Medicaid reimbursement methodology for freestanding psychiatric facilities is set on a per diem rate. The Texas Health and Human Services Commission (HHSC) will establish each facility’s eligibility for and amount of reimbursement. This section applies to all freestanding psychiatric facilities.

(b) Reimbursement to freestanding psychiatric facilities. Effective January 1, 2008, HHSC or its designee reimburses freestanding psychiatric facilities, under the prospective payment system, a facility-specific per diem rate. The per diem rate will be determined based on the Medicare base per diem for inpatient psychiatric facilities with facility-based adjustments for wages, rural location, and length of stay as determined by Medicare, to the extent possible within available funds. HHSC or its designee will not cost settle for services provided
to recipients admitted as inpatients to freestanding psychiatric facilities reimbursed under the prospective payment system or after the implementation date of the prospective payment system. The freestanding psychiatric facility inpatient per diem rates are for Medicaid clients under the age of 21. Per diem rates will be increased only if the Texas Legislature appropriates funds for this specific purpose.

(c) Reimbursement to children’s freestanding psychiatric facilities. On or after September 1, 2008, an in-state freestanding psychiatric facility that serves primarily individuals under the age of 21 will be exempt from the freestanding psychiatric facility prospective payment system methodology described in subsection (b) of this section and instead be reimbursed as an in-state children’s hospital as described in §355.8054 of this title (relating to Children’s Hospital Reimbursement Methodology), if the facility meets the following requirements:

(1) After a Medicaid participating freestanding psychiatric facility is recognized by Medicare as a freestanding psychiatric facility, it must request of HHSC or its designee that the facility be reimbursed as a children’s hospital. The hospital must submit its request on or after September 1, 2008, in writing, to HHSC or its designee’s provider enrollment contact and include documentation showing that during the previous two hospital fiscal years, at least 95 percent of the hospital’s total inpatient days were for services to individuals under the age of 21. HHSC will cost settle the annual cost report for the hospital fiscal year in which the request was submitted.

(2) After a freestanding psychiatric facility has been recognized by HHSC as a children’s hospital, it must annually submit documentation with its annual cost report to HHSC’s Medicaid Audit Division for continued recognition as a children’s hospital. The documentation must show that at least 95 percent of its total inpatient days were for services to individuals under the age of 21. A hospital that does not meet this 95 percent threshold based on its annual cost report will be reimbursed based on the prospective facility-specific per diem rate described in subsection (b) of this section, effective the first day of the hospital fiscal year following the cost reporting period in which the hospital did not meet the 95 percent threshold.

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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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

1 TAC §355.8061
The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8061, concerning Medicaid Payment for Hospital Services. The proposed amendment removes references to §355.8063, Reimbursement Methodology for Inpatient Hospital Services, and references to outpatient supplemental payments.

Background and Justification
The proposed amendment is part of a larger revision to repeal language in §355.8063 and replace it with program-specific, stand-alone Medicaid hospital reimbursement rules. The amendments will make it easier for providers to find the reimbursement methodology that governs specific programs. The proposed repeal of §355.8063 and several related proposed new rules are published elsewhere in this issue of the Texas Register.

Section-by-Section Summary
Proposed §355.8061(a)(1) deletes the reference to repealed §355.8063.
Proposed §355.8061(a)(2) adds the phrase “as those” to clarify the reference to procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982 through July 31, 2000, by Public Law 97-248, except as may be otherwise specified by HHSC.

The proposed deletion of §355.8061(a)(4) and (5) removes reference to the Medicaid outpatient hospital supplemental upper payment limit (UPL) methodology that is being or has been moved to other UPL rules. The specific rules include the following: §355.8069, Supplemental Payments to Certain Rural Public Hospitals; §355.8070, Supplemental Payments to Private Hospitals; and §355.8072, Supplemental Payments to State-Owned Hospitals.

The proposed deletion of §355.8061(b) removes a reference to an obsolete Code of Federal Regulations cite and the corresponding rule language.

Additional changes are made to reformat the rule.

Fiscal Note
Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the five-year period the proposed rule is in effect there will be no fiscal impact to state government as a result of amending the rule. The proposed amendment will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis
Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule.

Public Benefit
Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from adoption of the amendment. The anticipated public benefit, as a result of enforcing the amended rule, will be to clarify the Medicaid reimbursement methodology for inpatient hospital services and outpatient supplemental payments and to make it easier for providers to locate the reimbursement methodology rules for specific programs.

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

**Takeings Impact Assessment**

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

**Public Comment**

Written comments on the proposal may be submitted to Chris Dockal, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983; or by e-mail to: chris.dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

**Statutory Authority**

The amendment is proposed under Texas Government Code §351.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §931.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

§355.8061. Payment for Hospital Services.

(a) The Health and Human Services Commission (HHSC) or its designated agent shall reimburse hospitals approved for participation in the Texas Medical Assistance Program for covered Title XIX hospital services provided to eligible Medicaid recipients. The Texas Title XIX State Plan for Medical Assistance provides for reimbursement of covered hospital services to be determined as specified in paragraphs (1) - (3) [¶(4)] of this subsection.

(1) The amount payable for inpatient hospital services shall be determined as specified in §355.8052 of this title (relating to Inpatient Hospital Reimbursement Methodology); §355.8054 of this title (relating to Children’s Hospital Reimbursement Methodology); and §355.8056 of this title (relating to State-Owned Teaching Hospital Reimbursement Methodology) [and §355.8063 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services)].

(2) The amount payable for outpatient hospital services shall be determined under similar methods and procedures as those used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982 through July 31, 2000, by Public Law 97-248, except as may be otherwise specified by HHSC. For the period of September 1, 1999 through and including September 30, 2001, payments to all providers were at 80.3% of allowed costs. For the period beginning October 1, 2001, Medicaid reimbursement for outpatient hospital services for high-volume providers, as defined by the commission, shall be at 84.48% of allowable cost. For the remaining providers, reimbursement for outpatient hospital services shall be at 80.3% of allowable cost. For the purpose of establishing the proposed discount factor, a high-volume provider is defined as one, which is paid at least $200,000 during calendar year 2004. Any subsequent changes to the discount will require HHSC to hold a public hearing on proposed reimbursements before HHSC approves any changes. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed reimbursements. Notice of the hearing will be provided to the public. The notice of the public hearing will identify the name, address, and telephone number to contact for the materials pertinent to the proposed reimbursements. At least ten working days before the public hearing takes place, material pertinent to the proposed change will be made available to the public. This material will be furnished to anyone who requests it. After the public hearing, if negative comments are received, a summary of the comments made during the public hearing will be presented to HHSC. Reimbursement for outpatient hospital surgery is limited to the lesser of the amount reimbursed to ambulatory surgical centers (ASCs) for similar services, the hospital’s actual charge, the hospital’s customary charge, or the allowable cost determined by the commission or its designee.

(3) Variances shall be accounted for in the Texas State Plan for Medical Assistance or as otherwise specified by the commission.

[¶(4)] Except as otherwise provided in this chapter and subject to the availability of funds, supplemental payments will be made each state fiscal year in accordance with this paragraph to eligible hospitals that serve high volumes of Medicaid and uninsured patients.

([A]) Effective September 1, 2009, supplemental payments to certain eligible publicly-owned or affiliated urban hospitals are determined and paid in accordance with §355.8068 of this title (relating to Supplemental Payments to Certain Urban Hospitals).

([B]) Notwithstanding the provisions of subparagraph ([A]) of this paragraph, all hospitals that are eligible to receive funding under §355.8063[i](2) of this title shall also be eligible to receive funding under this paragraph. Supplemental payments will be made for outpatient services on or after June 21, 2005, for hospitals in Hidalgo, Maverick, Montgomery, Travis, Bexar, and Webb counties. Supplemental payments will be made for outpatient services on or after November 12, 2005, for eligible hospitals in all other counties in the State of Texas.

([C]) Notwithstanding the provisions of subparagraphs ([A]) and ([B]) of this paragraph, all hospitals that are eligible to receive funding under §355.8069 of this title (relating to Supplemental Payments to Certain Rural Public Hospitals) shall also be eligible to receive funding under this paragraph. Supplemental payments are available under this section for outpatient hospital services provided by certain rural public hospitals on or after September 1, 2007.

([D]) State funding for supplemental payments authorized under this paragraph will be limited to and obtained through intergovernmental transfers of local or hospital district funds. State funding for supplemental payments authorized under subparagraph ([B]) of this paragraph will be limited to and obtained through intergovernmental transfers of local governmental entity or hospital district funds or transfers of State General Revenue. The supplemental payments described in this subsection will be made in accordance with the applicable regulations regarding the Medicaid upper payment limit provisions codified at 42 CFR §147.321.

([E]) An eligible hospital will receive quarterly supplemental payments. The quarterly payments will be limited to one-fourth of the difference between the hospital’s Medicaid fee-for-service outpatient Medicaid payments received and 100% of Medicaid allowable outpatient hospital cost. Medicaid payments and cost will be based on a twelve consecutive month period of fee-for-service claims data selected by HHSC.

([F]) For purposes of calculating the “hospital specific limit” under this paragraph, the “cost of services to uninsured patients” and “Medicaid shortfall,” as defined by §355.8065(b)(5) and (16) of this title, will be adjusted as follows:
The amount of Medicaid payments (including inpatient and outpatient supplemental payments) that exceed Medicaid cost will be subtracted from the "Medicaid Shortfall."]

The amount of the "Medicaid shortfall," as adjusted in accordance with clause (i) of this subparagraph, will be subtracted from the "Cost of Services to uninsured patients" to ensure that, during any state fiscal year, a hospital does not receive more in total Medicaid payments (inpatient and outpatient payments, graduate medical education payments, supplemental payments and disproportionate share hospital payments) than its cost of serving Medicaid patients and patients without health insurance.

Notwithstanding other provisions of this section, supplemental payments will be made each state fiscal year in accordance with this subsection to state government-owned or operated hospitals for outpatient services provided to Medicaid patients.

Supplemental payments are available under this subsection for outpatient hospital services provided by state government-owned or operated hospitals on or after December 12, 2003. To qualify for a supplemental payment, the hospital must be owned or operated by the state of Texas.

The aggregate supplemental payment amount will be the annual difference between the aggregate upper payment limit and the outpatient fee-for-service Medicaid payments made to the state government-owned or operated hospitals under this section. The aggregate upper payment limit will be calculated, based on Medicare payment principles and in accordance with the federal upper limit regulations at 42 CFR §447.321, using the most recent cost report data available.

The amount of the supplemental payment made to each state government-owned or operated hospital will be determined by:

(i) dividing each hospital's fee-for-service Medicaid payments by the sum of the Medicaid fee-for-service payments of all state government-owned or operated hospitals; and

(ii) multiplying the percentage calculated in clause (i) of this subparagraph by the aggregate supplemental payment calculated in subparagraph (B) of this paragraph.

Supplemental payments determined under this subsection will be calculated annually and paid quarterly.

Supplemental payments made under this subsection when combined with other outpatient payments made under this section shall not exceed the maximum amounts allowable under applicable federal regulations at 42 CFR §447.325.

Title XIX providers may not carry forward those unrebursed costs attributed to either the lower costs or charge limitations authorized by 42 CFR §§405.455 et seq., effective for all accounting periods beginning on or after January 1, 1982.

The direct and indirect costs of caring for charity patients shall have no relationship to eligible recipients of the Texas Medical Assistance program and are not allowable costs under the Texas Title XIX Medical Assistance program. Obligations by hospitals to provide free care, under the Hill-Burton Act or any other arrangement as a condition to secure federal grants or loans, are not recognized as a cost under the Texas Medical Assistance program.

The contents of subsections (a) and (b) - (e) of this section do not describe the amount, duration, or scope of services provided to eligible recipients under the Texas Medical Assistance Program.

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

Filed with the Office of the Secretary of State on April 12, 2010.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900

1 TAC §355.8063

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

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.8063, concerning Reimbursement Methodology for Inpatient Hospital Services.

Background and Justification

The proposed repeal of §355.8063 is part of a larger revision to Medicaid inpatient hospital reimbursement rules that began with three new rules to govern Medicaid inpatient hospital reimbursement: §355.8052, Inpatient Hospital Reimbursement Methodology; §355.8054, Children’s Hospital Reimbursement Methodology; and §355.8056, State-Owned Teaching Hospital Reimbursement Methodology. The language for each of these three programs was moved to stand alone, program specific rules in 2008 to make it easier for providers to find and understand the reimbursement methodology for each program. The three rules specified above superseded §355.8063 for claims approved for payment for admissions beginning in state fiscal year 2009.

In addition to the three rules mentioned above and concurrent with the repeal of §355.8063, HHSC is proposing four new rules to govern Medicaid inpatient hospital reimbursement: §355.8058, Inpatient Direct Graduate Medical Education (GME) Reimbursement; §355.8060, Reimbursement Methodology for Freestanding Psychiatric Facilities; §355.8072, Supplemental Payments to State-Owned Hospitals; and §355.8070, Supplemental Payments to Private Hospitals. These new rules will replace the corresponding subsections in §355.8063 for payments beginning in state fiscal year 2011. The requirements in §355.8063 for these programs will continue to apply to claims approved for payment through state fiscal year 2010.

Section-by-Section Summary

HHSC proposes to repeal §355.8063(a) - (n) and (p) - (q) related to inpatient hospital reimbursement. These subsections were superseded with the adoption of §355.8052, and §355.8056 for state-owned teaching hospitals, beginning in state fiscal year 2009.

HHSC proposes to repeal §355.8063(o) and (r) related to children's hospital reimbursement. These subsections were superseded with the adoption of §355.8054 beginning in state fiscal year 2009.

HHSC proposes to repeal §355.8063(s) related to inpatient direct GME cost. The reimbursement methodology from this sub-
section will be superseded by proposed new §355.8058, Inpatient Direct Graduate Medical Education (GME) Reimbursement, effective September 1, 2010.

HHSC proposes to repeal §355.8063(t) and (u) related to non-state-owned hospital supplemental inpatient payments and state-owned hospital supplemental inpatient payments. The reimbursement methodologies from these subsections will be superseded effective September 1, 2010, by proposed new §355.8072, Supplemental Payments to State-Owned Hospitals; and §355.8070, Supplemental Payments to Private Hospitals.

HHSC proposes to repeal §355.8063(v) and (w) related to the reimbursement of freestanding psychiatric facilities. The reimbursement methodology contained in these subsections will be superseded effective September 1, 2010, by proposed new §355.8060, Reimbursement Methodology for Freestanding Psychiatric Facilities.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the five-year period following the repeal of the rule there will be no fiscal impact to state government as a result of repealing this rule. The repealed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the repealed rule.

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that the public will benefit from the repeal of the rule. The anticipated public benefit, as a result of the repeal of §355.8063 and movement of the existing language to stand alone reimbursement rules, will be an easier way for providers to find the Medicaid reimbursement methodologies that govern specific hospital programs.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "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.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Chris Dockal, Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail to: chris.dockal@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

Statutory Authority

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

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

§355.8063  Reimbursement Methodology for Inpatient Services.

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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TRD-201001756

Steve Aragon
Chief Counsel
Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900

1 TAC §355.8069

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8069, concerning Supplemental Payments to Certain Rural Public Hospitals.

Background and Justification

The amendment will consolidate in §355.8069 the Medicaid inpatient Upper Payment Limit (UPL) methodology for certain rural public hospitals currently in §355.8069 and the outpatient UPL methodology for certain rural public hospitals currently in §355.8061(a)(4)(C). A concurrent amendment to §355.8061 is proposed elsewhere in this issue of the Texas Register to remove the language regarding the outpatient UPL methodology for certain rural public hospitals.

HHSC is rewriting the language of this rule to add language that will require each governmental entity or group of entities that owns a rural public hospital that is participating in this program to provide the intergovernmental transfer (IGT) for its specific UPL payment; change the calculation period from a state fiscal year to a federal fiscal year and use adjudicated claims to compute supplemental payments; provide for a fourth-quarter payment reconciliation; and detail the process by which HHSC will recover an overpayment. The new language in the rule allows stakeholders to find all the information about this UPL program in one administrative rule and is written in a format that is easier to understand.

Section-by-Section Summary

Proposed subsection (a) is an introduction describing the rule.
Proposed subsection (b) sets forth the definitions applicable to §354.0269. This section was expanded to add new terms to the rule.

The language in subsection (b)(1) defines "adjudicated claim" as "(a) claim for a covered Medicaid service that is paid or adjusted by HHSC." HHSC intends for the act of adjusting a claim to include a reduction in billed charges to reflect any reduction in payments that is made by HHSC related to a preventable adverse event or other similar circumstances defined in proposed new §354.1070, which HHSC is developing concurrently with this rule amendment. Any such adjustment to a claim may be made by HHSC's designee before adjudicated claim data is transmitted to HHSC Rate Analysis for use in calculating supplemental payments, or by HHSC Rate Analysis staff after receiving the adjudicated claim data. This will be consistent with Senate Bill 203, 81st Legislature, Regular Session, 2009, which directs HHSC to reduce or deny Medicaid payment for preventable adverse events.

The language in subsection (b)(3) defines "charge room" as the difference between billed charges for adjudicated claims and payments for those claims, and states that billed charges will be reduced to reflect reductions in payments for preventable adverse events and other circumstances outlined in proposed new §354.1070. This will be consistent with Senate Bill 203, 81st Legislature, Regular Session, 2009, which directs HHSC to reduce or deny Medicaid payment for preventable adverse events.

Proposed subsection (c) describes which hospitals are eligible for this supplemental payment program.

Proposed subsection (d) explains the source of funding for this program. This subsection describes that the governmental entity or entities that own the rural public hospital are required to provide the IGTs for the supplemental payments.

Proposed subsection (e) states that supplemental payments will be subject to federal aggregate Medicaid supplemental payment limits.

Proposed subsection (f) describes the methodology for calculating supplemental payment limits for inpatient services.

Proposed subsection (g) describes the methodology for calculating supplemental payment limits for outpatient services.

Proposed subsection (h) describes the payment frequency HHSC will follow when making supplemental payments.

Proposed subsection (i) describes the supplemental payment methodology for inpatient and outpatient services.

Proposed subsection (j) describes the process of recoupment of funds in the event of an overpayment or disallowance.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule amendment is in effect there will be a fiscal impact to state government of $7,904,479 all funds each year for state fiscal year (FY) 2011 through FY 2015. This increase is due to adding the provision in the rule that will allow all eligible hospitals to provide the non-federal share of their UPL payments instead of the current practice of a smaller subset of hospitals providing the funds for all eligible hospitals. There will be a fiscal impact to local governments because the non-federal share of the estimated costs above will be provided through IGTs from the public entities that own the rural public hospitals eligible for this UPL program. The amount of fiscal impact to local government entities is inestimable because participation is voluntary. Additionally, there is a potential impact on individual hospitals or the local government entities that own them of reducing the billed charges related to preventable adverse events when calculating the charge room, which cannot be precisely determined, but will be very small.

Small and Micro-business Impact Analysis

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

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule amendment is in effect, the public will benefit from the adoption of the amendment. The anticipated public benefit, as a result of enforcing the amendment, will be to clarify the payment methodology for the distribution of Medicaid supplemental payment funds to certain rural public hospitals. The anticipated public benefit of adjusting claims by reducing the billed charges proportionate to reductions in payment for preventable adverse events prior to the calculation of supplemental payments is that the payment reductions imposed by the Medicaid/CHIP Division for preventable adverse events will not be repaid to the hospital through the supplemental payment program.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Jill Seime, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail to: jill.seime@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

Statutory Authority

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

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

§355.8069. Supplemental Payments to Certain Rural Public Hospitals.

(a) Introduction. Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments are available under this section for inpatient and outpatient hospital services provided by eligible rural public hospitals.

(b) Definitions. When used in this section, the following definitions apply:

(1) Adjudicated Claim--A claim for a covered Medicaid service that is paid or adjusted by HHSC.

(2) Calculation Period--The federal fiscal quarter determined by HHSC for which supplemental payment amounts are calculated based on adjudicated claims processed in that quarter.

(3) Charge Room--The difference between a hospital’s fee-for-service billed charges for adjudicated inpatient Medicaid claims and all Medicaid and other payments received during the calculation period for such claims. Billed charges will be reduced to reflect reductions in payments for preventable adverse events and other circumstances defined in §354.1070 of this title (relating to Definitions).

(4) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medical Assistance (Medicaid) program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(5) DSH Room--The difference between a hospital’s DSH limit and the total Medicaid DSH payments to the hospital for the federal fiscal year. The term "DSH limit" has the meaning assigned to the term "hospital specific limit" in §355.8065 of this division (relating to Disproportionate Share Hospital (DSH) Reimbursement Methodology).

(6) Governmental Entity--A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) Intergovernmental Transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(9) Medicaid Allowable Outpatient Hospital Costs--Costs remaining when total billed outpatient hospital charges are reduced by a hospital outpatient reduction factor in accordance with §355.8061(a)(2) of this division (relating to Payment for Hospital Services).

(10) Public Funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of a governmental entity. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds, such as the private operator of a hospital district’s facility.

(11) Publicly Owned Hospital--A hospital owned by a city, county, hospital authority, or hospital district. A hospital that is privately owned and privately operated does not constitute a publicly owned hospital.

(12) Rural Public Hospital--A publicly owned hospital located in a county of less than 100,000 population based on the most recent federal decennial census completed prior to the beginning of the current calculation period for which supplemental payments are being made.

(c) Eligible hospitals.

(1) Supplemental payments are available under this section for all rural public hospitals.

(2) A hospital that is participating in another hospital supplemental payment program described in Division 4 of this subchapter is ineligible to receive supplemental payments under this section. The DSH and Graduate Medical Education programs are not considered supplemental payment programs for purposes of this paragraph.

(3) A hospital participating in this supplemental payment program must notify the HHSC Rate Analysis Department of changes in ownership or operation that may affect the hospital’s continued eligibility, such as the sale of the hospital to a private entity, within 30 days of such change.

(d) Source of funding.

(1) State funding for supplemental payments authorized under this section is limited to and obtained through intergovernmental transfers of public funds.

(2) An intergovernmental transfer that is not received by the date specified by HHSC may not be accepted.

(e) Aggregate Medicaid supplemental payment limits.

(1) Inpatient supplemental payments authorized under this section are made in accordance with the Medicaid upper payment limit provisions codified at Title 42 Code of Federal Regulations (CFR) §447.271 and §447.272.

(2) Outpatient supplemental payments authorized under this section are made in accordance with the Medicaid upper payment limit provisions codified at 42 CFR §447.321.

(f) Hospital-specific inpatient payment limit.

(1) For a Disproportionate Share Hospital, the payment limit will be the lesser of:

(A) One fourth of the DSH room; or

(B) The charge room for the calculation period.

(2) For a non-Disproportionate Share Hospital, the payment limit will be the charge room for the calculation period.

(g) Hospital-specific outpatient payment limit.

(1) For a Disproportionate Share Hospital, the payment limit will be the lesser of:

(A) The difference between the hospital’s DSH room and any inpatient supplemental payments made to the hospital for the calculation period; or

(B) The difference between 100% of Medicaid allowable outpatient hospital costs and Medicaid fee-for-service outpatient payments received for claims adjudicated in the calculation period.

(2) For a non-Disproportionate Share Hospital, the payment limit will be the difference between 100% of Medicaid allowable outpatient hospital costs and Medicaid fee-for-service outpatient payments received for claims adjudicated in the calculation period.

(h) Payment frequency. HHSC will distribute supplemental payments to participating rural public hospitals on a quarterly basis subsequent to the calculation period.

PROPOSED RULES  April 23, 2010  35 TexReg 3151
(i) Supplemental payment methodology.

(1) HHSC will give notice of the inpatient and outpatient payment limits determined in subsections (f) and (g) of this section, the maximum IGT amount that can be provided for each hospital, and the deadline for completing the transfer.

(2) The amount of the payment to the hospital will be calculated in proportion to the amount transferred by the governmental entity or entities.

(A) If a governmental entity transfers the maximum IGT described in paragraph (1) of this subsection, the hospital will receive the payment limit amounts calculated in subsections (f) and (g) of this section.

(B) If a governmental entity transfers less than the maximum IGT described in paragraph (1) of this subsection, the hospital will receive a payment that is proportionate to the percentage of the maximum IGT that was actually transferred. The payment will be allocated proportionately between the inpatient and outpatient payment limits determined in subsections (f) and (g) of this section.

(3) Fourth quarter reconciliation. A governmental entity that did not transfer the maximum IGT described in paragraph (1) of this subsection in one or more of the first three quarters in a federal fiscal year will be allowed to fund the remaining payment limit during the fourth quarter of that fiscal year, subject to the following:

(A) HHSC must determine that there is sufficient room available for funding under the applicable aggregate upper payment limit for non-state public hospitals.

(B) HHSC will give notice of the remaining payment limits and the maximum IGT that can be provided for each hospital. Such notice will also contain instructions and deadlines for governmental entities to notify HHSC of the fourth-quarter transfer amount.

(C) Following the deadline for notification described in subparagraph (B) of this paragraph, if HHSC determines that the funding will exceed the applicable aggregate upper payment limit for non-state public hospitals, HHSC will reduce the amount of the transfer for the fourth-quarter payment under this clause proportionately for each participating hospital in an amount sufficient to ensure compliance with the applicable aggregate upper payment limit.

(D) If the fourth-quarter supplemental payment calculation results in overpayment to a hospital for the fiscal year, HHSC will initiate the process described in subsection (j) of this section to recover the amount of the overpayment.

(j) Recoupment.

(1) If payments under this section result in overpayment to a hospital, or in the event of a disallowance by the federal Centers for Medicare and Medicaid Services (CMS) of federal financial participation related to a hospital’s receipt and/or use of supplemental payments authorized under this section, HHSC may recoup an amount equivalent to the amount of supplemental payments overpaid or disallowed. The non-federal share of any funds recouped from a hospital will be returned to the governmental entity that provided the IGT.

(2) Supplemental payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments under §371.1703 of this title (relating to Recovery of Overpayments), 42 CFR Part 455, and Chapter 403, Texas Government Code. HHSC may recoup an amount equivalent to any such adjustment.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital to which an overpayment was made or against which any disallowance was directed.

(B) If, within 30 days of the hospital’s receipt of HHSC’s written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may withhold any or all Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed.

[Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments are available under this section for inpatient hospital services provided by certain rural public hospitals.]

[(1) For purposes of this section, “rural public hospital” means a public hospital affiliated with a city, county, hospital authority, or hospital district located in a county of less than 100,000 population based on the most recent federal decennial census.]

[(2) State funding for supplemental payments authorized under this section is limited to and obtained through intergovernmental transfers of city, county, hospital authority, or hospital district funds. Inpatient supplemental payments described in this section are made in accordance with the applicable regulations regarding the Medicaid upper limit provisions codified at 42 C.F.R. §447.272.]}

[(3) The amount of supplemental payments and fee-for-service Medicaid inpatient payments (including DRG and TEEA inpatient cost settlements) the hospital receives in a state fiscal year may not exceed Medicaid inpatient billed charges for inpatient services provided by the hospital to fee-for-service Medicaid recipients in accordance with 42 C.F.R. §447.271.]}

[(4) Supplemental payments are made to two groups of rural public hospitals:]

[(A) Rural public hospitals that have a deficit between fee-for-service Medicaid billed charges and fee-for-service Medicaid payments (including supplemental payments) which is greater than 0.5 percent of the total deficit between fee-for-service Medicaid billed charges and fee-for-service Medicaid payments (including supplemental payments) for all rural public hospitals. Medicaid billed charges and payments are based on a 12-consecutive-month period of fee-for-service claims data selected by HHSC.]

[(B) All other rural public hospitals that have a deficit between fee-for-service Medicaid billed charges and fee-for-service Medicaid payments (including supplemental payments). Medicaid billed charges and payments are based on a 12-consecutive-month period of fee-for-service claims data selected by HHSC.]}

[(5) Supplemental payments are made quarterly to eligible rural public hospitals:]

[(A) For hospitals eligible for payments according to paragraph (4)(A) of this section, the amount of the quarterly supplemental payments is one-fourth of]

[(i) The amount determined by multiplying the current state fiscal year Federal Medical Assistance Percentage (FMAP) by the deficit between fee-for-service Medicaid billed charges and fee-for-service Medicaid payments (including supplemental payments); and]

[(ii) The hospital’s proportionate share of the amount available to be distributed after subtracting payments to hospitals according to clause (i) of this subparagraph.]}
(A)(3) For hospitals eligible for payments according to paragraph (A)(3) of this section, the amount of the quarterly supplemental payments is one-fourth of the hospital's pro rata share of the amount available to be distributed after subtracting payments to hospitals according to subparagraph (A)(I) of this paragraph.

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 April 12, 2010.

TRD-201001757
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 424-6900

1 TAC §355.8070

The Texas Health and Human Services Commission (HHSC) proposes to add new §355.8070, concerning Supplemental Payments to Private Hospitals, to consolidate and update the Medicaid inpatient and outpatient supplemental payment methodology language contained in §355.8061, Payment for Hospital Services, and §355.8063, Reimbursement Methodology for Inpatient Hospital Services, into one new rule. Concurrently in this issue of the Texas Register, HHSC proposes to amend §355.8061 and §355.8063 to remove the language regarding inpatient and outpatient supplemental payment methodologies for private hospitals that is being included in new §355.8070.

Background and Justification

HHSC is combining the Medicaid inpatient and outpatient hospital supplemental payment methodologies from existing rules into one new comprehensive rule that will fully describe Medicaid supplemental payments made to eligible private hospitals.

HHSC is updating the language in the new rule to better explain the complex processes used in private hospital supplemental payments (also known as Upper Payment Limit or UPL payments). The new rule reflects the existing UPL payment methodology for private hospitals that is included in Texas’ approved Medicaid state plan.

Section-by-Section Summary

The language in subsection (a) provides an introduction to this rule.

The language in subsection (b) provides a list of definitions that relate to the administration of this supplemental payment program.

The language in subsection (b)(1) defines "adjudicated claim" as "(a) claim for a covered Medicaid service that is paid or adjusted by HHSC." HHSC intends for the act of adjusting a claim to include a reduction in billed charges to reflect any reduction in payments that is made by HHSC related to a preventable adverse event or other similar circumstances defined in proposed new §354.1070, which HHSC is developing concurrently with this new rule. Any such adjustment to a claim may be made by HHSC’s designee before adjudicated claim data is transmitted to HHSC Rate Analysis for use in calculating supplemental payments, or by HHSC Rate Analysis staff after receiving the adjudicated claim data. This will be consistent with Senate Bill 203, 81st Legislature, Regular Session, 2009, which directs HHSC to reduce or deny Medicaid payment for preventable adverse events.

The language in subsection (b)(3) defines "charge room" as the difference between billed charges for adjudicated claims and payments for those claims, and states that billed charges will be reduced to reflect reductions in payments for preventable adverse events and other circumstances outlined in proposed new §354.1070. This will be consistent with Senate Bill 203, 81st Legislature, Regular Session, 2009, which directs HHSC to reduce or deny Medicaid payment for preventable adverse events.

The language in subsection (c) describes the types of private hospitals eligible for this supplemental payment program.

The language in subsection (d) lists the required documentation and describes the documentation submission requirements for eligible hospitals.

The language in subsection (e) describes the source of funding requirements for this supplemental payment program.

The language in subsection (f) describes the frequency with which HHSC will make payments to eligible private hospitals.

The language in subsection (g) describes the aggregate Medicaid upper payment limits statutes that apply to this supplemental payment program.

The language in subsection (h) describes the methodology for calculating supplemental payment limits for inpatient services.

The language in subsection (i) describes the methodology for calculating supplemental payment limits for outpatient services.

The language in subsection (j) describes the payment methodology, including the allocation of intergovernmental transfers and a provision to allow for a fourth-quarter payment reconciliation.

The language in subsection (k) describes the process HHSC will use to recoup funds due to an overpayment or a disallowance by the Centers for Medicare and Medicaid Services.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be no fiscal impact to state or local government as a result of proposing this new rule. The administration and cost of the private hospital UPL program will not change as a result of combining and updating language in this new rule. The potential impact on individual hospitals of reducing the billed charges related to preventable adverse events when calculating the charge room cannot be precisely determined, but will be very small.

Small and Micro-business Impact Analysis

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

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of the new rule. The antici-
pated public benefit, as a result of enforcing the new rule, will be to allow the continued distribution of Medicaid supplemental payment funds to private hospitals that provide necessary Medicaid services. HHSC believes the public also will benefit from the consolidation of the inpatient and outpatient supplemental payment rules for private hospitals into a single rule. The anticipated public benefit of adjusting claims by reducing the billed charges proportionate to reductions in payment for preventable adverse events prior to the calculation of supplemental payments is that the Medicaid payment reductions imposed by HHSC for preventable adverse events will not be repaid to the hospital through the supplemental payment program.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Jill Seime, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail to: Jill.Seime@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

Statutory Authority

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

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

§355.8070. Supplemental Payments to Private Hospitals.

(a) Introduction. Notwithstanding other provisions of this subchapter and subject to the availability of funds, supplemental payments are available under this section for inpatient and outpatient hospital services provided by eligible private hospitals.

(b) Definitions. When used in this section, the following definitions apply:

(1) Adjudicated Claim--A claim for a covered Medicaid service that is paid or adjusted by HHSC.

(2) Calculation Period--The federal fiscal quarter determined by HHSC for which supplemental payment amounts are calculated based on adjudicated claims processed in that quarter.

(3) Charge Room--The difference between a hospital’s fee-for-service billed charges for adjudicated inpatient Medicaid claims and all Medicaid and other payments received during the calculation period for such claims. Billed charges will be reduced to reflect reductions in payments for preventable adverse events and other circumstances defined in §354.1070 of this title (relating to Definitions).

(4) Disproportionate Share Hospital (DSH)--A hospital participating in the Texas Medical Assistance (Medicaid) program that serves a disproportionate share of low-income patients and is eligible for additional reimbursement from the DSH fund.

(5) DSH Room--The difference between a hospital’s DSH limit and the total Medicaid DSH payments to the hospital for the federal fiscal year. The term "DSH limit" has the meaning assigned to the term "hospital specific limit" in §355.8065 of this division (relating to the Disproportionate Share Hospital (DSH) Reimbursement Methodology).

(6) Governmental Entity--A governmental entity includes a hospital authority, hospital district, city, county, or state entity.

(7) HHSC--The Texas Health and Human Services Commission or its designee.

(8) Intergovernmental Transfer (IGT)--A transfer of public funds from a governmental entity to HHSC.

(9) Medicaid Allowable Outpatient Hospital Costs--Costs remaining when total billed outpatient hospital charges are reduced by a hospital outpatient reduction factor in accordance with §355.8061(a)(2) of this division (relating to Payment for Hospital Services).

(10) Private Hospital--A hospital that is both owned and operated by a non-governmental entity or entities.

(11) Public Funds--Funds derived from taxes, assessments, levies, investments, and other public revenues within the sole and unrestricted control of the governmental entity that is affiliated with the hospital as described in this section. Public funds do not include gifts, grants, trusts, or donations, the use of which is conditioned on supplying a benefit solely to the donor or grantor of the funds, such as the private hospital.

(c) Eligibility:

(1) A private hospital that executes an indigent care affiliation agreement with a governmental entity or entities is eligible to receive supplemental payments under this section, subject to the limitations described in paragraph (2) of this subsection.

(2) A hospital that is participating in another hospital supplemental payment program described in this division is ineligible to receive supplemental payments under this section, except that a children’s hospital described in §355.8054 of this division may also participate in the children’s hospital supplemental payment program described in §355.8071 of this division.

(3) A hospital participating in this supplemental payment program must notify HHSC’s Director of Hospital Reimbursement within 30 days of changes in ownership, operation, or provider identifiers that may affect the hospital’s continued eligibility. At the request of HHSC, the hospital must submit any documentation supporting the change.

(4) A hospital that has not received a payment under this supplemental payment program for four consecutive quarters will be deemed by HHSC to be ineligible for future payments. A hospital deemed ineligible under this paragraph must again comply with the requirements described in subsection (d)(4)(A) of this section to be eligible to receive supplemental payments in future quarters.
(d) Documentation.

(1) As a condition of participation, hospitals and governmental entities must submit, in an accurate and timely fashion, to HHSC upon request all documentation, including the documentation described in paragraphs (2) and (3) of this subsection, that HHSC deems necessary to confirm eligibility requirements and to support all internal and external reviews and audits of this supplemental payment program.

(2) Indigent care affiliation agreements. An indigent care affiliation agreement is an agreement entered into between the private hospital and the governmental entity that does not conflict with federal or state law. HHSC does not prescribe the form of agreement that is entered into between the private hospital and the governmental entity.

(3) Certifications.

(A) An eligible hospital must certify the following facts, among other things, on a form prescribed by HHSC by the deadlines described in paragraph (4) of this subsection:

(i) That it is a private hospital as defined in this section;

(ii) That no part of any supplemental payment paid to the hospital under this section will be returned or reimbursed to the governmental entity with which the hospital affiliates;

(iii) That no part of any supplemental payment paid to the hospital under this section will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds; and

(iv) That the person signing the certification on behalf of the hospital is legally authorized to bind the hospital and to certify the matters described in the certification.

(B) A governmental entity must certify the following facts, among other things, on a form prescribed by HHSC by the deadlines described in paragraph (4) of this subsection:

(i) The governmental entity has not received and has no agreement to receive any portion of the supplemental payments made to an eligible hospital that has executed an affiliation agreement with the governmental entity;

(ii) The governmental entity has not entered into a contingent fee arrangement related to the governmental entity's participation in this supplemental payment program;

(iii) The governmental entity is authorized to participate in the supplemental payment program pursuant to a vote of the governmental entity's governing body in a public meeting preceded by public notice published in accordance with the governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable; and

(iv) All affiliation agreements, consulting agreements, or legal services agreements executed by the governmental entity related to the governmental entity's participation in this supplemental payment program are available for public inspection upon request.

(4) Submission requirements.

(A) Initial submissions. The parties must initially submit the affiliation agreements and certifications described in this subsection before the first day of the next scheduled calculation period in order for the hospital to receive supplemental payments for that quarter.

(B) Subsequent submissions. The parties must submit revised documentation as follows:

(i) When the nature of the affiliation changes or parties to the agreement are added or removed, the parties must submit the revised affiliation agreement and related hospital and governmental entity certifications.

(ii) When there are changes in ownership, operation, or provider identifiers, the hospital must submit a revised hospital certification.

(iii) The parties must submit the subsequent documentation before the first day of the next scheduled calculation period in order for the changes to be reflected in supplemental payments for that quarter.

(e) Source of funding.

(1) State funding for supplemental payments authorized under this section is limited to and obtained through IGTs of public funds from the governmental entity or entities affiliated with the hospital receiving the supplemental payment.

(2) An IGT that is not received by the date specified by HHSC may not be accepted.

(3) If the full amount of the calculated IGT is not made by the transfer deadline specified by HHSC, the supplemental payment to each hospital for that time period will be calculated based on the amount of the funds transferred, as described in subsection (j) of this section.

(f) Payment frequency. HHSC will distribute supplemental payments to participating private hospitals on a quarterly basis subsequent to the calculation period.

(g) Aggregate Medicaid upper payment limits.

(1) Inpatient supplemental payments authorized under this section are made in accordance with the Medicaid upper payment limit provisions codified at 42 Code of Federal Regulations §§447.271 and §447.272 (relating to upper payment limits).

(2) Outpatient supplemental payments authorized under this section are made in accordance with the Medicaid upper payment limit provisions codified at 42 Code of Federal Regulations §447.321 (relating to the application of upper payment limits to outpatient hospital and clinic services).

(h) Hospital-specific inpatient payment limit.

(1) For a Disproportionate Share Hospital, the payment limit will be the lesser of:

(A) One-fourth of the DSH; or

(B) The charge room for the calculation period.

(2) For a non-Disproportionate Share Hospital, the payment limit will be the charge room for the calculation period.

(i) Hospital-specific outpatient payment limit.

(1) For a Disproportionate Share Hospital, the payment limit will be the lesser of:

(A) The difference between the hospital’s DSH room and any inpatient supplemental payments made to the hospital for the calculation period; or

(B) The difference between 100% of Medicaid allowable fee-for-service outpatient hospital costs and Medicaid fee-for-ser-
vice outpatient payments received for claims adjudicated in the calculation period.

(2) For a non-Disproportionate Share Hospital, the payment limit will be the difference between 100% of Medicaid allowable fee-for-service outpatient hospital costs and Medicaid fee-for-service outpatient payments received for claims adjudicated in the calculation period.

(i) Payment methodology.

(1) HHSC will give notice of the payment limits determined in subsections (b) and (i) of this section, the maximum IGT that can be provided for each hospital, and the deadline for completing the transfer.

(2) The amount of the payment to the hospital will be calculated in proportion to the amount transferred by the governmental entity or entities.

(A) If a governmental entity transfers the maximum IGT described in paragraph (1) of this subsection, the hospital will receive the payment limit amounts calculated in subsections (h) and (i) of this section.

(B) If a governmental entity does not transfer the maximum IGT described in paragraph (1) of this subsection, each hospital affiliated with that governmental entity will receive a portion of the payment limit calculated in subsections (h) and (i) of this section, based on the hospital’s percentage of the total payment limit amounts for all hospitals affiliated with that governmental entity.

(C) For a hospital that is affiliated with multiple governmental entities, in the event those governmental entities transfer more than the maximum IGT that can be provided for that hospital, HHSC will calculate the amount of IGT necessary to fund the hospital to its payment limit and refund the remaining amount to the governmental entity identified by HHSC.

(3) Fourth quarter reconciliation. A governmental entity that did not transfer the maximum IGT described in paragraph (1) of this subsection in one or more of the first three quarters in a federal fiscal year will be allowed to fund the remaining payment limit during the fourth quarter of that fiscal year, subject to the following:

(A) HHSC must determine that there is sufficient room available for funding under the applicable aggregate upper payment limit for private hospitals.

(B) HHSC will give notice of the remaining payment limits and the maximum IGT that can be provided for each hospital. Such notice will also contain instructions and deadlines for governmental entities to notify HHSC of the fourth-quarter transfer amount.

(C) Following the deadline for notification described in subparagraph (B) of this paragraph, if HHSC determines that the funding will exceed the applicable aggregate upper payment limit for private hospitals, HHSC will reduce the amount of the transfer for the fourth-quarter payment under this clause proportionately for each participating hospital in an amount sufficient to ensure compliance with the applicable aggregate upper payment limit.

(D) If the fourth-quarter supplemental payment calculation results in overpayment to a hospital for the fiscal year, HHSC will initiate the process described in subsection (k) of this section to recover the amount of the overpayment.

(k) Recoupment.

(1) In the event that payments under this section result in overpayment to a hospital, or in the event of a disallowance by the federal Centers for Medicare and Medicaid Services of federal financial participation related to a hospital’s receipt and/or use of supplemental payments authorized under this section, HHSC may recoup an amount equivalent to the amount of supplemental payments overpaid or disallowed.

(2) Supplemental payments under this section may be subject to any adjustments for payments made in error, including, without limitation, adjustments under §371.1703 of this title (relating to Recovery of Overpayments), 42 C.F.R. part 455, and chapter 403, Texas Government Code.

(3) HHSC may recoup from any current or future Medicaid payments as follows:

(A) HHSC will recoup from the hospital against which any disallowance was directed or to which an overpayment was made;

(B) If, within 30 days of the hospital’s receipt of HHSC’s written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into a written agreement with HHSC to do so, HHSC may:

(i) Withhold any or all Medicaid payments from the hospital until HHSC has recovered an amount equal to the amount overpaid or disallowed; or

(ii) If HHSC determines that recovery as described in clause (i) of this subparagraph is not feasible, HHSC may recoup the amount overpaid or disallowed from other hospitals that are affiliated with the same governmental entity as the hospital described in subparagraph (A) of this paragraph. In the event HHSC recoups from such other affiliated hospitals, HHSC will withhold any or all Medicaid payments until HHSC has recovered an amount equal to the amount disallowed or overpaid, unless the recoupment is prohibited by law.

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 April 12, 2010.

TRD-2010001758
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 424-6900

DIVISION 4. MEDICAID HOSPITAL SERVICES

The Texas Health and Human Services Commission (HHSC) proposes to repeal §355.8071 and replace it with proposed new §355.8071, Title 1, Part 15, Chapter 355, Subchapter J, Division 4. The proposed new rule establishes the methodology by which HHSC calculates supplemental Medicaid Upper Payment Limit (UPL) payments for privately owned and operated children’s hospitals.

Background and Justification

The Medicaid children’s hospital supplemental payment program became effective on April 1, 2006. Currently, seven children’s hospitals participate in this program. Unlike other UPL programs, which require hospitals to identify state or local public entities to draw down federal funds via intergovernmental
transfers of public funds on their behalf, state general revenue appropriations provide the state match for the children's hospital supplemental payment program. Each biennium, the Texas Legislature must extend the appropriations ($12.5 million per fiscal year) in order for these children's hospital supplemental payments to continue. In state fiscal year 2009, supplemental payments to children's hospitals totaled $40,374,445.

HHSC is repealing current §355.8071 and proposing to replace it with new §355.8071 to standardize the payment methodology and terminology to be consistent with rules governing other Medicaid supplemental payment programs.

HHSC is adding language in the proposed new rule to expand the definitions and clarify the processes used to calculate the supplemental payments to children's hospitals. HHSC is redefining the calculation period from the state fiscal year to the federal fiscal year to be consistent with the Disproportionate Share Hospital (DSH) program and other UPL programs for 2010. No changes are being made to the calculations used to process payments.

Section-by-Section Summary

Subsection (a) is an introduction describing the rule. This language came from current §355.8071 and was updated for clarity. In addition, subsection (a) cites the federal regulations pertaining to Medicaid supplemental payments. This language came from current §355.8071(2) and was updated for clarity.

Subsection (b) sets forth the definitions applicable to §355.8071. The children's hospital definition set forth in current §355.8071 did not change; however, new definitions were added to clarify the children's hospital payment methodology terms such as Disproportionate Share Hospital (DSH) limit, DSH room, federal medical assistance percentage (FMAP), and Medicaid percentage.

Subsection (c)(1) explains the calculation for determining the total annual supplemental funds available for distribution. This language came from current §355.8071(4) and was updated for clarity.

Subsection (c)(2)(A) - (C) clarifies how each hospital's portion of the total annual supplemental funds is calculated. HHSC changed the calculation period from state fiscal year to federal fiscal year to be consistent with the DSH program and other UPL programs. This language came from current §355.8071(5)(A) - (D) and was updated for clarity.

Subsection (c)(2)(D) identifies the computation for any excess in supplemental payments resulting from the difference between each hospital's initial annual supplemental payment and the hospital's DSH room. This language came from current §355.8071(5)(E) and was updated for clarity.

Subsection (c)(2)(E) identifies how HHSC distributes any supplemental payment excess to hospitals that have not reached their DSH limit. This language came from current §355.8071(5)(F) and was updated for clarity.

Subsection (d) states that supplemental payments will be made to children's hospitals on a quarterly basis, subject to aggregate Medicaid upper payment limits. This language came from current §355.8071(3) and was updated for clarity.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be no fiscal impact to state government as a result of clarifying the payment methodology and adding new terminology to proposed §355.8071. The changes described above to the children's hospital UPL program rule will have a neutral fiscal impact and local governments will not incur additional costs.

Small and Micro-business Impact Analysis

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

Public Benefit

Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of the amendment. The anticipated public benefit, as a result of enforcing the amendment, will be to simplify the description of the methodology for calculating Medicaid supplemental payments to children’s hospitals and standardize the formatting of the rule for easier comprehension.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Jill Seime, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78709-5200; by fax (512) 491-1983 or by e-mail to mailto: Jill.Seime@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

1 TAC §355.8071

(EDITOR’S NOTE: THE TEXT OF THE FOLLOWING SECTION PROPOSED FOR REPEAL WILL NOT BE PUBLISHED. THE SECTION MAY BE EXAMINED IN THE OFFICES OF THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION OR IN THE TEXAS REGISTER OFFICE, ROOM 245, JAMES EARL RUDDER BUILDING, 1019 BRAZOS STREET, AUSTIN, TEXAS.)

Statutory Authority

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

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

§355.8071. Supplemental Payments to Children’s Hospitals.

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 April 12, 2010.
TRD-201001759
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

1 TAC §355.8071

Statutory Authority

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

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

§355.8071. Supplemental Payments to Children’s Hospitals.

(a) Introduction. Notwithstanding other provisions of this subchapter and limited to funds appropriated for this purpose, supplemental payments are available under this section for hospital services provided by Children’s Hospitals. Supplemental payments described in this section are made in accordance with the applicable regulations regarding the Medicaid upper payment limit (UPL) provisions codified at 42 C.F.R. §§447.271 and §447.272 (relating to Upper Limits).

(b) Definitions. When used in this section, the following terms will have the following meanings, unless the context clearly indicates otherwise.

(1) Children’s Hospital--A freestanding hospital within Texas that is certified by Medicare as a children’s hospital and is exempted from the Medicare prospective payment system.

(2) Disproportionate Share Hospital (DSH) Limit--DSH limit has the meaning assigned to the term "hospital specific limit" by §355.8065 of this title (relating to Disproportionate Share Hospital (DSH) Reimbursement Methodology).

(3) DSH Room--The difference between a hospital’s DSH limit and the total Medicaid DSH payments to the hospital for the federal fiscal year.

(4) Federal Medical Assistance Percentage (FMAP)--FMAP has the meaning assigned by Section 1905(b) of the Social Security Act, 42 U.S.C. §1396d(b). Generally, it means the federal government’s share of a state’s expenditures for most Medicaid services.

(5) Medicaid Percentage--The percentage of inpatient days of care provided by a hospital to Medicaid-eligible patients relative to all inpatient days of care. HHSC determines a hospital’s Medicaid percentage using the most recent data from the Disproportionate Share Hospital program.

(c) Supplemental Payment Methodology.

(1) HHSC identifies the total annual funds available for distribution, which are equal to:

(A) The amount of general revenue appropriated for this program, divided by

(B) 100 percent minus the current federal fiscal year FMAP.

(2) HHSC determines each children’s hospital’s share of the total annual funds available for distribution using the following process:

(A) HHSC multiplies each hospital’s DSH limit by a weighting factor to yield the weighted DSH limit. The weighting factor for each hospital equals 40 percent divided by (100 percent minus the hospital’s Medicaid percentage). The maximum allowable weighting factor is 3.000.

(B) HHSC divides each hospital’s weighted DSH limit by the sum of all hospitals’ weighted DSH limits to determine each hospital’s weighted percentage distribution. HHSC multiplies the weighted percentage distribution by the total annual funds available for distribution to yield an initial supplemental payment calculation.

(C) Using the most recent data from the Disproportionate Share Hospital program, HHSC determines the DSH Room for each hospital. A supplemental payment to a hospital cannot exceed the hospital’s DSH Room.

(D) HHSC determines the supplemental payment excess, if any, resulting from the difference between the initial computation of a hospital’s annual supplemental payment and the hospital’s DSH Room.

(E) HHSC distributes the total supplemental payment excess among hospitals that have not reached their DSH limit. Each hospital’s share of the total supplemental payment excess is proportionate to its share of the total DSH Room for hospitals that will receive the excess. A hospital’s share is paid in addition to the supplemental payments as initially computed.

(d) Payment Frequency. HHSC will distribute one-fourth of the annual supplemental payment computed to each eligible children’s hospital on a quarterly basis. HHSC may adjust the quarterly payments if necessary to be consistent with final supplemental payment limits.

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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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

1 TAC §355.8072
The Texas Health and Human Services Commission (HHSC) proposes new §355.8072, concerning Supplemental Payments to State-Owned Hospitals, to consolidate and update the inpatient and outpatient supplemental payment rule language currently contained in §355.8061, Payment for Hospital Services, and §355.8063, Reimbursement Methodology for Inpatient Hospital Services. Concurrently, HHSC proposes to amend §355.8061 and repeal §355.8063. These proposed changes will move the inpatient and outpatient supplemental payment rule language into one new rule governing the Medicaid supplemental payment methodology for eligible state-owned or state-operated hospitals.

Background and Justification
HHSC is combining the Medicaid inpatient and outpatient supplemental payment methodologies for state-owned hospitals into one new comprehensive rule. HHSC is updating the language in the new rule to better explain the complex processes used in state hospital supplemental payments.

Section-by-Section Summary
Proposed §355.8072(a) provides an introduction to this rule.
Proposed §355.8072(b) relates to inpatient supplemental payments for eligible state-owned or state-operated hospitals. This language came from §355.8063(u) and is updated for clarity.
Proposed §355.8072(c) relates to outpatient supplemental payments for eligible state-owned or state-operated hospitals. This language came from §355.8061(a)(5) and is updated for clarity.
Proposed §355.8072(d) relates to the federal provisions related to aggregate upper payment limit (UPL) requirements in the Code of Federal Regulations.

Fiscal Note
Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule is in effect there will be no fiscal impact to state or local government as a result of proposing this new rule. The administration and cost of the state-owned hospital UPL program will not change as a result of combining and updating language in this new rule.

Small and Micro-business Impact Analysis
Ms. Rymal has also determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit
Carolyn Pratt, Director of Rate Analysis, has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed rule will be the continued distribution of Medicaid supplemental payment funds to state-owned hospitals that provide necessary Medicaid services. HHSC believes the public also will benefit from the consolidation of the inpatient and outpatient supplemental payment methodologies for state-owned hospitals into a single rule.

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

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

Public Comment
Written comments on the proposal may be submitted to Jill Seime, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax (512) 491-1983 or by e-mail to: Jill.Seime@hhsc.state.tx.us within 30 days of publication of this proposal in the Texas Register.

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

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

§355.8072. Supplemental Payments to State-Owned Hospitals.
(a) Introduction. Notwithstanding other provisions of this division, supplemental payments will be made each federal fiscal year in accordance with this section to state government-owned or operated hospitals for inpatient and outpatient services provided to Medicaid patients.

(b) Supplemental payments are available under this subsection for inpatient hospital services provided by state government-owned or operated hospitals. To qualify for a supplemental payment, the hospital must be owned or operated by the State of Texas.

(1) The aggregate supplemental payment amount will be the annual difference between the aggregate upper payment limit, described in Title 42, Code of Federal Regulations §447.272, and the inpatient fee-for-service Medicaid payments made to the state government-owned or operated hospitals under this division.

(2) The amount of the supplemental payment made to each state government-owned or operated hospital will be determined by:

(A) dividing each hospital’s inpatient fee-for-service Medicaid payments by the sum of the inpatient fee-for-service Medicaid payments of all state government-owned or operated hospitals;

(B) multiplying the percentage calculated in subparagraph (A) of this paragraph by the aggregate supplemental payment calculated in paragraph (1) of this subsection.

(3) Supplemental payments determined under this subsection will be calculated and paid annually.

(c) Supplemental payments are available under this subsection for outpatient hospital services provided by state government-owned or
operated hospitals. To qualify for a supplemental payment, the hospital must be owned or operated by the State of Texas.

1 The aggregate supplemental payment amount will be the annual difference between the aggregate upper payment limit, described in Title 42, Code of Federal Regulations §447.321, and the outpatient fee-for-service Medicaid payments made to the state government-owned or operated hospitals under this division.

2 The amount of the supplemental payment made to each state government-owned or operated hospital will be determined by:

(A) dividing each hospital’s outpatient fee-for-service Medicaid payments by the sum of the outpatient fee-for-service Medicaid payments of all state government-owned or operated hospitals; and

(B) multiplying the percentage calculated in subparagraph (A) of this paragraph by the aggregate supplemental payment calculated in paragraph (1) of this subsection.

3 Supplemental payments determined under this subsection will be calculated and paid annually.

4 (d) Aggregate Medicaid upper payment limits.

1 Inpatient supplemental payments authorized under this section are made in accordance with the applicable federal regulations regarding the Medicaid upper limit provisions codified at Title 42, Code of Federal Regulations §447.272.

2 Outpatient supplemental payments authorized under this section are made in accordance with the applicable federal regulations regarding the Medicaid upper limit payment limit provisions codified at Title 42, Code of Federal Regulations §447.321.

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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TRD-201001761

Steve Aragon
Chief Counsel

Texas Health and Human Services Commission

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For further information, please call: (512) 424-6900

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

The Texas Education Agency (TEA) proposes amendments to §§97.1051, 97.1053, 97.1055, 97.1057, 97.1059, 97.1063, 97.1065, 97.1067, 97.1069, 97.1071, and 97.1073; the repeal of §97.1061; and new §97.1061 and §97.1064, concerning accreditation. The sections address provisions relating to accreditation status, standards, and sanctions. The proposed rule actions would implement the requirements of the Texas Education Code (TEC), Chapter 39, Public School System Accountability, as amended by House Bill (HB) 3, 81st Texas Legislature, Regular Session, 2009, which requires the commissioner by rule to establish procedures and adopt guidelines for the administration of accountability and performance monitoring as well as accreditation statuses and sanctions for public school districts and open-enrollment charter schools.

HB 3, 81st Texas Legislature, Regular Session, 2009, amended, reorganized, and renumbered the TEC, Chapter 39, Public School System Accountability. The proposed revisions to 19 TAC Chapter 97, Planning and Accountability, Subchapter EE, Accreditation Status, Standards, and Sanctions, would modify the rules to ensure compliance with HB 3, as follows.

The proposed amendment to 19 TAC §97.1051, Definitions, would change the definition of "campus closure" to remove references to "repurposing," which is now defined in statute and in the proposed amendment to 19 TAC §97.1055(c). The proposed amendment to 19 TAC §97.1051 would also add a definition for "insufficient performance." In addition, a statutory reference would be updated in alignment with HB 3.

The proposed amendment to 19 TAC §97.1053, Purpose, would update statutory references in alignment with HB 3.

The proposed amendment to 19 TAC §97.1055, Accreditation Status, would update statutory references and clarify the process for assigning accreditation statuses during the period of transition to new HB 3 requirements. The proposed amendment would add new language regarding when an accreditation status may be raised or lowered based on the performance of the district or one or more campuses in the district. The proposed amendment would also state how the statutory requirements related to a financial solvency review and projected deficit affect accreditation statuses. In addition, the proposed amendment would incorporate current agency procedures for completing the asset-to-liability calculation for the purposes of charter financial accountability.

The proposed amendment to 19 TAC §97.1057, Accreditation Sanctions, would update statutory references and add information regarding the factors the commissioner shall consider in determining whether to impose a particular sanction based on resource allocation practices. In addition, the section title would be changed.

The proposed amendment to 19 TAC §97.1059, Standards for All Accreditation Sanction Determinations, would update statutory references and add language to reflect statutory requirements regarding the commissioner’s obligation to review the performance of a district. Specifically, the commissioner must review at least annually the performance of a district for which the accreditation status has been lowered due to insufficient student performance. The proposed amendment would also require the commissioner to increase sanctions if a lack of improvement is shown unless there is good cause not to do so.

Section 97.1061, Technical Assistance Team Campuses, would be repealed. This repeal is necessary because HB 3 removed references to technical assistance team campuses and replaced them with the requirements reflected in proposed new 19 TAC §97.1061.

Proposed new 19 TAC §97.1061, Interventions and Sanctions for Campuses, would add language to align with new statutory requirements related to campuses that satisfy current performance standards under TEC, §39.054(e), but that would not satisfy performance standards if the standards to be used for the following school year were applied to the current school year.
The proposed new section would also add language to align with new statutory requirements for intervening with and sanctioning campuses with performance below any standard under TEC, §39.054(e), including requirements relating to a hearing and a school community partnership team (SCPT).

Additionally, the proposed new section would add new statutory language that allows the commissioner to accept certain interventions that a campus has implemented under federal accountability requirements in lieu of required state measures if the intervention measures are substantially similar.

The proposed amendment to 19 TAC §97.1063, Campus Intervention Team; Reconstitution, would implement the provisions of HB 3 related to campuses below any standard under TEC, §39.054(e), and the assignment of a campus intervention team (CIT) to those campuses. The proposed amendment would define the duties and responsibilities of the CIT, including responsibilities to conduct a targeted on-site needs assessment relevant to the areas of insufficient performance or, if the commissioner determines necessary, a comprehensive on-site needs assessment. The proposed amendment would also outline requirements related to the development and submission of a school improvement plan (SIP) by a campus and establish timelines for how long the CIT will be assigned to a campus. The proposed amendment would outline requirements related to the involvement of the board of trustees of a school district in conducting a hearing to notify the public of the insufficient performance of one or more campuses within the district, the improvements expected by the agency for the campus(es), and the intervention measures or sanctions that may be imposed under the subchapter if performance does not improve. The proposed amendment would also detail requirements related to public posting of the SIP and, as appropriate, modification of the SIP in response to public comment. The proposed amendment would further note that the commissioner may authorize a SIP or updated SIP developed under 19 TAC Chapter 97, Subchapter EE, to supersede the provisions of and satisfy the requirements of developing, reviewing, and revising a campus improvement plan under TEC, Chapter 11, Subchapter F. The proposed amendment would also specify actions that the commissioner may take if the commissioner determines that a campus for which an intervention is ordered is not fully implementing the CIT’s recommendations or the SIP or updated SIP.

Additionally, references and requirements related to the School Leadership Pilot Program would be stricken from 19 TAC §97.1063 in alignment with changes in HB 3. Language would be added to this section to clarify that, if assigned by the commissioner, a SCPT may supersede the authority of and satisfy the requirements of establishing and maintaining a campus-level planning and decision-making committee under TEC, Chapter 11, Subchapter F. The section title would be also changed.

Proposed new 19 TAC §97.1064, Reconstitution, would update and relocate reconstitution requirements that previously were reflected in 19 TAC §97.1063. The proposed new section would continue to state the timelines under which a campus would be ordered to undergo reconstitution and describe the role of the CIT in updating and seeking approval of the SIP. The proposed new section would continue to include language regarding the authority of the CIT to determine which educators may be retained at a reconstituted campus but would revise language in accordance with HB 3 to describe circumstances surrounding a CIT’s determination related to the retention of the principal at a campus that is undergoing reconstitution. The proposed new section would continue to describe the authority of the commissioner to assign a monitor, conservator, management team, or board of managers to ensure and oversee district and campus-level activities related to required intervention and sanction activities and outline factors the commissioner must take into consideration when appointing individuals to serve in these roles. The proposed new section would reference the authority of the commissioner to impose on a district or campus certain other sanctions that are reasonably required and address the role of the district in successful campus reconstitution.

The proposed amendment to 19 TAC §97.1065, Campus Closure or Alternative Management, would implement the provisions of HB 3 related to circumstances under which the commissioner may, or is required to, order certain sanctions for campuses with insufficient performance over multiple years. Specifically, the proposed amendment would revise the timeline under which the commissioner is required to order a sanction for certain campuses and add repurposing, in addition to campus closure and alternative management, as one of the sanctions that must be ordered by the commissioner.

The proposed amendment would also establish that repurposing, alternative management, or campus closure may be ordered for a multi-year unacceptable campus if students fail to demonstrate substantial improvement in the areas targeted by an updated SIP. Furthermore, the proposed amendment would establish that repurposing, alternative management, or campus closure will be ordered if a campus has been identified as unacceptable for the third, as opposed to second, consecutive year after reconstitution is required to be implemented, thus adding an additional year to the mandatory intervention timeline previously established in statute. Additionally, the proposed amendment would provide for a one-year waiver of these required sanctions if the commissioner determines that, based on significant improvement over the preceding two school years, the campus is likely to be acceptable in the following year. The proposed amendment would also establish the requirements that must be met before the commissioner can approve a plan for campus repurposing and include parameters that may be considered by the commissioner when determining whether to order repurposing, alternative management, or campus closure when one of these sanctions is required.

The proposed amendment would also outline requirements and procedures for the district to appeal the commissioner’s order of repurposing, alternative management, or campus closure and outline other sanction actions that the commissioner may impose to achieve the purposes outlined in TEC, Chapter 39, and 19 TAC Chapter 97, Subchapter EE. In addition, the section title would be changed.

The proposed amendment to 19 TAC §97.1067, Alternative Management of Campuses, would update statutory references in alignment with HB 3.

The proposed amendment to 19 TAC §97.1069, Providers of Alternative Campus Management, would update requirements to align with HB 3 by allowing the commissioner to solicit proposals from qualified for-profit entities to assume alternative management of a campus if a non-profit entity has not responded to the commissioner’s request for qualifications.

The proposed amendment to 19 TAC §97.1071, Special Program Performance; Intervention Stages, would update statutory references in alignment with HB 3.
The proposed amendment to 19 TAC §97.1073, Appointment of Monitor, Conservator, or Board of Managers, would update statutory references to provide clarity and align with HB 3.

The proposed rule actions would have no new reporting implications. Consistent with current procedures, the commissioner must notify school districts and charter districts of their accreditation status. Those districts assigned an Accredited-Warned or Accredited-Probation status have a continuing requirement to notify parents and property owners of the district and must provide documentation of this notification to the TEA. Districts and campuses would have continued reporting obligations related to required interventions and sanctions under this proposal. Under the proposed rule actions, an additional procedural requirement consistent with statute would be for the board of trustees of a school district to conduct a hearing to notify the public of insufficient campus performance, solicit public comment on the SIP, and post the SIP on the district’s website, in addition to submitting the SIP to the commissioner.

The proposed rule actions would have no new locally maintained paperwork requirements. Districts will continue to be required to maintain documentation related to completion of required performance-based monitoring intervention activities and/or implementation of any required accreditation sanctions.

Laura Taylor, associate commissioner for accreditation, has determined that for the first five-year period the rule actions are in effect there will be no additional costs for state or local government as a result of enforcing or administering the rule actions. The proposed rule actions would add clarification of law to the required assignment of an accreditation status and implementation of sanctions and interventions under HB 3, 81st Texas Legislature, Regular Session, 2009. The rule actions would assign no additional fiscal burden beyond what already is imposed by law or current rule.

Ms. Taylor has determined that for each year of the first five years the rule actions are in effect the public benefit anticipated as a result of enforcing the rule actions will be updated standards and procedures for determining accreditation statuses for public school districts and charter districts in alignment with recent legislative changes. The public would be notified of the accreditation status and may assist the district in its efforts to improve its performance by addressing areas of deficiency identified by the commissioner. In addition, the proposed rule actions would provide for the implementation of sanctions and interventions to improve district and campus performance that fall below minimum state standards. There is no anticipated economic cost to persons who are required to comply with the proposed rule actions.

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 April 23, 2010, and ends May 24, 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 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 April 23, 2010.

19 TAC §§97.1051, 97.1053, 97.1055, 97.1057, 97.1059, 97.1061, 97.1063 - 97.1065, 97.1067, 97.1069, 97.1071, 97.1073

The amendments and new sections are proposed under the TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district; §§39.056-39.058, which authorize the commissioner to adopt procedures for conducting on-site and special accreditation investigations; §39.0823, which requires submission of a financial plan in the event of a school district projected deficit and authorizes the commissioner to adopt related accreditation status requirements; and §§39.102-39.116, which authorize the commissioner to implement procedures to impose interventions and sanctions for districts, campuses, and open-enrollment charter schools, including campus improvement plans; campus intervention teams; reconstitution, repurposing, alternative management, and closure; annual review; acquisition of professional services; costs paid by district; conservator or management team; board of managers; and transitional interventions and sanctions.


§97.1051. Definitions.

For purposes under Texas Education Code (TEC), Chapter 39; Subchapter DD of this chapter (relating to Investigative Reports, Sanctions, and Record Reviews); and this subchapter, the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

1. Board of trustees—The definition of this term includes a governing body of a charter holder as defined by TEC, §12.1012.

2. Campus—An organizational unit operated by the school district that is eligible to receive a campus performance rating in the state accountability rating system under §97.1001 of this title (relating to Accountability Rating System), including a rating of Not Rated–Other or Not Rated–Data Integrity Issues. The definition of this term includes a charter school campus as defined by §100.1011(3)(C) of this title (relating to Definitions).

3. Campus closure–Cessation of all instructional activity on the campus in each grade level served in the school year immediately preceding the closure of the campus. An order of closure does not preclude the district from reusing the facility for another purpose such as administration, storage, or instruction in other grades not served during the school year immediately preceding the closure of the campus.

4. A district ordered to close a campus may apply to the commissioner of education for approval to repurpose a building or facility formerly housing the closed campus.

5. A building or facility that is approved for repurposing under subparagraph (A) of this paragraph must house a completely different instructional program, bear a new name, and be assigned a new campus identification number.

6. The commissioner shall not approve the repurposing of a building or facility under subparagraph (A) of this paragraph unless:

(1) all instructional activity under the programs operated at the repurposed building or facility occurs at grade levels not previously served by the closed campus; or
(4) Charter school--This term has the meaning assigned by §100.1011(3) of this title. References to a charter school in TEC, Chapter 39, and rules adopted under it, shall mean either the board of trustees or the school district, as appropriate.

(5) Charter school site--This term has the meaning assigned by §100.1011(3)(D) of this title. 

(6) Insufficient performance--as used by House Bill 3, Acts of the 81st Texas Legislature, Regular Session, 2009, means the same as academically unacceptable performance. This change in terminology reflects the fact that minimum expectations for performance are higher in some cases than performance termed Academically Unacceptable in prior law.

(7) [62] Person--This term has the meaning assigned by the Code Construction Act, Government Code, §311.005(2), and includes a school district.

(8) [52] Reconstitution--

(A) The removal or reassignment of some or all campus administrative and/or instructional personnel in accordance with at least the minimum requirements of TEC, §39.107 [§39.1324(b)], taking into consideration proactive measures the district or campus has taken regarding campus personnel; and

(B) the implementation of a campus redesign, approved by the commissioner of education, that:

(i) provides a rigorous and relevant academic program;

(ii) provides personal attention and guidance;

(iii) promotes high expectations for all students; and

(iv) addresses comprehensive school-wide improvements that cover all aspects of a school’s operations, including, but not limited to, curriculum and instruction changes, structural and managerial innovations, sustained professional development, financial commitment, and enhanced involvement of parents and the community.

(9) [46] School district and district--The definition of these terms includes a charter operator, which is the same as a charter holder as defined by TEC, §12.1012.

§97.1053. Purpose.

(a) The provisions of Texas Education Code (TEC), Chapter 39, and this subchapter shall be construed and applied to achieve the purposes of accreditation statuses assigned under TEC, §39.051 and §39.052 [§39.071], and the purposes of accreditation sanctions, which are to:

(1) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers of the academic, fiscal, and compliance performance of each district or campus on the standards adopted by the commissioner of education under TEC, §39.052(b) [§39.071(b)] and (c), and/or listed in §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations); and

(2) encourage the district or campus to improve its academic, fiscal, and/or compliance performance by addressing each area of deficiency identified by the commissioner of education;

(3) enable the parents of students enrolled in the district, property owners in the district, general public, and policymakers to assist the district or campus in improving the district or campus performance by addressing each area of deficiency identified by the commissioner;

(4) encourage other districts or campuses to improve their performance so as to avoid similar action and to retain their accreditation; and

(5) improve the Texas public school system by eliminating poor academic, fiscal, and compliance performance by districts and campuses on the standards listed in §97.1059 of this title.

(b) The accreditation status assigned a district under §97.1055 of this title (relating to Accreditation Status) generally reflects performance under the state academic accountability rating system and financial accountability rating system beginning with the district’s 2006 ratings. However, performance under these systems for earlier years shall be considered for purposes of accreditation statuses and sanctions under this subchapter. Accordingly:

(1) consideration of or failure to consider any rating of the district under §97.1055 of this title does not preclude consideration of that rating when determining accreditation sanctions under this subchapter; and

(2) [except as provided by TEC, §39.1326] when determining accreditation sanctions under this subchapter, the commissioner shall consider the entire ratings history of the district and its campuses to the extent it is material.

(c) Except as provided by §97.1055(g) of this title, the provisions of TEC, Chapter 39, and this subchapter apply in the same manner to an open-enrollment charter school as to a district.


(a) General provisions.

(1) Each year, the commissioner of education shall assign to each school district an accreditation status under Texas Education Code (TEC), §39.052(b) [§39.071(b)] and (c). Each district shall be assigned a status defined as follows.

(A) Accredited. Accredited means the Texas Education Agency (TEA) recognizes the district as a public school of this state that:

(i) meets the standards determined by the commissioner under TEC, §39.052(b) [§39.071(b)] and (c), and specified in §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations); and

(ii) is not currently assigned an accreditation status of Accredited-Warned or Accredited-Probation.

(B) Accredited-Warned. Accredited-Warned means the district exhibits deficiencies in performance, as specified in subsection (b) of this section, that, if not addressed, will lead to probation or revocation of its accreditation status.

(C) Accredited-Probation. Accredited-Probation means the district exhibits deficiencies in performance, as specified in subsection (c) of this section, that must be addressed to avoid revocation of its accreditation status.

(D) Not Accredited-Revoked. Not Accredited-Revoked means the TEA does not recognize the district as a Texas public school because the district’s performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) [§39.071(b)] and (c), and specified in subsection (d) of this section.
(2) The commissioner shall assign the accreditation status, as defined by this section, based on the performance of each school district. This section shall be construed and applied to achieve the purposes of TEC, §39.051 and §39.052 [§39.074], which are specified in §97.1053(a) of this title (relating to Purpose).

(3) The commissioner shall revoke the accreditation status of a district that fails to meet the standards specified in this section. In the event of revocation, the purposes of the TEC, §39.051 and §39.052 [§39.074], are to:

(A) inform the parents of students enrolled in the district, property owners in the district, general public, and policymakers that the TEA does not recognize the district as a Texas public school because the district’s performance has failed to meet standards adopted by the commissioner under TEC, §39.052(b) [§39.074(b)] and (c), and specified in subsection (d) of this section; and

(B) encourage other districts to improve their performance so as to retain their accreditation.

(4) Unless revised as a result of investigative activities by the commissioner as authorized under TEC, Chapter 39, or other law, an accreditation status remains in effect until replaced by an accreditation status assigned for the next school year. An accreditation status shall be revised within the school year when circumstances require such revision in order to achieve the purposes specified in §97.1053(a) of this title.

(5) An accreditation status will be withheld pending completion of any appeal or review of an academic accountability rating, a financial accountability rating, or other determination by the commissioner, but only if such appeal or review is:

(A) specifically authorized by commissioner rule; and

(B) timely requested under and in compliance with such rule; and

(C) applicable to the accreditation status under review.

(6) An accreditation status may be withheld pending completion of on-site or other investigative activities in order to achieve the purposes specified in §97.1053(a) of this title.

(7) An accreditation status may be raised or lowered based on the district’s performance or may be lowered based on the performance of one or more campuses in the district that is below a standard required under this chapter or other applicable law.

(8) For purposes of determining multiple years of academically unacceptable or insufficient performance, the academic accountability ratings issued for the 2010-2011 school year and for the 2012-2013 school year are consecutive. An accreditation status assigned for the 2012-2013 school year shall be based on assigned academic accountability ratings for the applicable prior school years, as determined under subsections (b)-(d) of this section.

(9) Accreditation statuses are consecutive if they are not separated by an accreditation period in which the TEA assigned accreditation statuses to districts and charter schools generally. For example, if TEA does not assign accreditation statuses to districts and charter schools generally for the 2012-2013 school year, then the accreditation statuses issued for the 2011-2012 school year and for the 2013-2014 school year are consecutive.

(b) Determination of Accredited-Warned status.

(1) A district shall be assigned Accredited-Warned status if, beginning with its 2006 rating, the district is assigned:

(A) for two consecutive school years, an academic accountability rating of Academically Unacceptable or insufficient performance under §97.1001 of this title (relating to Accountability Rating System);

(B) for two consecutive school years, a financial accountability rating of Substandard Achievement or Sustained--Data Quality under §109.1002 of this title (relating to Financial Accountability Ratings);

(C) for two consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for one school year, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district’s performance paragraph (1) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052 [§39.074]. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title (relating to Public Education Information Management System (PEIMS) Data and Reporting Standards);

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after investigation under TEC, §39.056 [§39.074] or §39.057 [§39.075], the commissioner finds:

(i) the district’s programs monitored under §97.1005 of this title (relating to Performance-Based Monitoring Analysis System) exhibit serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district’s accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district’s accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052 [§39.074].

(4) Notwithstanding any provisions in this subsection, a district shall be assigned Accredited-Warned status if it has otherwise earned the Accredited status, but the commissioner determines:

(A) the district failed to submit a plan as provided by TEC, §39.0823(b);

(B) the district failed to obtain approval from the TEA for a plan as provided by TEC, §39.0823(b); or

(C) the district failed to comply with a plan approved by the TEA under TEC, §39.0823(b); or
(D) in a subsequent school year, based on financial data submitted by the district, the approved plan for the district is insufficient or inappropriately implemented under TEC, §39.0823.

(c) Determination of Accredited-Probation status.

(1) A district shall be assigned Accredited-Probation status if, beginning with its 2006 rating, the district is assigned:

(A) for three consecutive school years, an academic accountability rating of Academically Unacceptable or insufficient performance under §97.1001 of this title;

(B) for three consecutive school years, a financial accountability rating of Substandard Achievement or Suspended--Data Quality under §109.1002 of this title;

(C) for three consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for two consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) Notwithstanding the district’s performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052 [§39.074]. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after investigation under TEC, §39.056 [§39.074] or §39.057 [§39.075], the commissioner finds:

(i) the district’s programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district’s accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to revocation of the district’s accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052 [§39.071].

(4) Notwithstanding any provision in this subsection, a district shall be assigned Accredited-Probation status if it has otherwise earned the Accredited-Warning status, but the commissioner determines:

(A) the district failed to submit a plan as provided by TEC, §39.0823(b);

(B) the district failed to obtain approval from the TEA for a plan as provided by TEC, §39.0823(b);

(C) the district failed to comply with a plan approved by the TEA under TEC, §39.0823(b); or

(D) in a subsequent school year, based on financial data submitted by the district, the approved plan for the district is insufficient or inappropriately implemented under TEC, §39.0823.

(d) Determination of Not Accredited-Revoked status; Revocation of accreditation.

(1) The accreditation of a district shall be revoked if, beginning with its 2006 rating, the district is assigned:

(A) for four consecutive school years, an academic accountability rating of Academically Unacceptable or insufficient performance under §97.1001 of this title;

(B) for four consecutive school years, a financial accountability rating of Substandard Achievement or Suspended--Data Quality under §109.1002 of this title;

(C) for four consecutive school years, any one of the ratings referenced in subparagraphs (A) and (B) of this paragraph; or

(D) for three consecutive school years, a combination of ratings referenced in both subparagraphs (A) and (B) of this paragraph.

(2) A district shall have its accreditation revoked if, notwithstanding its performance under paragraph (1) of this subsection, the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052 [§39.074]. Such action is generally required by the following circumstances:

(A) to an extent established under subsection (e) of this section, the district has failed to comply with requirements related to:

(i) the integrity of assessment or financial data used to measure performance under TEC, Chapter 39 or 42, and rules implementing those chapters;

(ii) the reporting of data under TEC, §42.006, and §61.1025 of this title;

(iii) other reports required by state or federal law or court order;

(iv) awarding high school graduation under TEC, §28.025; or

(v) any applicable requirement under TEC, §7.056(e)(3)(C)-(I); or

(B) after investigation under TEC, §39.056 [§39.074] or §39.057 [§39.075], the commissioner finds:

(i) the district’s programs monitored under §97.1005 of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district’s accreditation; or

(ii) the district otherwise exhibits serious or persistent deficiencies that, if not addressed, may lead to revocation of the district’s accreditation.

(3) Notwithstanding paragraph (2) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052 [§39.071].

(4) Notwithstanding any provision in this subsection, a district shall be assigned Not Accredited-Revoked status if it has otherwise
earned the Accredited-Probation status, but the commissioner determines:

(A) the district failed to submit a plan as provided by TEC, §39.0823(b);
(B) the district failed to obtain approval from the TEA for a plan as provided by TEC, §39.0823(b);
(C) the district failed to comply with a plan approved by the TEA under TEC, §39.0823(b) or
(D) in a subsequent school year, based on financial data submitted by the district, the approved plan for the district is insufficient or inappropriately implemented under TEC, §39.0823.

(5) [44] The commissioner’s decision to revoke a district’s accreditation may be appealed under §97.1037 of this title (relating to Record Review of Certain Decisions). If the decision is sustained on appeal, the commissioner shall appoint a management team or board of managers to bring the district into compliance with the public school.

(e) Legal compliance. In addition to the district’s performance as measured by ratings under §97.1001 and §109.1002 of this title, the accreditation status of a district is determined by its compliance with the statutes and rules specified in TEC, §39.052(b)(2) [§39.0274(b)(2)]. Notwithstanding satisfactory or above satisfactory performance on other measures, a district’s accreditation status may be assigned based on its legal compliance alone, to the extent the commissioner determines necessary. In making this determination, the commissioner:

(1) shall assign the accreditation status that is reasonably calculated to accomplish the applicable provisions specified in §97.1053(a) of this title;
(2) may impose, but is not required to impose, an accreditation sanction under this subchapter in addition to assigning a status under paragraph (1) of this subsection; and
(3) shall lower the status assigned and/or impose additional accreditation sanctions as necessary to achieve compliance with the statutes and rules specified in TEC, §39.052(b)(2) [§39.071(b)(2)].

(f) Required notification of Accredited-Warning or Accredited-Probation status.

(1) A district assigned an accreditation status of Accredited-Warning or Accredited-Probation shall notify the parents of students enrolled in the district and property owners in the district as specified by this subsection.

(2) The district’s notice must contain information about the accreditation status, the implications of such status, and the steps the district is taking to address the areas of deficiency identified by the commissioner. The district’s notice shall use the format and language determined by the commissioner.

(3) Notice under this subsection must:

(A) not later than 30 calendar days after the accreditation status is assigned, appear on the home page of the district’s website, with a link to the notification required by paragraph (2) of this subsection, and remain until the district is assigned the Accredited status; and

(B) appear in the newspaper with the greatest circulation in the district for three consecutive days as follows:

(i) from Sunday through Tuesday of the second week following assignment of the status; or

(ii) if the newspaper is not published from Sunday through Tuesday, then for three consecutive issues of the newspaper beginning the second week following assignment of the status; or

(C) not later than 30 calendar days after the status is assigned, be sent by first class mail addressed individually to each parent of a student enrolled in the district and each property owner in the district.

(4) A district required to act under this subsection shall send the following to the TEA via certified mail, return receipt requested:

(A) the universal resource locator (URL) for the link required by paragraph (3)(A) of this subsection; and

(B) copies of the notice required by paragraph (3)(B) of this subsection showing dates of publication, or a paid invoice showing the notice content and its dates of publication; or

(C) copies of the notice required by paragraph (3)(C) of this subsection and copies of all mailing lists and postage receipts.

(g) Substitute criteria if no charter school financial accountability rating. In considering the financial performance of a charter operator during a fiscal year for which no financial accountability ratings were assigned to charter operators under §109.1002 of this title, the commissioner shall apply the following substitute criteria.

(1) Finding in lieu of rating. Any of the following findings, made after an opportunity for a record review under paragraph (2)(B) of this subsection, shall be deemed the equivalent of a financial accountability rating of Substandard Achievement or Suspended—Data Quality under §109.1002 of this title:

(A) the Annual Audit Report required for that fiscal year by TEC, §44.008, and §100.1047 of this title (relating to Accounting for State Funds) was received more than 180 days after the close of the entity’s fiscal year;

(B) the Annual Audit Report required for that fiscal year by TEC, §44.008, and §100.1047 of this title disclosed total [net] assets of less than 80% of total [net] liabilities; or

(C) the Annual Audit Report required for that fiscal year by TEC, §44.008, and §100.1047 of this title contained:

(i) an adverse opinion, including a going concern disclosure, or a disclaimer of opinion; and

(ii) the adverse or disclaimer opinion [that] pertained to:

(1) financial resources or expenditures that were not properly documented; or

(II) a material weakness in internal controls that led to the misallocation of financial resources.

(2) Provisions concerning finding. Whenever a provision of this section calls for consideration of the financial accountability rating of a charter operator for a fiscal year, a finding described by paragraph (1) of this subsection shall be deemed the financial accountability rating and applied as if such finding were issued under §109.1002 of this title.

(A) If a provision of this section calls for consideration of the financial accountability rating of a charter operator for more than one fiscal year, and financial accountability ratings were assigned to charter operators under §109.1002 of this title for at least one but fewer than all of the relevant fiscal years, a finding described by paragraph
(1) of this subsection shall be deemed the financial accountability rating only for the fiscal year(s) for which no financial accountability ratings were assigned to charter operators.

(B) A finding described by paragraph (1) of this subsection shall be issued using the process provided by §97.1035 of this title (relating to Procedures for Accreditation Sanctions) and shall be subject to a record review under §97.1037 of this title (relating to Record Review of Certain Decisions).

(C) A finding described by paragraph (1) of this subsection shall be issued pertaining to each fiscal year beginning with the 2007-2008 fiscal year. For the 2006-2007 fiscal year, the TEA shall report the performance of each open-enrollment charter operator for informational purposes only.

(h) Third-party accreditation. The commissioner may recognize a supplemental accreditation issued by a rating agency approved by the commissioner to a charter operator that meets the standards determined by the commissioner under subsection (a)(1)(A) of this section. A charter operator that fails to meet the standards for accreditation under subsection (a)(1)(A) of this section may not receive such recognition until the charter operator meets the standards for the Accredited status as determined by the commissioner.

§97.1057. Accreditation Interventions and Sanctions; Lowered Accreditation Status or Rating.

(a) The provisions of Texas Education Code (TEC), Chapter 39, and this subchapter shall be construed and applied to achieve the purposes of accreditation sanctions, which are specified in §97.1053 of this title (relating to Purpose).

(b) If the commissioner of education finds that a district or campus does not satisfy the accreditation criteria under TEC, §39.051 and §39.052 (§39.072), the academic performance standards under TEC, §39.054 (§39.072 or §39.073), or any financial accountability standard as determined by the commissioner, the commissioner may lower the district’s accreditation status, academic accountability rating, or financial accountability rating, as applicable, and take appropriate action under this subchapter.

(c) Regardless of whether the commissioner lowers a district’s status or rating under subsection (b) of this section, the commissioner may take action under TEC, Chapter 39, or this section if the commissioner determines that the action is necessary to improve any area of performance by the district or campus.

(d) Subject to §97.1035 of this title (relating to Procedures for Accreditation Sanctions), once the commissioner takes action under this subchapter, the commissioner may impose on the district or campus any other sanction under TEC, Chapter 39, or this subchapter, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in §97.1053 of this title.

(e) In determining whether to impose a particular sanction under TEC, Chapter 39, or this subchapter, the commissioner may consider the costs and logistical concerns of the district, but shall give primary consideration to the best interest of the district’s students. The sanction selected shall be reasonably calculated to address the district’s or campus’ deficiencies immediately or within a reasonable time, in the best interest of its present and future students. The following shall be considered as being contrary to the best interests of the district’s students:

1. inefficient or ineffectual use of district funds or property;
2. failure to adequately account for funds; and

(3) receipt of a substantial over-allocation of funds for which the district has failed to plan prudently in light of its obligation to repay the funds under TEC, §42.258.

(f) In determining whether to impose a particular sanction under TEC, Chapter 39, or this subchapter based on resource allocation practices as authorized by TEC, §39.082 and §39.057(a)(12), (d) and (e), the commissioner shall consider the factors specified in §97.1053 of this title.


(a) The commissioner of education shall impose district and campus accreditation sanctions under this subchapter individually or in combination as the commissioner determines necessary to achieve the purposes identified in §97.1053 of this title (relating to Purpose).

(b) In making a determination under subsection (a) of this section, the commissioner shall consider the seriousness, number, extent, and duration of deficiencies identified by the Texas Education Agency (TEA), and shall impose one or more accreditation sanctions on a district and its campuses as needed to address:

1. each material deficiency identified by the TEA through its systems for district and campus accountability, including:
   A. an accreditation status under §97.1055 of this title (relating to Accreditation Status);
   B. an academic accountability rating under §97.1001 of this title (relating to Accountability Rating System);
   C. a financial accountability rating under §109.1002 of this title (relating to Financial Accountability Ratings) or a financial audit or investigation;
   D. program effectiveness under §97.1071 of this title (relating to Special Program Performance; Intervention Stages) or other law;
   E. the results of a special accreditation investigation under Texas Education Code, §39.057 (§39.073);

2. any ongoing failures to address deficiencies previously identified or patterns of recurring deficiencies;

3. any lack of district responsiveness to, or compliance with, current or prior interventions or sanctions; and

4. any substantial or imminent harm presented by the deficiencies of the district or campus to the welfare of its students or to the public interest.

(c) If the commissioner identifies a district and one or more of its campuses for accreditation sanction under subsection (a) of this section, the commissioner may elect to combine activities to be undertaken at the district and campus levels as needed to achieve the purposes of each sanction.

(d) When making any campus-level determination under this subchapter, the commissioner shall also consider the district-level performance of the district on applicable academic, fiscal, and compliance standards.
The commissioner must review at least annually the performance of a district for which the accreditation status or academic accountability rating has been lowered due to insufficient student performance and may not raise the accreditation status or rating until the district has demonstrated improved student performance. If the review reveals a lack of improvement, the commissioner shall increase the level of state intervention and sanction unless the commissioner finds good cause for maintaining the current status.

§97.1061. Interventions and Sanctions for Campuses.

(a) If a campus’ performance is below any standard under Texas Education Code (TEC), §39.054(e), the commissioner of education shall take any action provided by TEC, Chapter 39, Subchapter E, to the extent the commissioner determines necessary. In addition, the commissioner may take either or both of the following actions, to the extent the commissioner determines necessary:

1) order a hearing before the commissioner at which the president of the board of trustees, the superintendent, and the campus principal shall appear and explain the campus’ low performance, lack of improvement, and plans for improvement; or

2) establish a school community partnership team (SCPT) composed of members of the campus-level planning and decision-making committee established under TEC, §11.251, or this section and additional community representatives as determined appropriate by the commissioner.

(b) If a campus performance satisfies academic accountability standards under TEC, §39.054(e), for the current school year but would not satisfy standards under TEC, §39.054(e), if the standards to be used for the following school year were applied to the current school year, the commissioner may require the campus-level planning and decision-making committee established under TEC, §11.251, to revise and submit to the commissioner in an electronic format the portions of the campus improvement plan (CIP) developed under TEC, §11.253, that are relevant to those areas for which the campus would not satisfy performance standards.

(c) If the campus to which subsection (b) of this section applies is an open-enrollment charter school, the school shall establish a campus-level planning and decision-making committee using the same procedures, as much as practicable, as those provided by TEC, §11.251(b)-(e), and develop a CIP as provided by TEC, §11.253. The school shall submit its proposed procedures for approval by the commissioner prior to establishing the committee.

(d) On request of the commissioner, the campus to which subsection (c) of this section applies shall submit to the commissioner in an electronic format the portions of the CIP that are relevant to those areas for which the campus would not satisfy academic accountability standards.

(e) A SCPT established under this section shall continue from year to year until the commissioner determines that it may be discontinued.

(f) Notwithstanding the provisions of TEC, Chapter 39, Subchapter E, and this subchapter, if the commissioner determines that a campus subject to interventions or sanctions under this subchapter has implemented substantially similar intervention measures under federal accountability requirements, the commissioner may accept the substantially similar intervention measures as measures in compliance with this subchapter.

§97.1063. Campus Intervention Team [see Reconstitution]

(a) If the performance of a campus is below any standard under Texas Education Code (TEC), §39.054(e), [Academically Unac-ceptable in the state academic accountability rating system] for the current school year, the commissioner of education shall assign a campus intervention team (CIT) under TEC, §39.106, and this section [Texas Education Code (TEC), §39.122 and §39.123]. The duties and responsibilities of the CIT will be based on the reasons for the campus’ academic accountability [Academically Unacceptable] rating.

1) In assigning a CIT to a campus below a standard under TEC, §39.054(e), for the first year, the commissioner will offer the school district an opportunity to recommend CIT members under procedures established by the Texas Education Agency (TEA).

A) If the district does not recommend CIT members under TEA procedures, the commissioner will assign a CIT without such input.

B) If the commissioner does not approve the CIT membership recommendation by the district, the commissioner will assign the CIT members.

2) In assigning a CIT to a campus below a standard under TEC, §39.054(e), for the second or more consecutive year, the commissioner will approve CIT members only as provided by procedures established by the TEA.

3) [(2)] If the campus does not implement the school improvement plan (SIP) or the recommendations of the CIT, the commissioner shall order the reconstitution of the campus in accordance with TEC, §39.107, and §97.1064 of this title (relating to Reconstitution) [(§39.124).

4) [§39.124.

A) A CIT shall:

1) conduct a targeted on-site needs assessment relevant to the areas of insufficient performance of the campus as provided by subsection (c) of this section, or if the commissioner determines necessary, a comprehensive on-site needs assessment using the procedures provided by subsection (c) of this section;

2) recommend appropriate actions as provided by subsection (d) of this section;

3) assist the campus in developing a SIP targeted to address the needs of the campus relating to the areas of insufficient performance;

4) assist the campus in submitting its SIP to its board of trustees for approval and in presenting the board of trustees’ SIP in a public hearing as provided by subsection (j) of this section; and

5) assist the commissioner in monitoring the progress of the campus in implementing the SIP.

5) An on-site needs assessment of the campus under subsection (a) of this section must determine the contributing education-related and other factors resulting in the campus’ low performance and lack of progress. The CIT shall use the guidelines and procedures provided by TEC, §39.106(b), in conducting the targeted or comprehensive on-site needs assessment.

6) On completing the on-site needs assessment under this section, the CIT shall recommend actions relating to any area of insufficient performance, including those specified by TEC, §39.106(c).

7) The CIT shall assist the campus in submitting the SIP or updated SIP to the commissioner for approval. The board of trustees shall ensure that the campus submits its SIP by a date prescribed by the TEA.

8) A school community partnership team (SCPT) shall supersede the authority of and satisfy the requirements of establishing and maintaining a campus-level planning and decision-making committee.
under TEC, Chapter 11, Subchapter F, or §97.1061(c) of this title (relating to Interventions and Sanctions for Campuses), if this is provided by the commissioner in establishing the SCPT under §97.1061(a)(2) of this title. In that event, the CIT shall involve and be advised by the SCPT in carrying out the duties set forth in subsections (b)(1) and (d) of this section.

(g) The commissioner may authorize a SIP or updated SIP developed under this subchapter to supersede the provisions of and satisfy the requirements of developing, reviewing, and revising a campus improvement plan (CIP) under TEC, Chapter 11, Subchapter F, or §97.1061(c) of this title.

(h) In assisting the district/campus to execute its approved SIP, the CIT will, as appropriate:

(1) assist the campus in implementing research-based practices for curriculum development and classroom instruction, including bilingual education and special education programs and financial management;

(2) provide research-based technical assistance, including data analysis, academic deficiency identification, intervention implementation support, and budget analysis, in order to help the campus strengthen and improve its instructional programs; and

(3) request the district to develop a teacher recruitment and retention plan to address the qualifications and retention of the teachers at the campus. At the recommendation of the CIT, the commissioner may require the district to develop such a plan.

(i) For each year a campus is assigned an unacceptable performance rating under the state academic accountability system, a CIT shall:

(1) continue to work with the campus until:

(A) the campus satisfies all performance standards under TEC, §39.054(e), for a two-year period; or

(B) the campus satisfies all performance standards under TEC, §39.054(e), for a one-year period and the commissioner determines that the campus is operating and will continue to operate in a manner that improves student achievement;

(2) assist in updating the SIP to identify and analyze areas of growth and areas that require improvement; and

(3) assist the campus in submitting its updated SIP to its board of trustees.

(j) After a SIP or updated SIP is submitted to the board of trustees of the school district, the board:

(1) shall conduct a hearing for the purpose of:

(A) notifying the public of the insufficient performance, the improvements in performance expected by the TEA, and the intervention measures or sanctions that may be imposed under this subchapter if the performance does not improve within a designated period; and

(B) soliciting public comment on the SIP or any updated SIP;

(2) must post the SIP on the district’s Internet website at least 72 hours before the hearing;

(3) may conduct one hearing relating to one or more campuses subject to a SIP or an updated SIP; and

(4) after modifying the SIP in response to public comment, as appropriate, shall submit the SIP or any updated SIP to the commissioner for approval. The SIP submitted to the commissioner for approval may include procedures for submitting certain changes or adjustments to the commissioner for approval without the necessity of further board hearing and action under this subsection.

(k) Notwithstanding any other provision of this subchapter, if the commissioner determines that a campus for which an intervention is ordered under subsection (a) of this section is not fully implementing the CIT’s recommendations or SIP or updated SIP, the commissioner may order the reconstitution of the campus as provided by TEC, §39.107, and §97.1064 of this title.

[(l) The principal of a campus assigned a CIT under subsection (a) of this section, or any person employed to replace that principal, shall participate in and complete the program requirements of the school leadership pilot program (SLPP) implemented in accordance with TEC, §11.203. The district shall be responsible for any costs associated with participation in the SLPP, such as travel, lodging, or extra duty pay.]

[(m) Participation in the SLPP shall begin not later than October 1 of the current school year.]

[(n) All program requirements of the SLPP shall be completed within one year of enrolling in the program.]

[(o) If a campus is rated Academically Unacceptable under the state academic accountability rating system for two consecutive school years, including the current school year, the campus shall be reconstituted under procedures developed by the TEA, and the CIT will continue to be assigned under TEC, §39.1324.]

[(p) A campus ordered to reconstitute shall use the current school year to plan the reconstitution, with the assistance of the district and CIT, and shall open the subsequent school year as a reconstituted campus regardless of the academic accountability rating assigned to the campus in that school year.]

[(q) The CIT shall decide which educators may be retained at the campus when it opens for the subsequent school year.]

[(r) A principal who has been employed by the campus in that capacity during the full two-year period described by this subsection may not be retained at the campus when it opens for the subsequent school year unless, in accordance with TEC, §97.116, the school district decides to retain the principal based on a demonstrated pattern of significant academic improvement by students enrolled at the campus.]

[(s) A teacher of a subject assessed by an assessment instrument under TEC, §39.023, may be retained for the subsequent school year only if the CIT determines that a pattern exists of significant academic improvement by students taught by the teacher.]

[(t) If an educator is not retained, the educator may be assigned to another position in the district when the district opens for the subsequent school year.]

[(u) The TEA may assign a monitor, conservator, management team, or board of managers to the campus in order to ensure the implementation of its school improvement and reconstitution plan.]

[(v) The commissioner shall order alternative management or campus closure under §97.1065 of this title (relating to Campus Closure or Alternative Management) when the campus has failed to implement recommendations of the CIT or terms of the school improvement and reconstitution plan and such order is needed to achieve the purposes listed in §97.1053 of this title (relating to Purposes).]

[(w) If a campus is rated Academically Unacceptable under the state academic accountability rating system for the school year after
reconstitution is required to be implemented under subsection (e) of this section, the commissioner:]

[(1) shall review the district’s implementation of the school improvement and reconstitution plan in accordance with TEC, §39.132; and]

[(2) may order alternative management or campus closure under §97.1065 of this title based on this review and on any other relevant information.]

[(c) The commissioner shall order alternative management or campus closure under §97.1065 of this title when the campus has failed to implement recommendations of the CIT or terms of the school improvement and reconstitution plan and such order is needed to achieve the purposes listed in §97.1053 of this title.]

§97.1064. Reconstitution.

(a) When a campus is assigned an unacceptable performance rating under the state academic accountability system for two consecutive school years, the commissioner of education shall order the campus reconstituted under procedures developed by the Texas Education Agency (TEA), and the campus intervention team (CIT) will continue to be assigned under §97.1063 of this title (relating to Campus Intervention Team).

(1) A campus ordered to reconstitute shall use the school year in which its second identification occurs to plan the reconstitution, with the assistance of the district and CIT, and shall open the subsequent school year as a reconstituted campus regardless of the state academic accountability rating assigned to the campus in that school year. For example: A district campus is rated Academically Unacceptable for the second consecutive year on August 1, 2009. In September 2009, the commissioner orders reconstitution, and the district uses the 2009-2010 school year to plan the reconstitution. The district must open the reconstituted campus in the fall of 2010.

(A) The CIT shall decide which educators may be retained at the campus when it opens as a reconstituted campus for the subsequent school year.

(B) A principal who has been employed by the campus in that capacity during the full period of campus performance resulting in the ratings triggering action under this subsection may not be retained at the campus when it opens as a reconstituted campus for the subsequent school year unless the CIT determines that retention of the principal would be more beneficial to the student achievement and campus stability than removal.

(C) A teacher of a subject assessed by an assessment instrument under Texas Education Code (TEC), §39.023, may be retained at the reconstituted campus only if the CIT determines that a pattern exists of significant academic improvement by students taught by the teacher.

(D) If an educator is not retained at the reconstituted campus, the educator may be assigned to another position in the district.

(2) A campus subject to this subsection shall implement the requirements of §97.1063 of this title and shall implement the updated school improvement plan (SIP), including the plan for campus reconstitution, as approved by the commissioner. The TEA may assign a monitor, conservator, management team, or board of managers to a district with a campus assigned an unacceptable performance rating under the state academic accountability system for two or more consecutive school years in order to ensure and oversee district-level support to low-performing campuses and the implementation of the updated SIP and the reconstitution plan. In making appointments under this subsection, the commissioner shall consider individuals who have demonstrated success in managing campuses with student populations similar to the campus at which the individual appointed will serve.

(3) The commissioner shall order repurposing, alternative management, or campus closure under §97.1065 of this title (relating to Repurposing, Alternative Management, or Campus Closure) when a campus assigned an unacceptable performance rating under the state academic accountability system for two or more consecutive school years has failed to fully implement recommendations of the CIT or terms of the updated SIP and the reconstitution plan or if the students enrolled at the campus fail to demonstrate substantial improvement in the areas targeted by the updated SIP and such order is needed to achieve the purposes listed in §97.1053 of this title (relating to Purpose).

(b) The district is responsible for the successful reconstitution and subsequent performance of its campus. The CIT shall assist the reconstituting campus in:

(1) developing an updated SIP;

(2) submitting the updated SIP to the board of trustees of the school district for approval and presenting the plan in a public hearing as provided by §97.1063(f) of this title;

(3) seeking approval of the updated SIP from the commissioner; and

(4) executing the plan on approval by the commissioner.

(c) For each year that a campus is considered to have an unacceptable performance rating under the state academic accountability system, a CIT shall:

(1) assist in updating the SIP to identify and analyze areas of growth and areas that require improvement; and

(2) support and assist the campus in submitting its updated SIP to the board of trustees of the school district, to the parents of campus students, and to the TEA for approval.

(d) In combination with action under this section, the commissioner may impose on the district or campus any other sanction under TEC, Chapter 39, or this subchapter, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in §97.1053 of this title. In particular, the commissioner may:

(1) impose a campus accreditation sanction under §97.1061 of this title (relating to Interventions and Sanctions for Campuses); and/or

(2) take action under any provision of TEC, Chapters 12 or 39; and/or

(3) require the district to purchase professional services under TEC, §39.109.

(A) The commissioner’s order may require the district or campus to:

(i) select or be assigned an external auditor, data quality expert, professional authorized to monitor district assessment instrument administration, or curriculum or program expert; or

(ii) provide for or participate in the appropriate training of district staff or board of trustee’s members in the case of a district or campus staff in the case of a campus.

(B) If the commissioner’s order requires the district or campus to select a specific professional service provider, the district is exempt from following competitive bidding procedures before executing the contract.
§97.1065. Repurposing, Alternative Management, or Campus Closure (or Alternative Management).

(a) Action required. The commissioner of education shall order repurposing, alternative management, or closure of a campus as provided in this section, if the campus is assigned an unacceptable performance rating under the state academic accountability system for the third consecutive school year after reconstitution is required to be implemented under §97.1064 of this title (relating to Reconstitution); or

(1) the campus is rated Academically Unacceptable under the state academic accountability rating system for the second consecutive school year after reconstitution is required to be implemented under §97.1063 of this title (relating to Campus Intervention Team; Reconstitution); or

(2) such action is required under §97.1063(c) of this title.

(b) Other actions permitted. In combination with action under this section, the commissioner may impose on the district or campus any other sanction under Texas Education Code (TEC), Chapter 39, or this subchapter, singly or in combination, to the extent the commissioner determines is reasonably required to achieve the purposes specified in §97.1053 of this title (relating to Purpose). In particular, the commissioner may impose sanctions as specified in §97.1064(d) of this title and/or may assign a monitor, conservator, management team, or board of managers in order to ensure and oversee district-level support to low-performing campuses and the implementation of the updated school improvement plan (SIP) and the reconstitution plan.

(1) impose a campus accreditation sanction under Texas Education Code (TEC), §39.132;

(2) take action under any provision of TEC, Chapters 12 or 39; and/or

(3) require the district to purchase professional services under TEC, §39.1331;

(A) the commissioner's order may require the district or campus to:

(i) select an external auditor, data quality expert, professional authorized to monitor district assessment instrument administration, or curriculum or program expert, or

(ii) provide for the appropriate training of district staff or board of trustees members in the case of a district, or campus staff in the case of a campus;

(B) if the commissioner's order requires the district or campus to select a specific professional service provider, the district is exempt from following competitive bidding procedures before executing the contract.

(c) Campus repurposing.

(1) If the commissioner orders repurposing of a campus under this section, the school district shall develop a comprehensive plan for repurposing the campus and submit the plan to the board of trustees for approval and to the commissioner for approval, using the procedures described by §97.1063 of this title (relating to Campus Intervention Team) for SIP approvals. The plan must include a description of a rigorous and relevant academic program for the campus. The plan may include various instructional models.

(2) The commissioner may not approve the repurposing of a campus unless:

(A) all students in the assigned attendance zone of the campus in the school year immediately preceding the repurposing of the campus are provided with the opportunity to enroll in and are provided transportation on request to a campus approved by the commissioner, unless the commissioner grants an exception because there is no other campus in the district in which the students may enroll;

(B) the principal is not retained at the campus, unless the commissioner determines that students enrolled at the campus have demonstrated significant academic improvement; and

(C) teachers employed at the campus in the school year immediately preceding the repurposing of the campus are not retained at the campus, unless the commissioner or the commissioner's designee grants an exception, at the request of a school district, for:

(i) a teacher who provides instruction in a subject other than a subject for which an assessment instrument is administered under TEC, §39.023(a) or (c), who demonstrates to the commissioner satisfactory performance; or

(ii) a teacher who provides instruction in a subject for which an assessment instrument is administered under TEC, §39.023(a) or (c), if the district demonstrates that the students of the teacher demonstrated satisfactory performance or improved academic growth on that assessment instrument.

(3) If an educator is not retained under paragraph (2)(C) of this subsection, the educator may be assigned to another position in the district.

(d) [44] Alternative management. The commissioner may order alternative management of a campus under this section and may require the campus to remain open, when:

(1) the commissioner does not approve repurposing of the campus under subsection (c) of this section and does not order the closure of the campus under §97.1051(3) of this title (relating to Definitions);

(2) [43] the commissioner determines that alternative management has a reasonable expectation of producing an acceptable [Academically Acceptable] or higher [better] campus performance rating in the state academic accountability [rating] system within three rating cycles of assignment of the alternative management service provider under §97.1067 of this title (relating to Alternative Management of Campuses); [and]

(3) [42] an alternative management service provider with the necessary skills and required expertise is available under §97.1069 of this title (relating to Providers of Alternative Campus Management); and [-]

(4) such action is determined warranted under §97.1059 of this title (relating to Standards for Accreditation Sanction Determinations) and other standards for accreditation sanction determinations.

(4) The commissioner shall grant the campus a one-year waiver of alternative management under this section and instead require the district to contract for appropriate technical assistance under TEC, §39.1327(e)(2), if the commissioner:

(1) determines that the basis for assigning a rating of Academically Unacceptable under the state academic accountability rating system is limited to a specific condition that may be remedied with targeted technical assistance;

(2) finds that the targeted technical assistance proposed by the district has significant potential for success in remediating the deficiencies of the district; and

(3) approves the contract for targeted technical assistance.
(e) Closure. The commissioner may [shall] order closure of the campus when action is required under this section and:

(1) the commissioner approves neither repurposing of the campus under subsection (c) of this section nor alternative management under subsection [to] (d) of this section [does not apply];

(2) the district fails to enter into a contract for alternative management under §97.1067 of this title as required by §97.1067 of this title; or

(3) the commissioner does not approve the contract for alternative management under §97.1067 of this title; and

(4) such action is determined warranted under §97.1059 of this title and other standards for accreditation sanction determinations.

(f) Alternative management unsuccessful. The commissioner shall order closure of a campus when alternative management of the campus was ordered under this section and:

(1) the district resumed operation of the campus under TEC, §39.107(n) [§39.1327(h)]; and

(2) for the school year immediately following resumption of operations, the campus is assigned an unacceptable performance rating [rated Academically Unacceptable] under the state academic accountability [rating] system.

(g) Appeal. An order proposing action under this section may be appealed only as provided by §97.1037 of this title (relating to Record Review of Certain Decisions).

(h) Waiver. The commissioner may waive the requirement to enter an order under subsection (a) of this section for not more than one school year if the commissioner determines that, on the basis of significant improvement in student performance over the preceding two school years, the campus is likely to be assigned an acceptable performance rating under the state academic accountability system for the following school year.

(i) Targeted technical assistance. In addition to the grounds specified in TEC, §39.109, if the commissioner determines that the basis for the unsatisfactory performance of a campus for more than two consecutive school years is limited to a specific condition that may be remedied with targeted technical assistance, the commissioner may require the district to contract for the appropriate technical assistance.

(j) Lack of improvement. The commissioner shall order repurposing, alternative management, or campus closure under this section if the students enrolled at a campus assigned an unacceptable performance rating under the state academic accountability system for two or more consecutive school years fail to demonstrate substantial improvement in the areas targeted by the campus’ updated SIP and such order is needed to achieve the purposes listed in §97.1053 of this title.


(a) By January 1 of the school year in which alternative management of a campus is ordered under §97.1065 of this title (relating to Repurposing, Alternative Management, or Campus Closure [or Alternative Management]), the school district shall:

(1) execute a contract in compliance with this section; and

(2) relinquish control over the campus to a service provider approved under §97.1069 of this title (relating to Providers of Alternative Campus Management).

(b) A contract under this section must be executed by the district and the service provider and must:

(1) relinquish all authority to perform the duties and responsibilities of a principal under Texas Education Code (TEC), §11.202(b)(1)-(6), with respect to the campus;

(2) comply with TEC, §39.107(m)-(o) [§39.1327(g)-(i)]; this section; and the requirements and performance measures established by the Texas Education Agency (TEA) under §97.1069 of this title;

(3) provide for the creation, maintenance, retention, and transfer of all public records concerning the campus;

(4) include provisions governing liability for damages, costs, and other penalties for acts or omissions by the service provider, including failure to comply with federal or state laws;

(5) provide for termination of the contract if:

(A) the campus is assigned an acceptable or higher performance rating [rated Academically Acceptable] under the state academic accountability [rating] system for two consecutive school years; or

(B) the commissioner of education orders campus closure under §97.1065(e) or (f) [§97.1065(g)] of this title;

(6) specify additional roles or responsibilities assumed by the service provider, if any;

(7) be approved by written resolution of the district’s board of trustees; and

(8) be approved in writing by the commissioner.

(c) The service provider may perform the duties and responsibilities of a principal, and in addition may make requests and recommendations to the district concerning all aspects of campus administration, including personnel and budget decisions.

(1) If a request is denied or a recommendation is not implemented by the district, the service provider shall report to the TEA both its request or recommendation and the district’s action in response.

(2) The commissioner may implement additional sanctions under this subchapter and consider such reports under TEC, §39.108 [§39.1123] and §39.107(n) [§39.1327(h)], as well as §97.1065(b) of this title.

(d) The funding for the campus must be not less than the funding of the other campuses operated by the district on a per-student basis so that the service provider receives at least as much funding as the campus would otherwise have received. The district must continue to support:

(1) campus maintenance and operations;

(2) transportation;

(3) food services;

(4) extracurricular activities;

(5) central office support services;

(6) state assessment administration; and

(7) similar operational expenses of the campus.

(e) A campus operated by a service provider under this section remains a campus of the district. Educators and staff assigned to work at the campus are district employees for all purposes. The campus is not subject to TEC, §11.253.

(f) A district subject to this section shall comply fully with TEA requests for information for the purpose of evaluating implemen-
tation of the contract, student performance, and management of the campus.

(g) A district that violates the terms of its contract under this section is subject to further sanctions under this subchapter.

§97.1069. Providers of Alternative Campus Management.

(a) Each school year, the Texas Education Agency (TEA) will issue a request for qualifications (RFQ) to solicit proposals from qualified non-profit management entities to assume the management of campuses identified for sanction under §97.1067 of this title (relating to Alternative Management of Campuses). The commissioner of education may solicit proposals from qualified for-profit entities to assume management of a campus subject to this section if a non-profit entity has not responded to the RFQ.

(1) To be approved as a provider of alternative campus management services, a non-profit entity must meet the requirements of Texas Education Code (TEC), §39.107 [§39.122], and any additional qualifications and procedural requirements specified by the TEA in the RFQ.

(2) The commissioner [of education] may appoint a school district in the same education service center region as the campus to provide alternative management services under this section. A district appointed under this subsection shall assume management of the campus in the same manner as a non-profit entity.

(b) Contact information for each approved provider of alternative campus management services will be posted to the TEA website. The TEA will notify approved providers before posting the providers’ information to the website.

(c) In addition to any action by the district on the contract, a service provider failing to comply with the terms of a contract under this section, or to perform services as specified in the RFQ, shall be removed from the TEA list of approved service providers.

(d) A service provider shall comply fully and promptly with TEA requests for information for the purpose of evaluating implementation of the contract, student performance, and management of the campus.

§97.1071. Special Program Performance; Intervention Stages.

(a) The commissioner of education shall assign a school district to an intervention stage based on performance levels under §97.1005 of this title (relating to Performance-Based Monitoring System) according to the following general criteria:

(1) the degree to which the district’s performance reflects a need for intervention, as indicated by the seriousness, number, extent, and duration of the student performance, program effectiveness, and/or program compliance deficiencies identified by the Texas Education Agency (TEA);

(2) a comparison of the district’s performance to aggregated state performance and to the performance of other districts;

(3) the availability of state and regional resources to intervene in all districts exhibiting a comparable need for intervention; and

(4) the length of time the performance standard has been in place and the length of time the district has exhibited deficiencies under the standard.

(b) In addition to performance levels determined under §97.1005 of this title, the commissioner may consider any other applicable information, such as:

(1) complaints investigation results;

(2) special education due process hearing decisions;

(3) data validation activities;

(4) integrity of assessment or financial data; and

(5) longitudinal intervention history.

(c) The standards used to assign districts to specific intervention stages under this section are established annually by the commissioner and communicated to all school districts.

(d) The commissioner may use graduated stages of intervention to address student performance, program effectiveness, and/or data quality deficiencies referenced in §97.1005 of this title. In addition to any sanction authorized by Texas Education Code (TEC), Chapter 39, [Subchapter C.], such intervention may require a district to implement and/or participate in:

(1) focused analysis of district data;

(2) required district review of program effectiveness;

(3) required public meetings;

(4) focused compliance reviews conducted by review teams established by the TEA;

(5) on-site reviews; and/or

(6) continuous improvement planning.

(e) The commissioner shall notify each district selected for intervention under this section via the Intervention Stage and Activity Manager (ISAM) on the TEA secure website.

(1) The TEA shall notify districts that intervention stages have been posted to ISAM by:

(A) posting a "To the Administrator Addressed" letter on the TEA web page for correspondence; or

(B) sending a "To the Administrator Addressed" letter via electronic mail or first-class mail.

(2) It is the district’s obligation to access the correspondence by:

(A) subscribing to the listserve for "To the Administrator Addressed Correspondence;" and

(B) accessing the ISAM system as directed to retrieve intervention instructions and information.

(f) Intervention actions taken under this section are intended to assist the district in raising its performance and/or achieving compliance under §97.1005 of this title and do not preclude or substitute for a sanction under another provision of this subchapter.

(1) The level of intervention selected under this section does not reflect any decision on, or consideration of, the need for other sanctions.

(2) A decision to impose other sanctions shall be based on the accreditation and compliance performance of the district, as determined under §97.1035 of this title (relating to Procedures for Accreditation Sanctions) and this subchapter, and not on the level of intervention chosen under this section.

(g) Intervention actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by the TEA, such as:

(1) required fiscal audit of specific program(s) and/or of the district, paid for by the district;
(2) required submission of improvement and/or corrective action plan(s), including the provision of compensatory services as appropriate, paid for by the district;

(3) expanded oversight including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or an improvement plan; and submission of district/program data;

(4) public release of monitoring review findings;

(5) denial of requests under TEC, §7.056 and/or §12.114;

(6) reduction, suspension, redirection, or withholding of program funds;

(7) lowering of the special education monitoring status of the district; and/or

(8) lowering of the district’s accreditation status, academic accountability rating, and/or financial accountability rating.

(b) As a system safeguard, the TEA will conduct desk review of on-site data verification activities through a random or other means of selection to verify system effectiveness and/or district implementation of monitoring requirements, including, but not limited to, accuracy of data reporting, implementation of intervention activities, implementation of plans for improvement or correction, and accuracy of findings made through the performance-based monitoring system process.

§97.1073. Appointment of Monitor, Conservator, or Board of Managers.

(a) The commissioner of education shall appoint a monitor, conservator, management team, or board of managers whenever such action is required, as determined by this section. Action under any other section of this subchapter is not a prerequisite to acting under this section.

(b) The commissioner shall appoint a monitor under Texas Education Code (TEC), §39.102(a)(6), §39.131(a)(6) when:

1. the deficiencies identified under §97.1059 of this title (relating to Standards for All Accreditation Sanction Determinations) require a monitor to participate in and report to the commissioner on the activities of the district’s board of trustees and superintendent;

2. the deficiencies identified under §97.1059 of this title are not of such severity or duration as to require direct Texas Education Agency (TEA) oversight of district operations;

3. the district has been responsive to and generally compliant with previous commissioner sanctions and TEA interventions; and

4. stronger intervention is not required to prevent substantial or imminent harm to the welfare of the district’s students or to the public interest.

(c) The commissioner shall appoint a conservator under TEC, §39.102(a)(7), §39.131(a)(7), and §39.111 [§39.135], or a management team under TEC, §39.102(a)(8) [§39.131(a)(8)] and §39.111 [§39.135], when:

1. the nature or duration of the deficiencies require that the TEA directly oversee the operations of the district in the area(s) of deficiency;

2. the district has not been responsive to or compliant with TEA intervention requirements; or

3. such intervention is needed to prevent substantial or imminent harm to the welfare of the district’s students or to the public interest.

(d) The decision whether to appoint a conservator or management team under subsection (c) of this section shall be based solely on logistical concerns, including the competencies required and the volume of work involved. Selecting a management team rather than a conservator does not reflect on the severity of the deficiencies to be addressed.

(e) The commissioner shall appoint a board of managers under TEC, §39.112 [§39.136] and §39.102(a)(9) or (b) [§39.131(a)(9) or §39.132(a)(6)], as applicable, when:

1. sanctions under subsection (b) or (c) of this section have been ineffective to achieve the purposes identified in §97.1035 of this title (relating to Procedures for Accreditation Sanctions);

2. the commissioner has initiated proceedings under §97.1037 of this title (relating to Record Review of Certain Decisions) to close or annex the district;

3. the commissioner has initiated proceedings under §97.1037 of this title to close a campus, and such intervention is needed to cease operations of the campus; or

4. such intervention is needed to prevent substantial or imminent harm to the welfare of the district’s students or to the public interest.

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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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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19 TAC §97.1061

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

The repeal is proposed under the TEC, §§39.102-39.116, which authorize the commissioner to implement procedures to impose interventions and sanctions for districts, campuses, and open-enrollment charter schools, including campus improvement plans; campus intervention teams; reconstitution, repurposing, alternative management, and closure; annual review; acquisition of professional services; costs paid by district; conservator or management team; board of managers; and transitional interventions and sanctions.


§97.1061. Technical Assistance Team Campuses.

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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CHAPTER 100. CHARTERS
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPEN-ENROLLMENT CHARTER SCHOOLS

The Texas Education Agency (TEA) proposes amendments to §§100.1015, 100.1017, 100.1021, 100.1022, 100.1027, 100.1033, and 100.1047, concerning open-enrollment charter schools. The sections address general provisions as well as provisions relating to commissioner action and intervention and funding and financial operations. The proposed amendments would update the rules to reflect statutory changes resulting from House Bill (HB) 3 and HB 1423, 81st Texas Legislature, 2009; align with rules in 19 TAC Chapter 97, Planning and Accountability; detail requirements for charter amendments, including a new type of expansion amendment; and update provisions relating to financial accountability.

In accordance with HB 6, 77th Texas Legislature, 2001, the commissioner exercised rulemaking authority to adopt 19 TAC Chapter 100, Charters, Subchapter AA, Commissioner’s Rules Concerning Open-Enrollment Charter Schools, covering a wide range of issues related to open-enrollment charter schools. The rules in 19 TAC Chapter 100, Subchapter AA, are organized in divisions addressing related subject matter, as follows: Division 1, General Provisions; Division 2, Commissioner Action and Intervention; Division 3, Charter School Funding and Financial Operations; Division 4, Property of Open-Enrollment Charter Schools; Division 5, Charter School Governance; and Division 6, Charter School Operations.

HB 3, 81st Texas Legislature, 2009, made changes to the Texas Education Code (TEC), Chapter 39, Public School System Accountability, to amend the methods and standards used for evaluating performance, including financial management performance, of school districts and open-enrollment charter schools. The changes to the TEC, Chapter 39, also amended the standards for interventions and sanctions.

HB 1423, 81st Texas Legislature, 2009, amended the TEC, Chapter 12, Subchapter E, to allow public junior colleges to be awarded charters.

The proposed amendments to 19 TAC Chapter 100, Subchapter AA, would reflect these statutory changes as well as changes in the non-regulatory guidance for the Elementary and Secondary Education Act (ESEA). In addition, the proposed amendments would align the rules with 19 TAC Chapter 97 and add reference to commissioner’s rules on the financial accountability rating system. Other technical corrections also would be made.

The proposed amendments would affect rules in Divisions 1, 2, and 3 as follows.


The proposed amendments to 19 TAC §100.1015, Applicants for an Open-Enrollment Charter or Public Senior College or University Charter, and §100.1017, Application to Public Senior College or University Charters, would modify the rules and section titles to include public junior colleges as potential charter holders in accordance with statute. Technical corrections to word usage would also be made.

Division 2. Commissioner Action and Intervention.

The proposed amendment to 19 TAC §100.1021, Adverse Action on an Open-Enrollment Charter, would update language to correspond with accreditation standards in the TEC, Chapter 39, and 19 TAC Chapter 97. Rules for accrediting charter schools would be specified in 19 TAC Chapter 97. Technical changes to correct word usage and subsection lettering would also be made.

The proposed amendment to 19 TAC §100.1022, Standards for Adverse Action on an Open-Enrollment Charter, would update language to correspond with accreditation standards in the TEC, Chapter 39, and 19 TAC Chapter 97. Rules for accrediting charter schools would be specified in 19 TAC Chapter 97. Technical changes to correct word usage and numbering would also be made.

The proposed amendment to 19 TAC §100.1027, Accountability Ratings and Sanctions, would revise language specifying which sections of the TEC, Chapter 39, are applicable to charter schools to reflect changes made by the 81st Texas Legislature, 2009. Technical corrections to word usage would also be made.

The proposed amendment to 19 TAC §100.1033, Charter Amendment, would revise the section as follows.

Subsection (c)(3) would be amended to specify that, in determining whether a substantive amendment is in the best interest of the students, the commissioner may consider the performance of all charters operated by the same charter holder.

Subsection (c)(5)(A)(iii) would be amended to clarify that the rating consideration for an expansion amendment would be associated with a single charter.

New subsection (c)(5)(A)(iv) would be added to specify the minimum student performance requirement for the commissioner to consider expansion amendments for schools evaluated using alternative education accountability procedures.

The word generally would be deleted in subsection (c)(5)(A)(vii) to clarify that all requirements for substantive amendments must be met in order for the commissioner to grant an expansion amendment.

Proposed new subsection (c)(5)(C)(iv) would be added to require charter holders to submit compliance information relating to nepotism, conflicts of interest, and restrictions on serving for the most recent three years of operation as part of an expansion amendment request.

Proposed new subsection (c)(5)(F) would be added to allow for an exemption to the expansion requirements for charters meeting certain conditions that seek and are granted a waiver by the commissioner.

Proposed new subsection (c)(6) would be added to provide for a new type of amendment for charters meeting certain conditions to seek and be granted new school status by the commissioner in order to be eligible for federal charter school program start-up funding.

Technical changes would also be made throughout the section to delete an outdated school year reference and correct word usage, punctuation, and numbering.

The proposed amendment to 19 TAC §100.1047, Accounting for State Funds, would revise the title to clarify that the charter holder is responsible for accounting for both state and federal funds and would add reference to commissioner’s rules on the financial accountability rating system in 19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner’s Rules Concerning Financial Accountability Rating System. Technical corrections to word usage and punctuation would also be made.

The proposed amendments would require that new school amendments be submitted to the TEA in accordance with the current expansion amendment process. An eligible charter holder would be required to complete an application for new school status and could eliminate some of the TEA amendment requirements by obtaining a waiver from the commissioner. The proposed amendments would have no new locally maintained paperwork requirements.

Laura Taylor, associate commissioner for accreditation, has determined that for the first five-year period the amendments are in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendments. The proposed amendments would result in an economic benefit to open-enrollment charter schools. New provisions in 19 TAC §100.1033 would allow charter schools meeting certain conditions to receive federal start-up funding for new schools under existing charters. The economic benefit statewide will be approximately $4.5 million for fiscal year 2010 and $5 million each year for fiscal years 2011-2014. The amount of the grant awards will be dependent on the number of charter schools that are eligible for these funds and the amount of federal funds available for this purpose under the ESEA, Section 5202.

Ms. Taylor has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be the alignment of charter school provisions with recent legislative changes and a potential increase in the number of high-quality charter schools available to students across the state, in accordance with the ESEA, Section 5201(3). There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

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 April 23, 2010, and ends May 24, 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 or faxed to (512) 463-0028. A public hearing on the proposed amendments has been scheduled for Wednesday, May 5, 2010, at 9:00 a.m. in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Questions about the scheduled public hearing should be directed to the TEA Division of Charter School Administration at (512) 463-9575.

DIVISION 1. GENERAL PROVISIONS

19 TAC §100.1015, §100.1017

The amendments are proposed under the TEC, §12.152 and §12.153, which authorize the commissioner to adopt rules and procedures related to the implementation of college or university or junior college charter schools.

The proposed amendments implement the TEC, §12.152 and §12.153.

§100.1015. Applicants for an Open-Enrollment Charter. [19] Public Senior College or University Charter, or Public Junior College Charter.

Applicants for an open-enrollment charter, [19] a public senior college or university charter, or a public junior college charter shall demonstrate compliance, or the capacity to operate in compliance, with the provisions of this subchapter.

§100.1017. Application to Public Senior College or University Charters and Public Junior College Charters.

(a) Except as expressly provided in the rules in this subchapter, or where required by Texas Education Code (TEC), Chapter 12, Subchapter E (College or University or Junior College Charter School), a provision of the rules in this subchapter applies to a public senior college or university charter school or junior college charter school as though the public senior college or university charter school or junior college charter school were granted a charter under TEC, Chapter 12, Subchapter D (Open-Enrollment Charter School).

(b) The following provisions of this subchapter do not apply to a public senior college or university charter school or a public junior college charter school:

(1) §100.1033(c)(6) and §100.1101, relating to delegation of powers and duties;
(2) §100.1035, relating to compliance records;
(3) §100.1073, relating to improvements to real property;
(4) §§100.1111 - 100.1116, relating to nepotism;
(5) §§100.1131 - 100.1135, relating to conflicts of interest;
(6) §100.1203(a), relating to retention of government records; and
(7) §100.1205, relating to procurement of professional services.

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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Cristina De La Fuente-Valadez
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Texas Education Agency
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DIVISION 2. COMMISSIONER ACTION AND INTERVENTION

19 TAC §§100.1021, 100.1022, 100.1027, 100.1033

The amendments are proposed under the TEC, §12.104(b)(2), which states that an open-enrollment charter school is subject to
a prohibition, restriction, or requirement, as applicable, imposed by TEC, Title 2, or a rule adopted under TEC, Title 2, relating to specific areas of operation, including public school accountability under TEC, Chapter 39, Subchapters B, C, D, E, and J; §12.114, which authorizes the commissioner to approve charter revisions; §12.1162(a), which authorizes the commissioner to take additional sanctions to the extent determined necessary by the commissioner under certain circumstances; §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district; §39.054, which authorizes the commissioner to adopt rules to evaluate school district and campus performance; §39.082, which authorizes the commissioner to develop and implement separate financial accountability rating systems for school districts and open-enrollment charter schools; §39.085, which authorizes the commissioner to adopt rules to implement TEC, Subchapter D, on financial accountability; and §39.102 and §39.104, which authorize the commissioner to implement procedures to impose interventions and sanctions for districts, including open-enrollment charter schools.


§100.1021.  Adverse Action on an Open-Enrollment Charter.

(a)  Adverse action. The commissioner of education may modify, place on probation, revoke, or deny renewal of an open-enrollment charter if the commissioner determines the charter holder:

(1) failed to satisfy accountability rating requirements and other student performance requirements, as determined by the commissioner under §100.1022 of this title (relating to Standards for Adverse Action on an Open-Enrollment Charter) and this section;

(2) failed to satisfy generally accepted accounting standards of fiscal management, as determined by the commissioner under §100.1022 of this title and this section;

(3) failed to protect the health, safety, or welfare of the students enrolled at the school, as determined by the commissioner under §100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students), §100.1022 of this title, and this section;

(4) committed a material violation of the open-enrollment charter, as determined by the commissioner under §100.1022 of this title and this section; or

(5) failed to comply with the requirements of the Texas Education Code (TEC), Chapter 12, Subchapter D, or other applicable state and/or federal law or rule, as determined by the commissioner under §100.1022 of this title and this section.

(b) Accreditation sanction or revocation. The procedures provided by §100.1022 of this title and this section do not apply to an accreditation action closing a charter school or revoking or modifying the open-enrollment charter held by a charter holder under TEC, Chapter 39. Such actions are governed by the procedures set forth in Chapter 97, Subchapter DD, of this title (relating to Investigative Reports, Sanctions, and Record Reviews); Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); and Chapter 157, Subchapter EE, of this title (relating to Review by State Office of Administrative Hearings: Certain Accreditation Sanctions). In accordance with §97.1037(g) of this title (relating to Record Review of Certain Decisions) and §157.1173 of this title (relating to Application to Charter Schools):

(1) the open-enrollment charter of a charter school is automatically revoked, void, and of no further force or effect on the effective date of a final decision by the commissioner ordering the charter school closed under TEC, Chapter 39. No adverse action under §100.1022 of this title or this section shall be required;

(2) the open-enrollment charter of a charter school is automatically modified to remove authorization for an individual campus on the effective date of a final decision by the commissioner ordering the campus closed under TEC, Chapter 39. No adverse action under §100.1022 of this title or this section shall be required. The commissioner shall not renew the open-enrollment charter of any otherwise-qualified charter holder unless the charter holder’s renewal application removes all the charter holder’s campuses that have been closed under TEC, Chapter 39; or

(3) the open-enrollment charter of a charter school is automatically revoked, void, and of no further force or effect on the effective date of a final decision by the commissioner ordering all of the campuses operated under that charter school closed under TEC, Chapter 39. No adverse action under §100.1022 of this title or this section shall be required.

(c) Notice to charter holder. The commissioner shall notify the charter holder before modifying, placing on probation, revoking, or denying renewal of the school’s charter. The notice shall clearly specify the following, either in the notice or by reference to other documents included with the notice:

(1) the action sought and the grounds for taking such action;

(2) the date, time, and place for a hearing on the action sought, which shall be provided to the charter holder and to parents and guardians of students in the school, if requested in accordance with subsection [(f)](4) of this section;

(3) a statement of the legal authority and jurisdiction under which the hearing will be held; and

(4) a reference to the particular sections of the statutes and rules involved.

(d) Notice to parents and guardians. The charter holder shall notify the parents and guardians of students in the school by posting the notice described in subsection [(c)](3) of this section, and any amendment to such notice, in the manner required by Texas Government Code, §§551.043, 551.051, and 551.052. Notwithstanding any failure by the charter holder to comply with this subsection, notice to the charter holder shall be notice to parents and guardians of students in the school, and the commissioner may conduct the hearing.

(e) Request for hearing and answer. Within ten business days after receiving the notice, the charter holder may request a hearing and submit a written response to the commissioner containing specific answers to each of the findings included in the notice. If a request for hearing and a written response are not submitted within ten business days, the recommendations of the Texas Education Agency (TEA) on the proposed action shall be submitted to the commissioner for consideration and action without a hearing. If a request for a hearing and a written response are timely submitted, the commissioner shall review the response. After reviewing the response, the commissioner may withdraw the original notice, modify the notice, permit corrective actions, or recommend a statutorily permitted sanction. Within 15 business days after receiving the charter holder’s response, the commissioner shall notify the charter holder of the action to be taken.

(f) State Office of Administrative Hearings. A hearing held under this section shall be conducted by the State Office of Administrative Hearings and governed by Chapter 155 of Title 1 (relating to Rules of Procedure [Procedures]), except as modified herein. Texas

PROPOSED RULES  April 23, 2010  35 TexReg 3177
Government Code, Chapter 2001, [Chapter 152, Subchapter BB, of this title (relating to Specific Appeals to the Commissioner)] does not apply. The hearing shall be open to the public and must be held at the facility at which the program is operated unless the program is not currently in operation or a different location is agreed to by the charter holder and TEA. The hearing shall be held no fewer than ten business days from the date the school receives notice.

(g) [¶] Exceptions and replies. Exceptions to a proposal for decision under this section shall be filed on or before the expiration of 30 calendar days from the date of the proposal for decision. Replies to the exceptions shall be filed on or before the expiration of 30 calendar days from the date of the proposal for decision.

(h) [¶] No motion for rehearing. A motion for rehearing is not a prerequisite to any judicial appeal authorized by law. No finding of imminent peril is required. No motion for rehearing shall toll or delay any applicable time period or deadline.

(i) [¶] Prefiled testimony. The administrative law judge may order that testimony and evidence from parents and guardians of students at the school be taken via prefilled written testimony.

§100.1022. Standards for Adverse Action on an Open-Enrollment Charter:

(a) Adverse action criteria. In accordance with this section, the action the commissioner of education takes under §100.1021 of this title (relating to Adverse Action on an Open-Enrollment Charter) shall be based on the best interest of the charter school’s students as it relates to the violation charged in the notice, the severity of the violation, and any previous violation the school has committed.

(1) These adverse action criteria are not listed in order of importance. Rather, the commissioner shall assign weight to each criterion as indicated by the facts of the case presented. For example, serious or persistent charter violations may warrant revocation or non-renewal even if the violations benefited or had neutral effect on the students enrolled in the charter school. The state’s interest in legal compliance is sufficient basis for adverse action with regard to evidence of harm to individual students.

(2) The “best interest of the charter school’s students” is not a decisional criterion independent of the violation charged in the notice. Rather, the commissioner shall consider the best interests of students only as this criterion relates to the violation charged in the notice. For example, evidence of serious and persistent violations in one area of performance may not be offset or excused by evidence of benefit to students in an area of performance that is unrelated to the violation charged in the notice.

(b) Minimum student performance required. Continuation of an open-enrollment charter is contingent on satisfactory student performance as measured primarily by the [accountability] ratings and accreditation statuses assigned under the Texas Education Code (TEC), Chapter 39, and in accordance with §100.1021(b) of this title. This subsection addresses special circumstances requiring that satisfactory student performance be measured by data other than ratings and accreditation statuses or in addition to ratings and accreditation statuses, as well as any supplemental accountability requirements in the open-enrollment charter pursuant to TEC, §12.111(a)(3) and (4). Such supplemental requirements are in addition to, and may not supplant, satisfactory student performance as measured by the ratings assigned under TEC, Chapter 39.

(1) Standard of required performance. The commissioner shall revoke or non-renew an open-enrollment charter of a charter holder that fails to demonstrate satisfactory performance as determined under paragraph (2) of this subsection. If all of the campuses operated under that charter have been closed under TEC, Chapter 39. The commissioner shall revoke or non-renew an open-enrollment charter of a charter holder if at least half of the campuses operated under that charter have received unsatisfactory ratings for a period of two consecutive years unless the charter holder has received a district level rating of acceptable or higher for either of the two years. The commissioner shall not renew the open-enrollment charter of any otherwise-qualified charter holder unless the charter holder’s renewal application removes all the charter holder’s campuses that have been closed under TEC, Chapter 39.

(A) [Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that receives unsatisfactory ratings. Accordingly, the appeal under §100.1021 shall normally be limited to the question of whether the charter school did in fact receive unsatisfactory ratings.] Where relevant factors mitigate or aggravate the charter holder’s unsatisfactory student performance [ratings], the appeal shall [further] consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (c), (d), (e), or (f) of this section shall not be considered in mitigation of unsatisfactory student performance [ratings] under this subsection.

(C) Evidence that the charter holder achieved satisfactory or unsatisfactory performance as measured by the ratings and accreditation statuses assigned under TEC, Chapter 39, may be considered in mitigation and/or aggravation of unsatisfactory student performance under this subsection.

(2) Determination of performance. [For purposes of this subsection, required minimum student performance shall be determined as follows.]

(A) Continuation of an open-enrollment charter is contingent on satisfactory student performance as measured by any supplemental accountability requirements in the open-enrollment charter pursuant to TEC, §12.111(a)(3) and (4). Such supplemental requirements are in addition to, and may not supplant, satisfactory student performance as measured by the ratings and accreditation statuses assigned under TEC, Chapter 39. Such minimum student performance shall be determined as specified in the open-enrollment charter pursuant to TEC, §12.111(a)(3) and (4).

[[A] An “unsatisfactory rating” shall mean a substantive rating that is not satisfactory as defined in this section. For any school year, if the Texas Education Agency (TEA) assigns no district-level ratings to open-enrollment charter schools generally, but does assign campus-level ratings in that year, then unsatisfactory ratings for a majority of the campuses operated by the charter holder in such year shall constitute an unsatisfactory rating for the charter holder at the “district” level.]

[[B] For school years prior to 2004-2005, a “satisfactory rating” shall mean a substantive rating of “Acceptable,” “Recognized,” or “Exemplary” under the relevant accountability manual, or a rating of “Acceptable” or “Commended” under the relevant alternative education accountability manual. For the 2004-2005 and subsequent school years, a satisfactory rating will be indicated in the relevant accountability manual.]

[[C] For school years prior to 2004-2005, a “substantive rating” shall mean any rating under the alternative education accountability manual other than “Not Rated,” or any rating under the accountability manual other than “Not Rated: Charter,” “Not Rated: PK-K,” “Not Rated: Alternative Education,” or “Not Rated: Other.” A rating of “Needs Peer Review” that is assigned due to the failure of the char-
ter holder to comply with the requirements of the alternative education accountability manual (or any other reason) is a substantive rating. A rating assigned due to unsatisfactory compliance performance, as described in subsection (d) of this section, is a substantive rating.

[(D)] Ratings are "consecutive" if they are not separated by a rating period in which the TEA assigned accountability ratings to charter schools generally. For example, the TEA did not assign accountability ratings to charter schools for the 2002-2003 school year. Thus, the ratings for the 2001-2002 and 2002-2003 school years are consecutive. Similarly, if TEA does not assign accountability ratings to registered alternative education campuses for the 2004-2005 school year, then the ratings for the 2001-2002 and 2004-2005 school years may be consecutive within the meaning of this rule. However, student performance for a year in which ratings were not issued may be considered as a mitigating or aggravating factor.

[(B) [(G)] If the performance of an applicant for renewal under §100.1031 of this title (relating to Charter Renewal) subparas. (1) and (2)] cannot be determined because the applicant’s charter school has [campus or campuses have] not received accountability [substantive] ratings and/or accreditation statuses for a sufficient number of years to support a judgment on its student performance [at least two consecutive years]:

(i) the commissioner may decline to finally grant or deny the application until the applicant has received a sufficient number of ratings or statuses, in which case the charter shall continue in effect under §100.1031(a) of this title [relating to Charter Renewal];

(ii) the commissioner may grant the renewal on condition that one or more future substantive ratings or statuses be at the level or levels required by the commissioner [satisfactory]; or

[(iii) [If the applicant has received two consecutive satisfactory ratings] the commissioner may grant the renewal unconditionally if the commissioner determines this is reasonable under all circumstances presented.

[(C) [(H)] If the performance of a charter holder or an applicant for renewal under §100.1031 of this title cannot be determined [a campus has not received enough substantive ratings to determine performance under subsection (b)(1) of this section] because the small numbers of students or the grade levels served by the program prevented, limited, or significantly impacted the application of Texas Education Agency’s (TEA’s) [TEAS] standard ratings and/or accreditation criteria, then the commissioner may evaluate substitute data chosen by the commissioner in taking action under this section.

(i) Based on this evaluation, the commissioner shall determine whether the applicant has demonstrated a history of unsatisfactory student performance [campus has met the requirements under subsection (b)(1) of this section]. Any appeal under §100.1021 of this title of a determination under this clause may include the question whether the campus has had unsatisfactory student performance.

(ii) Regardless of whether the campus has satisfactory student performance, the commissioner may modify the open-enrollment charter to require the charter holder to serve additional students or grade levels that will cause the campus to receive substantive ratings and/or statuses in the future.

[(D) If the performance of a charter holder or an applicant for renewal under §100.1031 of this title cannot be determined because a high proportion of students served are in prekindergarten through Grade 2 or another grade for which an assessment instrument is not administered under TEC §39.023(a), then the commissioner may evaluate the performance of the charter holder under subparagraph (C) of this paragraph.

[(E) [(G)] Evidence of relevant factors in mitigation or aggravation of the charter holder’s failure to meet the minimum student performance requirements of this subsection shall be considered under subsection (g) of this section.

(3) Finality of ratings.

[(A)] Any appeal to a specific rating must be brought using the appeal procedures in the relevant accountability manual or alternative education accountability manual adopted as rules in Chapter 97, Subchapter AA, of this title (relating to Accountability and Performance Monitoring).

[(B)] Any challenge to an agency rule, ratings standard, or process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(c) Minimum financial performance required. Continuation of an open-enrollment charter is contingent on the charter holder satisfying generally accepted accounting standards of fiscal management as demonstrated by annual audit reports under §100.1047(c) of this title (relating to Accounting for State and Federal Funds) and final investigative audit reports under Chapter 97, Subchapter DD, of this title (relating to Investigative Reports, Sanctions, and Record Reviews).

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that, for three consecutive fiscal years, has unsatisfactory financial performance shall be revoked or non-renewed.

[(A)] Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that has unsatisfactory financial performance for three consecutive fiscal years. Accordingly, the appeal under §100.1021 of this title shall normally be limited to the question whether the charter school did in fact fail to satisfy generally accepted accounting standards of fiscal management for three consecutive fiscal years. Where relevant factors mitigate or aggravate the charter holder’s failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

[(B)] Evidence that the charter holder achieved satisfactory performance under subsection (b), (d), (e), or (f) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

[(C)] Notwithstanding the previous provisions, if the commissioner determines that any unsatisfactory financial performance is both serious and has not been corrected, then that open-enrollment charter school shall be revoked or non-renewed.

(2) Determination of performance. For purposes of this subsection, required minimum financial performance shall be determined as follows.

[(A)] A charter holder has not satisfied generally accepted accounting standards of fiscal management for a given year where its annual audit report under §100.1047(c) of this title for that year fails to express the unqualified opinion of the certified public accountant preparing the report, reports a material weakness in internal controls, or is filed with the TEA more than 60 days after the deadline specified by TEC §44.008.

[(B)] An unsatisfactory financial performance is serious if the unsatisfactory financial performance includes any of the following.

(i) Payment is made in excess of bonafide compensation agreements. The payment of compensation to an individual in
excess of the fair market value of the services provided is a serious unsatisfactory financial performance. For purposes of this section, the fair market value of the services rendered shall be based on the individual’s education, experience, prior salary history, the job duties actually performed, and what a typical person with similar skills, experience, and job duties would earn.

(ii) Rental or purchase of property is in excess of its fair market value.

(iii) The Annual Audit Report required by TEC, §44.008, is more than 180 days delinquent.

(iv) The charter school received a significant overlocation from the Foundation School Program based on data reported by the charter holder.

(v) The charter school becomes financially insolvent. For purposes of this section "financially insolvent" means that the charter holder has a deficit of net assets.

(vi) The bank account where the foundation school allotments are deposited is subject to a lien, levy, or other garnishment, and that lien, levy, or other garnishment is not removed within 30 days.

(vii) The charter holder’s Foundation School Program allotment is subject to a warrant hold and that warrant hold is not removed within 30 days.

(viii) The charter holder loses its eligibility to participate in child nutrition programs for a period of more than 30 days.

(ix) The school’s financial auditor issues an adverse opinion regarding the school financial statements or the school’s financial auditor disclaims an opinion on the financial statements, and the issue resulting in the adverse or disclaimed opinion involves a significant amount of financial resources that were not properly documented or a material weakness that led to the misallocation of financial resources.

(x) The charter holder exhibits other instances of fiscal mismanagement including, but not limited to, the loss of financial records or a material non-compliance with §109.41 of this title (relating to Financial Accountability System Resource Guide) or related supplement resulting in a significant wasting of financial resources.

(C) Charter holder financial performance will be evaluated in accordance with the following standards.

(i) Step transactions. The commissioner may view the transaction as a whole and may disregard any nonsubstantive intervening transaction taken to achieve the final results.

(ii) Arm’s length transaction. A transaction that is described in subparagraph (B) of this paragraph that is the result of an arm’s length transaction between completely unrelated parties is only a serious unsatisfactory financial performance if the transaction resulted in a significant wasting of financial resources.

(D) A charter holder has not satisfied generally accepted accounting standards of fiscal management for a given fiscal year when a final investigative audit report on that year under Chapter 97, Subchapter DD, of this title finds material noncompliance with these standards.

(E) Evidence of relevant factors in mitigation or aggravation of the charter holder’s failure to satisfy generally accepted accounting standards of fiscal management shall be considered under subsection (g) of this section, including evidence that each corrective action required by the TEA has been successfully implemented in a timely manner.

(3) Finality of audits and reports.

(A) Any appeal to a specific audited financial statement or final investigative report must be brought using the procedures provided in Chapter 97, Subchapter DD, of this title.

(B) Any challenge to an agency rule, financial standard, audit procedure, or investigative process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(d) Minimum compliance performance required. Continuation of an open-enrollment charter is contingent on the charter holder’s compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules, financial accountability standards (including student attendance accounting and grant requirements), and data integrity as demonstrated by monitoring reports under TEC, §7.028; final investigative reports under Chapter 97, Subchapter DD, of this title; and other evidence.

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that has unsatisfactory compliance performance for three consecutive school years shall be revoked or non-renewed.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that has unsatisfactory compliance performance for three consecutive school years. Accordingly, the appeal under §100.1021 of this title shall normally be limited to the question whether the charter school did in fact fail to demonstrate compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability (including student attendance accounting and grant requirements); or data integrity for three consecutive years. Where relevant factors mitigate or aggravate the charter holder’s failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (c), (e), or (f) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum compliance performance shall be determined as follows.

(A) A charter holder’s compliance with TEC, Chapter 12, Subchapter D; federal and state laws and rules; financial accountability standards (including student attendance accounting and grant requirements); or data integrity standards may be determined by applying the applicable standards to the facts as found by TEA monitoring reports under TEC, §7.028, or final investigative reports under Chapter 97, Subchapter DD, of this title. Such reports establish non-compliance if the facts found therein are not in compliance with these standards. Other evidence may be considered.

(B) Evidence of relevant factors in mitigation or aggravation of the charter holder’s non-compliance shall be considered under subsection (g) of this section, including evidence that each corrective action required by the TEA has been successfully implemented in a timely manner.

(3) Finality of compliance reports.

(A) Any appeal to a specific monitoring report or final investigative report must be brought using the procedures provided in Chapter 97, Subchapter DD, of this title.

(B) Any challenge to an agency rule, compliance standard, monitoring procedure, or investigative process must be brought
using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(e) Minimum health and safety performance required. Continuation of an open-enrollment charter is contingent on the charter holder protecting the health, safety, and welfare of the students enrolled at the school, as determined by the commissioner under §100.1025 of this title (relating to Intervention Based on Health, Safety, or Welfare of Students) and this subsection or by an official report issued by a federal, state, or local authority with jurisdiction to issue the report.

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that fails to protect the health, safety, or welfare of the students enrolled at its school shall be revoked effective immediately.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that fails to protect the health, safety, and welfare of the students enrolled at the school. Accordingly, the appeal under §100.1021 of this title shall normally be limited to the question of whether the charter school did in fact fail to protect the health, safety, or welfare of the students enrolled at its school. Where relevant factors mitigate or aggravate the charter holder’s failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (c), (d), or (f) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum health and safety performance shall be determined as follows.

(A) A final investigative report under Chapter 97, Subchapter DD, of this title is admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(B) An official report issued by a federal, state, or local authority acting within its jurisdiction, as well as hearsay evidence and telephone testimony offered by officials from such authority, are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(C) Documents and testimony considered by the commissioner in making a determination under §100.1025 of this title are admissible to prove whether the charter holder failed to protect the health, safety, or welfare of the students enrolled at its school.

(D) Evidence of relevant factors in mitigation or aggravation of the charter holder’s non-compliance shall be considered under subsection (g) of this section.

(3) Finality of health and safety reports.

(A) Any appeal to a specific official report issued by a federal, state, or local authority acting within its jurisdiction must be brought using the procedures provided in law for the review of such findings.

(B) Any challenge to an agency rule, compliance standard, monitoring procedure, or investigative process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(f) Minimum charter performance required. Continuation of an open-enrollment charter is contingent on the charter holder’s implementation of and compliance with the terms of its open-enrollment charter as defined by §100.1011(15) of this title (relating to Definitions).

(1) Standard of required performance. The open-enrollment charter authorizing a charter school that commits a material violation of its open-enrollment charter shall be revoked or non-renewed.

(A) Paragraph (1) of this subsection applies the criteria in subsection (a) of this section to determine the sanction that is normally required for a charter school that commits a material violation of its open-enrollment charter. Accordingly, the appeal under §100.1021 of this title shall normally be limited to the questions of whether the charter school did in fact fail to implement or comply with the terms of its open-enrollment charter as defined by §100.1011(15) of this title and whether such charter violation was material. Where relevant factors mitigate or aggravate the charter holder’s failure to attain this required performance standard, the appeal shall further consider factors described in subsection (g) of this section.

(B) Evidence that the charter holder achieved satisfactory performance under subsection (b), (c), (d), or (e) of this section shall not be considered in mitigation of unsatisfactory performance under this subsection.

(2) Determination of performance. For purposes of this subsection, required minimum charter performance shall be determined as follows.

(A) A charter holder’s compliance with its open-enrollment charter may be determined by applying the charter terms to the facts as found by TEA monitoring reports under TEC, §7.028, or final investigative reports under Chapter 97, Subchapter DD, of this title. Such reports establish non-compliance if the facts found therein are not in compliance with these terms. Other evidence may be considered.

(B) A violation of the contract for charter, request for applications (RFA), or other document approved by the State Board of Education (SBOE), or of a condition, amendment, modification, or revision of a charter approved by the commissioner [of education] is material if it directly violates the purpose of the contract, the RFA, or other documents approved by the SBOE, or a condition, amendment, modification, or revision of the contract.

(C) An open-enrollment charter as defined by §100.1011(15) of this title includes all applicable state and federal laws, rules, and regulations. A violation of such laws, rules, or regulations may be considered both under this subsection and under subsection (b), (c), (d), or (e) of this section, as appropriate.

(D) Evidence of relevant factors in mitigation or aggravation of the charter holder’s material charter violation shall be considered under subsection (g) of this section, including evidence that each corrective action required by the TEA has been successfully implemented in a timely manner.

(3) Finality of charter violation reports.

(A) Any appeal to a specific final investigative report must be brought using the procedures provided in Chapter 97, Subchapter DD, of this title.

(B) Any challenge to an agency rule, compliance standard, monitoring procedure, or investigative process must be brought using the procedures outlined in Texas Government Code, Chapter 2001, for requesting agency rulemaking or challenging agency rules.

(g) Probation and modification; mitigating and aggravating factors.

(1) Revocation or non-renewal normally required. Subsections (b) - (f) of this section apply the criteria in subsection (a) of this...
section to determine the sanction that is normally required for a charter holder with unsatisfactory performance under these subsections.

(A) The appeal under §100.1021 of this title shall normally be limited to the question of whether the charter holder did in fact fail to achieve a required minimum performance standard as charged in the TEA notice under §100.1021(c) of this title [§100.1021(b)].

(B) If a preponderance of the evidence admitted at the hearing establishes that the charter holder failed to achieve the minimum performance standard required by one or more of subsections (b) - (f) of this section, then the open-enrollment charter must be revoked or non-renewed unless the commissioner makes each of the findings required by paragraph (2) of this subsection [subsection (a)(2) of this section].

(2) Mitigating factors warranting probation or modification. A mitigating factor is a fact or circumstance that does not justify or excuse a failure to achieve the required minimum charter performance, but reduces the degree of culpability for, or harm to the public interest caused by, that failure. The existence of a mitigating factor is an affirmative defense that must be plead by the charter holder under §100.1021 of this title and proven by a preponderance of the evidence.

(A) In a hearing under §100.1021 of this title, the charter holder may plead and prove only relevant factors mitigating its failure to attain the required minimum performance standard charged in the TEA notice under §100.1021(c) of this title [§100.1021(b)]. A "relevant" mitigating factor is one that tends to reduce the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct charged in the TEA notice under §100.1021(c) of this title [§100.1021(b)]. Evidence that the charter holder achieved acceptable performance on a different standard, such as one required by a different subsection of this section, is not relevant and shall not be considered to mitigate the unacceptable performance charged by the TEA in its notice.

(B) Each of the following findings of fact and conclusions of law must be made for evidence of a mitigating factor to be considered for purposes of reducing the sanction otherwise required by paragraph (1) of this subsection. The charter holder shall bear the burden of proof and the burden of persuasion on each of these findings and conclusions.

(i) The commissioner must find that a preponderance of the evidence admitted at the hearing proves that the charter holder failed to achieve the required minimum performance standard charged by a specific subsection of this section, as charged by the TEA notice under §100.1021(c) of this title [§100.1021(b)].

(ii) The commissioner must find that a preponderance of the evidence admitted at the hearing proves the existence of one or more mitigating factors that are relevant to the specific conduct found in clause (i) of this subparagraph.

(iii) The commissioner must find that the mitigating factors found in clause (ii) of this subparagraph reduce the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct found in clause (i) of this subparagraph to such an extent that they warrant consideration of a lesser sanction.

(iv) The commissioner must find that the public policy interest in deterring similar conduct by the charter holder, and similar conduct by other charter holders, in the future is clearly outweighed by the mitigating factors found in clause (ii) of this subparagraph.

(v) The commissioner must find that no aggravating factors under paragraph (4) of this subsection increase the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct found in clause (i) of this subparagraph to such an extent that they preclude consideration of a lesser sanction.

(vi) The commissioner must find that the root causes of the conduct found in clause (i) of this subparagraph have been fully disclosed by the evidence at trial, and can successfully be remedied through either specific modifications to the open-enrollment charter or specific probationary terms.

(vii) The commissioner must enter findings explaining how the probationary terms and/or charter modifications will remedy each of the root causes of the conduct found in clause (i) of this subparagraph and provide sufficient deterrence to prevent similar conduct by the charter holder and by other charter holders in the future.

(C) Mitigating factors include, but are not limited to the following.

(i) The charter holder complied successfully with all TEA-imposed corrective actions relating to the problem in a timely manner.

(ii) The charter holder has no prior history of similar problems.

(iii) The charter holder has no subsequent history of similar problems and a substantial amount of time has passed since the problem occurred.

(iv) The charter holder has successfully remedied the problem without TEA intervention and taken effective measures to prevent its recurrence.

(3) Mitigating factors plead by the TEA. Notwithstanding paragraph (1) of this subsection, the TEA may, in its notice of intent or other instrument, specifically request probation or modification in lieu of revocation or non-renewal of the open-enrollment charter held by a charter holder. In such a case, the TEA shall state the specific probationary terms and/or modifications it requests, and the charter holder shall state the specific probationary terms and/or modifications to which it objects and the basis for its objections. Paragraph (2) of this subsection shall apply to the disputed probationary terms and/or modifications, but the undisputed terms and modifications may be made without the specific findings required by that paragraph.

(4) Aggravating factors precluding probation or modification. An aggravating factor is a fact or circumstance that increases the degree of culpability for, or harm to the public interest caused by, a failure to achieve the required minimum charter performance. The existence of an aggravating factor must be plead by the TEA under §100.1021 of this title and proven by a preponderance of the evidence. An aggravating factor found under subparagraph (B) of this paragraph shall preclude a lesser sanction that would otherwise be available under paragraph (2) of this subsection.

(A) In a hearing under §100.1021 of this title, the TEA may plead and prove only relevant factors aggravating the charter holder’s failure to attain the required performance standard charged in the TEA notice under §100.1021(c) of this title [§100.1021(b)]. A "relevant" aggravating factor is one that tends to increase the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct charged in the TEA notice under §100.1021(c) of this title [§100.1021(b)]. Evidence that the charter holder achieved unacceptable performance on a different standard, such as one required by a different subsection of this section, is not relevant and shall not be considered to aggravate the unacceptable performance charged by the TEA in its notice.
(B) Each of the following findings of fact and conclusions of law must be made for evidence of an aggravating factor to be considered for purposes of precluding a sanction otherwise available under paragraph (2) of this subsection. The charter holder shall bear the burden of proof and the burden of persuasion on each of these findings and conclusions.

(i) The commissioner must find that a preponderance of the evidence admitted at the hearing proves that the charter holder failed to achieve the minimum performance standard required by a specific subsection of this section, as charged by the TEA notice under §100.1021(c) of this title [(§100.1021(b)].

(ii) The commissioner must find that a preponderance of the evidence admitted at the hearing proves the existence of one or more aggravating factors that are relevant to the specific conduct found in clause (i) of this subparagraph.

(iii) The commissioner must find that the aggravating factors found in clause (ii) of this subparagraph increase the degree of culpability of the charter holder for, or harm to the public interest caused by, the specific conduct found in clause (i) of this subparagraph to such an extent that they preclude a lesser sanction otherwise available under paragraph (2) of this subsection.

(C) Aggravating factors include the following.

(i) The charter holder failed to timely comply with TEA-imposed corrective actions relating to the problem.

(ii) The charter holder has a prior history of similar problems.

(iii) The charter holder has a subsequent history of similar problems.

(iv) The charter holder failed to take effective measures to correct the problem, and a significant time has passed since it occurred.

(v) The charter holder or its management company failed to cooperate with TEA audits, monitoring, or investigations relating to the problem, as required by §100.1029 of this title (relating to Agency Audits, Monitoring, and Investigations).

(vi) The charter holder or its management company failed to cooperate with TEA interventions and sanctions relating to the problem, as required by §100.1027 of this title (relating to Accountability Ratings and Sanctions).

(vii) The charter holder or its management company falsified public records, destroyed public records, or failed to maintain public records as required by §100.1203 of this title (relating to Records Management).

§100.1027. Accountability Ratings and Sanctions.

(a) Commissioner authority. The commissioner of education may take any action relating to the charter holder or any of its charter campuses authorized by Texas Education Code (TEC), Chapter 39, Subchapters B, C, D, E, and J [§§ 64], and the rules adopted under those subchapters. Except as expressly provided by statute, the commissioner may take any accountability action against a charter holder or charter campus that the commissioner is authorized to take against a school district or campus under those subchapters.

(b) Charter holder cooperation. A charter holder and its employees and agents shall fully cooperate with an action under subsection (a) of this section, and shall take all actions necessary to secure the cooperation of a management company. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) of this section constitutes a material charter violation.

(c) Management company cooperation. A management company and its employees and agents shall fully cooperate with an action under subsection (a) of this section. Failure to comply with lawful requests, directives, or other agency actions under subsection (a) of this section constitutes a management company breach.

§100.1033. Charter Amendment.

(a) Amendments in writing. Subject to the requirements of this section, the terms of an open-enrollment charter may be revised with the consent of the charter holder by written amendment approved by the commissioner of education in writing.

(b) Non-substantive amendment. A non-substantive amendment is any change to the terms of an open-enrollment charter that is not a substantive amendment under subsection (c) of this section.

(1) Before implementing a non-substantive amendment, the charter holder shall file with the Texas Education Agency (TEA) division responsible for charter schools a notice, clearly labeled “notice of non-substantive amendment,” setting forth the text and page reference, or a photocopy, of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language. A notice of non-substantive amendment must be filed separately from any other type of amendment request.

(2) Within 15 business days of receiving the notice of non-substantive amendment, the commissioner of education may in the commissioner’s sole discretion determine that the amendment will be processed under subsection (c) of this section (governing substantive amendments), and, in such event, subsection (c) of this section shall govern the amendment.

(3) Absent action by the commissioner under paragraph (2) of this subsection [(§14)2]2) of this section, the notice of non-substantive amendment shall be effective after the expiration of 15 business days following receipt of the notice by the TEA division responsible for charter schools.

(c) Substantive amendment. A substantive amendment is any change to the terms of an open-enrollment charter that relates to the following subjects: grade levels, maximum enrollment, geographic boundaries, approved sites, school name, charter holder name, charter holder governance, articles of incorporation, corporate bylaws, management company, admission policy, or the educational program of the school. For purposes of this section, educational program means the educational philosophy or mission of the school or curriculum models or whole-school designs that are inconsistent with those specified in the school’s charter. A substantive amendment must be approved by the commissioner under this subsection.

(1) Charter amendment request. Before implementing a substantive amendment, the charter holder shall file with the TEA division responsible for charter schools a request, clearly labeled “charter amendment request,” setting forth the text and page reference, or a photocopy, of the current open-enrollment charter language to be changed, and the text proposed as the new open-enrollment charter language. The request must be made in or attached to a written resolution adopted by the governing body of the charter holder and signed by the members voting in favor of it.

(2) Relevant information considered. As directed by the commissioner, a charter holder requesting a substantive amendment shall submit current information required by relevant portions of the last application form approved by the State Board of Education [§§5005], as well as any other information requested by the commissioner. In considering the amendment request, the commissioner may consider any relevant information concerning the charter holder,

PROPOSED RULES  April 23, 2010  35 TexReg 3183
including its student and other performance\textsuperscript{[1]} compliance, staff, financial, and organizational data\textsuperscript{[2]} and other information.

(3) Best interest of students. The commissioner may approve a substantive amendment only if the charter holder meets all applicable requirements, and only if the commissioner determines that the amendment is in the best interest of the students enrolled in the charter school. The commissioner may consider the performance of all charters operated by the same charter holder in the decision to finally grant or deny a substantive amendment.

(4) Conditional approval. The commissioner may grant the amendment without condition, or may require compliance with such conditions and/or requirements as may be in the best interest of the students enrolled in the charter school. An amendment receiving conditional approval shall not be effective until a written resolution accepting all conditions and/or requirements, adopted by the governing body of the charter holder and signed by the members voting in favor, is filed with the TEA division responsible for charter schools [accepting all conditions and/or requirements].

(5) Expansion amendment. An expansion amendment is a substantive amendment that permits a charter school to extend the grade levels it serves, add the site of an instructional facility, change its geographic boundaries, or increase its maximum allowable enrollment.

(A) The commissioner may approve an expansion amendment only if:

(i) the expansion will be effective no earlier than the start of the fourth full school year at the affected charter school. This restriction does not apply if the affected charter school has as its most recent rating Acceptable ["Acceptable"] or higher and is operated by a charter holder that operates other charter campuses and all of that charter holder’s most recent campus ratings are Acceptable ["Acceptable"] or higher under the relevant accountability manual;

(ii) [beginning with the 2005-2006 school year,] the amendment request under paragraph (1) of this subsection is received no later than the first day of February preceding the school year in which the expansion will be effective;

(iii) the most recent rating for each campus operated under [by] the charter holder is Acceptable ["Acceptable"] or higher under the relevant accountability manual;

(iv) if evaluated using alternative education accountability (AEA) procedures, the most recent district Academic Excellence Indicator System (AEIS) report shows at least 30% of the students in each of the following student groups (if evaluated) met the standard reported on the standard accountability indicator in all subject areas and for all tests in all grades tested: African American, Hispanic, white, special education, economically disadvantaged, limited English proficient (LEP), and at risk;

(v) [if] the charter holder has provided evidence that each school district affected by the expansion was sent a notice of the expansion amendment and was given an opportunity to submit a statement regarding the impact of the amendment on the district;

(vi) [if] the commissioner determines that the amendment is in the best interest of the students of Texas; and

(vii) [if] the charter holder meets all other requirements applicable to expansion amendment requests and substantive amendments [generally].

(B) The commissioner shall specify the earliest effective date for implementation of the expansion. In addition, the commissioner may require compliance with such conditions and/or requirements as may be in the best interest of the students of Texas.

(C) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve an expansion amendment request seeking to increase maximum allowable enrollment only if:

(i) within the calendar year preceding the request, the charter holder has not requested another expansion amendment seeking to increase maximum allowable enrollment;

(ii) before voting to request the enrollment increase, the charter holder governing body has considered a business plan comprised of the following components:

(I) a statement discussing the need for an increase in the maximum enrollment;

(II) a statement discussing the current and projected financial condition of the charter holder and charter school;

(III) an unaudited statement of financial position for the current fiscal year;

(IV) an unaudited statement of financial activities for the current fiscal year;

(V) an unaudited statement of cash flows for the current fiscal year;

(VI) a pro forma budget that includes the costs of operating the charter school, including the implementation of the expansion amendment;

(VII) a statement or schedule that identifies the assumptions used to calculate the charter school’s estimated Foundation School Program revenues;

(VIII) a statement discussing the use of debt instruments to finance part or all of the charter school’s incremental costs;

(IX) a statement discussing the incremental cost of acquiring additional facilities, furniture, and equipment to accommodate the anticipated increase in student enrollment; and

(X) a statement discussing the incremental cost of additional on-site [and] personnel and identifying the additional number of full-time equivalents that will be employed.

(iv) the charter holder submits, for the most recent three years of operation, copies of the compliance information on file as required in §100.1035 of this title (relating to Compliance Records on Nepotism, Conflicts of Interest, and Restrictions on Serving) to include documents such as affidavits identifying a board member’s substantial interest in a business entity or in real property, documentation of a board member’s abstention from voting in the case of potential conflicts of interest, and affidavits or other documents identifying other family members within the third degree of affinity or consanguinity who serve as board members and/or employees; and

(v) [on] request, the charter holder files the business plan required by clause (ii) of this subparagraph with the TEA division responsible for charters schools within ten business days.
(D) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve an expansion amendment request seeking to extend the grade levels it serves only if it is accompanied by appropriate educational plans for the additional grade levels.

(E) Exempt from subparagraphs (A) - (D) of this paragraph are requests by charter holders eligible under Texas Education Code (TEC), §12.101(a)(4), that provide instructional services within residential detention, treatment, or adjudication facilities.

(F) The commissioner may exempt from subparagraphs (A) - (D) of this paragraph charter holders eligible for new school amendments as outlined in paragraph (6) of this subsection. Charter holders seeking this exemption must apply for and be granted waivers requesting the exemption. A waiver granted under this provision shall be considered effective until such time as the charter holder fails to meet or exceed one or more standards outlined in paragraph (6) of this subsection.

(6) New school amendment. A new school amendment is an expansion amendment that permits a charter holder to establish an additional charter school under an existing open-enrollment charter pursuant to federal non-regulatory guidance in the Elementary and Secondary Education Act (ESEA), Section 5202(d)(1), as amended. Schools designated by the commissioner as new schools are potentially eligible for federal charter school program start-up funding.

(A) The commissioner may approve a new school amendment for a charter only if:

(i) the charter holder meets all requirements applicable to an expansion amendment and a substantive amendment set forth in this section and has operated at least one charter school in Texas for a minimum of five consecutive years;

(ii) the charter has been evaluated under the accountability rating system established in §97.1001 of this title (relating to Accountability Rating System) with at least 50% of the student population in grades assessed by the state accountability system, has an accreditation status of Accredited, and meets the following:

(1) currently evaluated under the standard accountability procedures and received a district rating of Exemplary or Recognized for three of the last five years with at least 75% of the campuses rated under the charter also being rated Exemplary or Recognized and no campus with an unacceptable rating in the most recent state accountability ratings; or

(2) currently evaluated under the AEA procedures and received a district rating of AEA: Academically Acceptable or a standard rating of Academically Acceptable or higher for five of the last five years with:

(a) in the most recent state accountability ratings, all rated campuses under the charter receiving an acceptable or higher rating; and

(b) in the most recent district AEIS report, at least 30% of the students in each of the following student groups (if evaluated) meeting the standard reported on the standard accountability indicator in all subject areas and for all tests in all grades tested: African American, Hispanic, white, special education, economically disadvantaged, LEP, and at risk;

(iii) no charter campus has been placed in Stages 1 - 5 in the No Child Left Behind school improvement program for failure to meet Adequate Yearly Progress in the most current report;

(iv) the charter is not under any sanction imposed by TEA authorized under TEC, Chapter 39; Chapter 97, Subchapter EE, of this title (relating to Accreditation Status, Standards, and Sanctions); or federal requirements;

(v) the charter holder completes an application approved by the commissioner;

(vi) the new charter school will serve at least 50 students;

(vii) at least 50% of the new school students will be in grades assessed for the state accountability system;

(viii) the amendment complies with all requirements of this paragraph; and

(ix) the commissioner determines that the amendment is in the best interest of the students of Texas.

(B) In addition to the requirements of subparagraph (A) of this paragraph, the commissioner may approve a new school amendment only on making the following written findings:

(i) the proposed school satisfies each element of the definition of a public charter school as set forth in the ESEA, Section 5210(1);

(ii) the proposed school is not merely an extension of an existing charter school;

(iii) the proposed school is separate and distinct from the existing charter school(s) established under the open-enrollment charter; and

(iv) the open-enrollment charter, as amended, includes a separate written performance agreement for the proposed school that meets the requirements of the ESEA, Section 5210(1)(L), and TEC, §12.111(a)(3) and (4).

(C) In making the findings required by subparagraph (B)(i) and (iii) of this paragraph, the commissioner shall consider:

(i) the terms of the open-enrollment charter as a whole, as modified by the new school amendment; and

(ii) whether the proposed school shall be established and recognized as a separate school under Texas law.

(D) In making the findings required by subparagraph (B)(ii) and (iii) of this paragraph, the commissioner shall consider whether the proposed school and the existing charter school(s) have separate sites, employees, student populations, and governing bodies and whether their day-to-day operations are carried out by different officers. The presence or absence of any one of these elements, by itself, does not determine whether the proposed school will be found to be separate or part of an existing school. However, the presence or absence of several elements will inform the commissioner's decision.

(E) In making the finding required by subparagraph (B)(iv) of this paragraph, the commissioner shall consider:

(i) whether the proposed school and the existing charter school(s) have distinctly different requirements in their respective written performance agreements; and

(ii) the extent to which the performance agreement for the proposed school imposes higher standards than those imposed by TEC, §12.104(b)(2)(L).

(F) Failure to meet or exceed any standard or requirement outlined in this paragraph or agreed to in a performance agreement under subparagraph (B)(iv) of this paragraph shall mean the immediate termination of all benefits that may have been granted to a charter holder as a result of the new school designation.
(7) Delegation amendment. A delegation amendment is a substantive amendment that permits a charter holder to delegate, pursuant to §100.1101(c) of this title (relating to Delegation of Powers and Duties), the powers or duties of the governing body of the charter holder to any other person or entity.

(A) The commissioner may approve a delegation amendment only if:

(i) the charter holder meets all requirements applicable to delegation amendments and substantive amendments generally;

(ii) the amendment complies with all requirements of Chapter 100, Subchapter AA, Division 5 of this title (relating to Charter School Governance); and

(iii) the commissioner determines that the amendment is in the best interest of the students enrolled in the charter school.

(B) The commissioner may grant the amendment without condition or may require compliance with such conditions and/or requirements as may be in the best interest of the students enrolled in the charter school.

(C) The following powers and duties must generally be exercised by the governing body of the charter holder itself, acting as a body corporate in meetings posted in compliance with Texas Government Code, Chapter 551. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i) - (vi) of this subparagraph cannot reasonably be carried out by the charter holder governing body, the commissioner may not grant an amendment delegating such functions to any person or entity through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the governing body of the charter holder shall not delegate:

(i) final authority to hear or decide employee grievances, citizen complaints, or parental concerns;

(ii) final authority to adopt or amend the budget of the charter holder or the charter school, or to authorize the expenditure or obligation of state funds or the use of public property;

(iii) final authority to direct the disposition or safekeeping of public records, except that the governing body may delegate this function to any person, subject to the governing body’s superior right of immediate access to, control over, and possession of such records;

(iv) final authority to adopt policies governing charter school operations;

(v) final authority to approve audit reports under TEC, §44.008(d); or

(vi) initial or final authority to select, employ, direct, evaluate, renew, non-renew, terminate, or set compensation for a chief executive officer.

(D) The following powers and duties must generally be exercised by the chief executive officer of the charter holder. Absent a specific written exception of this subparagraph, setting forth good cause why a specific function listed in clauses (i) - (iii) of this subparagraph cannot reasonably be carried out by the chief executive officer of the charter holder, the commissioner may not grant an amendment permitting the chief executive officer to delegate such function through a contract for management services or otherwise. An amendment that is not authorized by such a specific written exception is not effective for any purpose. Absent such exception, the chief executive officer of the charter holder shall not delegate final authority:

(i) to organize the charter school’s central administration;

(ii) to approve reports or data submissions required by law; or

(iii) to select charter school employees or officers.

(d) Required forms and formats. The TEA division responsible for charter schools may develop and promulgate, from time to time, forms or formats for requesting charter amendments under this section. If a form or format is promulgated for a particular type of amendment, it must be used to request an amendment of that type.

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 April 12, 2010.
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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 475-1497

DIVISION 3. CHARTER SCHOOL FUNDING AND FINANCIAL OPERATIONS

19 TAC §100.1047

The amendment is proposed under the TEC, §12.106(c), which authorizes the commissioner to adopt rules to provide and account for state funding of open-enrollment charter schools; 39.082, which authorizes the commissioner to develop and implement separate financial accountability rating systems for school districts and open-enrollment charter schools; and 39.085, which authorizes the commissioner to adopt rules to implement TEC, Subchapter D, on financial accountability.

The proposed amendment implements the TEC, §§12.106(c), 39.082, and 39.085.

§100.1047. Accounting for State and Federal Funds.

(a) Fiscal year. A charter holder shall adopt a fiscal year consistent with Texas Education Code (TEC), §44.0011.

(b) Financial accounting. A charter holder shall comply fully with:

(1) Generally Accepted Accounting Principles [generally accepted accounting principles] (GAAP);

(2) the Financial Accountability System Resource Guide, as adopted by reference in §109.41 of this title (relating to Financial Accountability System Resource Guide); [and]

(3) the federal standards for financial management systems, 34 Code of Federal Regulations §§80.20, and/or other applicable federal standards; [and]

(4) the financial accountability rating system (School FIRST) specified in Chapter 109, Subchapter AA, of this title (relating to Commissioner’s Rules Concerning Financial Accountability Rating System).

(c) Annual audit. A charter holder shall at its own expense have the financial and programmatic operations of the charter school...
audited annually by a certified public accountant licensed by the Texas State Board of Public Accountancy and registered as a provider of public accounting services.

1. The charter holder shall file a copy of the annual audit report, approved by a charter holder, with the Texas Education Agency (TEA) division responsible for school financial audits not later than the deadline specified by TEC, §44.008.

2. The audit must comply with Generally Accepted Auditing Standards and must include an audit of the accuracy of the fiscal information provided by the charter school through the Public Education Information Management System (PEIMS).

3. Financial statements in the audit must comply with Government Auditing Standards and the Office of Management and Budget Circular A-133 or its successor.

d. Attendance accounting. A charter holder shall comply with the Student Attendance Accounting Handbook, as adopted by reference in §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook) (and with TEC, §25.002-4) and Chapter 129 of this title (relating to Student Attendance) except that a charter school shall report its actual student attendance data to the TEA at six-week intervals, or as directed by the TEA.

e. Non-charter activities. A charter holder shall keep separate and distinct accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school.

1. Any business activities of a charter holder not directly related to the management and operation of the program described in the open-enrollment charter shall be kept in separate and distinct accounting, auditing, budgeting, reporting, and recordkeeping systems from those recording the business activities of the charter school.

2. Any commingling of charter and non-charter business in the accounting, auditing, budgeting, reporting, and recordkeeping systems of the charter school shall be a material charter violation.

f. Interested transactions. A charter holder shall comply with Local Government Code, Chapter 171, in the manner provided by the conflict of interest provisions described in §§100.1131 - 100.1135 of this title [subchapter]. In addition, the following shall be discretely and clearly recorded in the accounting, auditing, budgeting, reporting, and recordkeeping systems for the management and operation of the charter school:

1. financial transactions between the charter school and the non-charter activities of the charter holder;

2. financial transactions between the charter school and an officer or employee of the charter holder or the charter school;

3. financial transactions between the charter school and a member of the governing body of the charter holder or the charter school;

4. financial transactions between the charter school and a management company charged with managing the finances of a charter school; and

5. financial transactions between the charter school and any other person or entity in a position of influence over the charter holder or the charter school.

g. Position of influence. A person or entity is in a position of influence over the charter holder or the charter school, within the meaning of subsection (f)(5) of this section, if:

1. the charter holder or charter school is a subsidiary of, or shares governing body members, officers, or employees with, another organization, and:

   A. the person or entity is a shareholder, partner, administrator, official, or employee of the other organization; or

   B. the person or entity by any other means participates in the business decisions of the affiliate or parent organization; or

2. a relative of the person is in a position of influence over the charter holder or the charter school under this section, within the third degree by consanguinity or affinity, as determined under Texas Government Code, §§573.021 - 573.025, and §100.1113 of this title (relating to Relationships By Consanguinity or By Affinity).

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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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER U. PROGRAM FOR AMPLIFICATION FOR CHILDREN OF TEXAS

25 TAC §§37.561 - 37.573

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

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department of State Health Services (department), proposes the repeal of §§37.561 - 37.573, concerning the Program for Amplification for Children of Texas (PACT).

BACKGROUND AND PURPOSE

The PACT program currently provides identification and remediation services for Texas children from birth through 20 years of age who have a permanent hearing loss. The repeal of §§37.561 - 37.573 is necessary because the PACT program is being integrated into the Medicaid services structure administered by HHSC.

The relocation of the PACT program will standardize the payment processes administered by the Texas Medicaid program and will bring the PACT payment processing in compliance with the Centers for Medicaid Medicare Services audit conducted in
2000. Other program components of the PACT program will utilize the existing Medicaid enrollment for providers, including eligibility requirements and the hearing aid manufacturers already under contract with HHSC.

Hearing Aid Services are currently provided to Medicaid clients 21 years of age and older in accordance with HHSC rules in 1 TAC Chapter 354, Medicaid Health Services, Subchapter A, Purchased Health Services, Division 15, Hearing Aid Services. These rules will be amended by HHSC to include clients under 21 years of age who currently receive services through the PACT program.

SECTION-BY-SECTION SUMMARY

The PACT program enrolls audiologists to provide hearing services to children; verifies Medicaid eligibility of children; receives and distributes hearing aids from manufacturers; and processes payments for PACT services. Due to the integration of the program into the Medicaid services structure, there is no need for the PACT rules to remain within the department’s authority.

FISCAL NOTE

Jann Melton-Kissel, Section Director, Specialized Health Services Section, has determined that there will be no fiscal implications to the state or local governments as a result of repealing the sections as proposed because no requirements resulting in any fiscal implication were added or deleted.

MICRO-BUSINESS AND SMALL BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Melton-Kissel has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses affected by the PACT rules will be required to alter their business practices in order to comply with the rules, and an economic impact statement and regulatory flexibility analysis are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Melton-Kissel has also determined that for each year of the first five years the repeals are in effect, the repeal of these rules will benefit the public by eliminating unnecessary and duplicative rules and processes. If the department does not repeal these rules, there will appear to be dual administration.

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 with 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 repeals 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 proposed repeals may be submitted to David R. Martinez, Newborn Screening Branch, Health Screening and Case Management Unit, Specialized Services Section, Department of State Health Services, P.O. Box 149347, Mail Code 1918, Austin, Texas 78714-9347, (512) 458-7111, extension 2216, or by email to david.r.martinez@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 repeals are authorized by 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 repeals affect the Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§37.561. Purpose.
§37.562. Definitions.
§37.563. Program Benefits.
§37.564. Temporary Loan of Hearing Aids.
§37.565. Requirements for Provider Participation.
§37.566. Provider Application Process.
§37.567. Denial, Modification, Suspension, or Termination of Provider Approval.
§37.568. Recipient Eligibility Criteria.
§37.569. Requirements for Recipients to Receive Services.
§37.570. Denial of Application or Modification, Suspension, or Termination of Recipients’ Program Participation.
§37.571. Recipient Rights.
§37.572. Monitoring and Record Keeping Concerning Individuals with Hearing Loss.
§37.573. Confidentiality of 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.
CHAPTER 146. TRAINING AND REGULATION OF PROMOTORES OR COMMUNITY HEALTH WORKERS

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), proposes amendments to §§146.1 - 146.4, 146.6 - 146.10, new §§146.5, 146.11 and 146.12, and the repeal of §146.5, concerning the regulation of training and certification of promotores or community health workers.

BACKGROUND AND PURPOSE

Health and Safety Code, Chapter 48, requires the department to establish a program designed to train and educate persons who act as promotores or community health workers. This chapter also requires minimum standards for the certification of promotores or community health workers. These rules are reasonable and necessary to accomplish this legislative mandate.

The Promotor(a) or Community Health Worker Training and Certification Program provides leadership to enhance the development and implementation of statewide training and certification standards and administrative rules for the Promotor(a) or Community Health Worker (CHW) Training and Certification Program. The Promotor(a) or Community Health Worker Training and Certification Advisory Committee (committee) has provided advice to HHSC and the department related to the recommendation of qualifying applicants as sponsoring institutions of training programs and training instructors. The committee has also provided advice to HHSC and the department related to recommendations for new or amended rules for the Promotor(a) or Community Health Worker Training and Certification Program. This committee is a successor to the Promotora Program Development Committee mentioned in Health and Safety Code, §48.002(a) and §48.003(a). The committee is established under the Health and Safety Code, §11.016, which allows HHSC to establish advisory committees. The committee is governed by the Government Code, Chapter 2110, concerning state agency advisory committees.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 146.1 - 146.10 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

The proposed amendments, new rules, and repeal clarify the rules and improve the ability of promotores or community health workers to obtain the training and certification established by Health and Safety Code, Chapter 48. Additionally, they improve the ability of the certification program to expedite the process of reviewing applications for certification of instructors and training programs.

SECTION BY SECTION SUMMARY

Amendments to §§146.1 - 146.4 add a definition and clarify other definitions; reflect changes to purpose, tasks and terms of the advisory committee; who is eligible for training and certification; and remove language specific to the contents of an application which may be included in program policy or procedure.

The repeal of §146.5 allows for better organization of the rules concerning application requirements.

The amendment to §146.6 concerns application requirements and procedures for sponsoring organizations. The amendment to §146.7 provides clarification related to types of certification and applicant eligibility requirements. Amended §146.8 reflects standards for approved curriculum for community health workers or instructors in the program. The amendments to §146.9 and §146.10 outline requirements for certificate renewal and continuing education.

New §§146.5, 146.11 and 146.12 provide clarification on reporting of change in name and address; information related to professional and ethical standards; and information related to violations, complaints, and subsequent actions respectively.

FISCAL NOTE

Isa Covio, Office of Title V and Family Health, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications for state and local government as a result of the sections as proposed. There may be impacts on such entities to the extent they choose to become involved as employers, sponsors, or education providers to promotores or community health workers, but such involvement is voluntary on their part.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

There is no adverse effect to small businesses or micro-businesses required to comply with the sections as proposed because small businesses and micro-businesses will not be required to alter their business practices. Persons seeking certification as promotores or community health workers or instructors may incur costs related to obtaining initial or continuing education. This cost will vary depending on where this education is obtained. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Covio has also determined that for each year of the first five years the sections are in effect, the public health benefits of the proposed rules include increased clarity of the rules, better conformance to statute, and expanded opportunities for promotores or community health workers to obtain the training and certification established by Health and Safety Code, Chapter 48.

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
TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments, new rules, and repeal 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 may be submitted to the Promotora(a)/Community Health Worker Training and Certification Program, Office of Title V and Family Health, Department of State Health Services, 1100 West 49th Street, M-348, Austin, Texas 78756, telephone (512) 458-7111, extension 3500, or chw@dshs.state.tx.us. Comments on the proposed sections will be accepted for 30 days following publication 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.

25 TAC §§146.1 - 146.12

STATUTORY AUTHORITY

The amendments and new rules are authorized under Health and Safety Code, §48.003, which requires the Texas Board of Health (board) to adopt rules that provide minimum standards and guidelines on training; §48.002, which allows the board to provide for exemption from certification by rule; §11.016, which allows the board to appoint advisory committees to assist the board in performing its duties; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the Texas Department of Health and the commissioner of health. The Texas Department of Health and the Texas Board of Health were abolished by Chapter 198, §1.18 and §1.26, 78th Legislature, Regular Session, 2003. Government Code, §531.0055; and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.


§146.1. Definitions.

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

1. (No change.)

2. Applicant—A promotor(a) or community health worker who applies to the Department of State Health Services for a certificate of competence; an instructor who applies to the department to train promotores or community health workers; or [ ] a sponsoring organization [institution or training program] who applies to the department to offer training approved by the department [or an instructor who applies to the department] to train promotores [promotor(a)] or community health workers.

3. (No change.)

4. Certificate [of Competence]—Certificate issued to a promotor(a) [Promotor(a)] or community health worker or instructor [certificates issued] by the Department of State Health Services.

5. (No change.)

6. Core Competencies—Key skills for promotores or community health workers required for certification by the department, including communication skills, interpersonal skills, knowledge base on specific health issues, service coordination skills, capacity-building skills, advocacy skills, teaching skills, and organizational skills.

7. [ ] Department—The Department of State Health Services.


9. [ ] Health—A state of complete physical, mental and social well-being where an individual or group [The extent to which an individual or group] is able to realize aspirations and satisfy needs, and to change or cope with the environment. Health is a resource for everyday life, not the objective of living: it is a positive concept emphasizing social and personal resources as well as physical capabilities. This definition is from the World Health Organization, "Ottawa Charter for Health Promotion, 1986." and is available at http://www.who.int/aboutwho/policy/20010827_2.http://www.who.int/AboutWHO/Policye/20010827_2.[ ]

10. [ ] Certified Instructor—An individual approved by the department to provide instruction and training in one or more core competencies [public health education] to promotores [promotor(as)] or community health workers [in an educational setting].

11. [ ] Instructor certification—An authorization to train or instruct promotores(as) or community health workers in public health education services.

12. [ ] "Promotor(a)" or "Community Health Worker"—A person who, with or without compensation is a liaison between health care and social services, and the community. A promotor(a) or community health worker: is a trusted member, and has a close understanding of, the ethnicity, language, socio-economic status, and life experiences of the community served. A promotor(a) or community health worker assists people to gain access to needed services and builds individual, community, and system capacity by increasing health knowledge and self-sufficiency through a range of activities such as outreach, community health education and information, informal counseling, social support, and advocacy. [ ] provides cultural mediation between communities and health and human services systems; informal counseling and social support; and culturally and linguistically appropriate health education; advocates for individual and community health needs; assures people get the health services they need, builds individual and community capacity; or provides referral and follow-up services.

13. [ ] Sponsoring organization [institution or training program]—An organization approved by the department to deliver a certified training curriculum to promotores or community health workers or instructors, [ ] approved educational, community health, training program or other program or facility that offers or intends to offer promotor(a) or community health worker training or instructor preparation.

14. [ ] Sponsoring institution or training program certification—An authorization to offer promotor(a) or community health worker training or instructor preparation.
§146.2. Promotor(a) or Community Health Worker Training and Certification Advisory Committee.

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

(c) Purpose and tasks.

(1) The committee shall advise the Executive Commissioner concerning rules to implement standards adopted under the Health and Safety Code, Chapter 48, relating to the training and regulation of persons working as promotores or community health workers.

(2) The committee shall advise the department concerning guidelines and requirements relating to training and certification of promotores or community health workers, instructors, and sponsoring organizations.

(3) The committee shall review applications from sponsoring organizations, and recommend certification to the department if program requirements are met.

(4) The committee shall carry out any other tasks given to the committee by the Executive Commissioner.

(e) Purpose. The purpose of the committee is to recommend new or amended rules for the approval of the Executive Commissioner of HHSC. The committee may also review applications and recommend to the department qualifying applicants as sponsoring institutions or training programs and instructors.

(f) Tasks.

(1) The committee shall advise the Executive Commissioner of HHSC concerning rules to implement standards adopted under the Health and Safety Code, Chapter 48, relating to the training and regulation of persons working as promotores or community health workers.

(2) The committee may recommend to the department qualifying sponsoring institutions or training programs and instructors.

(3) The committee shall carry out any other tasks given to the committee by the Executive Commissioner of HHSC.

(g) Review and duration. By November 1, 2013, the Executive Commissioner of HHSC 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.

(h) Composition. The committee shall be composed of nine members appointed by the Executive Commissioner of HHSC. The composition of the committee shall include:

(1) four promotores or community health workers currently certified by the department;

(2) two public members which may include consumers of community health work services or individuals with paid or volunteer experience in community health care or social services;

(3) one member from the Texas Higher Education Coordinating Board, or a higher education faculty member who has teaching experience in community health, public health or adult education and has trained promotores or community health workers; and

(4) two professionals who work with promotores or community health workers in a community setting, including employers and representatives of non-profit community-based organizations.

(i) Terms of office. The term of office of each member shall be three years, and the member may be reappointed once.

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

(2) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1 of each even-numbered year.

(3) [The] Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) 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 board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) 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 serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

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

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

(4) Each member of the committee shall be informed of a committee meeting at least five 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 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 business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(i) [44] 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 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.

(4) The attendance records of the members shall be reported to the Executive Commissioner [of IHISC]. The report shall include attendance at committee and subcommittee meetings.

(j) [44] Staff. Staff support for the committee shall be provided by the department.

(k) [44] 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 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 and approved by the committee at the next scheduled meeting.

{[A] A draft of the minutes approved by the presiding officer shall be provided to the Executive Commissioner of IHISC and each member of the committee within 30 days of each meeting.}

{[B] After approval of the committee, the minutes shall be signed by the presiding officer.}

(l) [44] 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 advisory 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.

(m) [44] Statement by members.

(1) The Executive Commissioner [of IHISC], the department, and 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 in pursuit of specific instructions from the Executive Commissioner [of IHISC], department, or committee.

(2) The committee and its members may not participate in legislative activity in the name of the Executive Commissioner [of IHISC], the department, or the committee except with approval through the department’s legislative process. 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.

(n) [44] Reports to the Executive Commissioner [of IHISC]. The committee shall file an annual written report with the Executive Commissioner [of IHISC].

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the Executive Commissioner [of IHISC], the status of any rules which were recommended by the committee to the Executive Commissioner [of IHISC], anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee’s existence, including the cost of department staff time spent in support of the committee’s activities and the source of funds used to support the committee’s activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the Executive Commissioner [of IHISC] each January. It shall be signed by the presiding officer and appropriate department staff.

(o) [44] Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a
committee member may receive reimbursement for the member’s expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to the member’s receipts for expenses and any required official forms not later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state vouchers prepared by department staff.

§146.3. Applicability:

(a) (No change.)

(b) The provisions of this chapter apply to any promotor(a) or community health worker, and instructor, representing that he or she performs or will perform as a certified promotor(a) or community health worker or, trains or will train promotores [promotores(as)] or community health workers respectively. It also applies to any sponsoring organization who delivers a certified training curriculum [institution or training program that will sponsor/provide or sponsor/provides training programs] for promotores [promotores(as)] or community health workers[ who will expect certification under this chapter].

(c) Certification [Participation in a training and education program established] under this section is voluntary for promotores [promotores(as)] or community health workers who provide services without receiving compensation, and mandatory for promotores [promotores(as)] or community health workers who provide services for compensation.

§146.4. Application Requirements and Procedures for Promotores [Promotores(as)] or Community Health Workers and Instructors.

(a) Purpose. The purpose of this section is to set out the application procedures for certification of promotores [promotores(as)] or community health workers and instructors.

(b) Application Requirements. [Promotor(a) or community health worker certificate of competence.]

(1) Unless otherwise indicated, an applicant must complete all required information and documentation on current official department forms and submit the required information and documentation electronically or in hard copy as specified by the department.

(2) (No change.)

(c) [Required application materials. The application form shall contain the following items:]

(1) specific personal data, birth date, current and previous promotor(a) or community health worker activity (if applicable), and any educational and training background;

(2) a statement that the applicant understands the Health and Safety Code, Chapter 48 and this chapter and agrees to abide by them;

(3) the applicant’s permission to the department to seek any information or references which are material in determining the applicant’s qualifications;

(4) a statement that the applicant, if issued a certificate, shall return the certificate and identification card(s) to the department upon the expiration, revocation, or suspension of the certificate;

(5) a statement that the applicant understands that the materials submitted become the property of the department and are non-returnable (unless prior arrangements have been made);

(6) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant’s qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;

(7) a statement that the applicant shall advise the department of his or her current mailing address within 30 days of any changes of address;

(8) the dated signature of the applicant certifying the truth of the information submitted; and

(9) the signature of the instructor, sponsoring institution or training program indicating successful completion of the promotor(a) or community health worker training and the date when the training was successfully completed.

(d) [Disapproved applications.]

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter [section];

(B) has not successfully completed an approved competency-based promotor(a) or community health worker training;

(C) has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant’s qualifications for certification;

(D) has engaged in unethical conduct as defined in §146.11 of this title (relating to Professional and Ethical Standards); or

(E) has been convicted of a felony or misdemeanor directly related to the duties and responsibilities of a promotor(a) or community health worker or instructor as set out in §146.12 of this title (relating to Violations, Complaints and Subsequent Actions); or

(E) has developed an incapacity, which in accordance with the Americans with Disabilities Act, prevents the individual from practicing [practice of promotor(a) or community health worker service] with reasonable skill, competence, and safety to the public as the result of:

(i) an illness;

(ii) drug or alcohol dependency; or

(iii) another physical or mental condition or illness;
(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval and of the opportunity for re-application or [658] appeal;

(3) The applicant whose application has been disapproved under paragraph (1) [656] of this subsection shall be permitted to reapply after a period of not less than six months from the date of the disapproval and shall submit a current application satisfactory to the department, in [657] compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48 [667].

[(4) The applicant whose application has been disapproved under paragraph (1) [656] of the subsection shall be permitted to ask for a reconsideration in writing after a period of not less than six months from the date of the disapproval to the department.]

[(4) [657] An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).]

[(e) [659] Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. 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 has been approved [accepted for filing] or that the application is deficient and additional specific information is required.

(1) Letter of approval [acceptance of application] for certification - no more than 90 days.

(2) Letter of application deficiency - no more than 90 days.]

§146.5. Changes of Name and Address.

(a) The certificate holder shall notify the department of changes in name, preferred mailing address, or place(s) of business or employment within 30 calendar days of such change(s).

(b) Before any certificate and identification cards will be issued by the department, notification of name changes must be mailed to the department and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name.

§146.6. Application Requirements and Procedures for Sponsoring Organizations [Institutions and Training Programs].

(a) Purpose. The purpose of this section is to set out the application procedures for certification of curricula from sponsoring organizations [institutions and training programs].

(b) Sponsoring organization [institution or training program] certificate.

(1) Unless otherwise indicated, an applicant must complete all required information and documentation of credentials on current official department forms and submit the required information and documentation electronically or in hard copy as specified by the department.

(2) A sponsoring organization may submit an application to request approval to use a certified curriculum from another sponsoring organization who has agreed to share the certified curriculum. In this situation, the application must include a description of changes, if any, to the certified curriculum.

(3) [667b] The department shall send a notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

[(c) Required application materials. The application form shall contain the following items:]

[(1) specific organizational data, current and previous experience with training or sponsoring training for promoters(as) or community health workers, educational and training qualifications of staff, accrediting information, curricula and collateral materials, workplace assurances, registration policies and procedures for promoters(as) or community health workers. Applicants must meet the minimum eligibility requirements for sponsoring institutions or training program certification as set forth in §146.7(1) of this title (relating to Types of Certificates and Applicant Eligibility);]

[(2) a statement that the applicant understands Health and Safety Code, Chapter 48 and this chapter and agrees to abide by them;]

[(3) the applicant's permission to the department to seek any information or references which are material in determining the applicant's qualifications;]

[(4) a statement that the applicant, if issued a certificate, shall return the certificate(s) to the department upon the expiration, revocation, or suspension of the certificate(s);]

[(5) a statement that the applicant understands that the materials submitted become the property of the department and are non-returnable (unless prior arrangements have been made);]

[(6) a statement that the information in the application is truthful and that the applicant understands that providing false or misleading information which is material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted any certificate or the revocation of any certificate issued;]

[(7) a statement that the applicant shall advise the department of the organization's current mailing address within 30 days of any changes of address; and]

[(8) the dated signature of the chief executive officer certifying the truth of the information submitted.]

[(c) [667b] Application approval.]

(1) The committee shall review [may be responsible for reviewing] applications from sponsoring organizations and recommend [recommending those to be certified] to the administrator certification for curricula that meets program requirements.

(2) The administrator shall approve any application which is in compliance with this chapter and which properly documents applicant eligibility, unless the application is disapproved under the provisions of subsection [(d) [667d] of this section.

[(d) [667b] Disapproved applications.]

(1) The department may disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this chapter; or

(B) has failed or refused to properly complete or submit any application form(s) or has knowingly presented false or misleading information on the application form, or any other form or documentation required by the department to verify the applicant's qualifications for certification.

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant
written notice of the reason for the disapproval and of the opportunity for re-application or appeal.

(3) The applicant whose application has been disapproved under paragraph (1) of this subsection shall be permitted to reapply after a period of not less than six months from the date of the disapproval and shall submit a current application satisfactory to the department, in [corrected] compliance with the then current requirements of this chapter and the provisions of the Health and Safety Code, Chapter 48 [Ade].

(4) An applicant whose application has been disapproved may appeal the disapproval under the fair hearing procedures found in Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(c) [44] Application processing. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. 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.

(1) Letter of acceptance of application for certification - no more than 90 days.

(2) Letter of application deficiency - no more than 90 days.

§146.7. Types of Certificates and Applicant Eligibility.

(a) Purpose. The purpose of this section is to set out the types of certificates issued and the qualifications of applicants.

(1) Upon approval of the application, the department shall issue the promotor(a) or community health worker, instructor or sponsoring organization a certificate with an expiration date and a certificate number. An identification card shall be included for a promotor(a) or community health worker or instructor.

(4) The Department of State Health Services (department) shall issue promotor(a) or community health worker certificates of competence, instructor certificates, and sponsoring institutions or training program certificates. A certificate will recognize all those who have performed promotor(a) or community health worker services between July 1997 and January 2005 and not less than 1000 cumulative hours between July 1997 and January 2005. A certificate will recognize all those who have successfully completed an entry-level training and certification program.

(2) - (3) (No change.)

(4) A promotor(a) or community health worker and instructor shall carry the original identification card. A sponsoring organization [institution or training program] shall display the original certificate at the training or educational site. Photocopies shall not be carried or displayed.

(5) - (7) (No change.)

(8) The department shall replace a lost, damaged, or destroyed certificate or identification card upon written request.

(b) Special provisions for persons who have performed promotor(a) or community health worker services in the previous six years starting from the date the application is signed [between July 1997 to January 2005]. Upon submission of the application forms by the practicing promotor(a) or community health worker and upon approval by the department, the department shall issue a certificate of competence to a person who has performed promotor(a) or community health worker services for not less than 1000 cumulative hours in the previous six years starting from the date the application is signed [between July 1997 to January 2005], as documented on form(s) specified [prescribed] by the department.

(3) Special provisions for persons with experience in instructing or training individuals providing promotor(a) or community health work services, including promotores or community health workers and other health care paraprofessionals and professionals. Upon submission of the application forms by the instructor and upon approval by the department, the department shall issue a certificate of competence to a person who has provided instruction or training to individuals providing community health work services for not less than 1000 cumulative hours in the previous six years starting from the date the application is signed.

(4) Special provisions for persons who are nationally certified health education specialists in good standing, with experience in instructing or training promotores(as) or community health workers for not less than 1000 cumulative hours between July 1997 and January 2005, other licensed/certified healthcare professionals including social workers in good standing as well as other professionals with Masters degrees in public health, community health or related field, or Bachelor's degrees in social services or related field who have acted as instructors of promotores(as) or community health workers, for not less than 1000 cumulative hours between July 1997 and January 2005 and for promotores(as) or community health workers who have acted as supervisors or as trainers and have experience in instructing or training promotores(as) or community health workers for not less than 1000 cumulative hours between July 1997 and January 2005. Upon submission of the application forms by an instructor, other licensed/certified healthcare professional or certified health education specialist, or instructor with Masters/Bachelors degree and upon approval by the department, the department shall issue an instructor certificate to a person who is certified by the National Commission for Health Education Credentialing, Inc., or who is a licensed/certified healthcare professional, or instructor with Masters/Bachelors degree and to a promotor(a) or community health worker who meets the above qualifications.

(d) Minimum eligibility requirements for promotor(a) or community health worker certification. The following requirements apply to all individuals applying for certification [who do not meet the requirements of subsection (b) of this section]:

(1) attainment of 18 years of age or an eligible and informed minor as determined by the department [committee];

(2) freedom from physical or mental impairment, which in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of the persons being served; and

(3) submission of a satisfactory completed application on a form supplied by the department [; and]

(4) successful completion of an approved competency-based training program.

(e) Individuals applying for certification who do not meet the requirements of subsection (b) of this section shall complete a certified competency-based training program by an approved sponsoring organization.

(f) [45] Minimum eligibility requirements for instructor certification. The following requirements apply to all individuals applying for certification [who do not meet the requirements of subsection (c) of this section]:

(1) graduation from high school or its equivalent as determined by the sponsoring institution or the training program or six years of continuous service as a promotor(a) or community health worker;
1. [22] attainment of 18 years of age as an eligible and informed minor as determined by the department.

[23] Completion of an instructor-trainer program by an approved sponsoring institution or training program.

2. [44] freedom from physical or mental impairment, which, in accordance with the Americans with Disabilities Act, interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of participants; and

3. [53] submission of a satisfactory completed application on a form supplied by the department.

(g) Individuals applying for certification who do not meet the requirements of subsection (c) of this section shall complete a certified instructor-trainer program by an approved sponsoring organization. An individual applying for certification as an instructor may seek certification in one or more of the eight core competencies.

(b) [44] Minimum eligibility requirements for certification of a curriculum from a sponsoring organization (institutional training program certification). The following requirements apply to all organizations (institutions or programs) applying for certification of a curriculum:

1. approval and certification [usage] of a [an approved] curriculum for promotor(a) or community health worker training, instructor certification or [and/or] for continuing education of promoters [promotor(a)es] or community health workers and instructors that meets the standards and guidelines established by the department and as set forth in §146.8 of this title (relating to Standards for the Approval of Curriculum); and

2. submission of a satisfactory completed application on a form supplied by the department;

[2] at least two years of experience with training or sponsoring training for promoters or community health workers.

§146.8. Standards for the Approval of Curricula.

(a) Purpose. The purpose of this section is to establish the minimum standards for approval of curricula and programs to train persons to perform promotor(a) or community health worker services or to act as an instructor and to qualify for the certificate of competence.

(b) All 160-hour curricula to be used and programs developed to train individuals to perform promotor(a) or community health worker services or to act as instructors must:

1. assure that the eight core skill and knowledge competencies, identified in the National Community Health Advisor Study, June 1998 for promoters or community health workers, including communication, interpersonal, service coordination, capacity-building, advocacy, teaching and organizational skills and knowledge base on specific health issues are addressed. [Individuals applying for certification as an instructor may seek certification in one or more of the eight core competencies outlined in this subsection;]

2. [No change.]

3. include a method or process to evaluate and document the acquisition of knowledge and mastery of skills by the individual trained and the success of the training program according to the performance measures framework established within the National Community Health Advisor Study, June 1998;

4. include a method or process for the individual trained to evaluate the training experience using a form supplied by the department;

5. [44] be certified [approved] by the department and [be] offered within the geographic limits of the State of Texas;

6. be submitted to the department along with supporting materials in hard copy and electronic format as specified by the department. Materials shall be organized as a three-ring binder with all pages clearly legible and consecutively numbered with a table of contents (follow Required Table of Contents on page ii of application form) and divided with tabs identified to correspond to the core competencies, including evaluation materials and other programmatic information and assurances required within this section;

7. be 50 pages or less, not including application sections I - IV;

8. [22] provide a list of certified instructors, facilities and locations for the training program;

9. [44] provide a [yearly] calendar of scheduled training events by dates, times and locations;

10. [44] maintain an accurate record of each person's attendance and participation for not less than five years;

11. [44] report the names of individuals to the department who have successfully completed the training program within 30 days of program completion on a form supplied by the department;

12. [44] maintain an accurate record of each person's attendance and participation for not less than five years;

13. [44] report the names of individuals to the department who have successfully completed the training program within 30 days of program completion on a form supplied by the department;

14. specify the method or methods by which training will be delivered, including classroom instruction and use of distance learning technology with at least 75% of instruction delivered in "real time."

(c) All continuing education curricula to be used to provide continuing education to certified promoters or community health workers or instructors must:

1. assure that one or more of the eight core skill and knowledge competencies, identified in the National Community Health Advisor Study, June 1998 for promoters or community health workers, including communication, interpersonal, service coordination, capacity-building, advocacy, teaching and organizational skills and knowledge base on specific health issues are addressed;

2. include a method or process to evaluate and document the acquisition of knowledge and mastery of skills by the individual trained;

3. include an evaluation by the individual trained of the training experience on a form supplied by the department;

4. be certified by the department and offered within the geographic limits of the State of Texas;

5. be submitted to the department along with supporting materials in hard copy and electronic format as specified by the depart-
ment. Materials shall be organized with all pages clearly legible and consecutively numbered with a table of contents (follow Required Table of Contents on page ii of application form) and divided with tabs identified to correspond to the core competencies, including evaluation materials and other programmatic information and assurances required within this section;

(6) be 20 pages or less, not including application sections I - IV;

(7) provide a list of certified instructors, facilities and locations for the training program;

(8) provide a calendar of scheduled training events by dates, times and locations;

(9) identify the method for recruiting persons to the program;

(10) report the names of individuals to the department who have successfully completed the training program within 30 days of program completion on a form supplied by the department;

(11) maintain an accurate record of each person’s attendance and participation for not less than five years;

(12) include the participation in the curriculum development of an instructor certified by the department; and

(13) specify the method or methods by which training will be delivered, including classroom instruction and use of distance learning technology.

(d) Addenda to existing certified curriculum. A sponsoring organization may submit an addendum when making revisions to a current certified curriculum. An addendum may be submitted to the department via mail or email and must be in compliance with standards listed above;

§146.9. Certificate Renewal [Issuance and Renewals].

(a) Purpose. The purpose of this section is to set out the rules for [issuing certificates and] certificate renewal.

(b) Issuance of certificates.

(1) Upon approval of the application, the department shall issue the promotor(a) or community health worker, instructor or sponsoring institution or training program a certificate with an expiration date and a certificate number. An identification card shall be included for the promotor(a) or community health worker and the instructor.

(2) The department shall replace a lost, damaged, or destroyed certificate or identification card upon written request.

(b) [44] Certificate renewal. Each promotor(a) or community health worker, instructor and sponsoring organization [institution or training program] shall renew the certificate biennially (every two years).

(1) Each promotor(a) or community health worker, instructor and sponsoring organization [institution] is responsible for renewing the certificate before the expiration date. Failure to receive notification from the department prior to the expiration date will not excuse failure to file for renewal.

(2) Each promotor(a) or community health worker, instructor and sponsoring organization [institution] is responsible for completing a renewal application [form].

(3) The department may not renew the certificate of a promotor(a) or community health worker, instructor or sponsoring organization [institution or training program] who is in violation of Health and Safety Code, Chapter 48 or this chapter at the time of renewal.

(c) Late renewals.

(1) A person or sponsoring organization whose certificate has expired for not more than one year may renew the certificate by submitting to the department the completed renewal application. Promotores, community health workers and instructors must also submit proof of compliance with continuing education requirements for renewal as set out in this section before the late renewal is effective. A certificate issued under this subsection shall expire two years from the date the previous certificate expired.

(2) A certificate not renewed within one year after expiration cannot be renewed.

(3) A person may not use a title that implies certification while the certificate is expired as set out in §146.12 of this title (relating to Violations, Complaints and Subsequent Actions).

(d) Expired certificates. The department, by certified mail using the last address known, shall attempt to inform each promotor(a) or community health worker, instructor, or sponsoring organization [institution or training program] who has not timely renewed a certificate, after a period of more than ten days after the expiration of the certificate that the certificate has automatically expired. A person or sponsoring organization [institution or training program] whose certificate automatically expires is required to surrender the certificate and identification cards to the department.

(e) Right to inspect. The department reserves the right to inspect facilities and documentation and to monitor sponsoring organizations [institutions, training programs, and instructors].

§146.10. Continuing Education Requirements.

(a) Purpose. The purpose of this section is to establish the continuing education requirements which a promotor(a) or community health worker and instructor must complete to maintain certification.

[The requirements are intended to maintain and improve the quality of professional services provided by promotores(a) or community health workers and instructors and to keep these individuals knowledgeable of current programs, techniques and practices. Approved sponsoring institutions and/or training programs can offer continuing education opportunities for promotores(a) or community health workers and instructors.]

(b) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period. [A promotor(a) or community health worker must complete 20 contact hours of continuing education acceptable to the department during each biennial renewal period. An instructor must complete at a minimum 20 contact hours of continuing education acceptable to the department during each biennial renewal period.]

(1) A promotor(a) or community health worker must complete 20 contact hours of continuing education related to the core competencies acceptable to the department during each biennial renewal period.

(A) At least 5 hours shall be satisfied by participation in a department certified training program including a training program sponsored or provided by the department that provides continuing education credits for promotores or community health workers.

(B) Up to 5 hours may be satisfied through continuing education credits toward the renewal of a promotor(a) or community health worker’s Texas license /registration, or /certification in another
health profession provided the hours meet all the requirements of this section.

(C) Up to 10 hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, training not certified by the department, or a combination thereof which meet the requirements set out in this section.

[(1) At least 50% of the required number of hours shall be satisfied by attendance and participation in instructor-directed activities through a department certified sponsoring institution/training program.]

(2) An instructor must complete at a minimum 20 contact hours of continuing education related to the core competencies during each biennial renewal period.

(A) At least 5 hours shall be satisfied by participation in a department certified training program including a training program sponsored or provided by the department that provides continuing education credits for promotores or community health workers or instructors.

(B) Up to 5 hours may be satisfied through:

(i) instruction in certified training programs which meet the department’s criteria as set out in §146.7 of this title (relating to Types of Certificates and Applicant Eligibility). One hour of credit shall be given for 2 clock hours actually taught, up to 5 hours. Continuing education credit will only be given once for teaching a particular course; or

(ii) continuing education counted toward the renewal of an instructor’s Texas license/registration/certification in another health profession provided the hours meet all the requirements of this section.

(C) Up to 10 hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, training not certified by the department, or a combination thereof which meet the requirements set out in this section.

[(2) No more than 50% of the required number of hours may be satisfied through verifiable independent self-study. These activities include reading materials, audio materials, audiovisual materials, training not certified by the department, or a combination thereof which meet the requirements set out in this section.]

(3) (No change.)

c) Content. All continuing education activities should provide for the professional growth of the community health worker or promotor(a) and instructor.

(1) At least 50% of the required hours must be skill-based activities which are directly related to promotor(a) or community health worker competencies, including communication skills, interpersonal skills, service coordination skills, capacity-building skills, advocacy skills, teaching skills, and organizational skills.

(2) The remaining 50% can be related to new knowledge base on specific health issues or programmatic activity.

(d) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and is offered by an approved sponsoring organization of a [institution and/or] training program.

(e) Reporting of continuing education. Each promotor(a) or community health worker and instructor is responsible for and shall complete and file with the department at the time of renewal a continuing education report form approved by the department listing the title, date, [and] number of hours, and core competency(ies) covered for each activity for which credit is claimed. The sponsoring organization [institution or training program] must provide a list of instructors, promotores [promotores]] or community health workers who successfully complete continuing education contact hours within 30 days of the continuing education event on a form supplied by the department.

(f) Failure to complete the required continuing education.

(1) An instructor, promotor(a) or community health worker may request one [a one time only] 120-day extension per certification period if needed in order to complete the continuing education requirement.

(2) (No change.)

(3) An instructor, promotor(a) or community health worker may renew late under §146.9 of this title (relating to Certificate Renewal) after all the continuing education requirements have been met. [take the required training again to become an instructor, promotor(a) or community health worker if deadlines for renewal were not met.]

§146.11. Professional and Ethical Standards. The purpose of this section shall be to establish the standards of professional and ethical conduct required of an instructor, training program, promotor(a) or community health worker pursuant to the Health and Safety Code, Chapter 48.

(1) Professional representation and responsibilities.

(A) An instructor, promotor(a) or community health worker shall not misrepresent any professional qualifications or credentials or provide any information that is false, deceptive, or misleading to the department, for employment or work assignment as an instructor, promotor(a) or community health worker, or fail to disclose any information that could affect the decision to employ or assign a task as an instructor, promotor(a) or community health worker.

(B) An instructor, promotor(a) or community health worker shall maintain knowledge and skills for continuing professional competence. An instructor, promotor(a) or community health worker shall participate in continuing education programs and activities as set out in §146.10 of this title (relating to Continuing Education Requirements).

(C) An instructor, promotor(a) or community health worker shall be responsible for competent and efficient performance of his assigned duties and shall report to the department incompetence and illegal or unethical conduct of members of the profession.

(D) An instructor, promotor(a) or community health worker shall not retaliate against any person who reported in good faith to the department alleged incompetence; illegal, unethical, or negligent conduct of any instructor, promotor(a) or community health worker; or alleged misrepresentation or any violation(s) of the Health and Safety Code, Chapter 48, or this chapter.

(E) An instructor, promotor(a) or community health worker shall keep his or her file updated by notifying the department of changes in preferred mailing address and telephone number.

(F) An instructor, promotor(a) or community health worker shall not engage in conduct that is prohibited by state, federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol.

(G) An instructor, promotor(a) or community health worker shall not discriminate on the basis of race, creed, gender,
sexual orientation, religion, national origin, age, physical disability or economic status in the performance of community health work services or training.

(I) A sponsoring organization shall not make any misleading, deceptive, or false representations in connection with offering or obtaining approval of a certified curriculum.

(2) Relationships with patients/clients.

(A) An instructor, promotor(a) or community health worker shall not accept gratuities for preferential consideration of the patient/client. The instructor, promotor(a) or community health worker shall guard against conflicts of interest.

(B) An instructor, promotor(a) or community health worker shall not violate any provision of any federal or state statute relating to confidentiality of patient/client communication and/or records.

§146.12. Violations, Complaints and Subsequent Actions.

(a) General. This section establishes standards relating to:

(1) offenses or criminal convictions;

(2) violations which result in disciplinary actions;

(3) procedures for filing complaints alleging violations and prohibited actions under the Health and Safety Code, Chapter 48, or this chapter; and

(4) the department’s investigation of complaints.

(b) Criminal convictions which directly relate to the profession as an instructor, promotor(a) or community health worker.

(1) The department may suspend or revoke any existing certificate, or disqualify a person from receiving any certificate because of a person’s conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an instructor, promotor(a) or community health worker.

(2) In considering whether a criminal conviction directly relates to the occupation of an instructor, promotor(a) or community health worker, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for certification as an instructor, promotor(a) or community health worker. The following felonies and misdemeanors relate to any certificate of an instructor, promotor(a) or community health worker because these criminal offenses indicate an inability or a tendency to be unable to perform as an instructor, promotor(a) or community health worker:

(i) any misdemeanor or/and felony offense involving moral turpitude by statute or common law; and

(ii) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(I) offenses against the person (Title 5);

(II) offenses against property (Title 7);

(III) offenses against public order and decency (Title 9);

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4);

(C) the extent to which any certificate might offer an opportunity to engage in further criminal history activity of the same type as that in which the person previously has been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an instructor, promotor(a) or community health worker. In making this determination, the department will apply the criteria outlined in Texas Occupations Code, Chapter 53, the legal authority for the provisions of this section.

(3) The misdemeanors and felonies listed in paragraph (2)(B)(i) - (ii) of this subsection are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the Health and Safety Code, Chapter 48, and this chapter.

(c) Types of violations:

(1) a person intentionally or knowingly represents oneself as an instructor, promotor(a) or community health worker without a certificate issued under the Health and Safety Code, Chapter 48;

(2) a person obtains or attempts to obtain a certificate issued under the Health and Safety Code, Chapter 48, by bribery or fraud;

(3) a person engages in unprofessional conduct, including the violation of the standards of practice for instructors, promotores or community health workers as established by the department;

(4) a person fails to report to the department the violation of the Health and Safety Code, Chapter 48, or any allegations of sexual misconduct by another person;

(5) a person violates a provision of the Health and Safety Code, Chapter 48, or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department; or

(6) a person has a certificate revoked, suspended or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory or country.

(d) Procedures for revoking, suspending, or denying a certificate to persons with criminal backgrounds.

(1) The department shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate after hearing in accordance with the provisions of Chapter 1, Subchapter C of this title (relating to Fair Hearing Procedures).

(2) If the department denies, suspends, or revokes a certificate under these sections after hearing, the department shall give the person written notice of the reasons for the decision.

(e) Filing of complaints.

(1) Anyone may complain to the department alleging that a person has committed an offense or action prohibited under the Health and Safety Code, Chapter 48, or that a certificate holder has violated the Health and Safety Code, Chapter 48, or this chapter.

(2) A person wishing to complain about an offense, prohibited action, or alleged violation against an instructor, promotor(a) or community health worker or other person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department. The department’s mail-
The promotor(a) patient, closing accused community department's investigating department, complaint this party.

The promotor(a) patient, closing accused community department's investigating department, complaint this party.

Anonymous complaints shall be investigated by the department, provided sufficient information is submitted.

The department's action.

1. The department shall take one or more actions described in this section.

2. The department may determine that an allegation is groundless and dismiss the complaint.

3. The department may determine that an instructor, promotor(a) or community health worker has violated the Health and Safety Code, Chapter 48, or this chapter and may institute disciplinary action in accordance with subsection (b) of this section.

4. Whenever the department dismisses a complaint or closes a complaint file, the department shall give a summary report of the final action to the advisory committee, the complainant, and the accused party.

Disciplinary actions. The department may take action under this section as follows.

1. The department may reprimand an instructor, promotor(a) or community health worker or initiate action to deny, suspend, not renew, or revoke a certificate.

2. The department may take disciplinary action if it determines that a person who holds a certificate is in violation of §146.11 of this title (relating to Professional and Ethical Standards).

3. The department shall take into consideration the following factors in determining the appropriate action to be imposed in each case:

   (A) the severity of the offense;
   (B) the danger to the public;
   (C) the number of repetitions of offenses;
   (D) the length of time since the date of the violation;
   (E) the number and type of previous disciplinary cases filed against the instructor, promotor(a) or community health worker;
   (F) the length of time the instructor, promotor(a) or community health worker has performed community health work services or training;
   (G) the actual damage, physical or otherwise, to the patient, if applicable;
   (H) the deterrent effect of the penalty imposed;
   (I) the effect of the penalty upon the livelihood of the instructor, promotor(a) or community health worker;
   (J) any efforts for rehabilitation; and
   (K) any other mitigating or aggravating circumstances.

4. The department may take action for violation of the Health and Safety Code, Chapter 48, or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department.

(i) Fair hearing.

1. The fair hearing shall be conducted according to the Chapter 1, Subchapter C of this title.

2. Prior to making a final decision adverse to a certificate holder, the department shall give the certificate holder written notice of an opportunity for a hearing on the proposed action.

3. The certificate holder has 20 days after receiving the notice to request a hearing on the proposed action. A request for a hearing shall be made in writing and mailed or hand-delivered to the department, unless the notice letter specifies an alternative method. If a person who is offered the opportunity for a hearing does not request a hearing within the prescribed time for making such a request, the person is deemed to have waived the hearing and the action may be taken.

Final action.

1. If the department suspends a certificate, the suspension remains in effect until the department determines that the reasons for suspension no longer exist. The instructor, promotor(a) or community health worker whose certificate has been suspended is responsible for securing and providing to the department such evidence, as may be required by the department that the reasons for the suspension no longer exist. The department shall investigate prior to making a determination.

2. During the time of suspension, the former certificate holder shall return the certificate and identification card(s) to the department.

3. If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in these sections; however, the department may not renew the certificate until the department determines that the reasons for suspension have been removed.

4. A person whose application is denied or certificate is revoked as a result of disciplinary action is ineligible for a certificate under Health and Safety Code, Chapter 48, for one year from the date of the denial or revocation or surrender.

5. Upon revocation or nonrenewal, the former certificate holder shall return the certificate and any identification card(s) to the department.

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 April 7, 2010.

TRD-201001653
Lisa Hernandez  
General Counsel  
Department of State Health Services  
Earliest possible date of adoption: May 23, 2010  
For further information, please call: (512) 458-7111 x6972

25 TAC §146.5

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

STATUTORY AUTHORITY

The repeal is authorized under Health and Safety Code, §48.003, which requires the Texas Board of Health (board) to adopt rules that provide minimum standards and guidelines on training; §48.002, which allows the board to provide for exemption from certification by rule; §11.016, which allows the board to appoint advisory committees to assist the board in performing its duties; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the Texas Department of Health and the commissioner of health. The Texas Department of Health and the Texas Board of Health were abolished by Chapter 198, §1.18 and §1.26, 78th Legislature, Regular Session, 2003. Government Code, §531.0055, and Health and Safety Code, §1001.075, authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the section implements Government Code, §2001.039.


§146.5. Application Requirements and Procedures for Instructors.

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 April 7, 2010.  
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Lisa Hernandez  
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For further information, please call: (512) 458-7111 x6972

CHAPTER 421. HEALTH CARE INFORMATION
SUBCHAPTER A. COLLECTION AND RELEASE OF HOSPITAL DISCHARGE DATA

25 TAC §§421.1, 421.8, 421.9

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§421.1, 421.8 and 421.9, concerning the collection and release of hospital discharge data.

BACKGROUND AND PURPOSE

Sections 421.1 - 421.10 establish the rules regarding the collection requirements and release specifications of hospital inpatient discharge data from Texas hospitals. The rules were originally developed and adopted by the Texas Health Care Information Council (council) and were transferred to the department as result of the consolidation of health and human service agencies under House Bill 2292 (HB 2292), 78th Texas Legislature in 2003.

The department proposed amendments (32 TexReg 6030, September 7, 2007 Texas Register) to collect and report “diagnosis present on admission” (POA) indicators from all hospitals required to report under Health and Safety Code, Chapter 108, and to report the data collected. The amendments concerning the POA indicators were withdrawn from the adopted rules published in the Texas Register December 21, 2007 (32 TexReg 9683), in response to comments received.

The proposed amendments are necessary to comply with Health and Safety Code, Chapter 108, which requires the Executive Commissioner to adopt rules to implement the data submission requirements for hospitals to submit inpatient discharge data to the department.

The department held two meetings with stakeholders (August 18, 2009 and October 27, 2009) including representatives from the following organizations: Texas Senate Health and Human Services Committee, Texas Health and Human Services Commission, Texas Hospital Association, Dallas-Fort Worth Hospital Council, Texas Ambulatory Surgery Center Society, Texas Medical Association, Texas Association of Businesses, Memorial Hermann Hospital System, East Texas Medical Center, Austin Radiological Association, Blue Cross Blue Shield of Texas, Governor’s Office, Texas Tech Health Science Center School of Nursing, Hospital Corporation of America, Hillco Partners, Inc. and QuadraMed, Inc.

At the August 18, 2009, meeting the stakeholders recommended that the department collect POA indicators to provide better data for determining the quality of care provided by hospitals and to utilize the Agency for Healthcare Research and Quality (AHRQ) Inpatient Quality, Patient Safety and Pediatric Quality indicators that utilize the POA indicators in their methodologies. The department has not produced the Patient Safety Report or several of the Pediatric Quality Indicators because POA indicators are required for reporting these AHRQ reports. The stakeholders suggested that the department propose the POA rules as previously written in 2007. It was indicated that many of the health plans are requiring POA indicators for claims adjudication.

On October 27, 2009, the department met with the stakeholders to look at a draft of the proposed amendments. A Texas Hospital Association representative suggested that the department follow the Centers for Medicare and Medicaid Services (CMS) guidelines regarding the “Inpatient Prospective Payment System” which exempts: Critical Access Hospitals (CAH), Long-Term Care Hospitals (LTCH), Maryland Waiver Hospitals, Cancer Hospitals, Children’s Inpatient Facilities, Inpatient Rehabilitation Facilities (IRF) and Psychiatric Hospitals. Children’s hospitals have indicated to the department that they would like to include POA indicators in their data, because it would provide a better understanding of the patient care being provided in their facilities. The department researched the hospitals that would
be exempt from reporting using the CMS guidelines and determined that 220 hospitals out of 563 would be exempt from reporting. The exempt hospitals’ patients would account for approximately 10% of the total patients in the Public Use Data file. The proposed amendments will require that acute care hospitals submit POA indicators and establish a list of hospital types that are exempt from reporting POA indicators. The exempt hospitals under the proposed amendments may submit POA indicators on a voluntary basis. The additional data collected regarding the quality of care provided in hospitals could potentially identify Hospital Acquired Conditions (HAC). The POA indicators will be new data elements. Therefore, in accordance with Health and Safety Code, Chapter 108, the new data element cannot be required to be submitted to the department before the 90th day after the date the rule is adopted and must take effect no later than the first anniversary after the date the rule is adopted.

The department anticipates beginning collecting POA indicators data January 1, 2011. This indicator code will be collected and used by the department for public reporting on the quality of care in the hospitals. The POA indicator code is critical for Patient Safety, Inpatient Quality and Pediatric Quality indicator reporting methodologies developed by the United States Department of Health and Human Services, AHRQ. The AHRQ indicators will be used by the department for public reporting.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 421.1, 421.8 and 421.9 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §421.1(32) adds the term “Present on admission (POA)—Diagnosis present on admission” and renumber the definitions following the added term in the section.

The amendment to §421.8(c)(11)(III) adds the data element “POA Indicator (if applicable).” This proposed amendment requires the department to include this new data element in the public use data file. The public use data file is an electronic file with patient level data that identifies facilities and provides consumers, healthcare facilities and independent researchers with additional data regarding quality of care provided in hospitals.

The amendment to §421.9 adds a new subsection (e) for the submission of a new required data element and establishes a list of hospital types that are exempt from the reporting of this new data element and renumbers the following subsection. The data element “POA indicator” is listed to be submitted by all acute care hospitals required to submit data under Health and Safety Code, Chapter 108. Some hospitals are exempted from the requirements for submission of POA indicators. The exempted hospitals are: (1) Critical Access Hospitals; (2) Inpatient Rehabilitation Hospitals; (3) Inpatient Psychiatric Hospitals; (4) Cancer Hospitals; (5) Children’s or Pediatric Hospitals; and (6) Long Term Care Hospitals. The amendment allows for the exempted hospital to submit the POA indicators to the department voluntarily. The Code of Federal Regulations citation is corrected in §421.9(f).

FISCAL NOTE

Ramdas Menon, Ph.D., Director, Center for Health Statistics, has determined that for each calendar year of the first five years that 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 a one time cost for the department of $47,500 for development and modification to the current health care data collection system (data file format, file structures, logs, reports and associated data software tools). Cost estimates were requested from all state facilities for collection of diagnosis present on admission for all patients. The proposed rules exempt the department’s mental hospitals and Harris County Psychiatric Center (Psychiatric hospital), the University of Texas M.D. Anderson hospital (Cancer hospital) and the Texas Center for Infectious Disease (Long-Term Care Hospital). The University of Texas Medical Branch at Galveston stated they already collect the data and there would be less than $20,000 for programming to submit the data as required by the proposed rule. The University of Texas Southwestern University Hospitals - Saint Paul and Zale Lipsky provided an estimate of an initial cost of $2,500 and an annual recurring cost of $2,500. The University of Texas Health Center at Tyler system responded to an inquiry on the cost to implement the proposed amendments that there would be no additional costs, that they were already collecting and submitting the data. The fiscal implications of submitting the POA indicator codes as proposed for local governments that operate hospital systems that are exempt depending on the complexity of the hospitals’ information technology and contract requirements with any vendors involved. The costs could range from $0 to $4,174 per year to thousands of dollars for a new information system. If the facility is already collecting and reporting data for CMS, the department anticipates no new costs. Local government hospitals could manually enter the data in the secured web based data entry tool provided by the department at no cost to the facility. The facility may incur costs for adding resource staff to perform this function and their time would be dependent on the number of discharges occurring in the facility. Based on the time estimates (provided by the department’s state mental hospitals) of 20 records per hour for data entry, the average hourly salary of healthcare support workers in Texas of $14.22 (2008 Texas Workforce Commission), the average number of claims for a hospital in Texas in 2007 of 5,184 (THCIC Public Use Data File), an annual cost of approximately $3,686 per year is estimated for data submission. The cost for review and certification of the data is estimated at $461 per year (1/8th of the time required for data entry based on the estimate from Texas Center for Infectious Disease). Thus the sum total of data submission, review and certification is estimated at approximately $4,147 per year. Estimating a 4% increase per year, the total costs for the first through six years is approximately $27,504. If the facility chose to modify their current billing system, the costs would be dependent upon the complexity of their information system or the contractual agreement with their vendor or they may be required to purchase a new information system and cannot be estimated.

The following state facilities that are exempted from reporting POA indicators under the proposed amendments provided cost estimates if they were to voluntarily submit the additional data to the department. The department’s mental hospitals (exempt under the proposed rules as “psychiatric hospitals”) provided a monthly cost estimate of $2,384 (annual cost - $28,408) for their 10 facilities to comply with the rules if all facilities elected to submit POA indicators. Texas Center for Infectious Disease, exempt under the proposed rules as a “long term acute care hospital,” reported an annual additional, recurring cost of $260 if they elected to comply with the amendment to the rules. The University of Texas M.D. Anderson Cancer Center (exempt under the proposed rules as “cancer hospital”) reported that they
would have a one-time cost of $900 to comply with the amendments to the rules. Harris County Psychiatric Center (exempted under the proposed rules as a "Psychiatric Hospital") estimated a one-time cost for development of $900 - $1,000 to submit POA indicators.

**SMALL AND MICRO-BUSINESS IMPACT ANALYSIS**

Dr. Menon anticipates that only 2 acute care hospitals out of 42 hospitals with less than 100 in staffing (2007 Annual Hospital Survey) and with potential gross receipts of less than $6,000,000 would possibly have to comply with the proposed amendments. These two hospitals were not exempted by Health and Safety Code, Chapter 108, as "Rural Providers" nor exempted as critical access hospitals, rehabilitation hospitals or long-term care hospitals under the proposed rules. The department, therefore, does anticipate there may be an economic impact on these small or micro-business hospitals regarding the requirements for collection and reporting of POA. The costs could range from $0 to $294 per year to thousands of dollars for a new information system. If the facility is already collecting and reporting data for CMS, no new costs are anticipated. These hospitals could manually enter the data in the secured web-based data entry tool provided by the department at no cost to the facility. The facility may incur costs for adding resource staff to perform this function and their time would be dependent on the number of discharges occurring in their facility. Based on the time estimates (provided by the department's state mental hospitals) of 20 records per hour for data entry, the average hourly salary of healthcare support workers in Texas of $14.22 per hour (2008 Texas Workforce Commission), the average number of claims for a hospital in Texas in 2007 of 367 (THCIC Public Use Data File), an annual cost of approximately $261 per year is estimated for data submission. The cost of the review of records and certification of the data is estimated at $33 per year (1/8th of the time required for data entry based on the estimate from Texas Center for Infectious Disease). The total cost for data submission, review and certification is estimated to be approximately $294 per year. Estimating a 4% increase per year, the total cost for the first through six years is approximately $1,947. If the facility chooses to modify their current billing system, the costs would be dependent upon the complexity of their information system or the contractual agreement with their vendor or they may be required to purchase a new information system and cannot be estimated.

The anticipated economic costs to persons (hospitals that are required to report under Health and Safety Code, Chapter 108) who are required to comply with the sections as proposed will be dependent upon the complexity and status of their information systems and will range from no additional costs to an estimated $20,000 for the first year. The annual costs thereafter would range from zero to $4,147.

Department staff looked at alternative and solutions for reducing the adverse economic impact on these hospitals and found the following: First alternative solution was to collect the POA indicator code voluntarily from all hospitals. Making the POA data elements an option rarely gets hospital to comply, because hospitals are not reimbursed for the submission of the data and the POA may identify potential errors in the care of the patient. A second alternative solution was to collect the data from the CMS. This would provide data on only a select set of patients, the elderly or very young. The data is difficult to obtain and does not contain patient identifiers. A third alternative solution was to have these facilities submit the data in an alternate manner such as Microsoft Excel spreadsheet, but this would have issues regarding: data confidentiality, data matching to the correct records, data validity and certification. Currently, the Health Care Information Collection, Health Care Data Collection System is the only program in the state that collects patient level data for all patients, including the homeless and self-pay patients. The system does provide a method of manual entry and online correction of the data. Health and Safety Code, §108.006(a)(9)(D), requires the department to collect and report data regarding the quality and effectiveness of health care for all citizens of Texas.

There will be little effect on local employment. The department assumes any hires to occur in the first year that the rules are in effect. No additional local employment is anticipated in the subsequent years. Several facilities stated they would need to hire one full time person to collect and submit the data.

**PUBLIC BENEFIT**

Dr. Menon has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the amended sections. The public benefit anticipated as a result of collecting and reporting of this data element is the ability to provide the public with additional data regarding whether a diagnosis was present at the time the patient was admitted to the hospital or after the patient had been admitted to the hospital. The public will benefit from the production of additional health care provider reports that report on patient safety and provide information about the quality of care being provided in hospitals. The standardized data and the reports and information developed from the data will assist the consumer in making informed decisions on healthcare issues. The department is encouraging hospitals that are exempted under the proposed rules to voluntarily submit the POA indicators codes, because of the potential benefits to the public regarding reports on patient safety.

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

**PUBLIC COMMENT**

Comments on the proposal may be submitted to Bruce M. Burns, D.C., Center for Health Statistics, Mail Code 1898, Department of State Health Services, P.O. Box 149347, Austin, TX 78714-9909, (512) 458-7740 or by email to Bruce.Burns@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 amendments are authorized by Health and Safety Code, §§108.006, 108.009, 108.010 and 108.011, which require the Executive Commissioner to adopt rules regarding which data elements are to be required for submission to the department and which data elements are to be released in a public use data file; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

The amendments affect the Health and Safety Code, Chapters 108 and 1001; and Government Code, Chapter 531.

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

(1) - (31) (No change.)

(32) Present on admission (POA)–Diagnosis present on admission.

(33) [322] Provider--A physician or health care facility.

(34) [323] Provider quality data--A report or reports authored by the department on provider quality or outcomes of care, as defined in Health and Safety Code, Chapter 108 [Chapter 108 of Health and Safety Code], created from data collected by the department or obtained from other sources.

(35) [344] Public use data file--A data file composed of discharge claims with risk and severity adjustment scores which have been altered by the deletion, encryption or other modification of data fields to protect patient and physician confidentiality and to satisfy other restrictions on the release of hospital discharge data imposed by statute.

(36) [366] Race--A division of patients according to traits that are transmissible by descent and sufficient to characterize them as distinctly human types. Hospitals shall report this data element according to the following racial types: American Indian, Eskimo, or Aleut; Asian or Pacific Islander; Black; White; or Other.

(37) [36A] Required minimum data set--The list of data elements which hospitals are required to submit in a discharge claim for each inpatient stay in the hospital. The required minimum data set is specified in §421.9(d) of this title. This list does not include the data elements that are required by the ANSI 837 Institutional Guide to submit an acceptable discharge report. For example: Interchange Control Headers and Trailers, Functional Group Headers and Trailers, Transaction Set Headers and Trailers and Qualifying Codes (which identify which qualify as subsequent data elements).

(38) [322] Research data file--A customized data file, which includes the data elements in the public use file and may include data elements other than the required minimum data set submitted to the department, except those data elements that could reasonably identify a patient or physician. The data elements may be released to a requester when the requirements specified in §421.8 of this title (relating to Hospital Discharge Data Release) are completed.

(39) [333] Risk adjustment--A statistical method to account for a patient’s severity of illness at the time of admission and the likelihood of development of a disease or outcome, prior to any medical intervention.

(40) [335] Rural provider--A health care facility located in a county with a population of not more than 35,000 as of July 1 of the most recent year according to the most recent United States Bureau of the Census estimate; or located in a county with a population of more than 35,000 but with 100 or fewer licensed hospital beds and not located in an area that is delineated as an urbanized area by the United States Bureau of the Census; and is not state owned, or not managed or directly or indirectly owned by an individual, association, partnership, corporation, or other legal entity that owns or manages one or more other hospitals. A health care facility is not a rural provider if an individual or legal entity that manages or owns one or more other hospitals owns or controls more than 50% of the voting rights with respect to the governance of the facility.

(41) [400] Service Unit Indicator--An indicator derived from submitted data (based on Bill type or Revenue Codes) and represents the type of service unit or units (e.g., Coronary Care Unit, Detoxification Unit, Intensive Care Unit, Hospice Unit, Nursery, Obstetric Unit, Oncology Unit, Pediatric Unit, Psychiatric Unit, Rehabilitation Unit, Sub acute Care Unit or Skilled Nursing Unit) where the patient received treatment.

(42) [441] Severity adjustment--A method to stratify patient groups by degrees of illness and mortality.

(43) [423] Submission--The transfer of a set of computer records as specified in §421.9 of this title that constitutes the discharge report for one or more hospitals.

(44) [433] Submitter--The person or organization, which physically prepares discharge reports for one or more hospitals and submits them to the department. A submitter may be a hospital or an agent designated by a hospital or its owner.

(45) [444] THCIC Identification Number--A string of six characters assigned by the department to identify health care facilities for reporting and tracking purposes.

(46) [445] Uniform facility identifier--A unique number assigned by the department to each health care facility licensed in the state. For hospitals, this will include the hospital’s state license number. For hospitals operating multiple facilities under one license number and duplicating services, the department will assign a distinguishable uniform facility identifier for each separate facility. The relationship between facility identifier and the name and license number of the facility is public information.

(47) [466] Uniform patient identifier--A unique identifier assigned by the department to an individual patient and composed of numeric, alpha, or alphanumeric characters, which remains constant across hospitals and inpatient admissions. The relationship of the identifier to the patient-specific data elements used to assign it is confidential.

(48) [472] Uniform physician identifier--A unique identifier assigned by the department to a physician or other health professional who is reported as attending or treating a hospital inpatient and which remains constant across hospitals. The relationship of the identifier to the physician-specific data elements used to assign it is confidential. The uniform physician identifier shall consist of alphanumeric characters.
§421.8. Hospital Discharge Data Release.
(a) (b) (No change.)
(c) Creation of public use data file. The department will create a public use data file by creating a single record for each inpatient discharge and adding, modifying or deleting data elements in the following manner as listed in paragraphs (1) - (11) of this subsection:

(1) - (10) (No change.)
(11) data elements to be included in the public use data file:
(A) - (HHHH) (No change.)
(III) POA indicator (if applicable)
(d) (l) (No change.)

§421.9. Discharge Reports--Records, Data Fields and Codes.
(a) (d) (No change.)
(e) A hospital shall submit the "POA indicator" for all diagnosis codes on inpatient claims filed, unless exempted by this subsection. Exempted hospitals may, but are not required to submit POA indicators to the department. The following hospital type are exempted from reporting POA indicators to the department for the purposes of this subsection:

(1) Critical Access Hospitals (certified by the Secretary of the United States Department of Health and Human Services as a critical access hospital under Title 42 United States Code, §1395i-4).
(2) Inpatient Rehabilitation Hospitals (a majority of the patients are inpatients being rehabilitated).
(3) Inpatient Psychiatric Hospitals (a majority of the patients are inpatients being treated for psychiatric diseases or associated conditions).
(4) Cancer Hospitals (a majority of the patients are inpatients being treated for cancer or associated cancerous conditions).
(5) Children’s or Pediatric Hospitals (a majority of the patients are under the age of 18 and admitted as inpatients).
(6) Long Term Care Hospitals (a majority of the patients are inpatients being treated for chronic conditions or associated diseases that require extended stays in a hospital).

(f) [44] For patients which are covered by 42 USC 290dd-2 and 42 CFR Part 2 [24], the hospital shall submit the following patient identifying information or default values in the specified Record and Field locations as required by subsection (a) of this section:

(1) Patient Account Number - This alphanumeric patient control number shall be reported. This number is unique to the institution and episode of care and will be used by the hospital to review and certify data.
(2) Last Name - The patient’s last name shall be removed and replaced with "Doe."
(3) First Name - The patient’s first name shall be removed and replaced with "Jane" if female, or "John" if male, and can include a sequential number (e.g., John1, John2, John3... etc.).
(4) Middle Initial - The patient’s middle initial shall be removed and left blank (space filled).
(5) Date of Birth - The patient’s date of birth shall be reported.
(6) Address - The patient’s residence address shall be removed and replaced with the hospital’s street address.
(7) City - The patient’s city of residence shall be reported.
(8) State - The patient’s state of residence shall be reported.
(9) ZIP Code - The patient’s ZIP code of residence shall be reported.
(10) Medical Record Number - The patient’s medical record number shall be removed and replaced with "999999" and reported.
(11) Social Security Number - The patient’s Social Security Number shall be removed and replaced with "99999999999".

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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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 458-7111 x6972

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

The Texas Parks and Wildlife Department proposes amendments to §§53.9, 53.14 and 53.30, concerning Fees. The proposed amendments would establish a pro rata fee for falconry permits issued on a four or five-year basis; reduce the fee for deer breeder permit renewals for permittees who submit reports electronically; create a generic authorization for the department to collect fees for department-sponsored activities, programs, and events; and implement a flat admission fee of $5 per person for entry to the lower visitation area at Old Tunnel Wildlife Management Area (WMA).

The proposed amendment to §53.9, concerning Falconry Permits, would establish fee amounts for falconry permits issued on a four or five-year basis. Recent changes to federal rules governing falconry allow states to issue falconry permits with a period of validity of up to five years. Although current department rules address a variable fee depending on the period of validity of a permit, those rules address a maximum period of validity of three years. The proposed amendment would address pro-rata falconry fees for periods of validity of up to five years. Specifically, this proposed amendment adds a fee of $84 for a four-year permit and $105 of a five year permit for both the apprentice falconer’s permit and falconer’s renewal permit.

The proposed amendment to §53.14, concerning Deer Management and Removal Permits, would reduce the fee for renewal of a deer breeder permit. The department has created an electronic
reporting system for persons who hold deer breeder permits. Increased utilization of the system by deer breeders results in cost savings to the department and makes data more immediately available to department, regulatory and enforcement personnel, which makes those activities more efficient. The department has determined that deer breeders who use the electronic reporting system are therefore contributing to a reduction in administrative costs associated with their permits. In order to implement a renewal fee that reflects this reduced administrative cost, and to create an incentive for deer breeders to use the electronic reporting system exclusively, the department is publishing a proposed amendment elsewhere in this issue of the Texas Register that would provide for a reduced renewal fee for deer breeders who submit at least 85% of specified reports and permit activations via the department's online system. The proposed amendment provides that the amount of reduced fee for using the on-line system is $200, rather than $400.

The proposed amendment to §53.30, concerning Facility Admission and Use Fees, would create a generic authorization for the department to collect fees for department-sponsored activities, programs, and events; and implement a flat admission fee of $5 per person for entry to the lower visitation area at Old Tunnel Wildlife WMA.

The department hosts a number of workshops, educational programs, and other similar activities at department facilities. At these events, the department usually collects a nominal fee to recoup the cost of providing the programs. There is currently no specific regulatory provision explicitly establishing fees for those programs. The proposed amendment would address this by creating a generic fee authorization to allow the department to recover the costs of providing workshops, educational programs, and other similar activities.

Current entry fees for the lower visitation area at the Old Tunnel WMA are based on age and/or type of group. Under current rules, children under the age of five pay no admission fee, children between the ages of six and 16 pay a $2 admission fee, persons between 17 and 64 pay a $5 admission fee, and persons 65 and over pay a $3 admission fee. The proposed amendment would implement a flat admission fee of $5 per person, irrespective of age. The Old Tunnel WMA is popular with the public; however, due to staffing priorities at other wildlife management areas, Old Tunnel WMA is staffed by only one employee and the department must rely on unpaid volunteers to fill additional staffing needs. By implementing a flat fee, the admissions process will be simplified, easier to administer, and will provide for simplified bookkeeping and fiscal control.

Robert Macdonald, Regulations Coordinator, has determined that for each of the first five years that the proposed rules are in effect, there could be fiscal implications to state government as a result of administering or enforcing the proposed fee adjustment at Old Tunnel WMA. There will be no effects from the remaining amendments, as the reduced revenue from deer breeder fees will be offset by increased administrative efficiencies and the generic fee for participation in department activities, programs and events will offset the cost of providing those programs and events.

The impact of a flat admissions fee at Old Tunnel WMA cannot be quantified reliably, because future visitation is unknown. Based on fiscal year (FY) 2009 data, however, the department estimates that a flat $5 entry fee could potentially result in additional revenue of $9,581 per year. Persons between the ages of 16 and 65 already pay a $5 admissions fee, so revenue for that class of visitor is not affected by the proposed amendment and is not included in this analysis. In FY 2009, the department admitted 1,175 persons between the ages of 6 and 16 ($2 admission fee, for a total of $2,350) and 698 persons age 65 or older ($3 admission fee, for total of $2,094). Additionally, 752 children were admitted at no charge. Therefore, total revenue from these three classes of visitors in FY 2009 was $4,444. Taking the total number of visitors from FY 2009 and multiplying by five yields estimated revenue of $13,125. Subtracting last year’s revenue ($4,444) from that value yields estimated net revenue of $8,681, assuming visitation in all three classes remains constant. There will be no fiscal implications to local governments as a result of administering or enforcing the rules as proposed.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be rules that clearly state the conditions under which fees are imposed and the amounts of those fees.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and microbusinesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule’s potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule’s “direct adverse economic impacts” to small businesses and microbusinesses to determine if any further analysis is required. For that purpose, the department considers “direct economic impact” to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses, microbusinesses, and persons required to comply with the amendments as proposed. If anything, the effect of the reduced renewal fee for deer breeder permits will be positive. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; email: robert.macdonald@tpwd.state.tx.us.

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES 31 TAC §53.9, §53.14
The amendments are proposed under Parks and Wildlife Code, §43.357, which authorizes the commission to promulgate rules governing deer breeder permits, including fees and reporting requirements; §49.014, which authorizes the department to prescribe fees for any falconry, raptor propagation, or nonresident trapping permit; and §11.027, which authorizes the commission to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department.

The proposed amendments affect Parks and Wildlife Code, Chapters 11, 43, and 49.

§53.9. Falconry Permits.

(a) apprentice falconer’s:
   (1) one-year--$21;
   (2) two-year--$42; [and]
   (3) three-year--$63;
   (4) four-year--$84; and
   (5) five-year--$105.

(b) general falconer’s--$126;

(c) master falconer’s--$189;

(d) falconer’s renewal:
   (1) one-year--$21;
   (2) two-year--$42; [and]
   (3) three-year--$63;
   (4) four-year--$84; and
   (5) five-year--$105.

(e) nonresident raptor trapper’s--$378; and

(f) raptor propagator permit--$63.


(a) Deer breeding and related permits.
   (1) Deer breeder’s and deer breeder’s renewal--$400; and
   (2) Deer breeder’s renewal if qualified for reduced fee for electronic record submission--$200.

(b) Urban white-tailed deer removal permit:
   (1) nonrefundable application processing fee--$750; and
   (2) nonrefundable application processing fee for amendment to existing permit--$30. If the amendment includes additional release sites, the fee prescribed by paragraph (1) of this subsection shall be imposed for each additional release site.

(c) Deer management permit and renewal--$1,000.

(d) Antlerless and spike buck deer control permit application processing fee--$378.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 389-4775

DIVISION 2. FACILITY ADMISSION AND USE FEES

31 TAC §53.30

The amendments are proposed under Parks and Wildlife Code, §11.027(e), which authorizes the commission to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department.

The proposed amendments affect Parks and Wildlife Code, Chapter 11.

§53.30. Facility Admission and Use Fees.

(a) The department may impose and collect a fee for participation in a department-sponsored program, event, or activity, but only as necessary to recover the cost of the program, event, or activity.

(b) As determined and authorized by the executive director, the department may charge entrance and facility use fees within the ranges established or the amounts specified in this section.

(1) Texas Freshwater Fisheries Center.
   (A) Entry fees.
      (i) daily entrance fee--$0 to $6; and
      (ii) annual pass--$0 to $15.
   (B) The executive director, or his designee, may:
      (i) establish additional entrance requirements for student groups and teachers as necessary, to enhance student utilization of the center; and
      (ii) waive fee requirements when such a waiver is in the best interest of the public or the department.
   (C) Rental and use fees for meeting/convention room rental--$0 to $500.

(2) Sea Center Texas.
   (A) daily entrance--$0 to $5; and
   (B) annual pass--$0 to $20.

(3) Old Tunnel Wildlife Management Area. Entrance fees:
   (A) upper visitation area--free; and
   (B) lower visitation area--$5.
   [A] visitors under five years of age--free
   [B] visitors 6-16 years of age--$2 to $5;
   [C] visitors over 16 years of age--$5 to $10;
   [D] visitors 65 years of age and over--$3 to $5;
   [E] group tours--$25 to $50; and
   [F] youth group tours--$40 to $50;

(4) Mason Mountain Wildlife Management Area.
   (A) bunk (per night)--$20 to $24;
(B) room (per night)--$60 to $72; and

(C) Big House rental--$300 to $360 per day.

(5) Parrie Haynes Ranch.

(A) Definitions.

(i) Rig--a vehicle/horse trailer tandem;

(ii) Volunteer--a person the department has authorized to access the Parrie Haynes Ranch to provide maintenance, development, program delivery, or other similar assistance to the Parrie Haynes Ranch; and

(iii) Youth group--a group at least 60% of which are 17 years of age or younger.

(B) General. Use of the Parrie Haynes Ranch facilities listed in subparagraphs (C), (D) and (F) of this paragraph is on an as-available basis by reservation only.

(C) Facility fees. On the basis of availability, use of the Longhorn Lodge, Hoblitze Activity Pavilion, Rio Vista Hall, Buffalo Bunkhouse Meeting Rooms, and Pool is included for groups of 25 or more persons who purchase lodging and meals at the Hilltop Complex.

(i) Lodging.

(I) Mountain Laurel House--$150 to $250 per 24-hour period;

(II) Lone Star House--$250 to $400 per 24-hour period;

(III) Buffalo Bunkhouse--$300 to $600 per 24-hour period;

(IV) Cabins (Llano, Frio, Comal, Lantana, Primrose, Rattlesnake, Hawk, Coyote, and Bobcat)--$300 to $500 per 24-hour period, subject to applicable occupancy restrictions; and

(V) Rustic Hunter’s Cabin--$50 to $100 per 24-hour period.

(ii) Other facilities.

(I) Longhorn Lodge (classroom)--$150 to $250 per 24-hour period;

(II) Hoblitze Activity Pavilion--$100 to $150 per 24-hour period;

(III) Buffalo Bunkhouse (meeting rooms)--$50 to $150 per 24-hour period;

(IV) Rio Vista Hall--$150 to $250 per 24-hour period;

(V) pool--$150 to $250 per 24-hour period (lifeguard not provided).

(iii) Miscellaneous.

(I) kayak rental--$10 to $40 per kayak per 24-hour period;

(II) ropes challenge course--$10 to $40 per person per 24-hour period (must be accompanied by or include at least one certified facilitator provided by the user);

(III) shooting range--$10 to $40 per person per 24-hour period (must be accompanied by or include at least one person, provided by the user, who is certified by the department or the National Rifle Association as a hunter education instructor); and

(IV) Hilltop equestrian arena--$200 to $300 per 24-hour period.

(V) Youth Hunting Package (maximum: two nights, lodging (Rustic Hunter’s Cabin) and hunting only)--$20 to $60 per person per 48-hour period;

(D) camping and day use:

(i) camping:

(I) primitive--$5 to $20 per person per 24-hour period; and

(II) RV/electrical connection--$16 to $30 per 24-hour period.

(ii) day use: $3 to $15 per person per 24-hour period.

(E) Equestrian Center fees. When necessary to address staffing and management priorities, the Executive Director by order may close the equestrian center to overnight visitation and waive the fees established in this subparagraph.

(i) Day use (includes overnight, no lodging)--$10 to $20 per 24-hour period per rig;

(ii) Overnight (with electrical hook-up)--$16 to $30 per 24-hour period per rig;

(iii) Extra vehicle--$5 to $15 per 24-hour period;

(iv) Cowboy Cabin--$20 to $40 per 24-hour period;

(v) Hideout Clubhouse (including porch)--$120 to $200 per 24-hour period; and

(vi) Hideout Clubhouse (porch only)--$60 to $80 per 24-hour period.

(F) Meals.

(i) Meal fees shall be from $5 to $25 per person per meal, depending on the meal plan selected.

(ii) For groups of fewer than 25 people, the minimum meal fee shall be the fee that would be charged to a group of 25 persons, depending on the meal plan selected.

(G) Exceptions.

(i) The fees listed in subparagraph (C)(i) of this paragraph shall be discounted by 40% for youth groups.

(ii) Use of the Parrie Haynes Ranch by governmental entities shall be by agreement according to the relevant provisions of Government Code, Chapters 771 and 791, regarding Interagency Cooperation and Interlocal Cooperation.

(iii) Volunteers are exempt from all fee requirements.

(iv) Existing subleases of Parrie Haynes Ranch approved by the Texas Youth Commission are exempt from the provisions of this section.

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

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TRD-201001709
CHAPTER 57. FISHERIES
SUBCHAPTER A. HARMFUL OR POTENTIALLY HARMFUL FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §57.125
The Texas Parks and Wildlife Department proposes an amendment to §57.125, Triploid Grass Carp Permit; Application, Fee.

The proposed amendment would remove references to fee amounts in the rule. In 2009 the department increased the fees for a number of permits, including the triploid grass carp permit. Although the fee amounts in Chapter 53 of the Texas Administrative Code (relating to Finance) reflect the correct fee amount as adopted by the Parks and Wildlife Commission and published in the August 7, 2009, issue of the Texas Register (34 TexReg 5392), an obsolete fee reference appears in Chapter 57 (relating to Fisheries). The proposed amendment would eliminate all references to fee amounts in Chapter 57 to rectify the conflict.

Earl Chilton, Program Administrator, has determined that for each of the first five years that the proposed rule is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rule.

Mr. Chilton also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be rules that accurately reflect fee amounts for triploid grass carp permits.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and microbusinesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule’s potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule’s "direct adverse economic impacts" to small businesses and microbusinesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses, microbusinesses, and persons required to comply with the amendment as proposed. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposal may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; email: robert.macdonald@tpwd.state.tx.us.

The amendment is proposed under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the Parks and Wildlife Code.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§57.125. Triploid Grass Carp Permit; Application, Fee.
(a) The department may issue a triploid grass carp permit for stocking of triploid grass carp in private or public waters.

(b) To be considered for a triploid grass carp permit, the applicant shall:

(1) complete an initial triploid grass carp permit application on a form provided by the department;

(2) submit this application to the department not less than 30 days prior to the proposed stocking date; and

(3) remit to the department the sum of the cost of the triploid grass carp permit application fee and the triploid grass carp user fee set forth in §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits), if required.

(c) [The department shall charge a triploid grass carp permit application fee in the amount of the sum of a $15 application flat fee plus $2.00 for each triploid grass carp requested on the triploid grass carp permit application form.] In the case of permit denial, the triploid grass carp permit application flat fee is not refundable. All fees shall be waived in the case of applications to stock triploid grass carp in public water.

(d) An applicant for a triploid grass carp permit or a permittee shall allow inspection of their facilities and ponds or lakes by authorized employees of the department during normal business hours.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department

SUBCHAPTER K. SCIENTIFIC AREAS
31 TAC §57.921
Texas Parks and Wildlife Department (TPWD) proposes an amendment to §57.921, concerning the Redfish Bay State Scientific Area (RBSSA). The proposed amendment would remove the expiration date for the effectiveness of the section. Submerged seagrass meadows are a dominant, unique subtropical habitat in many Texas bays and estuaries. These communities of highly evolved marine flowering plants play a critical role in the coastal environment, including functioning as nursery habitat for estuarine fisheries, a major source of organic biomass for coastal food webs, effective agents for stabilizing coastal erosion and sedimentation, and major biological agents in nutrient cycling and water quality processes. Recent studies show that seagrasses are sensitive to nutrient enrichment and water quality problems, as well as physical stress from human disturbances.

Destruction of seagrasses in the RBSSA by boat propellers has been well documented. See, e.g., Montagna, Holt et al., Characterization of Anthropogenic and Natural Disturbance on Vegetated and Unvegetated Bay Bottom Habitats in the Corpus Christi Bay Natural Estuary Program Study Area (1998); Pulich et al., Current Status and Historical Trends of Seagrass in the Corpus Christi Bay National Estuary Program Study Area (1997). As a result, many Texas scientists, resource managers and environmentally aware citizens have concerns about the ecosystem health of these seagrass resources. In January 1999, (TPWD), the Texas General Land Office and the Texas Natural Resource Conservation Commission (the precursor agency to the Texas Commission on Environmental Quality) published 'The Seagrass Conservation Plan for Texas.' The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction.

In 2000, a large triangle-shaped area on the mid-Texas coast (encompassing all of Redfish Bay) was established as a state scientific area. The substantial meadows of submerged aquatic vegetation (seagrasses) within RBSSA were receiving extensive boating pressure and subsequently the seagrasses were being uprooted and scarred by outboard motor propellers. Initial efforts for five years (2000-2005) of establishing voluntary no-prop zones proved ineffective and unenforceable. Prior to renewing the state scientific area designation, the Texas Parks and Wildlife Commission directed staff to hold public hearings to discuss the concepts of mandatory no-prop zones and a prohibition on uprooting of seagrasses within the state scientific area. In 2006, the Commission reauthorized the RBSSA, effective until June 30, 2010 and prohibited the uprooting of seagrasses within the area. Scientific research, following extensive efforts by staff to educate boaters, indicates that seagrasses are being protected by the current regulation. Therefore the department believes that continuation of the Redfish Bay State Scientific Area without a term limit is warranted.

The proposed amendment also replaces taxonomic references in subsection (d) in order to be consistent with the scientific nomenclature.

Jeremy Leitz, Program Specialist for the Coastal Fisheries Division, has determined that for each of the first five years that the rule as proposed will be in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Leitz also has determined that for each of the first five years that the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the proposed rule will be the continued protection of an important ecosystem enjoyed by the public.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule’s potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule’s "direct adverse economic impacts” to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact” to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the proposed rule will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

The department has determined that the proposed rule is in compliance with Government Code, §505.11 (Actions and Rules Subject to the Coastal Management Program) and §505.22 (Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposal may be submitted to Jeremy Leitz, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4333; email: jeremy.leitz@tpwd.state.tx.us.

The amendment is proposed under Parks and Wildlife Code, §81.501, which authorizes the commission to create state scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value, and §81.502(c), which authorizes the commission to adopt rules necessary for the management and protection of scientific areas.

The amendment affects Parks and Wildlife Code, Chapter 81.

§57.921. Redfish Bay State Scientific Area.
(a) Purpose: The Redfish Bay State Scientific Area is established for the purpose of education, scientific research, and preservation of flora and fauna of scientific or educational value.
[b] (b) Term: July 1, 2005 through June 30, 2010.
(b) [65] Boundaries:
(1) 27°59.538N; 097°3.858W (Northern extremity of island forming northern boundary of Estes Cove)
(2) 27 59.232N; 097 4.434W (Intersection of Gulf Intra-coastal Waterway (GIWW) and Mouth of Cove Harbor);
(3) 27 55.986N; 097 6.804W (GIWW at Rocky Ridge);
(4) 27 53.880N; 097 8.088W (intersection of GIWW and Aransas Pass Shrimp Boat Channel);
(5) 27 53.058N; 097 8.502W (Intersection of GIWW and Brown and Root Channel);
(6) 27 52.32N; 097 9.486W (Intersection of GIWW and mouth of Redfish Bay Terminal);
(7) 27 49.483N; 097 11.255W (A point near the southern extremity of Dagger Island where the Corpus Christi Ship Channel and the GIWW intersect);
(8) 27 50.489N; 097 6.619W (A point north of the southwest arm of Harbor Island);
(9) 27 50.613N; 097 6.614W (A point northwest of the previous point, north of the southwest arm of Harbor Island);
(10) 27 50.860N; 097 5.315W (A point north of the southeast portion of Harbor Island);
(11) 27 50.439N; 097 4.841W (A Point in the Corpus Christi Channel southeast of Harbor Island);
(12) 27 50.745 N; 097 3.66 W (A Point on Harbor Island at the intersection of Aransas Shrimp Boat Channel and Corpus Christi Ship Channel);
(13) 27 52.420 N; 097 2.470 W (A point in Lydia Ann Channel);
(14) 27 55.020 N; 097 03.460 W (East of the mouth of Corpus Christi Bayou).

(c) [44] No person may move, remove, deface, alter, or destroy any sign, depth marker or other informational signage placed by the department to delineate boundaries of the Redfish Bay State Scientific Area or to designate specific zones within the area.

(d) [45] This subsection is effective May 1, 2006:

(1) In this section, "seagrass plant" means individuals from the following marine flowering plant species: Star Grass [Clove Grass] (Halophila engelmannii), Manatee Grass (Cymodocea [Springodium] filiformis), Shoalgrass (Halodule beaudeletii), Turtle Grass (Thalassia testudinum), and Widgeon Grass (Ruppia maritima).

(2) Within the Redfish Bay State Scientific Area, no person shall cause or allow any rooted seagrass plant to be uprooted or dug out from the bay bottom by a submerged propeller, except as may be permitted by a coastal lease issued by the Texas General Land Office or otherwise permitted under state law.

(3) Notwithstanding paragraph (2) of this subsection, it is not a violation to:

(A) anchor a vessel within the Redfish Bay State Scientific Area; or
(B) use electric trolling motors within the Redfish Bay State Scientific Area.

(e) [46] The penalty for violation of this section is prescribed by Parks and Wildlife Code, §13.112.

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.

CHAPTER 65. WILDLIFE

The Texas Parks and Wildlife Department proposes amendments to §§65.109, 65.132, and 65.603. Section 65.109, concerning Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds (Triple T permit), also applies to permits for trapping, transporting and processing white-tailed deer, and permits for urban white-tailed deer removal. Those permits are collectively referred to herein as Triple T permits. Sections 65.132 and 65.603 concern Deer Management Permits (DMP) and Deer Breeder Permits (breeder permit), respectively.

The proposed amendments would allow the department to refuse issuance or renewal of Triple T, DMP, or breeder permits to any person who has been convicted of or assessed a civil penalty for a violation of the federal Lacey Act, and would allow the department to prevent a person convicted or assessed a civil penalty for a Lacey Act violation from acting as an agent for any person under a Triple T, DMP, or deer breeder permit. The proposed amendments also alter §§65.109(d) and §65.132(f) to allow the department to delay processing of permit or renewal applications if the applicant is a defendant in a prosecution for a Lacey Act violation.

Additionally, the proposed amendment to §65.132, concerning Permit Application, would alter the period of validity of DMP permits in order to accommodate a proposed amendment to §65.136, concerning Release (published elsewhere in this issue of the Texas Register), which provides for release dates after August 31 for deer held under a DMP. Under current rule, a DMP is valid from September 1 through August 31, which is the state fiscal year. Because the proposed amendment to §65.136 would allow the department to specify release dates beyond August 31, it is necessary to establish a period of validity for each permit, based on the ecoregion of the state in which the property is located.

Under current rules, the department may refuse to issue or renew a Triple T, DMP, or breeder permit for any person if that person has been, within five years of application, finally convicted of or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R; a violation of Parks and Wildlife Code that is a Class A misdemeanor, a Class B misdemeanor, or felony; or a violation of Parks and Wildlife Code, §63.002. Current rules also allow the department to prevent anyone convicted of a violation listed above from acting as an agent of a permittee for up to five years. The purpose of the provisions is to protect native wildlife by preventing persons who have been proven to exhibit disregard for statutes and regulations governing the taking or possession of wildlife, particularly the possession of live wildlife, from obtaining permits.

The Lacey Act (16 U.S.C. §§3371-3378) is a federal law enacted in 1900 that, among other things, prohibits interstate trade in or movement of wildlife, fish, or plants taken, possessed, trans-
ported or sold in violation of state law. Lacey Act prosecutions are normally conducted by the United States Department of Justice in federal courts. Although a Lacey Act conviction or civil penalty is predicated on a violation of state law, the federal government need only prove that a state law was violated; there is no requirement for there to be a record of conviction in a state jurisdiction.

As a result of several recent Lacey Act convictions of Texas residents, it has come to the attention of the department that current department rules do not address the implications of such Lacey Act convictions on issuance or renewal of Triple T, DMP, or breeder permits. Although these Lacey Act cases involved violations of state law, the subjects were prosecuted in federal court under the Lacey Act. If concurrent prosecutions had been conducted in state court for the underlying state law violations, current rules would have clearly provided for the denial of permit issuance or renewal upon obtaining a conviction. However, the department’s rules are silent regarding the impact of these subjects being convicted in federal court for a violation of the Lacey Act.

Rather than expending resources and time conducting concurrent prosecutions, the department believes that it is reasonable to use a Lacey Act conviction or civil penalty as the basis for denial of Triple T, DMP, or breeder permit issuance or renewal. The department reasons that conviction or civil penalty for a Lacey Act violation constitutes legal proof that a violation of state law occurred and it is therefore redundant and wasteful to pursue a conviction in state jurisdiction to prove something that has already been proven in a federal court. The proposed amendment is necessary to ensure that such Lacey Act convictions or civil penalties are considered by the department in determining whether to issue to renew Triple T, DMP, or breeder permits.

The proposed amendments also remove the five-year time period for possible disqualification from permit issuance, permit renewal, or acting as an agent with respect to Triple T, DMP, and deer breeder permits. The current five-year period of possible disqualification may be appropriate in some instances, but is not uniformly appropriate. The department believes that a person who has been convicted of a violation of state law involving wildlife or fisheries resources has demonstrated a disregard for laws intended to protect the state’s wildlife resources. Depending on the circumstances, such a person should not be entrusted with the privilege of a permit that authorizes the possession of live wildlife resources and should not be allowed to benefit from the use of those resources, for any period of time.

The denial of issuance or renewal of a Triple T, DMP or deer breeder permit based on a Lacey Act conviction or civil penalty under the proposed amendment would not be automatic, but be within the discretion of the department. Factors that may be considered by the department in determining whether to issue or renew a permit based on a Lacey Act conviction or civil penalty would include, but not be limited to, the seriousness of the offense, the number of offenses, the existence or absence of a pattern of offenses, the length of time between the offense and the permit application, the applicant’s efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant’s prior permit history.

Mr. Lockwood also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the ability of the department to prevent persons with proven disregard for conservation laws from participating in department permit programs involving live deer.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that there will be no direct economic effect on small or micro-businesses or persons required to comply as a result of the proposed rules. The rules would not compel or mandate any action on the part of any entity, including small businesses or micro-businesses. In particular, the proposed rules would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert MacDonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.109

The amendment is proposed under Parks and Wildlife Code, §43.061, which requires the commission to adopt rules for the trapping, transporting, and transplanting of game animals and game birds under a permit issued by the department.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.


(a) Permits authorized under this subchapter:

(1) will be issued, with the exception of permits to trap, transport, and process surplus white-tailed deer, only if the activities identified in the application are determined by the department to be in accordance with the department’s stocking policy;

(2) will be issued only if the application and any associated materials are approved by a Wildlife Division technician or biologist assigned to write wildlife management plans;
(3) do not exempt an applicant from the requirements of §§55.142 - 55.152 of this title (relating to Aerial Management of Wildlife and Exotic Animals).

(b) The department may refuse permit issuance or renewal to any person who [within five years of applying for a triple D permit] has been:

(1) finally convicted of or received deferred adjudication for:

(A) [41] a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(B) [22] a violation of Parks and Wildlife Code that is a Class A misdemeanor, a Class B misdemeanor, or felony; or

(C) [23] a violation of Parks and Wildlife Code, §63.002; or[1]

(2) convicted, received deferred adjudication or pretrial diversion, or assessed a civil penalty for a violation of 16 U.S.C. §§3371-3378 (the Lacey Act).

(c) The department may prohibit any person [for a period of up to five years] from acting as an agent of any permittee if:

(1) the person has been convicted of or received deferred adjudication for an offense listed in subsection (b)(1) [22] of this section; or[2]

(2) has been convicted, received deferred adjudication or pre-trial diversion, or assessed a civil penalty for an offense listed in subsection (b)(2) of this section.

(d) The department may delay the processing of a permit or renewal application if the applicant is a defendant in a criminal prosecution or proceeding to assess a civil penalty for:

(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R; or[

(2) a violation of Parks and Wildlife Code, §63.002; or[3] an offense listed in subsection (b) of this section;]


(e) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

This agency hereby certifies that the 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 April 9, 2010.
TRD-201001714
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 389-4775

SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §65.132

The amendment is proposed under Parks and Wildlife Code, §43.603, which authorizes the commission to establish conditions for the deer management permit.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§65.132. Permit Application.

(a) Applicants for a DMP shall complete and submit an application on a form supplied by the department. Applications for a DMP shall be accompanied by a deer management plan containing the information stipulated by the application form and the nonrefundable fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees). Incomplete applications will be returned to the applicant and will not be processed until complete. A DMP will not be issued unless the applicant’s deer management plan has been approved by a Wildlife Division technician or biologist assigned to write wildlife management plans.

(b) A permit under this subchapter is valid from the date of issuance through the last release date authorized under the permit [September 1 of one year through August 31 of the immediately following year].

(c) A person who receives deferred adjudication for or is finally convicted of a violation involving §65.136 of this title (relating to Release) is prohibited from obtaining a DMP for a period of three years from the date the conviction is obtained or deferred adjudication was received.

(d) The department may refuse to issue a permit or permit renewal to any person who [within five years of applying for a permit] has been:

(1) convicted of or received deferred adjudication for:

(A) [41] a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(B) [22] a violation of Parks and Wildlife Code that is a Class A misdemeanor, a Class B misdemeanor, or felony; or

(C) [23] a violation of Parks and Wildlife Code, §63.002; or[1]

(2) convicted, received deferred adjudication or pretrial diversion, or assessed a civil penalty for a violation of 16 U.S.C. §§3371-3378 (the Lacey Act).

(e) The department may prohibit a person [for a period of up to five years] from acting as an agent for any permittee if the person:

(1) has been convicted of or received deferred adjudication for an offense listed in subsection (d)(1) [41] of this subchapter; or[2]

(2) has been convicted, received deferred adjudication or assessed a civil penalty for an offense listed in subsection (d)(2) of this section.

(f) The department may delay the processing of a permit or renewal application if the applicant is a defendant in a prosecution or proceeding to assess a civil penalty for:

(1) a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R; or[

(2) a violation of Parks and Wildlife Code, §63.002; or[3]

(3) a violation of 16 U.S.C. §§3371-3378 (the Lacey Act).

(g) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.
This agency hereby certifies that the 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 April 9, 2010.
TRD-201001713
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 389-4775

SUBCHAPTER T. DEER BREEDER PERMITS
31 TAC §65.603
The amendment is proposed under Parks and Wildlife Code, §43.357, which authorizes the commission to make rules governing the possession of breeder deer.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§65.603. Application and Permit Issuance.

(a) An applicant for an initial deer breeder’s permit shall submit the following to the department:

1. a completed application on a form supplied by the department;

2. a letter of endorsement by a certified wildlife biologist which states that the biologist has conducted an inspection of the facility identified in the application and affirms that:
   (A) the facility identified in the application:
      (i) physically exists and
   (ii) is adequate for the lawful conduct of activities governed by this subchapter; and
   (B) no deer are present within the facility;
   (C) a diagram of the physical layout of the facility;
   (D) the application processing fee specified in Chapter 53, Subchapter A, of this title (relating to Fees); and
   (E) any additional information that the department determines is necessary to process the application.

(b) A deer breeder’s permit may be issued when:

1. the application and associated materials have been approved by the department; and

2. the department has received the fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(c) A deer breeder’s permit shall be valid from the date of issuance until the immediately following July 1.

(d) Except as provided in subsection (g) of this section, a deer breeder’s permit may be renewed annually, provided that the applicant:

1. is in compliance with the provisions of this subchapter;

2. has submitted a timely application for renewal or is, as determined by the department, making satisfactory progress towards resolution of deficiencies that prevent timely renewal;

3. has filed the annual report in a timely fashion, as required by §65.608 of this title (relating to Annual Reports and Records); and

4. has paid the permit renewal fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(e) An authorized agent may be added to or deleted from a permit at any time by faxing or mailing an agent amendment form to the department. No person added to a permit under this subsection shall participate in any activity governed by a permit until the department has received the agent amendment form.

(f) Except as provided by this subchapter for release, transfer, or transport of breeder deer, a deer breeder’s permit authorizes the holding of breeder deer only within the physical layout of a facility described by the diagram required by subsection (a)(3) of this section. If a permittee wishes to alter the exterior dimensions of a facility, either by enlargement or reconfiguration, the permittee shall submit an accurate diagram of the altered facility, indicating all changes to the existing facility, to the department. It is unlawful to introduce, cause the introduction of, or hold breeder deer anywhere other than within the dimensions of the facility as indicated by the diagram on file with the department.

(g) The department may refuse permit issuance or renewal to any person who [within five years of applying for a deer breeder’s permit] has been:

1. finally convicted of or received deferred adjudication for:
   (A) [44] a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;
   (B) [32] a violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or a felony;
   (C) [42] a violation of Parks and Wildlife Code, §63.002;

2. convicted, received deferred adjudication or pre-trial diversion, or assessed a civil penalty for a violation of 16 U.S.C. §§3371-3378 (the Lacey Act).

(h) The department may prohibit any person [for a period of up to five years] from acting as an agent of any permittee if the person:

1. has been convicted of or received deferred adjudication for an offense listed in subsection (g)(1) [subsection (g)(1)] of this section;

2. has been convicted, received deferred adjudication or pre-trial diversion, or assessed a civil penalty for an offense listed in subsection (g)(2) of this section.

(i) The department may refuse to issue a permit to any person the department has evidence is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

(j) An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

1. An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.
(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Deputy Executive Director for Operations (or his or her designee);
(B) the Director of the Wildlife Division; and
(C) the Big Game Program Director.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

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 April 9, 2010.

TRD-201001715
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 389-4775

SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §65.134, §65.136

The Texas Parks and Wildlife Department proposes amendments to §65.134 and §65.136, concerning the deer management permit (DMP).

The proposed amendment to §65.134, concerning Facility Standards, would remove the current exception that allows DMP pens of fewer than five acres under certain circumstances and require all pens, irrespective of size, to have at least 50,000 square feet of natural vegetation of the type normally used by deer for concealment and cover.

The proposed amendment to §65.136, concerning Release, would allow the department to establish the dates by which deer held under a DMP must be released each year.

Under Parks and Wildlife Code, Chapter 43, Subchapter R, the department may issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer. This permit is the Deer Management Permit (DMP). The current rule states that a DMP pen may be no more than 100 acres nor fewer than five acres in area; however, there is an exception that allows for a DMP pen of fewer than five acres in area, provided it contains a minimum of 50,000 square feet of continuous natural vegetative cover of the type typically used by deer for cover and concealment. The vegetative cover requirement is intended to provide a safe environment for wild white-tailed deer captured and placed in pens of less than five acres for DMP purposes. Wild animals are less susceptible to capture-induced trauma if they are kept in enclosures that mimic their usual habitat. The cover requirement currently does not apply to pens larger than five acres in size.

The department’s White-tailed Deer Advisory Committee (WTDAC) discussed the issue of adequate cover and space and concluded that a five-acre pen without cover does not provide a safe environment for wild-caught white-tailed deer. Furthermore, the WTDAC recommended that the department initiate rulemaking to prohibit DMP pens of fewer than five acres in area and to require all DMP pens to provide a minimum of 50,000 square feet of natural vegetative cover. The WTDAC also advised that the rule be amended to eliminate the requirement that vegetative cover be continuous, because studies have shown that wild deer prefer broken cover to continuous cover.

Staff concurs with the recommendations of the WTDAC and believes that the suggested rule changes will reduce stress on wild deer held in captivity under the authority of a DMP.

The WTDAC also recommended that existing DMP infrastructure of less than five acres and larger than five acres but with fewer than 50,000 square feet of natural cover be “grandfathered,” provided permits are kept continuously current and ownership does not change. The proposed amendment would address that recommendation by allowing a property in compliance with current requirements to be excepted from the proposed new standards provided the pens in question are continuously included in permit renewal applications, the permit is continuously renewed, and ownership of the property does not change. The proposed amendment also allows a spouse or child who inherits a DMP property to continue to operate infrastructure that is less than five acres or larger than five acres but with fewer than 50,000 square feet of natural cover, provided the permit is continuously renewed.

The proposed amendment to §65.136, concerning Release, would extend release dates based on the ecoregion in which a property is located. In addition to the matters already addressed in this preamble, the WTDAC also engaged in a discussion of release dates. Under current rule, deer kept under a DMP must be released by no later than August 31 of each year. This date was selected because it is the end of the state’s fiscal year and did not conflict with the trapping period. Testimony provided to the WTDAC indicated that there is concern that fawn survivability would be enhanced if permittees were allowed to retain deer until the fawns were older and thus more likely to survive in the wild. The department has determined that there is no resource concern associated with extending release dates; therefore, the proposed amendment also would alter the current release date to allow the department to specify the release date on a permit-by-permit basis, depending on the ecoregion in which the permitted property is located. The department intends to use breeding chronology data to determine the latest date in each ecoregion that deer could be released without creating the likelihood that bred does would be recaptured in the following trapping season. Breeding chronology data indicate that if deer are released a minimum of 45 days prior to the trapping deadline of the subsequent DMP trapping season, there is very little probability that bred does will be recaptured.

Staff has determined that the amendments as proposed will not result in negative biological implications for the resource.
Mitch Lockwood, Acting Director of the Big Game Program, has determined that for each of the first five years that the proposed rules are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rules.

Mr. Lockwood also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the protection of public resources and the enhanced survivability of white-tailed deer held under a DMP.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule’s potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule’s “direct adverse economic impacts” to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers “direct economic impact” to mean a requirement that would directly impose record-keeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no direct adverse economic effects on small businesses, micro-businesses, or persons required to comply with the amendments as proposed, because the rule will not apply to any current permitee, provided the permittee continuously renews his or her permit. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed amendments may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; email: robert.macdonald@tpwd.state.tx.us.

The amendments are proposed under Parks and Wildlife Code, §43.603, which authorizes the commission to establish conditions for the deer management permit.

The proposed amendments affect Parks and Wildlife Code, Chapter 43.

§65.134. Facility Standards.
(a) No pen used to detain deer under a DMP shall be more than 100 acres in area or less than five acres in area, except as provided in subsection (b) of this section.
(b) A pen [less than five acres in area] must contain at least 50,000 square feet of [continuous] natural vegetation of the type typically used by white-tailed deer for concealment and cover.

(c) Exceptions.
(1) The department may issue a DMP for a property that includes a pen of less than five acres in area, provided:
   (A) the pen contains at least 50,000 square feet of natural vegetation of the type typically used by white-tailed deer for concealment and cover;
   (B) the pen was authorized under a DMP as of August 31, 2010;
   (C) the pen is included in the deer management plan submitted to the department for permit renewal for the 2011 permit year and every year thereafter; and
   (D) the property for which the DMP is sought is owned by one of the following:
      (i) the same person who owned the property as of August 31, 2010; or
      (ii) a spouse or child of the person who owned the property as of August 31, 2010, if the spouse or child obtained ownership of the property by inheritance, will, or intestate succession, provided the spouse or child makes application for a DMP permit within one year of the date the spouse or child obtained ownership of the facility.
(2) The department may issue a DMP for a property that includes a pen containing less than 50,000 square feet of natural vegetation of the type typically used by white-tailed deer for concealment and cover, provided:
   (A) the pen includes at least five acres in area;
   (B) the pen was part of an approved facility as of August 31, 2010;
   (C) the pen is included in the deer management plan submitted to the department for permit renewal for the 2011 permit year and every year thereafter; and
   (D) the property for which the DMP is sought is owned by one of the following:
      (i) the same person who owned the property as of August 31, 2010; or
      (ii) a spouse or child of the person who owned the property as of August 31, 2010, if the spouse or child obtained ownership of the property by inheritance, will, intestate succession, provided such person makes application for a DMP permit within one year of the date the spouse or child obtained ownership of the facility.
(3) The provisions of subsections (a) and (b) of this section apply to all applications that do not qualify for an exception under the provisions of subsection (c) of this section.
(d) [46a] Except for fawns born in a DMP facility during the current permit year, no pen at any time shall contain more than:
   (1) one buck deer; and/or
   (2) 20 doe deer.

§65.136. Release.
(a) Release of deer shall be effected by removing, for a total of at least 20 feet, those components of a pen that serve to maintain deer in a state of detention within the pen; however, no opening shall be less than 10 feet in width. Such components shall be removed for no fewer than 30 consecutive days.
(b) At any time that components of a pen are removed or manipulated for the purposes of releasing wild deer, all externally provided food and water (i.e., food or water that does not naturally occur at the site) shall be removed or made inaccessible to deer for no fewer than 30 days.

(c) All deer within a DMP pen shall be released on or before the date specified for the facility by the department [August 31 of each year].

(d) Except for deer authorized by the department for release elsewhere under a permit to trap, transport, and transplant game animals and game birds, all deer released from a DMP pen shall be released directly into the pasture where they were captured for the purposes of activities under this subchapter.

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

Filed with the Office of the Secretary of State on April 9, 2010.
TRD-201001712
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 389-4775

SUBCHAPTER T. DEER BREEDER PERMITS

31 TAC §65.608

The Texas Parks and Wildlife Department proposes an amendment to §65.608, concerning Annual Reports and Records.

The proposed amendment would set forth the reporting requirements that deer breeder permittees would be required to meet in order to qualify for a reduced fee for permit renewal.

Under current rule, the fee for renewing a deer breeder permit is $400. Under the terms of Parks and Wildlife Code, §43.369, as added by Senate Bill 1586 (S.B. 1586), enacted by the 81st Texas Legislature in 2009, the department is required to develop a process for a database to be shared with the Texas Animal Health Commission for the purpose of collecting data required to be submitted to each agency by deer breeders. S.B. 1586 also requires the department to provide incentives to deer breeders whose cooperation results in reduced costs and increased efficiency by offering reduced fees for deer breeder permits.

The department has created an electronic reporting system for persons who hold deer breeder permits. Increased utilization of the system by deer breeders will result in cost savings and greater efficiency because electronic reporting makes data more immediately available to department regulatory and enforcement personnel and eliminates the need for manual data entry by department employees. In addition, the data reported electronically is accessible by the Animal Health Commission. The department and the Animal Health Commission have agreed that electronic reporting will also satisfy the Animal Health Commission’s reporting requirements. Therefore, users will benefit by having to submit their reports to only one agency rather than two, and by receiving a reduced fee for reporting online.

The department has determined that deer breeders who use the electronic reporting system are therefore reducing the costs of administering and enforcing the program. In order to implement a renewal fee that reflects this reduced administrative cost and to create an incentive for deer breeders to maximize their utilization of the electronic reporting system, the department believes that a fee reduction of 50% is appropriate. Therefore, the proposed amendment would reduce the renewal fee 50% for deer breeders who submit at least 85% of specified reports and permit activations via the department’s online system. The department selected the 85% criterion because it was necessary to establish a standard that while effectively encouraging permittees to submit all reports electronically was not so stringent that permittees could be disqualified for a reduced renewal fee because of factors beyond their control (technical problems, unavoidable circumstances, etc.) that necessitated reporting by phone or over-land mail. The department expects that permittees who choose to submit required information electronically will submit all information electronically.

Mitch Lockwood, Acting Director of the Big Game Program, has determined that for each of the first five years that the proposed rule is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rule. The savings achieved by electronic reporting will be offset by reduced fees; however, the effect will be positive, since the data entered will become immediately available and the department will save time by not having to enter data manually.

Mr. Lockwood also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be more efficient and less costly administration of programs administered by the department. Users will benefit by having to submit their reports to only one agency rather than two, and by receiving a reduced fee for reporting online.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and microbusinesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule’s potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule’s “direct adverse economic impacts” to small businesses and microbusinesses to determine if any further analysis is required. For that purpose, the department considers “direct economic impact” to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. Compliance with the proposed rule is not mandatory; therefore, any small or microbusiness can choose to continue to report manually with no changes to current costs of complying with reporting requirements.

The proposed rule will not impose additional recordkeeping or reporting requirements; impose taxes or fees; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that most if not all businesses affected by the proposed rule qualify as small or microbusinesses; however, the department has also determined that the rule as proposed will result in positive economic effects on small businesses and microbusinesses that choose to file records and reports online, since doing so will result in a 50% reduction in fee costs to each business.
The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposal may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; email: robert.macdonald@tpwd.state.tx.us.

The amendment is proposed under Parks and Wildlife Code, §43.357, which authorizes the commission to promulgate rules governing deer breeder permits, including fees and reporting requirements.

The proposed amendments affect Parks and Wildlife Code, Chapter 43.

§65.608. Annual Reports and Records.
(a) Each deer breeder shall file a legible, completed annual report on a form supplied or approved by the department by not later than May 15 of each year.
(b) A person other than a deer breeder holding breeder deer for nursing, breeding, or health care purposes shall maintain and, upon request, provide copies of transfer permits indicating the source of all breeder deer in the possession of that person.
(c) The reduced fee for renewal of a deer breeder permit specified in §53.14a(2) of this title (relating to Deer Management and Removal Permits) shall apply to any permittee who, in the year prior to renewal, has reported via the department’s online reporting system at least 85% of the following (in the aggregate):

(1) births and deaths of deer held under the permit; and
(2) transfer permits activated by the permittee.

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 April 9, 2010.
TRD-201001716
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 389-4775

CHAPTER 69. RESOURCE PROTECTION

The Texas Parks and Wildlife Department proposes an amendment to §69.310, concerning Fees, and §69.404, concerning Permit Application, Issuance, and Fees.

The proposed amendments would remove references to fee amounts in the rules. In 2009 the department increased the fees for a number of permits, including the fees for scientific research, educational display, zoological collection, and protected nongame sales permits. Although the fee amounts in Chapter 53 of the Texas Administrative Code (relating to Finance) reflect the correct fee amounts as adopted by the Parks and Wildlife Commission and published in the August 7, 2009, issue of the Texas Register (34 TexReg 5392), obsolete fee references for these permits appear in Chapter 69 (relating to Resource Protection). The proposed amendment would eliminate all references to fee amounts in Chapter 69 to rectify the conflict.

Karen Pianka, Program Administrator, has determined that for each of the first five years that the proposed rules is in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the proposed rules.

Ms Pianka also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be rules that accurately reflect fee amounts for scientific collection, educational display, zoological, and protected nongame permits.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic affect on small businesses and microbusinesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule’s potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule’s “direct adverse economic impacts” to small businesses and microbusinesses to determine if any further analysis is required. For that purpose, the department considers “direct economic impact” to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that there will be no adverse economic effects on small businesses, microbusinesses, and persons required to comply with the amendments as proposed. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Robert Macdonald, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775; email: robert.macdonald@tpwd.state.tx.us.

SUBCHAPTER J. SCIENTIFIC, EDUCATIONAL, AND ZOOLOGICAL PERMITS

31 TAC §69.310

The amendment is proposed under Parks and Wildlife Code, §43.002, which authorizes the commission to set fees for review of permit applications, inspections, laboratory analysis, or other department actions related to permits governing the collecting, holding, possession, propagation, release, display, or transport of protected wildlife for scientific research, educational display, zoological collection, or rehabilitation.
The proposed amendments affect Parks and Wildlife Code, Chapter 43.

§69.310. Fees.

(a) The application fees established in §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits) for zoological collection permits, scientific research permits, and educational display permits are nonrefundable.

[...]

(b) No fee shall be required for:

1. applications on behalf of a primary or secondary educational institution;

2. applications on behalf of a governmental entity required by law to conduct activities governed by this subchapter.

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

Filed with the Office of the Secretary of State on April 9, 2010.

TRD-201001717

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 23, 2010

For further information, please call: (512) 389-4775

SUBCHAPTER K. SALE OF NONGAME SPECIES

31 TAC §69.404

The amendment is proposed under Parks and Wildlife Code, Chapter 67, which requires the commission to establish any limitations on the taking, possession, transportation, exportation, sale, and offering for sale of nongame fish and wildlife.

The proposed amendments affect Parks and Wildlife Code, Chapter 67.

§69.404. Permit Application, Issuance, and Fees.

(a) A person may apply for a sales permit by submitting a completed department-supplied application form and the permit fee specified in §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife License and Permits) [at $300].

(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 April 9, 2010.

TRD-201001718

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 23, 2010

For further information, please call: (512) 389-4775

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.3

The Texas State Soil and Water Conservation Board (State Board or agency) proposes amendments to §523.3, Water Quality Management Plan (WQMP) Certification Program, to allow for the "conditional" certification of a WQMP in certain situations for demonstrating experimental conservation technologies, and to modify the requirements associated with documenting neighbor consent relating to odor control plans for a proposed poultry facility.

The State Board proposes to amend 31 TAC §523.3(c), relating to the certification of a WQMP, by adding a new §523.3(c)(2). With the creation of §523.3(c)(2), it makes necessary to number the existing unnumbered paragraph as §523.3(c)(1). Section 523.3(c)(2) would establish the allowance for "conditional" certification of a WQMP in situations where the landowner, the local soil and water conservation district (SWCD), and State Board agree to demonstrate experimental conservation technologies and systems. The option of a conditional certification would allow the State Board to work with landowners to find alternative solutions to problems that would otherwise result in the landowner not participating in the program. One of the major components to this amendment would be the requirement that the landowner allow the State Board to intensely monitor compliance with management measures within the WQMP, and to perform intensive soil and water quality monitoring to verify if the experimental technologies are being successful in protecting state water quality standards. Upon completion of the monitoring, the State Board would make a determination that the conditional certification be made permanent, or be removed resulting in the WQMP not being certified.

The State Board also proposes to amend 31 TAC §523.3(j)(3)(D). After September 1, 2009, the State Board may not certify a water quality management plan for a proposed newly constructed poultry facility, or an existing poultry facility that proposes to expand by more than 50 percent the number of birds included in the existing certified water quality management plan as of September 1, 2009, that is located less than one half of one mile from a neighbor if the presence of the facility is likely to create a persistent nuisance odor for such neighbors, unless the facility provides an odor control plan the Texas Commission on Environmental Quality (TCEQ) determines is sufficient to control odors. Section 523.3(j)(3)(D) provides that a proposed newly constructed poultry facility does not need to obtain an odor control plan if all neighbors within one half of one mile provide their consent for the facility to begin construction and operate. Existing §523.3(j)(3)(D) requires that a "notarized letter of consent" signed by the neighbor or authorized legal
representative(s) of the neighbor must be submitted to the State Board in order to verify its authenticity. The State Board proposes to eliminate the need for the consent to be provided by a notarized written document, and proposes to refer to the written document as a "form" rather than a "letter."

The State Board has developed a standard form the poultry facility owner signs affirming that properly signed consent forms have been obtained from all neighbors and a separate standard form to use for obtaining consent so as to receive consistent consent from all neighbors rather than each neighbor having to write their own unique letter to grant consent. This proposed amendment would also remove the burden and cost of obtaining notarization from neighbors.

Mr. Kenny Zajicek, Fiscal Officer, Texas State Soil and Water Conservation Board, has determined that for the first five year period there will be no fiscal implications for state or local government as a result of administering these new rules.

Mr. Kenny Zajicek has also determined that for the first five year period these new rules are in effect, the public benefit anticipated as a result of administering these new rules will be the removal of the burden for neighbors of poultry facilities to generate their own letters of consent, as well as the burden of the cost of notarization.

There is no anticipated cost to small businesses or individuals resulting from these amended rules.

Comments on the proposed new rules may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250, ext. 231.

The new rules are proposed under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the Texas State Soil and Water Conservation Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

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

§523.3. Water Quality Management Plan Certification Program.

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

(c) Certification.

(1) To be certified, a water quality management plan must at a minimum meet the resource quality criteria for water quality at the resource management system level specified within the NRCS FOTG and encompass all lands whether contiguous or non-contiguous that constitutes an operating unit for agricultural or silvicultural nonpoint source pollution abatement purposes.

(2) The State Board may conditionally certify a water quality management plan for the purpose of demonstrating experimental technologies or alternative combinations of practice standards at the request of a landowner or operator. Conditional certification of a water quality management plan shall provide the landowner or operator all the benefits and limitations of certification under traditional circumstances. Conditional certification will remain applied to a water quality management plan until such time that the experimental technologies or alternative combinations of practice standards have been determined by the State Board to be equivalently effective as the traditionally applied practices for water quality criteria at the resource management system level within the NRCS FOTG. If the experimental technologies or alternative combinations of practice standards are determined to be not as effective as the traditionally applied practices for water quality criteria at the resource management system level within the NRCS FOTG, the State Board shall remove the conditional certification and the water quality management plan shall be considered not certified. Landowners or operators receiving conditional certification must enter into an agreement with the State Board allowing for intense monitoring of soil and water quality and compliance with management measures contained within the water quality management plan.

(d) - (i) (No change.)


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

(3) After September 1, 2009 the State Board may not certify a water quality management plan for a proposed newly constructed poultry facility, or an existing poultry facility that proposes to expand by more than 50 percent the number of birds included in the existing certified water quality management plan as of September 1, 2009, that is located less than one half of one mile from a neighbor if the presence of the facility is likely to create a persistent nuisance odor for such neighbors, unless the facility provides an odor control plan the Texas Commission on Environmental Quality determines is sufficient to control odors. A facility that will house fewer than 10,000 total birds is unlikely to create a persistent nuisance odor. Within this paragraph and subparagraphs, the term neighbor includes business, off-site permanently inhabited residence, place of worship, or other poultry farm under separate ownership; and proposed facility has the meaning described in paragraph (2) of this subsection.

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

(D) Alternatively to meeting conditions of subparagraphs (A), (B), or (C) of this paragraph a proposed facility may obtain certification of a water quality management plan if subsections (e) - (h) of this section are met and each neighbor within one half of one mile of the proposed facility provides a [notarized letter or] consent form properly signed by the neighbor or authorized legal representative(s) of the neighbor. The form [letter] must contain the name, physical and mailing address(es), and phone number(s) of the neighbor and consent to location and operation of permanent odor sources of a poultry facility within one half of one mile of the neighbor. Such form(s) [letter(s)] must be contained in the water quality management plan.

(4) - (8) (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 April 7, 2010.

TRD-201001655
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: May 23, 2010
For further information, please call: (254) 773-2250 x252

TITLE 34. PUBLIC FINANCE
PART 1. COMPTROLLER OF PUBLIC ACCOUNTS
CHAPTER 9. PROPERTY TAX ADMINISTRATION
SUBCHAPTER A. PRACTICE AND PROCEDURE

34 TAC §9.17

(EDITOR’S NOTE: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Comptroller of Public Accounts or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Comptroller of Public Accounts proposes the repeal of §9.17, concerning notices of public hearings on tax increases under Tax Code, §26.06. The proposed repeal is a result of a rule review of Texas Administrative Code, Title 34, Part 1, Chapter 9, Subchapter A, conducted by the comptroller. The rule review was performed pursuant to Government Code, §2001.039 and resulted in a determination that the reasons for initially adopting §9.17 no longer exist.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the repeal will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be by improving the administration of local property valuation and taxation. The proposed repeal would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the repeal may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeal is proposed pursuant to Government Code, §2001.039(c), which authorizes the repeal of a rule upon agency assessment in conducting a rule review that the reasons for initially adopting the rule no longer exist.


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 April 6, 2010.

TRD-201001577
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 475-0387

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 71. CREDITABLE SERVICE

34 TAC §71.29, §71.31

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) §71.29 and §71.31, concerning Purchase of Additional Service Credit and Credit Purchase Option for Certain Waiting Period Service.

In the 81st Legislative Session, House Bill 2559, Chapter 1308, Acts of the 81st Legislature, Regular Session, 2009 (HB 2559) was passed providing new retirement plan provisions for state employees hired on or after September 1, 2009. Buck Consultants, ERS’ consulting actuary for retirement, reviewed the recent legislative changes and recommended that new actuarial factor tables should be adopted to address the legislative changes in areas such as the cost to purchase credit for service performed during the 90-day waiting period for membership in the retirement system and the cost of purchasing additional service credit. The Board approved the recommended changes to the actuarial factor tables at its February 23, 2010 meeting. As a result of the Board’s approved changes to the tables, §71.29 and §71.31 of the rules are amended to update them for the various changes to actuarial tables and reduction factors relating to the above referenced legislation. The rule is also being changed to provide a more specific physical address for the ERS building.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, has determined that for the first five year period the rules as in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be to simplify administration for the ERS defined benefit plans, to improve the accuracy of calculations and computations related to retirement benefits, and to make the rules conform to the Board’s approved reduction factors and actuarial tables for retirement as recommended by the ERS actuary. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, May 24, 2010, at 8:00 a.m.

The amendments are proposed under the Texas Government Code §§815.102 and §815.105 which provide authorization for the ERS Board of Trustees to adopt rules for the retirement system and to adopt mortality, service and other tables necessary for the retirement system.

No other statutes are affected by the proposed amendments.

§71.29. Purchase of Additional Service Credit.

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

(c) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the credit established under this section. The tables recommended by the actuaries and adopted by the board shall be used by the system to determine the actuarial present value. The additional service credit tables are adopted by reference and made a part of this rule for all purposes. The 2009 additional service credit tables apply to service purchase calculations performed on or after September 1, 2009, and are those tables adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 additional service credit tables apply only to those employees hired by the state of Texas on or after
Section 71.31. Retirements 2010

35 TexReg 3222  April 23, 2010  Texas Register

CHAPTER 73. BENEFITS

34 TAC §§73.2, 73.17, 73.21

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) §§73.2, 73.17, and 73.21, concerning Determination of Date of Hire for Retirement Benefit Eligibility, Disability Retirement--Eligibility and Reduction Factor for Age and Retirement Option.

Section 73.2, concerning Determination of Date of Hire for Retirement Benefit Eligibility, is being amended to clarify the standards that the retirement system will use to determine if an employee was hired by the state of Texas on or after September 1, 2009, for determination of eligibility for retirement benefits.

Section 73.17 concerning Disability Retirement--Eligibility would change by adding subsection (c) clarifying that a medical examination required by the Government Code, Title 8, Subchapter C, including the two provisions referenced above, must be performed by a duly licensed medical doctor or doctor of osteopathic medicine. Government Code §814.201 requires that an applicant for disability retirement benefits administered by ERS must submit to medical examination as required by ERS. Government Code §814.208 provides that ERS may require an ERS disability retiree to undergo periodic medical examinations to demonstrate continuing eligibility for disability retirement benefits. Examinations performed by healthcare providers who are not licensed medical doctors or doctors of osteopathic medicine would not comply with the statutory directive that examinations relating to an application for disability retirement or proof of continuing eligibility for disability retirement must qualify as medical examinations.

In the 81st Legislative Session, House Bill 2559, Chapter 1308, Acts of the 81st Legislature, Regular Session, 2009 (HB 2559) was passed providing new retirement plan provisions for state employees hired on or after September 1, 2009. Buck Consultants, ERS' consulting actuary for retirement, reviewed the recent legislative changes and recommended that new actuarial factor tables should be adopted to address the legislative changes in areas such as the reduction factors for a standard nonoccupational disability retirement annuity and reduction factors for early retirement or death. The Board approved the recommended changes at its February 23, 2010 meeting. As a result of the Board's approved changes to the tables, §73.21 of the rules is amended to update it for the various changes to actuarial tables and reduction factors relating to the above referenced legislation.

Ms. Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and, to her knowledge, small businesses should not be affected.

Ms. Jones also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules would be clarifying which employees are considered to be hired by the state on or after September 1, 2009, and ensuring that duly licensed medical doctors or osteopaths have provided medical examinations to applicants for disability retirement. In addition, the amendments will help to simplify administration of the ERS defined benefit plans, to improve the accuracy of calculations and computations related to retirement benefits, and to make the rules conform to the Board's approved reduction factors and actuarial tables for retirement. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel and Chief Compliance Officer, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is Monday, May 24, 2010, at 8:00 a.m.
These amendments are proposed under the Texas Government Code, §§815.102 and §815.105 which provide authorization for the ERS Board of Trustees to adopt rules for the retirement system and to adopt mortality, service and other tables necessary for the retirement system.

No other statutes are affected by the proposed amendments.

§73.2. Determination of Date of Hire for Retirement Benefit Eligibility.

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

(c) To be considered hired by the state of Texas on or after September 1, 2009, an employee holding a position included in the employee class of membership:

(1) must be hired by the state of Texas on or after September 1, 2009, and not meet the requirements in subsection (a) of this section; or

(2) meets the requirements in subsection (b) of this section.

§73.17. Disability Retirement--Eligibility.

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

(c) A medical examination required by any provision of the Government Code, Title 8, Chapter 814, Subchapter C, shall be performed only by a medical doctor or a doctor of osteopathic medicine holding a license to practice medicine in Texas and in good standing, or who holds a similar license in good standing in another jurisdiction with licensing and disciplinary requirements substantially similar to Texas.

§73.21. Reduction Factor for Age and Retirement Option.

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

(c) The actuaries have developed reduction factors for early retirement or death in accordance with the mortality tables adopted by the board. Such tables are incorporated in this rule by reference and are a part of this rule for all purposes. The 2009 reduction factors for early retirement or death apply to retirements effective on or after September 30, 2009, and apply to deaths first reported to ERS on or after September 1, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 reduction factors for early retirement or death apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2(c) of this chapter (relating to Determination of Date of Hire for Retirement Benefit Eligibility). The 2010 reduction factors apply to retirements effective on or after September 30, 2010, and apply to deaths first reported to ERS on or after September 1, 2010, and are those factors adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. For retirements prior to September 30, 2010 [2009] and deaths first reported to ERS prior to September 1, 2010 [2009], the previously adopted factors apply.

(d) (No change.)

(e) The 2005 reduction factors for a standard nonoccupational disability retirement annuity apply to a disability retirement application received by the System on or after September 1, 2005, and are those factors adopted by the board on August 24, 2005, based on assumptions adopted by the board on December 10, 2003. The 2009 reduction factors for a standard nonoccupational disability retirement annuity apply to a disability retirement based on the effective date of a retirement that is [first] effective on or after September 30, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 reduction factors for a standard nonoccupational disability retirement annuity apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2(c) of this chapter. The 2010 reduction factors apply to a disability retirement based on the effective date of a retirement that is effective on or after September 30, 2010, and are those factors adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. For disability retirements based on an effective date of retirement that is [first] effective prior to September 30, 2010 [2009], the previously adopted factors apply.

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 April 12, 2010.

TRD-201001746

Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas

Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 867-7416

PART 9. TEXAS BOND REVIEW BOARD

CHAPTER 181. BOND REVIEW BOARD

SUBCHAPTER A. BOND REVIEW RULES

34 TAC §181.9

The Texas Bond Review Board (BRB) proposes an amendment to 34 TAC Chapter 181, Subchapter A, §181.9, State Exemptions. The proposed amendment restores language in subsection (a) that was inadvertently omitted when other amendments were adopted in February 2010. The proposed amendment exempts certain state securities issues from the need for BRB approval.

Robert Kline, Executive Director for the BRB, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment of this section.

Mr. Kline also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to expedite the review process for affected transactions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment of this section.

Comments on the proposal may be submitted in writing to Robert Kline, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292. Comments may also be submitted electronically to kline@brb.state.tx.us or faxed to (512) 475-4802. All comments must be received by May 10, 2010, at 5:00 p.m.

The amendment is proposed under Texas Government Code §1231.022(2), which gives BRB the authority to adopt rules exempting certain state securities from the need for formal BRB approval if the BRB finds that review of the securities is unnecessary or impractical.
The proposed amendment implements Texas Government Code Chapter 1231.

§181.9. State Exemptions.

(a) The Board may exempt certain state securities from formal approval by the Board. Exemptions include the following:

1. (No change.)

2. (No change.)

3. (No change.)

4. (No change.)

5. (No change.)

6. (No change.)

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

Filed with the Office of the Secretary of State on April 9, 2010.

TRD-201001707
Robert Kline
Executive Director
Texas Bond Review Board

Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 463-9891

TITLE 37. PUBLIC SAFETY AND CORRECTIONS
PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE
CHAPTER 159. SPECIAL PROGRAMS
37 TAC §159.1

The Texas Board of Criminal Justice files this notice of proposed amendments to §159.1, Substance Abuse Felony Punishment Facilities (SAFPF) Eligibility Criteria. The proposed amendments allow offenders with pending misdemeanor charges to be placed in the SAFPF program. It also clarifies existing eligibility criteria for pretrial detainees and those sentenced to prison and ordered to participate in the SAFPF program as a condition of community supervision.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice, has determined that for each year of the first five years the rule will be in effect, enforcing or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that for each year of the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, will be to provide substance abuse treatment for a greater number of offenders.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendments are proposed under Texas Government Code §493.009 and Texas Code of Criminal Procedure Article 42.12, §14.


(a) Offenders with a detainer filed by the United States Immigration and Customs Enforcement (ICE) or a felony detainer, a misdemeanor detainer, or pending charges except as noted in subsection (d) below are not eligible to participate unless the jurisdiction that placed the detainer agrees not to seek custody of the defendant until after the program and continuum of care requirements have been completed. Exceptions may be made on a case-by-case basis. Offenders sentenced to a prison term and ordered to participate in a substance abuse felony punishment facility (SAFPF) program as a condition of community supervision shall be transferred to a SAFPF six to nine months prior to their projected release date on the prison sentence. [For offenders whose sentences are being served concurrently, provided that the sentence length is the same or less than the term of confinement in the SAFPF]

(b) Offenders shall be physically and mentally capable of uninterrupted participation in a rigorous, stressful, and confrontational therapeutic community program. Offenders with special medical or psychological needs shall meet the eligibility criteria for the Special Needs SAFPF as defined in both the Community Justice Assistance Division’s (CJAD’s) §14.1.1 [Division] CJAD/SAFPF Procedure Manual and the Substance Abuse Treatment Operations Manual.

(c) Offenders who have signs or symptoms of acute drug or alcohol withdrawal or who require detoxification are not eligible to participate until they have detoxified.

(d) Pretrial detainees are eligible to participate if ordered to do so pursuant to a drug court program established under Texas [Chap­ter 499.] Health and Safety Code §§469.001 - 469.009 or a similar program. A pretrial detainee is not eligible to participate in the SAFPF program unless the [4th] detainee has [must have already] been unsuccessfully discharged from [ordered to participate in] an outpatient substance abuse treatment program and [or] a residential substance abuse treatment facility, if available, as a condition of a pretrial order for the charges that are currently pending [and has been unsuccessfully dis­charged from both programs].

(e) Offenders convicted of offenses for which sex offender registration is required are not eligible to participate.

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 April 12, 2010.

TRD-201001732
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice

Earliest possible date of adoption: May 23, 2010
For further information, please call: (936) 437-6003

35 TexReg 3224 April 23, 2010 Texas Register
37 TAC §159.15
The Texas Board of Criminal Justice proposes amendments to §159.15, GO KIDS Initiative. The proposed amendments are non-substantive revisions to the current rule.

Jerry McGinty, Chief Financial Officer for the Texas Department of Criminal Justice (TDCJ), has determined that for each year of the first five years the rule will be in effect, enforcing, or administering the rule will not have foreseeable implications related to costs or revenues for state or local government.

Mr. McGinty has also determined that, for the first five year period, there will not be an economic impact on persons required to comply with the rule. There will not be an adverse economic impact on small or micro businesses. Therefore, no regulatory flexibility analysis is required. The anticipated public benefit, as a result of enforcing the rule, is to notify the public about programs within the TDCJ and resources at local, state, and national levels to help the children of those persons under criminal justice supervision in Texas.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this rule.

The amendments are proposed under Texas Government Code §492.013.

Cross Reference to Statutes: Texas Government Code §492.001.

§159.15. GO KIDS Initiative.

(a) The Texas Department of Criminal Justice (TDCJ) [GO KIDS] (Giving Offenders’ Kids Incentive and Direction to Succeed) [Agency] (GO KIDS) initiative identifies programs [resources] within the TDCJ [Agency] and resources at the local, state, and national levels to help the children of those persons under criminal justice supervision in Texas.

(b) A resource directory, identifying these programs and services, is available on the TDCJ [Agency] website (www.tdcj.state.tx.us). In addition, direct links to selected GO KIDS collaborators are included.

(c) A TDCJ [Agency] GO KIDS coordinator [Coordinator] is available to answer inquiries on the initiative. Inquiries should be addressed to the GO KIDS coordinator [Coordinator], TDCJ Rehabilitation [Agency] Programs Division, P.O. Box 99, Huntsville, Texas 77342-0099.

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES

SUBCHAPTER A. DEFINITIONS AND APPLICABILITY

37 TAC §343.106
The Texas Juvenile Probation Commission proposes an amendment to §343.106, concerning variance for secure juvenile pre-adjudication detention and post-adjudication correctional facilities. The amendment is being proposed in an effort to conform to new Chapter 349 section numbers.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendment is in effect, there will be no fiscal implications for state or local government. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcement or implementation will be consistent standards without any reference to outdated standard numbers.

Public comments on the proposed amendment may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to Kristy.Almager@tjpc.state.tx.us or faxed to (512) 424-6718.

The amendment is proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by this amendment.

§343.106. Variance.

Unless expressly prohibited by another standard, the juvenile board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.200 [§349.2] of this title.

No other rule or standard is affected by this amendment.

§343.106. Variance.

Unless expressly prohibited by another standard, the juvenile board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.200 [§349.2] 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 April 9, 2010.

TRD-201001697
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 424-6710

PROPOSED RULES  April 23, 2010  35 TexReg 3225
SUBCHAPTER B. PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §343.272

The Texas Juvenile Probation Commission proposes an amendment to §343.272 concerning the Commission’s standard on housekeeping plans for pre-adjudication and post-adjudication secure facilities. The amendment is being proposed in an effort to ensure pre-adjudication and post-adjudication secure facilities maintain adequate cleanliness, facility sanitation, and control of vermin and pests.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcement or implementation will be to ensure that pre-adjudication and post-adjudication secure facilities are sufficiently and suitably maintained and cleaned while detaining juveniles.

Public comments on the proposed amendments may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to Kristy.Almager@tjpc.state.tx.us or faxed to (512) 424-6718.

The amendment is proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these amendments.

§343.272. Facility Maintenance, Cleanliness and Appearance [Housekeeping Plan]

(a) Housekeeping Plan. The facility shall have a written and implemented housekeeping plan for the maintenance of a clean and sanitary facility that promotes a safe and secure environment for residents. [A written housekeeping plan shall be followed which promotes and ensures cleanliness, facility sanitation, and control of vermin and pests.]

(1) The plan shall contain the following:

(A) a schedule for periodic and routine cleaning and housekeeping including:

(i) the identification of staff and resident responsibilities; and

(ii) the regular cleaning and disinfection of toilet and shower areas currently in use;

(B) a schedule for pest and vermin control; and

(C) a requirement for the weekly cleaning, safety, and maintenance inspection by facility staff of all areas of the facility that are currently in use.

(2) The housekeeping plan shall be accessible to facility staff.

(b) Maintenance. The facility administrator shall be responsible for ensuring that the interior physical plant, exterior grounds, and all equipment are in proper repair and safely functioning including, but not limited to, the following:

(1) repairs shall be made promptly to all furniture, fixtures, and equipment currently in use that are not in safe working order;

(2) all surfaces in facility areas currently being used shall be regularly maintained and repaired if damaged and reasonably free from graffiti and markings, excluding minor damage from reasonable and expected wear and tear from normal use; and

(3) all exterior grounds currently used for programmatic purposes or accessed by staff, residents or visitors are free from any health and safety hazards and are appropriately maintained to ensure the safe use by residents, staff and visitors.

(c) Cleanliness. All areas of the facility where residents reside or participate in programming or services shall be clean, sanitary and reasonably free from debris, rodents, insects and strong, offensive or foul odors.

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 April 9, 2010.

TRD-2010001696

Lisa A. Capers

Deputy Executive Director and General Counsel

Texas Juvenile Probation Commission

Earliest possible date of adoption: May 23, 2010

For further information, please call: (512) 424-6710

CHAPTER 344. EMPLOYMENT, CERTIFICATION AND TRAINING

SUBCHAPTER D. DISQUALIFYING CRIMINAL HISTORY

37 TAC §344.410

The Texas Juvenile Probation Commission proposes an amendment to §344.410, concerning variance of disqualifying criminal history. The amendment is being proposed in an effort to conform to new Chapter 349 section numbers.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendment is in effect, there will be no fiscal implications for state or local government. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcement or implementation will be consistent standards without any reference to outdated standard numbers.

Public comments on the proposed amendment may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to Kristy.Almager@tjpc.state.tx.us or faxed to (512) 424-6718.
The amendment is proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by this amendment.


A variance under §349.200 [§349.202] of this title may not be requested for any Class A misdemeanor or felony unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by a trial or appellate court.

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 April 9, 2010.

TRD-2010001698
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 424-6710

CHAPTER 346. FUNDING FORMULAS

The Texas Juvenile Probation Commission (TJPC) proposes new Chapter 346, §§346.100, 346.200, 346.202, 346.204, 346.206, 346.208, and 346.210, relating to TJPC funding formulas. The new rules are proposed in an effort to comply with the requirements of House Bill 3689, which was enacted during the 81st Legislative Session, 2009.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state government and local government as a result of enforcement or implementation of these rules. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the new rules are in effect, the public benefit expected as a result of enforcement or implementation will be increased public and stakeholder awareness and education regarding state grant funding methodologies affecting local juvenile probation departments and their programs and services.

Public comments on the proposed rules may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to Kristy.Almager@tjpc.state.tx.us or faxed to (512) 424-6718.

SUBCHAPTER A. DEFINITIONS

37 TAC §346.100

The new rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by the new rules.

§346.100. Definitions.

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

(1) Aftercare--Control, supervision, and care exercised over juveniles released from facilities through an individualized aftercare plan.

(2) Caseload--The juveniles for which a certified juvenile probation officer is authorized under the Commission’s standards to provide probation supervision and services.

(3) Certified Officer--A juvenile probation officer or juvenile supervision officer who has met the minimum certification requirements and is currently certified by the Commission.


(5) Community-Based Programs--A program operated for the benefit of juveniles referred to the juvenile probation department that is wholly or partly operated by the juvenile board or by a private vendor under contract with the local community juvenile board.

(6) Community-Based Services--Juvenile probation services provided to juvenile offenders under the jurisdiction of the local community juvenile court.

(7) Eligible Placement Day--A placement day that is eligible for payment under the Local Post-Adjudication Fund grant is defined as:

(A) The day that a juvenile is admitted into a post-adjudication secure correctional facility regardless of the time of day;

(B) Each day or partial day a juvenile is present in the post-adjudication secure correctional facility at least during all or part of the non-program hours (i.e., sleeping hours); and

(C) The day a juvenile is discharged as long as the juvenile is discharged from the post-adjudication secure correctional facility after 12:00 p.m. and was present during all or part of the non-program hours (i.e., sleeping hours).

(8) Habitual Misdemeanor Youth--Juvenile offenders adjudicated for misdemeanor offenses that, under prior law, were eligible for commitment to the Texas Youth Commission.

(9) Intensive Community-Based Program--A program that provides a higher level of specialized services at the community level to the eligible population.

(10) Jailable Misdemeanor--An offense classification that may result in the imposition of a penalty that may include a period of confinement or jail.

(11) Juvenile-Age Population--Population of juveniles between the ages of 10 and 17.

(12) Juvenile Justice Program--A program operated for the benefit of juveniles referred to the juvenile probation department that is wholly or partly operated by the juvenile board or by a private vendor under contract with the juvenile board. As defined in Texas Family Code §261.405, this term also includes juvenile justice alternative education programs (JJAEPs) and non-residential programs that serve juveniles that have been referred to the juvenile probation department and who are under the jurisdiction of the juvenile court. A juvenile justice program does not include any program operated in a facility that is licensed or operated by a state agency other than a facility registered with the Commission.
(13) Juvenile Probation Department ("department")—All physical offices and premises utilized by a county or district level governmental unit established under the authority of a juvenile board to facilitate the execution of the responsibilities of a juvenile probation department enumerated in Title 3 of the Texas Family Code and Chapter 141 of the Texas Human Resources Code.

(14) Juvenile Probation Services—Juvenile probation services means services provided to juvenile offenders under the jurisdiction of the juvenile court by or under the authority of the Grantee and provided by the juvenile probation department or other entity, including services contracted with third-party service providers, in response to a policy or directive instituted by the governing juvenile board or an order issued by a juvenile court and under the court’s direction, including:

(A) Protective services;
(B) Prevention of delinquent conduct and conduct indicating a need for supervision;
(C) Diversion;
(D) Deferred prosecution;
(E) Foster care;
(F) Counseling;
(G) Supervision;
(H) Diagnostic, correctional and educational services;

(I) Services provided by a juvenile probation department that are related to the provision of services or operation of a pre-adjudication secure detention facility, a short-term secure detention facility (i.e., holdover), a post-adjudication secure correctional facility, a non-secure correctional facility, a residential child-care facility, a juvenile justice alternative education program or a juvenile justice program as defined in Texas Family Code §261.405.

(15) No Loss Provision—A provision established by the Texas Juvenile Probation Commission to ensure that no county shall receive less funding from a specific grant than was received in previous years.

(16) Post-Adjudication Secure Correctional Facility—A secure facility administered by a juvenile board or a privately operated facility certified by the juvenile board that includes construction and fixtures designed to physically restrict the movements and activities of the residents and is intended for the treatment and rehabilitation of juveniles who have been adjudicated.

(17) Pre-Adjudication Secure Detention Facility—A public secure facility administered by a juvenile board or a privately operated facility certified by the juvenile board that includes construction and fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody and is intended for the temporary placement of any juvenile or other individual who is accused of having committed an offense and is awaiting court action, an administrative hearing or other transfer action.

(18) Priority Population—Juvenile offenders who have the chronological sequence and adjudication pattern of jailable misdemeanor offenses which, in combination with other misdemeanors, felony or probation violation adjudications would have resulted in eligibility for commitment to Texas Youth Commission under the law existing prior to June 8, 2007.

(19) Residential Facility—A residential facility includes post-adjudication secure correctional facilities, non-secure correctional facilities, residential child-care facilities or out-of-state residential placement facilities.

(20) Residential Child-Care Facility—A facility licensed or certified by the Texas Department of Family and Protective Services to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers. The term includes child-care institutions, child-placing agencies, foster group homes, foster homes, agency foster group homes, and agency foster homes. This also includes a residential child-care facility licensed and/or operated by or under the authority of another governmental entity under the laws of this state or another state.

(21) Specialized Officer—The certified juvenile probation officer(s) funded under this grant who serves only those juveniles who have been identified as being appropriate for services through the SNDP.

(22) Statewide Regions—Based on the juvenile probation department chief’s association and the department allegiance with a specific region.

(23) TYC—The Texas Youth Commission.

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 April 9, 2010. TRD-201001701 Lisa A. Capers Deputy Executive Director and General Counsel Texas Juvenile Probation Commission Earliest possible date of adoption: May 23, 2010 For further information, please call: (512) 424-6710

SUBCHAPTER B. GRANTS


The new rules are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services. No other rule or standard is affected by the new rules.

§346.200. Grant Aid.

(a) Description. The State Aid Grant provides funding to local juvenile boards to support the provision of basic juvenile probation services and juvenile justice programs and to assist the juvenile board in adhering to the Commission’s standards and policies.

(b) Objective. The objective of the State Aid Grant is to support the provision of basic juvenile probation services and juvenile justice programs and to ensure the delivery of safe and effective juvenile probation services and juvenile justice programs that maximize adherence to Commission standards and policies.

(c) Funding Formula. The State Aid Grant shall be allocated according to a two-tiered formula based on county juvenile-age population.
(1) Tier One. Tier One of the State Aid formula shall be allocated based on each county’s juvenile-age population multiplied by $12 per juvenile. No county shall receive less than $5,200 or more than $58,000.

(2) Tier Two. Tier Two shall distribute remaining funds based on each county’s proportion of the state’s total juvenile-age population.

(d) No Loss Provision and Increase in Appropriation. A no loss provision is currently in place for State Aid funding. Since total appropriations for state aid have not increased in recent years, departments experiencing population growth have not received an increase in the State Aid grant. In the event of an increase in the State Aid appropriation, departments which have had an increase in population shall receive additional funding in accordance with the two-tiered allocation formula.

(e) Time Period. Grant funding shall be allocated based on a two-year grant period. Departments shall submit a budget application each fiscal year of the biennium in order to receive funding. Departments shall receive funding once the budget application has been approved by TJPC’s Fiscal Division.


(a) Description. The purpose of the Commitment Reduction Program Grant is to provide funding that supports an array of rehabilitation services for juvenile offenders including, but not limited to, community-based programs and services, residential placements, transition and aftercare programs or services. The programs are intended to divert appropriate youth from TYC to suitable programs and services in local communities.

(b) Objective. The objective of the Commitment Reduction Program Grant is to increase the availability of community-based programs and services in an effort to divert additional juvenile offenders from commitment to TYC while maintaining appropriate and adequate community safety.

(c) Funding Formula.

(1) In accordance with the Commission’s General Appropriations Rider 21 during the 81st Legislative session, a maximum funding rate of $140 per juvenile diverted per day or $51,100 annually has been established. This distribution formula allows all departments in the state to receive funding.

(2) Felony Commitments.

(A) Departments that average 0-1 felony commitments from fiscal year 2006 through fiscal year 2008 shall be allocated $12,500 to enhance services or to work with other departments and pool resources and to maintain current level of commitments.

(B) Departments that average 2-4 felony commitments from fiscal year 2006 through fiscal year 2008 shall be allocated $25,000 to enhance services or to work with other departments and pool resources and to maintain current level of commitments.

(C) Departments that average 5 or more felony commitments from fiscal year 2006 through fiscal year 2008 shall be allocated $51,100 for each new diversion.

(3) Diversions.

(A) The number of diversions established for each department shall be based on the department’s proportion of the weighted TYC commitment number divided by the total number of diversions to be funded.

(B) The number of diversions funded shall be determined by taking the total funding awarded and subtracting the funding provided to the departments with less than 5 commitments.

(d) Time Period. Funding for the Commitment Reduction Program is based on each juvenile probation department’s proportion of the statewide weighted average of felony commitments to TYC from fiscal year 2006 through fiscal year 2008 and is allocated based on a two-year grant period. Departments are required to submit a budget application each fiscal year of the biennium in order to receive funding. Departments shall receive funding once the budget application has been approved by TJPC’s Fiscal Division.

§346.204. Grant H Diversiory Fund.

(a) Description. The Diversiory Fund Grant provides funding to local juvenile boards for the purpose of developing community-based probation programs and services for juveniles at-risk of commitment to TYC.

(b) Objective. The objective of the Diversiory Fund Grant is to provide alternatives for juveniles at-risk of commitment to TYC.

(c) Funding Formula.

(1) The largest five urban counties shall receive 40% of the appropriated funding based on the department’s proportion of misdemeanor, felony and violation of probation referrals from fiscal year 2008.

(2) The remaining 60% of the appropriated funding shall be divided among the seven statewide regions. Each region determines the distribution formula to be used within that region and is based on the department’s proportion of misdemeanor, felony and violation of probation referrals during fiscal year 2008.

(d) Time Period. Grant funding shall be allocated based on a two-year grant period. Departments shall submit a budget application each fiscal year of the biennium in order to receive funding. Departments shall receive funding once the budget application has been approved by TJPC’s Fiscal Division.

§346.206. Grant U Intensive Community-Based Pilot.

(a) Description. The Intensive Community-Based Program Pilot (ICBP-Pilot) Grant provides funding for services for habitual misdemeanor youth in counties with a population of at least 335,000.

(b) Objective. The objective of the ICBP-Pilot is to increase the resources available for juvenile probation departments to serve the priority population of chronic misdemeanor offenders in accordance with the requirements of Senate Bill 103 enacted during the 80th Texas Legislative Session.

(c) Funding Formula.

(1) A total of $6,901,835 was appropriated by the Legislature for enhanced community-based programs to misdemeanor offenders that are no longer eligible for TYC commitment.

(2) The amount of $1,325,000 shall be allocated to the ICBP-Pilot and the remaining amount shall be designated for the Intensive Community Based Program Grant (Grant X).

(3) The largest urban departments including Bexar, Dallas, Harris, Tarrant and Travis counties shall be allocated $225,000 each after submitting a program proposal for the funding.

(4) The remaining departments with a population of 335,000 shall compete for funding by submitting a Request for Proposal (RFP) to the Commission. Departments shall be awarded funding based on the approved RFP.
§346.208. Grant X Intensive Community-Based Program.

(a) Description. The Intensive Community-Based Program (ICBP) Grant provides funding for enhanced or additional community-based programs and services for jailable misdemeanor and felony offenders under the supervision of the juvenile court.

(b) Objective. The Intensive Community-Based Program objective is to provide funding for enhanced or additional community-based programs and services for jailable misdemeanor and felony offenders under the supervision of the juvenile court.

(c) Funding Formula.

(1) A total of $6,901,835 for each year of the biennium was appropriated by the Legislature for enhanced community-based programs for misdemeanor offenders no longer eligible for TYC commitment and $5,576,835 was allocated to the ICBP (Grant X).

(2) The largest five counties shall receive 28% of the funding and the remaining 72% shall be distributed to other counties within the state based on each department’s proportion of total misdemeanor referrals within the designated group.

(d) Time Frame for Funding Formula. The funding formula is based on Fiscal Year 2008 statewide misdemeanor referrals. Grant funding is allocated based on a two-year grant period. Departments are required to submit a budget application each fiscal year of the biennium in order to receive funding. Departments shall receive funding once the budget application has been approved by TJPC’s Fiscal Division.


(a) Description. The Community Corrections Grant provides funding to local juvenile boards for the purpose of developing community-based probation programs and services for juveniles at-risk of commitment to TYC.

(b) Objective. The Community Corrections Grant objective is to develop and support a system of community programs and services designed to provide alternatives for juveniles at risk of commitment to TYC.

(c) Funding Formula.

(1) Community Corrections funding shall be allocated using a three-tiered formula based on juvenile-age population and felony referrals.

(2) Seventy-five percent of Community Corrections funding shall be allocated based on the juvenile-age population (Tiers One and Two) while 25% of funding shall be allocated based on felony referrals (Tier Three).

(3) An additional "tier" was added in fiscal year 2008 when additional funding was appropriated for the Community Corrections grant. This new "tier" incorporates the distribution of the new funds for county per capita tax base data.

(4) Tier One of the Community Corrections formula allocates funding to each juvenile probation department based on juvenile-age population multiplied by $11 per juvenile. No department shall receive more than $75,000.

(5) Tier Two funds allocations shall be based on a department’s percentage of the total state juvenile-age population.

(6) Tier Three shall allocate the remaining 25% of historical Community Corrections funding based on a department’s percentage of the total state felony referrals.

(7) The tax based distribution of new funding shall consider each department’s per capita tax base compared to the state median base of $33,897, the average county spending for juvenile justice and the amount of state funding the department receives per juvenile referred.

(d) No Loss Provision and Increase in Appropriation. A no loss provision is currently in place for Community Corrections funding. This provision shall ensure that no county receives less community corrections funding than was received in previous years. In the event of an increase in the Community Corrections appropriation, departments with increases in population shall receive additional funding.

(e) Time Frame for Funding Formula. Grant funding shall be allocated based on a two-year grant period. Departments shall submit a budget application each fiscal year of the biennium in order to receive funding. Departments shall receive funding once the budget application has been approved by TJPC’s Fiscal Division.

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 April 9, 2010.
TRD-201001702
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 424-6710

CHAPTER 351. STANDARDS FOR SHORT-TERM DETENTION FACILITIES

The Texas Juvenile Probation Commission proposes amendments to §§351.2, 351.17, 351.30, and 351.33, concerning standards for short-term detention facilities. The amendment is being proposed in an effort to conform to new Chapter 349 section numbers and to provide clarification to the new section numbers referenced.

Lisa Capers, Deputy Executive Director and General Counsel, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government. There will be no fiscal implications for small businesses or individuals as a result of enforcement or implementation.

Ms. Capers has also determined that for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcement or implementation will be consistent standards without any reference to outdated standard numbers.

Public comments on the proposed amendments may be submitted in writing to Kristy Almager at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas 78711-3547. Comments may also be submitted electronically to Kristy.Almager@tjpc.state.tx.us or faxed to (512) 424-6718.
SUBCHAPTER B. SHORT-TERM DETENTION FACILITY STANDARDS

37 TAC §351.2, §351.17

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these amendments.

§351.2. Administration and Management.

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

(d) Duties of Facility Administrator. The duties of the facility administrator shall include, but shall not be limited to the following:

(1) (No change.)

(2) maintaining personnel records for each employee which shall include:

(A) (No change.)

(B) documentation of criminal background checks under §351.30(b)(4) of this chapter and Chapter 344, Subchapter C [§349.8] of this title;

(C) - (F) (No change.)

§351.17. Waivers and Variances.

Unless expressly prohibited by another standard, the juvenile board, chief administrative officer or facility administrator may make an application for waiver and the juvenile board may make an application for variance of any standard or standards adopted by the Commission in accordance with §349.200 [§349.2] 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.

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 424-6710

SUBCHAPTER C. SHORT-TERM JUVENILE DETENTION OFFICERS

37 TAC §351.30, §351.33

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affect by these amendments.

§351.30. Employment of Short-Term Juvenile Detention Officers.

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

(c) Disqualification from Employment.

(1) Criminal History. A person with the following criminal history shall be disqualified from employment as a short-term juvenile detention officer, supervisor of juvenile detention officers, or administrative officer.

(A) - (G) (No change.)

(H) Waiver/Variances. A request for waiver or variance under §349.200 [§349.2] of this title may not be requested for any Class A misdemeanor or felony under this section unless the person received a pardon based upon proof of innocence or the reversal of a finding of guilt by a trial or appellate court.

(2) Revocations and Suspensions. An individual whose certification has been revoked by the Commission shall never qualify for employment as a juvenile detention officer, supervisor of detention officers or administrative officer.

(A) An individual whose certification is currently under a suspension order issued as a result of a disciplinary action pursuant to Chapter 349 [under §349] of this title shall not qualify for employment as a juvenile detention officer, supervisor of juvenile detention officers, or administrative officer so long as the suspension order remains in effect.

(B) An individual whose certification is currently under a mandatory suspension order issued as a result of failure to pay child support pursuant to §349.385 [under §349.385] of this title shall not qualify for employment as a juvenile detention officer, supervisor of juvenile detention officers, or administrative officer until the Commission receives an order issued under Texas Family Code §232.013 staying or vacating the license suspension.

(d) (No change)

§351.33. Certification.

The facility administrator of a short-term detention facility, may elect to certify a facility’s short-term juvenile detention officers and supervisors of short-term detention officers as detention officers in accordance with 37 Texas Administrative Code Chapter 344 [344]. If the election to certify is made, every short-term detention officer within the facility comply with the certification standards found in Chapter 344 [344].

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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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: May 23, 2010
For further information, please call: (512) 424-6710

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 215. MOTOR VEHICLE DISTRIBUTION

SUBCHAPTER I. PRACTICE AND PROCEDURE FOR HEARINGS CONDUCTED
BY THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

43 TAC §§215.312, 215.314, 215.315

The Texas Department of Motor Vehicles (department) proposes amendments to §215.312, Discovery, §215.314, Cease and Desist Orders, and §215.315, Statutory Stays, all concerning practice and procedure for hearings conducted by the State Office of Administrative Hearings.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments to Chapter 215 are proposed to clarify procedures for certain interlocutory matters that occur in cases to be decided by the new Board of the Department of Motor Vehicles (Board) related to the regulation of motor vehicle distribution. Occupations Code, §2301.704 allows administrative law judges (ALJs) with the State Office of Administrative Hearings (SOAH) to hold hearings, issue subpoenas, and issue interlocutory orders including cease and desist orders. The proposed amendments will clarify that the Board is directing these interlocutory matters to SOAH, rather than conducting the initial hearing and issuance of such matters itself.

The department proposes amendments to §215.312, Discovery. Within this section, the word "Board", representing the Board of the Department of Motor Vehicles is deleted and replaced with "ALJ" to clarify that discovery matters such as subpoenas or commissions to take deposition shall be presented to the SOAH ALJ that presides over the case from which the matter arises. Allowing SOAH ALJs to issue subpoenas in the cases they hear will streamline the hearing process, saving time and expense for the participants in a hearing.

Also proposed are amendments to §215.314, Cease and Desist Orders. Under subsection (a), the word "Board" is replaced with "ALJ" to reflect that the requests for cease and desist orders will be directed to a SOAH ALJ who decides whether or not to issue the order. This change will streamline the hearing process for these interlocutory matters because the SOAH ALJ will conduct the hearing rather than the Board, as was the practice before the Board’s creation. In subsection (b), the reference to the Occupations Code contains a typographical error, and is corrected to refer to the statutory section governing cease and desist orders.

Amendments are proposed to §215.314(c)(3) to clarify that the party requesting a cease and desist order without notice to the affected party has the burden of proof in a show cause hearing to determine if such an order issued without notice should remain in effect until final resolution of the case. This clarification is consistent with the Texas Rules of Civil Procedure governing temporary injunctions.

Amendments are proposed to §215.314(i) to reflect that the SOAH ALJ will issue the written cease and desist order. This change will clarify that the ALJ issues the order after conducting the hearing, rather than the Board. This will decrease the amount of time that parties will have to wait for an order after request, saving time and expense for all parties. Subsection (i) is also amended to remove the time limit an ALJ has to issue the order. This practice will be governed by SOAH’s own processes, and thus the time limit is not necessary.

Section 215.314(j) is also amended to insert language clarifying that a party may file an appeal against the issuance of a cease and desist order. Also included is language clarifying that a party may not file an interlocutory appeal to the denial of a cease and desist order consistent with statutory language and prior division precedent. The remaining subsections are relettered accordingly.

Amendments are also proposed to §215.315, Statutory Stay, to clarify that an ALJ will hear a motion to modify or clarify a statutory stay, and issue the resulting order. Similar to the other proposed amendments, this change is intended to clarify procedure before the Board, and to afford the parties to a case the most efficient way to resolve interlocutory matters that arise.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mr. Brett Bray, Division Director of the Motor Vehicle Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Brett Bray has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be clarity regarding procedures before the new department, as well as saving time and money for litigants before the department. There are no additional anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§215.312, 215.314, and 215.315 may be submitted to Brett Bray, Texas Department of Motor Vehicles, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768-2293. The deadline for receipt of comments is 5:00 p.m. on May 10, 2010.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code §2301.155, which authorizes the Board to adopt rules relating to motor vehicle distribution.

CROSS REFERENCE TO STATUTE


§215.312. Discovery.

(a) At the written request of a party, the ALJ [Board] will issue a written commission directed to officers authorized by statute to take a deposition of a witness.

(b) At the written request of a party, the ALJ [Board] will issue a subpoena for the production of documents. The written request must identify the documents with as much detail as possible and must include a statement of the documents’ relevance to the issues in the case.

(c) At the written request of a party, the ALJ [Board] will issue a subpoena for the attendance of a witness at a hearing in a contested case. The subpoena may be directed to any person within the department’s jurisdiction, without regard to the distance between the location of the witness and the location of the hearing.
(d) If a dispute arises concerning the validity or necessity of a subpoena or commission to take deposition, the dispute will be presented to the ALJ for hearing and ruling.

§ 215.314. Cease and Desist Orders.

(a) Whenever it appears to the ALJ [Board] that a person is violating any provision of Occupations Code, Chapter 2301, Transportation Code, Chapter 503, or this chapter, the ALJ [Board] may enter an order requiring the person to cease and desist from the violation.

(b) If it appears from specific facts shown by affidavit or by verified complaint that one or more of the conditions enumerated in Occupations Code, § 2301.802(b) [§ 2301.803(b)] will occur before notice can be served and a hearing held, the order may be issued without notice, otherwise it must be issued subject to a notice of hearing to determine the validity of the order.

(c) A cease and desist order issued without notice must include:

1. the date and hour of issuance;

2. a statement of which of the conditions enumerated in Occupations Code, § 2301.802(b) [§ 2301.803(b)] will occur before notice can be served and a hearing held; and

3. a notice of hearing for the earliest date possible to determine the validity of the order and to allow the person who requested [against whom] the order [is issued] to show good cause why the order should [not] remain in effect during the pendency of the proceeding.

(d) A cease and desist order issued with or without notice must:

1. set out the reasons for its issuance; and

2. describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained.

(e) A cease and desist order shall not be issued unless the person requesting the order presents a petition or complaint to the Board verified by affidavit containing a plain and intelligible statement of the grounds for relief.

(f) A cease and desist order issued without notice expires as provided in the order, but shall not exceed 20 days.

(g) A cease and desist order may be extended for a period equal to the period granted in the original order, if prior to the expiration of the previous order, good cause is shown for the extension or the party against whom the order is directed consents to the extension. No more than one extension may be granted unless subsequent extensions are unopposed.

(h) The person against whom a cease and desist order was issued without notice may request that the scheduled hearing be held earlier than the date set in the order.

(i) After [not later than three working days after] the hearing, the ALJ shall prepare [and submit to the Board] a written order [recommendation], including a reasoned justification, explaining why [and proposed order, as to whether] the cease and desist order should remain in place during the pendency of the proceeding.

(j) If any party disagrees with the issuance of a cease and desist order, the order may be appealed to the Board. A party that is denied a cease and desist order may not appeal a denial of an order.

(k) [(i)] An appeal of the interlocutory decision must be made to the Board before a person may seek judicial review. An interlocutory decision is sufficient for a complaining party to seek judicial review of the matter.

(l) [(ii)] Upon appeal of an order issued under this section to the district court, as provided in the code, the order may be stayed by the Board upon a showing of good cause by a party of interest.


(a) In accordance with Occupations Code, § 2301.803(c), a person affected by a statutory stay imposed by Occupations Code, Chapter 2301 may request a hearing before an ALJ to modify, vacate, or clarify the extent and application of the statutory stay.

(b) After a hearing on a motion to modify, vacate, or clarify a statutory stay, the ALJ shall expeditiously prepare [and submit to the Board] a written order [recommendation], including a reasoned justification, explaining why [and proposed order, as to whether] the statutory stay should be modified, vacated, or clarified.

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 April 9, 2010.

TRD-201001678
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles

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For further information, please call: (512) 463-8683

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§ 217.21, 217.22, 217.28, 217.40

The Texas Department of Motor Vehicles (department) proposes amendments to § 217.21, Definitions, § 217.22, Motor Vehicle Registration, § 217.28, Specialty License Plates, Symbols, tabs, and Other Devices, and § 217.40, Marketing of Specialty License Plates through a Private Vendor, all concerning motor vehicle registration.

EXPLANATION OF PROPOSED AMENDMENTS

Amendments are necessary to continue the implementation of Transportation Code, Chapter 504, as amended by Senate Bill 1616, 81st Legislature, Regular Session, 2009, concerning the development of new specialty license plates, including the marketing of specialty license plates through a private vendor. In addition, amendments are made to eliminate the specialty license plate committee, to establish a $40 personalized plate fee for all plates, and to change the pricing for the "T" and generic plates.

Throughout the amended sections " alphanumeric sequence" has been replaced with " alphanumeric pattern" for consistency.

Amendments to § 217.21 add the definition of "division" to remove the necessity for restating "Vehicle Titles and Registration Division" in 43 TAC § 217.28 and § 217.240. The definition of " escrow account" is deleted because escrow accounts are no longer used by the department in this chapter, and the use of such accounts had been deleted previously.

Amendments to § 217.22(c)(3)(B) clarify that an alphanumeric pattern will not be approved if it implies a threat of harm as
threats are considered suggestions of illegal activities. The term "indecent" is clarified to include a reference to a sex act, an excretory function or material, or sexual body parts. The department will not issue an alphanumeric pattern if it is controversial, including whether a similar pattern has been the subject of litigation in Texas or another state. By not issuing controversial patterns, the department can provide the applicant with an alternative pattern that the applicant will be able to register for the full life of the plate.

Amendments to §217.28(8)(F) clarify that the fee for a personalized plate is $40. This is not a change from current practice.

Amendments to §217.28(i) delete the specialty license plate committee. The specialty license plate committee was created when the function for approval of plates was part of the Texas Department of Transportation (TxDOT). The committee was formed because motor vehicle related functions were only one of the many functions of TxDOT. The creation of the specialty license plate committee brought in a range of employees from all over the state to incorporate motor vehicle functions into the department. This function is now part of the Texas Department of Motor Vehicles (TxDMV). The department’s focus is motor vehicles; there is no need to incorporate into a larger agency with many other priorities. The division has the expertise to make the recommendations to the executive director or his designee for final decisions regarding specialty plates. In addition, the specialty license plate committee was formed before legislation required plates to be sold through a private vendor. The legislation and the input gathered during the passage of the legislation gave the department an indication of the types of plates the legislature would like the department to consider. The department will not consider controversial plates, including if a similar plate has been the subject of litigation in Texas or another state. The authority given to the department by the legislature to create specialty plates was designed for the approval of non-controversial specialty plates. Controversial specialty plates may be approved by the legislature as independent statutes.

The requirement to consider the number of potential purchasers as a factor in the approval decision has been removed. The applicant must deposit $8,000 with the department unless applications for at least 1,900 plates are submitted. The deposit is not returned until the number of plates identified by that section are sold. The deposit was designed for the department to recoup the start-up and initial cost of issuance of the plates. Either way, the department is made whole. It is up to the applicant to decide whether the return of the deposit is a concern.

A criterion has been added for the division to consider whether a design is similar enough to an existing plate design that it may compete with the existing plate sales. This concept prevents the possibility of a plate design from moving from one organization to another when the first organization has made the appropriate deposit and marketing effort for a similar plate design. For consistency, the subsection also provides that the division and the executive director, or designee, will take into consideration for the design of a specialty plate, the same criteria that are used to approve alphanumeric patterns. In addition, §217.28(i) clarifies that when an application is not approved, the applicant may submit the application again if the applicant has additional, required documentation, or the design has been altered to an acceptable degree. This helps ensure the applicant will not resubmit the same design when the same decision would be reached by the department.

Amendments to §217.40(c) delete the specialty plate committee as it applies to vendor plates, and allows the division to make recommendations to the executive director or his designee to make the final decision. The requirement to consider the projected sales as a factor in the approval decision has been removed. By contract, the vendor must deposit an amount with the department for payment of the start-up costs for the vendor specialty plates. This transfers the potential risk of not enough sales to recoup that amount to the vendor.

In accordance with Transportation Code, §504.852, a criterion has been added to §217.40(d) for the division to consider whether a design is similar enough to an existing plate design that it may compete with the existing plate sales. This helps prevent an approved plate design of an existing organization from being duplicated or similarly designed by the vendor when the organization has already made the appropriate deposit and marketing effort for that plate design. For consistency, the subsection also provides that the division and the executive director, or designee, will take into consideration for the design of a specialty plate, the same criteria that are used to approve alphanumeric patterns. In addition, the subsection clarifies that when a design is not approved, the vendor may resubmit if the vendor has additional, required documentation, or the design has been altered to an acceptable degree.

Amendments to §217.40(h)(1) and (3) delete the generic license plate on standard white sheeting from the category of custom license plates. These plates would then fall into the luxury plate category which is anticipated to increase revenue, bringing these plates in line with other similar plates.

Amendments to §217.40(h)(2) increases the fees for issuance of a T-Plate (Premium) for one year from $95 to $155 to increase revenue. The vendor has determined, based on its analysis of the sale of these plates, the pricing is too low. The T-Plates originally offered a six-character random personalization option, and now a seven-character personalization option is available.

In accordance with Transportation Code, §504.854, §217.40(h)(7) is amended to provide that the vendor may auction alphanumeric patterns for 10 or 25 year terms with options to renew indefinitely, through additional 10 year terms at the current price established for a 10 year luxury category license plate. The auction pattern may be moved from one vendor design plate to another vendor design plate with a restyle fee of $55, and the pattern may be transferred from owner to owner through auction.

FISCAL NOTE

Brian Ragland, Interim Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for local governments as a result of enforcing or administering the amendments, but there may be a fiscal impact to state general revenue with the increase in price for the generic plates and the T-Plate. However, this amount cannot be determined until the vendor sells enough generic and T-plates to calculate whether the increase in price results in an increase or decrease in sales.

Rebecca Davio, Director, Vehicle Titles and Registration Division, has certified that there will not be a significant impact on local economies or overall employment as a result of enforcing or administering the new chapter.

PUBLIC BENEFIT AND COST
Ms. Davio has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the sections is to streamline the specialty license plate process by eliminating the specialty license plate committee.

There are no anticipated economic costs for persons required to comply with the sections as purchase of specialty license plates is optional. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS
Written comments on the amendments to §§217.21, 217.22, 217.28, and 217.40 may be submitted to Rebecca Davio, Director, Vehicle Titles and Registration, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on May 24, 2010.

STATUTORY AUTHORITY
The amendments are proposed under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE
Transportation Code, §§504.702, 504.801, 504.802, and 504.851 - 504.854.

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

1. - (18) (No change.)

19. Division--Vehicle Titles and Registration Division.

20. [499] Electric bicycle--A device that has two tandem wheels and is designed to be propelled by an electric motor. An electric bicycle cannot attain a speed of more than 20 miles per hour without the application of human power and weighs 100 pounds or less.

[180] Escrow account--A deposit of a specific amount of money held by the department for security.

21. - (62) (No change.)

§217.22. Motor Vehicle Registration.

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

(c) Vehicle registration insignia.

1. On receipt of a complete initial application for registration with the accompanying documents and fees, the department will issue vehicle registration insignia to be displayed on the vehicle for which the registration was issued for the current registration period.

(A) If the vehicle has a windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the inside lower left corner of the vehicle’s front windshield within six inches of the vehicle inspection sticker in a manner that will not obstruct the vision of the driver.

(B) If the vehicle has no windshield, the symbol, tab, or other device prescribed by and issued by the department shall be attached to the rear license plate.

(C) If the vehicle is registered as a former military vehicle as prescribed by Transportation Code, §504.502, the vehicle’s registration number shall be displayed instead of displaying a symbol, tab, or license plate.

(i) Former military vehicle registration numbers shall be displayed on a prominent location on the vehicle in numbers and letters of at least two inches in height.

(ii) To the extent possible, the location and design of the former military vehicle registration number must conform to the vehicle’s original military registration number.

2. Unless otherwise prescribed by law, each vehicle registered under this subchapter must display two license plates, one at the front and one at the rear of the vehicle.

3. In accordance with Transportation Code, §§502.052 and §502.180(e), the department will cancel or not issue any license plate containing an alpha-numeric pattern [sequence] that meets one or more of the following criteria.

(A) The alpha-numeric pattern [sequence] conflicts with the department’s current or proposed regular license plate numbering system.

(B) The executive director finds that the alpha-numeric pattern may be considered objectionable or misleading, including that the pattern may be viewed as, directly or indirectly:

1. indecent (defined as including a reference to a sex act, an excretory function or material, or sexual body parts);

2. a vulgarity (defined as curse words);

3. derogatory (defined as an expression of hate directed toward people or groups that is demeaning to people or groups, or associated with an organization that advocates such expressions);

4. controversial, including whether a similar plate pattern has been the subject of litigation in Texas or another state;

5. [??] a reference to illegal activities or substances, or implied threats of harm; or

6. [??] a misrepresentation of a law enforcement or other governmental entities and their titles [entity].

(C) The alpha-numeric pattern [sequence] is currently issued to another owner.

4. The provisions of paragraph (1) of this subsection do not apply to vehicles registered with annual license plates issued by the department.

(d) - (1) (No change.)

§217.28. Specialty License Plates, Symbols, Tabs, and Other Devices.

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

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

1. Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.
(2) Exhibition Vehicle, Classic Motor Vehicle, and Classic Travel Trailer.

(A) License plates. Texas license plates that were issued the same year as the model year of an Exhibition Vehicle, Classic Motor Vehicle, or Classic Travel Trailer, may be displayed on that vehicle under Transportation Code, §§504.501, 504.5011, and 504.502, unless:

(i) the license plate’s original use was restricted by statute to another vehicle type; or

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle;

(ii) Classic Travel Trailer;

(iii) Cotton Vehicle;

(iv) Disaster Relief;

(v) Forestry Vehicle;

(vi) Golf Cart;

(vii) Log Loader;

(viii) Military Vehicle; and

(ix) Parade.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a certificate of title application shall be filed in that person’s name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(a)(3) of this chapter (relating to Motor Vehicle Certificates of Title) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Other classes of vehicle. A specialty license plate design may be varied to accommodate its use on motor vehicles other than passenger cars and light trucks. The department will determine whether a specialty license plate will be made available for one or more classes of vehicles in addition to passenger cars and light trucks and, if so, to which class or classes. In making this determination, the department will consider the cost of redesigning a specialty license plate to accommodate another class of vehicle, the potential demand for that specialty license plate on that class of vehicle, and other factors bearing on the potential cost or benefit to the public of expanding the availability of a specialty license plate.

(8) Personalized plate numbers.

(A) Issuance. The director will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the director if the alphanumeric pattern [sequence]:

(i) conflicts with the department’s current or proposed regular license plate numbering system;

(ii) would violate §217.22(c)(3) of this subchapter as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle;

(iv) Apportioned;

(v) Congressional Medal of Honor;

(vi) Cotton Vehicle;

(vii) Disabled Veteran;

(viii) Disaster Relief;

(ix) Farm Trailer (except Go Texan II);

(x) Farm Truck (except Go Texan II);

(xi) Farm Truck Tractor (except Go Texan II);

(xii) Fertilizer;

(xiii) Forestry Vehicle;
(xiv) Log Loader;
(xv) Machinery;
(xvi) Parade;
(xvii) Permit;
(xviii) Rental Trailer;
(xix) Soil Conservation; and
(xx) Texas Guard.

(F) Fee. Unless specified by statute, a personalized license plate fee of $40 [The statutorily prescribed personalized license plate fee] will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) - (h) (No change.)

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801 whether the new license plate originated as a result of an application or as a department initiative.

(2) Specialty license plate committee. The executive director will appoint no fewer than three employees of the department to the specialty license plate committee. The committee shall meet as necessary to review completed specialty license plate applications.

(3) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.40 of this subchapter (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the director. The application must include:

(A) the applicant’s name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity, and that the applicant’s non-profit status is current at the time of application;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the department [committee] to reach a decision regarding approval of the requested specialty plate.

(3) [44a] Review [Committee review] process. The division [committee]:

(A) will not consider incomplete applications;

(B) will not consider controversial specialty plates, including whether a similar plate has been the subject of litigation in Texas or another state;

(C) [44a] may request additional information from an applicant if necessary for a decision; and

(D) [44a] will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates); including using the limited number of potential purchasers as a factor in the approval decision.

(4) [45a] Request for additional information. If the division [committee] determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the division [committee] will return the application as incomplete unless the division [committee]:

(A) determines that the additional requested information is not critical for [committee] consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) [46a] Division [Committee] recommendation. The recommendation of the division [committee] will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness; and

(iii) other information provided during the application process; [and]

(iv) the criteria designated in §217.22(c)(3)(B) of this subchapter (relating to Motor Vehicle Registration) as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant’s ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) [47a] Public comment on proposed design. If the division [committee] recommends the issuance of the proposed specialty license plate design, notice of the license plate design will be posted on the department’s Internet web site to receive public comment. Simultaneously, the department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design must be submitted in writing through the mechanism provided on the department’s Internet website for submission of official comments, and must be received by the department within 10 days after the date that the notice is posted on the department’s website.

(7) [48a] Final approval.
(A) Approval. The executive director of the department, or the executive director’s designee, not below the level of division director, will approve or disapprove the specialty license plate application based on the division’s [committee’s] recommendation after consideration of [and on] comments received during the comment period, including whether negative comments suggest that the plate would fall under the criteria of §217.22(c)(3)(B) [§217.22(c)(3)(B)(ii)] of this subchapter as applied to the design.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the department if: [committee:]

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) [81] Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the department, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department’s website for additional comments.

(9) [93] Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.852, but the applicant must pay a redesign cost to cover administrative expenses.

§217.40. Marketing of Specialty License Plates through a Private Vendor.

(a) (No change.)

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the department for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined; (C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the division [specialty license plate committee] to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The division [specialty license plate committee established under §217.28(c) of this subchapter (relating to Specialty License Plates, Symbols, Tabs, and Other Devices)] will review vendor specialty license plate applications. The division:

(1) Committee review. The committee:

[1] will not consider incomplete applications; and

[2] may request additional information from the vendor to reach a decision.

(2) Postponement of decision for additional information.

[3] If the committee reviews an application and determines that additional information is needed, it will postpone the decision on the application until its next meeting;

[4] If the additional requested information is not received before the next committee meeting, the committee will not consider the application and will return it to the vendor as incomplete.

(d) Division [committee] recommendation and public comment.

(1) Recommendation. The recommendation of the division [committee] will be based on:

[5] projected sales of the license plate as demonstrated in the marketing plan and by the listing of target purchasers;

[6] compliance with Transportation Code, §504.851 and §504.852;

[7] the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(h); [and]

(iv) the criteria designated in §217.22(c)(3)(B) of this subchapter (relating to Motor Vehicle Registration) as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

[8] other information provided during the application process.

(2) Public comment on proposed design. If the division [committee] recommends the issuance of the proposed vendor specialty license plate design, notice of the proposed design will be posted on the department’s website for public comment. The department simultaneously will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting.
A comment on the proposed design must be submitted in writing and must be received within 10 days after the date that the notice is first posted on the department’s web site.

(e) Final approval and specialty license plate issuance.

(1) Approval. The executive director of the department, or the executive director’s designee, not below the level of division director, will make the final decision on the vendor’s specialty license plate application based on the division’s [committee’s] recommendation after consideration of [and on all] comments received during the period prescribed by subsection (d)(2) of this section, including whether negative comments suggest that the plate would fall under the criteria of §217.22(c)(3)(B)(i), §217.22(c)(3)(B)(ii), §217.22(c)(3)(B)(iii), or §217.22(c)(3)(B)(iv) of this subchapter as applied to the design [relating to Motor Vehicle Registration].

(2) Application not approved. If the vendor’s application is not approved by the executive director, or the executive director’s designee, the vendor may [must] submit a new application and supporting documentation for the design to be considered again if: [by the committee.]

(A) the vendor has additional, required documentation; or

(B) the design has been altered to an acceptable degree.

(3) Issuance of approved specialty plates.

(A) If the vendor’s specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, five-year, or ten-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. The fees for issuance of custom license plates are $85 for one year, $225 for five years, and $325 for ten years. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters, or two or three numeric and three alpha characters.

[(A) license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters, or two or three numeric and three alpha characters;]

[(B) generic license plates on standard white sheeting with the word “Texas” that may be personalized with up to six alphanumeric characters.]

(2) T- Plates (Premium) license plates. T- Plates (Premium) license plates may be personalized with up to seven alphanumeric characters on colored backgrounds or designs approved by the department. T- Plates (Premium) license plates will be made available to coincide with extraordinary events of public interest to Texas registrants. The fees for issuance of T- Plates (Premium) license plates are $155 [§25] for one year, $395 for five years, and $495 for ten years.

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. [The department cannot consider a plate that qualifies under paragraph (1)(B) of this subsection as a luxury license plate.] The fees for issuance of luxury license plates are $195 for one year, $495 for five years, and $595 for ten years.

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are $395 for one year, $695 for five years, and $795 for ten years.

(5) Background only license plates. Background only license plates include non-personalized license plates with a variety of pre-approved background and character color combinations. The fees for issuance of background only license plates are $55 for one year, $195 for five years, and $295 for ten years.

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to twenty-four alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is $40.

(7) Auction of alphanumeric patterns. The vendor may auction alphanumeric patterns for 10 or 25 year terms with options to renew indefinitely, through 10 year terms, at the current price established for a 10 year luxury category license plate. The purchaser of the auction pattern may select from the vendor background designs at no additional charge at the time of initial issuance. The auction pattern may be moved from one vendor design plate to another vendor design plate as provided in subsection (n)(1) of this section. The auction pattern may be transferred from owner to owner as provided in subsection (l)(2) of this section. [Auctioned plates transfer fee. In addition to the fee paid to the department after the auction, the transferee will pay the department a fee of $25 when the transfer right of ownership is exercised.]

(8) Personalization of license plates.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the plates are renewed annually.

(B) The personalization fee for plates applied for after November 19, 2009 is $40 if the plates are issued pursuant to Transportation Code, Subchapters G and I.

[(C) The personalization fee for plates not subject to subparagraphs (A) and (B) of this paragraph is as provided in this subsection.]

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the vendor for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.
(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2), (3), or (4) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §502.184.

(3) No-charge replacement. The owner of vendor specialty license plates will receive at no charge replacement license plates as follows:

(A) one set of replacement license plates on or after the seventh anniversary after the date of initial issuance; and

(B) one set of replacement license plates seven years after the date the set of license plates were issued in accordance with subparagraph (A) of this paragraph.

(4) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates before the seventh anniversary after the date of issuance by submitting a request to the county tax assessor-collector accompanied by the payment of a $30 fee.

(5) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner’s vendor specialty license plate number will be shown on the interim replacement tags.

(6) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department’s records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner’s name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons except through auction as provided in subsection (h)(7) of this section. An auctioned alphanumeric pattern may be transferred as a specialty license plate or as a virtual pattern to be manufactured on a new background as provided under the restyle option in subsection (n)(1) of this section. In addition to the fee paid at auction, the new owner of an auctioned alphanumeric pattern or plate will pay the department a fee of $25 and complete the department’s prescribed application at the time of transfer.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser’s name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category, except if the pattern is an auction pattern; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is $55.

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 April 9, 2010.

Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles

Early possible date of adoption: May 23, 2010
For further information, please call: (512) 463-8683

♦ ♦ ♦ ♦
Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

**TITLE 4. AGRICULTURE**

**PART 1. TEXAS DEPARTMENT OF AGRICULTURE**

**CHAPTER 25. SPECIAL NUTRITION PROGRAMS**

**SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM (CACFP)**

**DIVISION 1. OVERVIEW AND PURPOSE**

4 TAC §§25.1 - 25.4

The Texas Department of Agriculture withdraws the proposed repeal of §§25.1 - 25.4 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

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

DIVISION 2. ELIGIBILITY OF CONTRACTORS AND FACILITIES

4 TAC §§25.11 - 25.37

The Texas Department of Agriculture withdraws the proposed repeal of §§25.11 - 25.37 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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DIVISION 3. CONTRACTOR APPLICATION PROCESS

4 TAC §§25.61 - 25.68

The Texas Department of Agriculture withdraws the proposed repeal of §§25.61 - 25.68 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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DIVISION 4. AGREEMENTS

4 TAC §§25.81 - 25.92

The Texas Department of Agriculture withdraws the proposed repeal of §§25.81 - 25.92 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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DIVISION 5. CONTRACTOR STANDARDS AND RESPONSIBILITIES

4 TAC §§25.111 - 25.122

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DIVISION 6. BUDGETS

4 TAC §§25.141 - 25.154
The Texas Department of Agriculture withdraws the proposed repeal of §§25.141 - 25.154 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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DIVISION 7.  FINANCIAL MANAGEMENT

4 TAC §§25.161 - 25.165
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DIVISION 8.  REPORTING AND RECORD RETENTION

4 TAC §§25.171 - 25.183
The Texas Department of Agriculture withdraws the proposed repeal of §§25.171 - 25.183 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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DIVISION 9.  MEAL REQUIREMENTS

4 TAC §§25.191 - 25.198
The Texas Department of Agriculture withdraws the proposed repeal of §§25.191 - 25.198 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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DIVISION 10.  DAY CARE HOMES

4 TAC §§25.211 - 25.233
The Texas Department of Agriculture withdraws the proposed repeal of §§25.211 - 25.233 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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DIVISION 11.  START-UP AND EXPANSION PAYMENTS

4 TAC §§25.261 - 25.269
The Texas Department of Agriculture withdraws the proposed repeal of §§25.261 - 25.269 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 12.  ADVANCE PAYMENTS

4 TAC §§25.281 - 25.290
The Texas Department of Agriculture withdraws the proposed repeal of §§25.281 - 25.290 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

Filed with the Office of the Secretary of State on April 7, 2010.

TRD-201001622
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 13.  COMMODITIES AND CASH-IN-LIEU ASSISTANCE
4 TAC §§25.311 - 25.317
The Texas Department of Agriculture withdraws the proposed repeal of §§25.311 - 25.317 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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TRD-201001623
Dolores Alvarado Hibbs
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Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 14. REIMBURSEMENT
4 TAC §§25.331 - 25.363
The Texas Department of Agriculture withdraws the proposed repeal of §§25.331 - 25.363 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001624
Dolores Alvarado Hibbs
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For further information, please call: (512) 463-4075

DIVISION 15. OVERPAYMENTS
4 TAC §§25.381 - 25.383
The Texas Department of Agriculture withdraws the proposed repeal of §§25.381 - 25.383 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001625
Dolores Alvarado Hibbs
General Counsel
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For further information, please call: (512) 463-4075

DIVISION 16. PROGRAM REVIEWS, MONITORING, AND MANAGEMENT EVALUATIONS
4 TAC §§25.391 - 25.406
The Texas Department of Agriculture withdraws the proposed repeal of §§25.391 - 25.406 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001626

Dolores Alvarado Hibbs
General Counsel
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For further information, please call: (512) 463-4075

DIVISION 17. AUDITS
4 TAC §§25.421 - 25.425
The Texas Department of Agriculture withdraws the proposed repeal of §§25.421 - 25.425 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001627
Dolores Alvarado Hibbs
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For further information, please call: (512) 463-4075

DIVISION 18. SANCTIONS, PENALTIES, AND FISCAL ACTION
4 TAC §§25.441 - 25.472
The Texas Department of Agriculture withdraws the proposed repeal of §§25.441 - 25.472 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

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Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 19. DENIALS AND TERMINATION
4 TAC §§25.491 - 25.497
The Texas Department of Agriculture withdraws the proposed repeal of §§25.491 - 25.497 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6939).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001629
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 1. OVERVIEW AND PURPOSE
4 TAC §§25.1 - 25.4
The Texas Department of Agriculture withdraws proposed new §§25.1 - 25.4 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001630
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 2. ELIGIBILITY OF CONTRACTORS AND FACILITIES

4 TAC §§25.11 - 25.19

The Texas Department of Agriculture withdraws proposed new §§25.11 - 25.19 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001631
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 3. CONTRACTOR APPLICATION PROCESS

4 TAC §25.21, §25.22

The Texas Department of Agriculture withdraws proposed new §25.21 and §25.22 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001632
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 4. AGREEMENTS

4 TAC §§25.31 - 25.33

The Texas Department of Agriculture withdraws proposed new §§25.31 - 25.33 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001633

Dolores Alvarado Hibbs
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Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 5. CONTRACTOR STANDARDS AND RESPONSIBILITIES

4 TAC §§25.41 - 25.47

The Texas Department of Agriculture withdraws proposed new §§25.41 - 25.47 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001634
Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 6. BUDGETS

4 TAC §§25.51 - 25.53

The Texas Department of Agriculture withdraws proposed new §§25.51 - 25.53 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001635
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 7. FINANCIAL MANAGEMENT

4 TAC §25.61, §25.62

The Texas Department of Agriculture withdraws proposed new §25.61 and §25.62 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001636
Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 8. REPORTING AND RECORD RETENTION
4 TAC §§25.71 - 25.75
The Texas Department of Agriculture withdraws proposed new §§25.71 - 25.75 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001637
Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DOLIVISION 9. MEAL REQUIREMENTS

4 TAC §§25.81, §25.82
The Texas Department of Agriculture withdraws proposed new §25.81 and §25.82 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001638
Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 10. DAY CARE HOMES

4 TAC §§25.91 - 25.96
The Texas Department of Agriculture withdraws proposed new §§25.91 - 25.96 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001639
Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 11. START-UP AND EXPANSION FUNDS

4 TAC §25.101
The Texas Department of Agriculture withdraws proposed new §25.101 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001640

Dolores Alvarado Hibbs
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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 12. ADVANCES

4 TAC §§25.111 - 25.115
The Texas Department of Agriculture withdraws proposed new §§25.111 - 25.115 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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Texas Department of Agriculture
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For further information, please call: (512) 463-4075

DIVISION 13. COMMODITIES AND CASH-IN-LIEU ASSISTANCE

4 TAC §§25.121 - 25.127
The Texas Department of Agriculture withdraws proposed new §§25.121 - 25.127 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001642
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 14. REIMBURSEMENT

4 TAC §§25.131 - 25.143
The Texas Department of Agriculture withdraws proposed new §§25.131 - 25.143 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

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TRD-201001643
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075

DIVISION 15. OVERPAYMENTS

4 TAC §25.151, §25.152
The Texas Department of Agriculture withdraws proposed new §25.151 and §25.152 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001644
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075
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DIVISION 16. REVIEWS AND MONITORING

4 TAC §25.161, §25.162
The Texas Department of Agriculture withdraws proposed new §25.161 and §25.162 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001645
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075
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DIVISION 17. AUDITS

4 TAC §§25.171 - 25.174
The Texas Department of Agriculture withdraws proposed new §§25.171 - 25.174 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001646
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075
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DIVISION 18. ADVERSE ACTIONS, DENIALS AND TERMINATIONS

4 TAC §§25.181 - 25.184
The Texas Department of Agriculture withdraws proposed new §§25.181 - 25.184 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001647
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075
   ♦   ♦   ♦   ♦

DIVISION 19. APPEALS

4 TAC §25.191
The Texas Department of Agriculture withdraws proposed new §25.191 which appeared in the October 9, 2009, issue of the Texas Register (34 TexReg 6949).

Filed with the Office of the Secretary of State on April 7, 2010.
TRD-201001648
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: April 7, 2010
For further information, please call: (512) 463-4075
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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS’ COMPENSATION

CHAPTER 137. DISABILITY MANAGEMENT SUBCHAPTER A. GENERAL PROVISIONS

28 TAC §137.5
The Texas Department of Insurance, Division of Workers’ Compensation withdraws proposed new §137.5 which appeared in the November 27, 2009, issue of the Texas Register (34 TexReg 8460).

Filed with the Office of the Secretary of State on April 12, 2010.
TRD-201001744
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers’ Compensation
Effective date: April 12, 2010
For further information, please call: (512) 804-4703
   ♦   ♦   ♦   ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 343. SECURE JUVENILE PRE-ADJUDICATION DETENTION AND POST-ADJUDICATION CORRECTIONAL FACILITIES
SUBCHAPTER B.  PRE-ADJUDICATION AND POST-ADJUDICATION SECURE FACILITY STANDARDS

37 TAC §343.272

The Texas Juvenile Probation Commission withdraws the proposed amendment to §343.272 which appeared in the February 12, 2010, issue of the Texas Register (35 TexReg 1035).

Filed with the Office of the Secretary of State on April 9, 2010.
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 1. ADMINISTRATION
PART 1. OFFICE OF THE GOVERNOR
CHAPTER 4. TEXAS MILITARY PREPAREDNESS COMMISSION
SUBCHAPTER B. DEFENSE ECONOMIC ADJUSTMENT ASSISTANCE GRANT PROGRAM
1 TAC §4.34
The Texas Military Preparedness Commission (TMPC) adopts without changes an amendment to §4.34, concerning Maximum and Minimum Awards, as published in the March 5, 2010, issue of the Texas Register (35 TexReg 1844) and will not be republished.

The adopted amendment reflects the changes in Sections 1, 18(a), 19(6), 20(b), and 21(4) of House Bill 2546, enacted by the 2009 Legislature, and also implements best practices of the Texas Economic Development and Tourism Office.

Amended §4.34(d), as adopted, sets forth the Community support requirement to receive a Defense Economic Adjustment Assistance Grant award.

No comments were received regarding the adoption of this amendment.

The amendment is adopted under House Bill 2546, Section 24, enacted by the 2009 Legislature, which provided rulemaking authority to the Economic Development and Tourism Office.

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 April 9, 2010.
TRD-201001681
Martin Fox
Director, Texas Military Preparedness Commission
Office of the Governor
Effective date: April 29, 2010
Proposal publication date: March 5, 2010
For further information, please call: (512) 936-0517

TITLE 16. ECONOMIC REGULATION
PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 402. CHARITABLE BINGO
ADMINISTRATIVE RULES
SUBCHAPTER B. CONDUCT OF BINGO
16 TAC §402.202
The Texas Lottery Commission (Commission) adopts the repeal of 16 TAC §402.202 (relating to Transfer of Funds), without changes to the proposed text as published in the January 22, 2010, issue of the Texas Register (35 TexReg 422). The repeal is adopted concurrently with adopted new 16 TAC §402.202 (relating to Transfer of Funds). The purpose of the repeal and new rule is to facilitate implementation of revisions to §2001.451 of the Bingo Enabling Act resulting from recent legislation H.B. 1474 effective October 1, 2009.

A public comment hearing was held on February 16, 2010 at 10:00 a.m. Individuals were present at the hearing and commented in favor of the repeal as proposed. The Bingo Interest Group commented in favor of the proposed repeal. The Commission received no written comments during the public comment period.

The repeal is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission’s jurisdiction.

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 April 12, 2010.
TRD-201001747
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: May 2, 2010
Proposal publication date: January 22, 2010
For further information, please call: (512) 344-5012

16 TAC §402.202
The Texas Lottery Commission (Commission) adopts new 16 TAC §402.202 (relating to Transfer of Funds), with changes to the proposed text as published in the January 22, 2010, issue of the Texas Register (35 TexReg 423). The purpose of the new rule is to facilitate implementation of revisions to §2001.451 of the Bingo Enabling Act resulting from recent legislation H.B. 1474 effective October 1, 2009. Specifically, the new rule defines...
the term, "other account," sets forth requirements for notification of transfer of funds into a bingo account, maintenance of related documentation, use of transferred funds, amount of funds transferred, allowable disbursement, and maximum bingo account or unit account bank balance for the quarter that funds were transferred.

A public comment hearing was held on February 16, 2010 at 10:00 a.m. One individual was present at the hearing and commented in favor of the new rule as proposed. A representative of the Bingo Interest Group commented against the new rule as proposed and suggested changes to certain portions of the new rule as proposed. The Commission received no written comments during the public comment period.

Comment: In subsection (a), the definition of "other account" would include the bingo account. I would propose that this be revised to read, "For purposes of Section 2001.451(c), Texas Occupations Code, 'other account' means an account other than the bingo account held in the name of the licensed authorized unit -- organization or unit."

Agency Response: The Commission agrees and has revised subsection (a) accordingly.

Comment: The use of the funds in the bingo account are governed by the chapters within the Bingo Enabling Act that specify what the funds in the bingo account can be used for, as well as existing rules. Therefore, subsection (i) is not needed and should be eliminated.

Agency Response: The agency agrees and has deleted proposed subsection (i).

Comment: In this section, there's a reference to repayment of transferred funds. There is no requirement to repay transferred funds. Consequently, there should be no documentation of something as a repayment of transferred funds. That's sliding back into the notion that this is a loan. Rather, it's a transfer of funds back to the organization if needed to restore operating capital in order to be able to run the bingo operations. So we would suggest the striking of the second sentence in subsection (e).

Agency Response: The agency disagrees. Subsection (e) permits funds to be transferred from the bingo account or bingo unit account back to the licensed authorized organization or unit and provides that such a transfer must be reported on the quarterly report. However, "repayment of transferred funds" has been changed to "reimbursed transferred funds" to conform to language on the Texas Quarterly Report form and to lessen any implication that the transfer relates to a loan.

Comment: The rule should be consistent in saying "bingo account or unit account" throughout the rule in order to take account of those organizations operating in the form of a unit or as part of a unit.

Agency Response: The agency agrees and has modified language in the rule to consistently indicate a bingo account or unit bingo account when appropriate.

Comment: Subsection (h) has more words in it than needed and should say, "Only funds from a licensed authorized organization's other account may be transferred into its bingo account or unit account if the licensed authorized organization is a member of an accounting unit at the time the funds are transferred."

Agency Response: The Commission agrees and has modified subsection (h) as suggested.

Comment: Language should be added to proposed subsection (j) to clarify that it pertains to "at the time of the transfer."

Agency Response: The Commission agrees and has changed the introductory phrase of the subsection from "(a)fter funds are transferred" to "(a)t the time the funds are transferred."

The new rule is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.


(a) For purposes of §2001.451(c), Texas Occupations Code, "other account" means an account other than the bingo account held in the name of the licensed authorized organization.

(b) Notification of the transfer of funds into the bingo account or bingo unit account must be submitted on a form prescribed by the Commission. To be timely submitted, the notification’s postmark date, date of delivery for common carrier, date of e-mail, or date of facsimile must clearly show a date that is no later than 14 calendar days after the date the funds were transferred.

(c) The licensed authorized organization must show the amount of transferred funds on the Texas Bingo Quarterly report for the quarter the funds were transferred.

(d) A licensed authorized organization or unit must maintain records to substantiate the transfer of funds into or removed from the bingo account or bingo unit account.

(e) All or part of the transferred funds may be transferred from the bingo account or bingo unit account back to the licensed authorized organization or unit. The amount of transferred funds removed from the licensed authorized organization’s bingo account or bingo unit account must be shown as reimbursed transferred funds on the Texas Bingo Quarterly report for the quarter the funds were removed.

(f) Funds transferred to the bingo account or bingo unit account may be used for authorized expenses but will not be used to determine if the organization’s bingo operation resulted in net proceeds over its license period.

(g) Funds transferred to the bingo account or bingo unit account from a licensed authorized organization’s general fund or other account may not be disbursed to the organization as net proceeds from the conduct of bingo.

(h) Only funds from a licensed authorized organization’s other account may be transferred into its bingo account or bingo unit account if the licensed authorized organization is a member of an accounting unit at the time the funds are transferred.

(i) At the time the funds are transferred into a bingo account or bingo unit account the reconciled bank balance for the quarter that the funds were transferred into the bingo account or bingo unit account may not exceed the licensed authorized organization’s or unit’s authorized quarterly operating capital as determined by the Commission.

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 April 12, 2010.

TRD-201001748
SUBCHAPTER D. LICENSING REQUIREMENTS

16 TAC §402.400

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.400 (relating to General Licensing Provisions), with changes to the proposed text as published in the January 22, 2010, issue of the Texas Register (35 TexReg 424). The purpose of the amendments is to make the rule consistent with changes to the Bingo Enabling Act resulting from recent legislation H.B. 1474 effective October 1, 2009. Subsection (k)(5) has been added to clarify that a licensed authorized organization that places its license on administrative hold must comply with Texas Occupations Code §2001.451(g) requirements concerning net proceeds. Subsection (m) has been deleted from the rule, and the remaining subsections have been renumbered accordingly. At newly renumbered subsection (n)(2), "except Schedule F Bingo Financial Summary" has been deleted; at newly renumbered subsection (n)(6), "and Schedule F Bingo Financial Summary" has been deleted; and at newly renumbered subsection (n)(7), "Schedule B3 Registered Workers for License to Conduct Bingo," has been deleted. As a result of comments received, the Commission has deleted subsection (k)(5). An organization with its license on administrative hold for a full license period would not have engaged in bingo operations, and therefore the statutory provision regarding net proceeds of bingo operations would not be applicable.

A public comment hearing was held on February 16, 2010 at 10:00 a.m. One individual was present at the hearing and commented in favor of the amendments as proposed. A representative of the Bingo Interest Group commented against the amendments as proposed. The Commission received no written comments during the public comment period.

Comment: New subsection (k)(5) says that a license on administrative hold must still comply with the requirements of the Bingo Enabling Act concerning net proceeds. This is inconsistent with the legislative intent and should be deleted.

Agency Response: The Commission agrees and has deleted subsection (k)(5). An organization with its license on administrative hold for a full license period would not have engaged in bingo operations, and therefore the statutory provision regarding net proceeds of bingo operations would not be applicable.

The amendments are adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.


(a) Any person who wants to engage in a bingo related activity shall apply to the Commission for a license. The application must be on a form prescribed by the Commission and all required information must be legible, correct and complete. An application is incomplete if the following information is not provided:

1. All information requested on the application form and applicable schedules;
2. All supplemental information requested during the pre-licensing investigation period;
3. The applicable license fee;
4. The required bond or other security, if applicable; and
5. Authorized signatures as required by the Commission.

(b) Information submitted by an applicant in the form of an applicable schedule shall be considered to be part of the application. Supplemental information should be submitted on a form prescribed by the Commission and all information required must be correct and complete.

(c) Information submitted by an applicant in a format other than an applicable schedule must be legible and must include the following:

1. the name and address of the organization as it appears on the application;
2. the Texas taxpayer identification number; or, if sole owner, the individual’s social security number;
3. a statement identifying the information submitted;
4. the signature, printed name and telephone number of the person authorized to submit the information; and
5. all supplemental information requested during the pre-licensing investigation period.

(d) Within 21 calendar days after the Commission has received an original application, the Commission will review the application and notify the applicant if additional information is required.

(e) If an application is incomplete, the Commission will notify the applicant. The applicant must provide the requested information within 21 calendar days of such notification. Failure to provide the requested information within the 21 calendar day time line may result in the denial of the license application.

(f) Prior to the issuance of a license, the Commission may require an applicant to attend a pre-licensing interview. The Commission will identify the person or persons for the applicant who must attend the pre-licensing interview. The pre-licensing interview will consist of, at a minimum, the following:

1. review of the Bingo Enabling Act;
2. review of the Charitable Bingo Administrative Rules;
3. licensee responsibilities;
4. process pertaining to the different types of license application;
5. bookkeeping and record keeping requirements as it involves bingo; and
6. a statement from the person or persons attending the pre-licensing interview that they are aware of and will comply with the provisions of the Bingo Enabling Act and Charitable Bingo Administrative Rules.

(g) The Commission may deny an application based on information obtained that indicates non-compliance with the provisions of the Bingo Enabling Act and/or the Charitable Bingo Administrative
rules in connection with a pre-licensing interview and/or location inspection.

(h) Each licensed authorized organization and organization issued a temporary authorization is required to file timely and complete required reports, as applicable to the type of current license held.

(i) An organization may withdraw an application at any time. Once the written request for withdrawal is received by the Commission, all processing of the application will cease and the withdrawal is considered final. If the organization wants to reapply for a license, a complete new application is required.

(j) Voluntary surrender of a license.

(1) A licensee may surrender its license for cancellation provided it has completed and submitted to the Commission the prescribed form.

(2) If surrendering a license to conduct bingo, the prescribed form must be signed by the bingo chairperson.

(3) If surrendering any other type of license, the prescribed form must be signed by the sole owner, or by two officers, directors, limited liability corporation members, or partners of the organization.

(4) The cancellation of the license shall be final and effective upon receipt by the Charitable Bingo Operations Division of a copy of the resolution, or other authoritative statement of the licensee, requesting cancellation of the license and providing a requested effective date.

(A) The cancellation is effective as of the date identified in the letter provided that the date has not passed.

(B) If no date is identified in the letter, or the date has passed, the effective date shall be the date the Commission receives the letter.

(5) Notwithstanding cancellation of the license, the licensee must file all reports, returns and remittances required by law.

(6) The licensee shall surrender the license to the Commission on the effective date of the surrender.

(7) The Commission will send the licensee a letter confirming the surrender and resulting cancellation of the license.

(k) Administrative Hold. A licensee may place its license in administrative hold.

(1) The placement of a license in administrative hold shall be effective upon receipt by the Commission of a copy of the resolution, or other authoritative statement of the licensee, requesting administrative hold and citing a requested effective date.

(2) The licensee shall submit the license, or a certified statement that the license is not available, to the Commission on the effective date of the placement of the license in administrative hold.

(3) Once the license has been placed in administrative hold, all bingo activity (i.e. leasing, conducting bingo) must cease until the licensee files an amendment and the amended license is issued by the Commission and received by the licensee.

(4) Notwithstanding placement of the license in administrative hold, the licensee must file all reports, returns and remittances required by law. The licensee must also file a timely and complete application for renewal of the license each time the license is ripe for renewal.

(l) Each person required to be named in an application for license under the Bingo Enabling Act other than a temporary license will have a criminal record history inquiry at state and/or national level conducted. Such inquiry may require submission of fingerprint card(s). FBI fingerprint cards are required for an individual listed in an application for a distributor, system service provider, or manufacturer’s license and for an individual listed on an application who is not a Texas resident. A criminal record history inquiry at the state and/or national level may be conducted on the operator and officer or director required to be named in an application for a non-annual temporary license under the Bingo Enabling Act.

(m) Representation; personal receipt of documents. For purposes of this subsection, an individual shall be recognized by the Commission as an applicant or licensee’s authorized representative only if the applicant or licensee has filed with the Commission a form prescribed by the Commission identifying the individuals currently listed as directors, officers, or operators, or if they are identified on the completed form “Schedule E Authorization of Representation.” A person is not an authorized representative of the applicant or licensee unless specifically named on a form prescribed by the Commission as part of the application, or in the “Schedule E Authorization of Representation” that is on file with the Commission. Only those persons specifically named on a form prescribed by the Commission or in the “Schedule E Authorization of Representation” as an authorized representative shall be recognized by the Commission concerning any matter relating to the licensing process or license. Only the applicant or licensee or its authorized representative may receive from the Commission documents relating to the application or license without being required to submit a request under the Public Information Act.

(n) Eligibility determination pending identification of playing location, days, times, and starting date.

(1) An organization may submit an original application for a license to conduct bingo without including information on intended playing location, days, times, and starting date if requesting a determination of eligibility status.

(2) All other information requested on the application and the accompanying schedules must be complete and in compliance with all other requirements of the Act and Rules before the Commission determines eligibility status.

(3) An organization requesting a determination of eligibility status must submit with its application $100 to be applied towards the organization’s license fee.

(4) Upon a determination that the requirements in paragraph (2) and (3) of this subsection have been met, the Commission will provide to the authorized organization written notice of the eligibility status of the applicant.

(5) Within 180 calendar days of the date the Commission provides notice of the eligibility status of an applicant, the authorized organization must inform the Commission on a form prescribed by the Commission of the intended playing location, days, times, and starting date of the occasions. If the authorized organization fails to provide the information to the Commission within 180 calendar days, the Commission will proceed with denial of the application.

(6) After review of the applicant’s submitted intended playing location, days, times, starting date, and upon request by the applicant, the Commission may issue temporary authorization to conduct bingo for a period of 60 calendar days if the Commission determines that the intended playing location, days, times, and starting date comply with the Bingo Enabling Act.

(7) In order to receive a regular license to conduct bingo, an authorized organization that has received an eligibility determination and informed the Commission of its intended playing location, days,
times, and starting date of the occasions must also submit the required bond or security, any remainder of the appropriate license fee, a Texas Request for Licensure for Eligible Organization form, certified meeting minutes stating that the organization voted to conduct bingo at the licensed location, and confirmation of the accuracy of information provided on the application to conduct bingo. The Commission will notify the applicant of the required license fee and bond amounts within 14 calendar days of receipt of the organization’s intended playing location, days, times, and starting date.

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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Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
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Proposal publication date: January 22, 2010
For further information, please call: (512) 344-5012

16 TAC §402.403

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.403 (relating to Licenses for Conduct of Bingo Occasions and to Lease Bingo Premises), without changes to the proposed text as published in the January 22, 2010, issue of the Texas Register (35 TexReg 426). The purpose of the amendments is to update the rule, making it consistent with changes to the Bingo Enabling Act resulting from recent legislation H.B. 1474 effective October 1, 2009 and current practice. Some portions of the rule have been deleted because the subject matter is now addressed in other rules. Specifically: (1) subsection (a)(1) has been deleted; (2) newly renumbered subsection (a)(1) adds the word "regular," deletes the word "annual," and adds the language, "days, times, and"; (3) subsection (a)(3), (a)(4) and (a)(5) have been deleted and new subsection (a)(2), (a)(3) and (a)(4) have been added to the rule; (4) subsection (b)(1), (b)(2) have been deleted from the rule; (5) former subsection (b)(2)(A), (b)(2)(B) and (b)(2)(C) have been renumbered as subsection (b)(1), (b)(2), and (b)(3); and (6) subsections (c) and (d) have been deleted from the rule.

A public comment hearing was held on February 16, 2010 at 10:00 a.m. One individual was present at the hearing and commented generally in favor of the amendments as proposed. A representative of the Bingo Interest Group commented in favor of the amendments as proposed. The Commission received no written comments during the public comment period.

Comment: Within this rule, there should be a time deadline by which a refund request should be processed.

Agency Response: The agency disagrees. This rule is not intended to address refund requests.

The amendments are adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission’s jurisdiction.

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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Kimberly L. Kiplin
General Counsel
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16 TAC §402.404

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §402.404 (relating to License Fees), with changes to the proposed text as published in the January 22, 2010, issue of the Texas Register (35 TexReg 428). The purpose of the proposed amendments is to make the rule consistent with changes to the Bingo Enabling Act resulting from recent legislation H.B. 1474 effective October 1, 2009 and to more accurately reflect current terminology and practice. Specifically: (1) a new subsection (a) regarding definitions has been added to the rule and the remaining subsections have been renumbered accordingly; (2) throughout the rule, "annual license" has been replaced with "regular license"; (3) throughout the rule the word "year" has been replaced with "license period"; (4) existing subsection (c)(1) has been deleted and replaced with new subsection (c)(1); (5) at subsection (d)(2), the language, "within 30 days of the license expiration date and" has been added; (6) new subsection (d)(3) relating to the recalculated license fee amount submission deadlines has been added to the rule; (7) at subsections (d)(6) and (d)(7), certain language regarding additional license fees has been deleted from the rule; (8) a new subsection (e) regarding two-year license fee payments has been added to the rule; at subsection (f) relating to regular license fee recalculation, paragraphs (1) - (4) have been added to the rule; (9) at subsection (f)(6), the language, "such as, the original conductor is licensed less than a full year," has been deleted; (10) at subsection (f)(6)(A) language regarding calculation of estimated annual gross receipts has been added to the rule; (11) a new subsection (f)(6)(B) regarding calculation of estimated gross rental income per quarter has been added to the rule; (12) a new subsection (f)(10) regarding recalculating license fees has been added to the rule; (13) at subsection (g)(2)(C), the language, "remain in the application escrow account" replaces the language," temporary license fee; or"; (14) subsection (g)(2)(D) has been deleted from the rule; (15) new subsections (g)(4) - (6) have been added to the rule; (16) subsections (h)(2) - (4) have been deleted from the rule; and (17) subsections (h)(3) - (5) have been added to the rule.

A public comment hearing was held on February 16, 2010 at 10:00 a.m. One individual was present at the hearing and commented against the amendments as proposed. A representative of the Bingo Interest Group commented against the amendments as proposed. A representative of Fort Worth Bookkeeping commented against the amendments as proposed. The Commission received no written comments during the public comment period.

Comment: At subsection (e)(1), "shall be considered" should be changed to "may be considered" to give both the licensee
and the Commission flexibility to work an issue out concerning renewal of a license where there's no legible postmark or no postmark whatsoever.

Agency Response: The Commission agrees and has changed "shall be considered" to "may be considered" at subsection (e)(1).

The amendments are adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission's jurisdiction.

§402.404. License Fees.

(a) Definitions.

(1) Application Escrow Account—A formal record of the debits and credits for application fees.

(2) License period—For purposes of Texas Occupations Code §2001.104 and §2001.158, the term "license period" means the four full calendar quarters immediately preceding the license end date.

(3) Regular License Fee Amount:

(A) For a license to conduct bingo, an amount equal to the license fee amounts based on annual gross receipts specified in Texas Occupations Code, §2001.104(a).

(B) For a commercial lessor license, an amount equal to the license fee amounts based on annual gross rentals specified in Texas Occupations Code, §2001.158(a).

(b) Original License Application.

(1) License to Conduct Charitable Bingo.

(A) An initial license fee for an original license to conduct charitable bingo or an original license to lease bingo premises submitted by an authorized organization that does not have a license issued under the Bingo Enabling Act, must be paid from the organization’s general fund bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross receipts used to calculate the license fee are not reasonable when compared to gross receipts of other organizations with the same number of occasions conducting bingo at the same bingo premises. If no such organizations exist, the Charitable Bingo Operations Division may use gross receipts amounts from organizations with the same number of occasions conducting bingo at similarly situated bingo premises. These amounts are used to establish the gross receipts amount upon which the applicant’s license fee is based and must be submitted.

(2) Commercial License to Lease Bingo Premises.

(A) License fees for an original license to lease bingo premises submitted by an authorized organization licensed to conduct bingo must be paid from the organization’s bingo bank account.

(B) An applicant may be required to submit additional license fees if the estimated gross rental income used to calculate the license fee is not reasonable when compared to the gross rental income at similarly situated bingo premises. These comparative amounts are used to establish the gross rental income amount upon which the applicant’s license fee is based and must be submitted.

(c) Changes Within Six Months of the License Term.

(1) An organization shall re-estimate its annual gross receipts and submit any balance due in license fee amount if there is an increase in the number of bingo occasions conducted within six months of the issuance of the original license to conduct bingo.

(2) An organization shall re-estimate its annual gross rental income and submit any balance due in license fee amount if there is an increase within six months of the issuance of the original lessor license in:

(A) the number of organizations conducting bingo at a licensed location; and

(B) the number of bingo occasions conducted at the licensed location.

(d) License Renewal Fee.

(1) The amount of license fee to be paid upon renewal of a license to conduct bingo or license to lease bingo premises is the recalculated license fee amount calculated for the preceding license period.

(2) If the recalculation of the license fee amount for the previous license period reflects an underpayment of the license fee amount for that license period, the incremental difference must be submitted by the organization within 30 days of the license expiration date and before the license may be renewed.

(3) If the recalculated license fee amount calculation for the first year of a two year license reflects an underpayment of license fee amount for the first year, the incremental difference must be submitted by the organization within 30 days of the first anniversary of the date the license became effective.

(4) Upon written request by an organization to renew its license to conduct bingo or license to lease bingo premises that is in administrative hold, the organization may submit a renewal fee of $100 in lieu of the recalculated fee amount from the preceding license period.

(5) The Commission may require an amount of license fee in addition to the recalculated fee at renewal if there is a change in:

(A) playing location;

(B) rental amount per occasion; or,

(C) increase in the number of occasions bingo is conducted.

(6) If an organization requests its license be placed in administrative hold upon the renewal of the license and submits an estimated Class A ($100 license fee), the Commission may require an organization to submit additional license fee when it files an application to amend a license to conduct charitable bingo if the organization amends its license to begin conducting bingo within the first six months of the license term.

(7) If an organization requests its license be placed in administrative hold upon the renewal of its lessor license and submits an estimated Class A ($100 license fee), the Commission may require an organization to submit an additional license fee when it files the application to amend a commercial license to lease bingo premises if the organization amends its license to begin leasing bingo premises within the first six months of the license term.

(e) Two-Year License Fee Payments.
(1) To be timely received, the full license fee payment for the second year of a two year license must be postmarked no later than the first anniversary of the date the license became effective. A license fee payment bearing no legible postmark, postal meter date, or date of delivery to the common carrier may be considered to have been sent seven calendar days before receipt by the Agency, or on the date of the check, if the check date is less than seven days earlier than date of receipt. If the first anniversary of the date the license became effective falls on a Saturday, Sunday, or legal holiday, the payment will be due the next day which is not a Saturday, Sunday, or legal holiday.

(2) An organization that places its license on administrative hold during the first year of a two year license period and elected to pay the second year by the first anniversary of the license effective date may pay an estimated license fee of $100 for the second year of the license period.

(f) Regular License Fee Recalculation.

(1) For the purpose of determining the license fee recalculation for a license to conduct bingo or license to lease bingo premises, the annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the license expiration date.

(2) For the purposes of determining the license fee recalculation for a two year license to conduct bingo or license to lease bingo premises, each year of the license period shall be recalculated separately. The final recalculated fee will be the total of the yearly license fees. The annual gross receipts or gross rental income, as applicable, shall be based on the four consecutive quarterly returns due immediately prior to the first year period and the four consecutive quarterly returns due immediately prior to the license expiration date of the second year period.

(3) For accounting units, gross receipts used to recalculate the license fee apportioned to a unit member will be calculated by dividing the unit’s gross receipts by the total number of members during the quarter unless the accounting unit bases its distribution of proceeds on the number of occasions.

(4) For accounting units who base their distribution of proceeds on the number of occasions a member conducts, the gross receipts used to recalculate the license fee apportioned to a unit member will be calculated by dividing the unit’s gross receipts by the total number of occasions conducted by all unit members and then multiplying by the number of occasions reported by the unit member.

(5) If a quarterly return is due less than 50 days prior to a license expiration, the gross receipts or gross rental income reported on that return will not be available to be used to calculate the annual gross receipts or gross rental income. Instead, the gross receipts or gross rental income reported on the four immediately preceding quarterly returns, as applicable, will be used to recalculate the organization’s license fee.

(6) If an organization fails to file a report for one or more quarter(s) of the license period, or if there are not four quarters available for any other reason, the Commission shall estimate the quarterly gross receipts or gross rental income for the missing quarter(s) to recalculate the organization’s license fee.

(A) The estimated annual gross receipts are determined by calculating the average gross receipts per occasion reported on the returns filed for the license period and multiplying by the number of occasions licensed per week and then multiplying by 52.

(B) The estimated gross rental income per quarter is determined by adding the gross rental income reported on the returns filed in the license period and dividing this number by the number of returns filed. The resulting number would then be multiplied by four to calculate the organization’s license fee and to estimate the second year license fee of a two year license.

(7) License no longer exists.

(A) Notwithstanding the fact that an organization conducted bingo under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization conducted bingo and collected gross receipts.

(B) Notwithstanding the fact that an organization which leased bingo premises under a license that ceased to exist for whatever reason, the organization must submit the recalculated license fee for the period that the organization leased the premises and collected gross rental income.

(C) If an organization ceases to be licensed for whatever reason, all gross receipts or gross rental income collected (from the period after the last quarterly return used to recalculate the license fee for the prior year) is used to recalculate the final license fee due. If the organization fails to file a return for any required period(s), an estimated return will be used. The organization shall submit any balance due after license fee recalculation.

(8) The Commission may recalculate license fees for up to four consecutive immediately preceding license periods if a change in an organization’s reported gross receipts or gross rental income occurs as a result of an audit, or if the original recalculation was determined by using estimated gross receipts or gross rental income.

(9) If there is a change in an organization’s reported gross receipts or gross rental income, the organization may submit a written request to the Charitable Bingo Operations Division to recalculate its license fees for up to four immediately preceding license periods.

(10) If an organization issued a license that is effective for two years ceases to be licensed prior to conducting bingo in a quarter used to calculate the second year fee, a $100 fee will apply for the second year of the license for the purposes of recalculating the license fee.

(g) Overpayment of License Fee.

(1) An overpayment of a regular license fee based on the previous license period’s recalculation is a credit and shall be applied to the license renewal license fee for the next license period or the second year of a two year license, as applicable.

(2) An organization may submit a written request to have the overpayment of a regular license fee based on the previous license period’s recalculation applied to:

(A) outstanding liabilities;

(B) regular license fee for another license issued to the organization under the Bingo Enabling Act; or

(C) remain in the application escrow account.

(3) An organization may submit additional license fees to be placed in the application escrow account and applied toward future license applications.

(4) An accounting unit may submit additional license fees to be placed in an application escrow account and applied toward future license application for its members. At the time of submission of the additional license fees, the accounting unit must designate in writing the member organization to which the additional license fee payment applies.
(5) The unit’s designated agent, unit manager or officer of the organization may submit a written request to move excess license fee payments previously submitted from one active unit member’s application escrow account to another active unit member’s application account.

(6) All license fee payments are considered the property of the licensed authorized organization regardless of whether the license fee is submitted prior to joining the accounting unit or payment is made by the accounting unit. Any overpayment of license fee existing when the licensed authorized organization leaves a unit is considered the property of the licensed authorized organization and will be credited to the licensed authorized organization. Any underpayment of license fee when the licensed authorized organization leaves a unit is considered the liability of the licensed authorized organization.

(h) Refund of Payments.

(1) Once an organization is no longer licensed, and if any outstanding liabilities exist, the license fee payment will be applied to the outstanding liability. Any balance from the license fee payment, after liabilities are paid, shall be refunded to the organization provided no other outstanding liabilities under the Bingo Enabling Act to the State exist. A refund will not be issued until all liabilities to the State under the Bingo Enabling Act have been paid and all quarterly reports have been filed and processed by the Commission.

(2) If an application for a license is denied, the Director may refund the application fee less the cost incurred by the Charitable Bingo Operations Division to process the application.

(3) If an application for an original license is withdrawn, the applicant’s license fee may be refunded upon written request less a $100 processing fee.

(4) If the Commission serves the applicant for an original license with a notice of application denial and the applicant later withdraws the application, the Commission will refund the applicant’s license fee, less a $400 processing fee, upon the applicant’s written request.

(5) The Commission will refund to the licensed authorized organization any overpayment of regular license fee for a licensed authorized organization who was a member of a unit.

(i) Transfer of Commercial License to Lease Bingo Premises.

(1) All gross rental income collected in connection with a license to lease bingo premises that has been transferred during the term of the license shall be used to recalculate the license fee.

(2) A license fee recalculation credit in connection with a license to lease bingo premises that was transferred during the term of the license shall be credited to the current license holder at the time of license renewal.

(3) A license fee recalculation balance due for a license to lease bingo premises that was transferred during the term of the license shall be the liability of the current license holder at the time of license renewal.

(j) The license fee in connection with a license to manufacture bingo supplies, distribute bingo supplies, or system service provider is not refundable.

(k) An organization must submit a fee of $10.00 to the Commission at the time the licensed organization notifies the Commission of a change in the time or date of a game for a regular license to conduct bingo.

(l) Temporary Authorization to Conduct Bingo.

(1) The amount of gross receipts collected in connection with a temporary authorization is used to recalculate the regular license fee.

(2) An organization conducting bingo pursuant to a temporary authorization must comply with the same statutory and administrative rule requirements, annual gross receipts fee schedule, and quarterly return filing requirements as an organization which has a regular license to conduct bingo.

(3) If an organization conducting bingo pursuant to a temporary authorization does not become licensed to conduct bingo, the fee for the temporary authorization will be determined by the fee schedule for a license to conduct bingo set out in Occupations Code, §2001.104(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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16 TAC §402.408

The Texas Lottery Commission (Commission) adopts new 16 TAC §402.408 (relating to Designation of Members), with changes to the proposed text as published in the January 22, 2010, issue of the Texas Register (35 TexReg 431). The purpose of the new rule is to provide the requirements for an organization to designate an individual as a member in accordance with new §2001.411(c-1) of the Bingo Enabling Act resulting from recent legislation H.B. 1474 effective October 1, 2009. The new rule requires a licensed authorized organization to submit to the Commission a completed Designated Member form signed by the organization’s bingo chairperson. Additionally, the new rule sets forth requirements for notifying the Commission of a designated member’s status change.

A public comment hearing was held on February 16, 2010 at 10:00 a.m. One individual was present at the hearing and commented against the new rule as proposed. A representative of the Bingo Interest Group commented against the new rule as proposed, and suggested changes to certain portions of the new rule as proposed. The Commission received written comments against the new rule as proposed from one individual during the public comment period.

Comment: Subsection 402.408(a)(2) and subsection (b) make designating a member in accordance with new paragraph (c-1) of Tex. Occ. Code §2001.411 far too cumbersome. The rule should not require a vote of the members of the organization in order to designate an individual as a member. Many organizations do not require a vote on membership. The proposed rule would put a new requirement on hundreds of licensed authorized organizations to vote on new members. This would create a hardship on organizations that do not meet frequently.
Agency Response: The Commission agrees and has modified the rule by deleting proposed paragraph (a)(2) and subsection (b) that required the organization’s membership to vote on new members and submit signed, certified meeting minutes recording the vote. Rather, language is added to subsection (a) to simply require that the Designated Member form be signed by the bingo chairperson.

Comment: The whole notion of request to remove a designated member in paragraph (d)(2) seems to give some discretion to the agency which is unwarranted. The purpose of this section in the statute was to recognize that these organizations don’t require the state of Texas to micromanage their affairs. Any notion of having to go remove members should be eliminated.

Agency Response: The Commission agrees and has changed the word “request” to “notification” to clarify that Commission approval is not required for an organization to change the status of a member, but rather the organization must simply notify the Commission of the change.

Comment: The bingo chairperson concept should be loaded up with responsibility and be the single point of contact.

Agency Response: The agency agrees and has added language in subsections (a) and (d) requiring the bingo chairperson’s signature on the designation form and notification of change in status.

The new rule is adopted under Occupations Code §2001.054, which authorizes the Commission to adopt rules to enforce and administer the Bingo Enabling Act, and under Government Code §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of this chapter and the laws under the Commission’s jurisdiction.

§402.408. Designation of Members.

(a) To designate an individual as a member for purposes of Texas Occupations Code §2001.411(c-1) and other law, a licensed authorized organization must submit to the Commission a completed Designated Member form prescribed by the Commission and signed by the bingo chairperson.

(b) A licensed authorized organization is responsible for all of the bingo related activities conducted by its organization’s members and designated members.

(c) A designated member or a licensed authorized organization may notify the Commission that the designated member’s status has changed and is no longer bona fide by submitting:

(1) a completed form prescribed by the Commission, or

(2) a written notification signed by the bingo chairperson that states that the designated member’s status has changed and is no longer bona fide and provides the effective date.

(d) Removal of a designated member from all positions held for the organization is effective on the latter of the date received by the Commission or a date indicated.

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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**TITLE 19. EDUCATION**

**PART 2. TEXAS EDUCATION AGENCY**

**CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS**

**SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS**

19 TAC §66.67

The State Board of Education (SBOE) adopts new §66.67, concerning instructional materials. The new section is adopted with changes to the proposed text as published in the December 11, 2009, issue of the Texas Register (34 TexReg 8913). The adopted new section implements changes to the instructional materials review and adoption process resulting from the 81st Texas Legislature, 2009.

House Bill (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.

The new section was modified at adoption to address opportunity for public comment on open-source textbooks to be adopted, including a public hearing before the SBOE. The new section was also modified at adoption to specify the responsibility of publishers to comply with required duties and to clarify that open-source textbooks shall not fulfill the requirement of a classroom set.

Appropriate changes resulting from the adopted new section will be incorporated into the Educational Materials and Textbooks (EMAT) online system. The adopted new section has no 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 allow districts to begin preparing for implementation. The effective date is 20 days after filing as adopted.

No public comments were received on the proposal.

The new section is adopted under the TEC, §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 section implements the TEC, §7.102(c) and Chapter 31.

§66.67. Adoption of Open-Source Instructional Materials.

(a) “Open-Source Materials” are defined by the Texas Education Code, (TEC) §31.002, as electronic textbooks that are available for downloading from the Internet at no charge to a student and without requiring the purchase of an unlock code, membership, or other access or use charge, except for a charge to order an optional printed copy of all or part of the textbook. The term includes a state-developed open-source textbook purchased under the TEC, Chapter 31, Subchapter B-1.

(b) The State Board of Education (SBOE) shall place an open-source textbook submitted for a secondary-level course on a conforming or nonconforming list if the textbook meets the criteria outlined in subsections (c) and (d) of this section.

(c) An open-source textbook must be:

(1) submitted by an eligible institution, defined as a public institution of higher education that is designated as a research university or emerging research university under the Texas Higher Education Coordinating Board’s accountability system, or a private university located in Texas that is a member of the Association of American Universities, or a public technical institute, as defined by the TEC, §61.003;

(2) intended for a secondary-level course; and

(3) written, compiled, or edited primarily by faculty of an eligible institution who specialize in the subject area of the textbook.

(d) To submit an open-source textbook, an eligible institution must:

(1) certify by the board of regents or president of the university, or by an individual authorized by one of these entities, that the textbook qualifies for placement on a conforming or nonconforming list based on the extent to which the textbook covers the essential knowledge and skills identified under the TEC, §28.002;

(2) identify each contributing author;

(3) certify by the appropriate academic department of the submitting institution that the textbook is accurate; and

(4) certify that:

(A) for a textbook for a senior-level course, a student who successfully completes a course based on the textbook will be prepared, without remediation, for entry into the eligible institution’s freshman-level course in that subject; or

(B) for a textbook for a junior-level and senior-level course, a student who successfully completes the junior-level course based on the textbook will be prepared for entry into the senior-level course.

(e) All submissions required by subsection (d) of this section shall be made in a format approved by the SBOE and the commissioner of education.

(f) Technology-based open-source textbooks shall be required to comply with the technical standards in the Rehabilitation Act, §508, as applicable.

(g) All university-developed open-source textbook submissions shall be reviewed independently by the same process used in §66.36 of this title (relating to State Review Panels: Duties and Conduct) to confirm the content meets the criteria for placement on the conforming or nonconforming list based on the extent to which the textbook covers the essential knowledge and skills. The SBOE shall notify the submitting institution of any discrepancy with alignment with essential knowledge and skills.

(h) Before placing an open-source textbook submitted under subsection (b) of this section on the conforming or nonconforming list, the SBOE shall direct the Texas Education Agency (TEA) to post the materials on the TEA website for 60 days to allow for public comment and the SBOE shall hold a public hearing on the textbooks.

(i) With the exception of 1% of sales, all university-developed open-source textbook submissions shall be assessed fines as defined in §66.10(d)-(f) of this title (relating to Procedures Governing Violations of Statutes--Administrative Penalties).

(j) For purposes of this chapter, an entity producing an open-source material shall comply with all duties of publishers in this chapter or in the TEC, Chapter 31, from which such entity is not explicitly exempted.

(k) An open-source textbook defined in the TEC, §31.0241 and §31.071, shall not fulfill the requirement of a classroom set.

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

19 TAC §66.69

The State Board of Education (SBOE) adopts an amendment to §66.69, concerning instructional materials. The amendment is adopted with changes to the proposed text as published in the February 5, 2010, issue of the Texas Register (35 TexReg 749). The section addresses provisions relating to ancillary materials. The adopted amendment addresses certain ancillary materials in prekindergarten systems.

At the January 15, 2010, meeting, the SBOE approved for first reading and filing authorization a proposed amendment to 19 TAC §66.69, Ancillary Materials, adding a new subsection (b) to specify that three-dimensional ancillary materials designed for use as manipulatives in prekindergarten systems that cannot be produced in a digital or web-based format shall not be required to be provided electronically. The subsequent subsection was reordered accordingly.

At the March 12, 2010, meeting, the SBOE approved for second reading and final adoption the amendment to 19 TAC §66.69. In response to public comment, the amendment was modified at adoption to address implementation in subsection (b).

The adopted amendment has no procedural and reporting implications. The adopted amendment has no locally maintained paperwork requirements.

The Texas Education Agency determined that there is no direct adverse economic impact for small businesses and microbusi-
nesses; 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 the public comment received and the corresponding response regarding the proposed amendment to 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials, Subchapter B, State Adoption of Instructional Materials, §66.69, Ancillary Materials.

Comment. A publisher requested that the SBOE make the proposed amendment regarding three-dimensional ancillary materials for prekindergarten systems effective for Proclamation 2011. The publisher commented that publishers were not notified of the new requirement that all ancillary materials must be digital until January and explained the difficulties this would cause with the timeline for providing materials. The publisher further commented that three-dimensional components are more practical for prekindergarten classrooms than digital ancillary items.

Response. The SBOE agreed and modified language in subsection (b) to clarify the intent to begin implementation with Proclamation 2011.

The amendment is adopted under the TEC, §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 TEC, §7.102(c) and Chapter 31.

§66.69. Ancillary Materials.

(a) "Ancillary materials" are defined by the Texas Education Agency (TEA) as materials that are not listed on the publisher’s intent to bid statement but which the publisher plans to provide to districts and open-enrollment charter schools free with their order. A publisher of adopted instructional materials shall provide any ancillary item free of charge or at the same price discount to the same extent that the publisher provides the item free of charge or at a price discount to any state, public school, or school district in the United States. Free or discounted price ancillary items will be distributed equitably to all school districts and open-enrollment charter schools regardless of size. The title of each ancillary item that a publisher will make available to school districts and open-enrollment charter schools at no charge and the ratio at which each item shall be supplied shall be filed with the TEA according to the schedule contained in the proclamation. A publisher must notify TEA of any ancillaries provided to school districts and open-enrollment charter schools that are not listed with TEA. All packages of ancillary materials shipped to school districts and open-enrollment charter schools shall be labeled, "Ancillary Materials -- Not Reviewed by the State Board of Education."

(b) Three-dimensional ancillary materials designed for use as manipulatives in prekindergarten systems that cannot be produced in a digital or web-based format shall not be required to be provided electronically. This subsection shall be implemented beginning with Proclamation 2011.

(c) Designated ancillaries shall be made available to the State Board of Education (SBOE) upon request. Individual SBOE members are not authorized to act on behalf of the SBOE in requesting and making changes to supplemental or ancillary materials.

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
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CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

The Texas Education Agency (TEA) adopts the repeal of §89.1401, new §89.1401, and amendments to §§89.1403, 89.1405, 89.1409, 89.1411, 89.1413, 89.1415, 89.1417, and 89.1419, concerning the high school equivalency program (HSEP). The repeal of §89.1401, new §89.1401, and amendments to §§89.1403, 89.1405, 89.1411, 89.1413, 89.1415, 89.1417, and 89.1419 are adopted without changes to the proposed text as published in the October 9, 2009, issue of the Texas Register (34 TexReg 6978) and will not be republished. The amendment to §89.1409 is adopted with a change to the proposed text as published in the October 9, 2009, issue of the Texas Register (34 TexReg 6978). The rules in 19 TAC Chapter 89, Subchapter DD, implement provisions for the implementation and administration of HSEPs. The adopted rule actions update attendance and funding rules for HSEPs to correspond with other administrative rules that provide for alternative attendance accounting programs. The adopted rule actions also clarify student eligibility criteria, update the assessment requirement for a student entering an HSEP, and make minor technical corrections throughout the subchapter.

The Texas Education Code (TEC), §29.087(n), authorizes the commissioner to adopt rules for the implementation and administration of HSEPs. The rules adopted in 19 TAC Chapter 89, Subchapter DD, implement the provisions of the TEC, §29.087.

The adopted revisions modify the existing HSEP attendance accounting and funding rules to match those for the Optional Flexible School Day Program. The adopted revisions also clarify student eligibility criteria, update the assessment requirement for a student entering an HSEP, and make minor technical corrections. Following is a description of the adopted rule actions.

Section 89.1401, Definitions, was repealed and adopted as new §89.1401, Purpose.

Section 89.1403, Student Eligibility, was modified in paragraph (2)(D) to clarify student eligibility criteria. Language in clause (ii) addressing students who left school prior to Grade 9 was removed in alignment with the TEC, §29.087(d)(2)(D). Also, language in clause (i) was reorganized as subparagraph (D) for clarification purposes. The provision in subparagraph (D) allows students who left school prior to enrollment in Grade 9, but were subsequently served in other educational settings that resulted
in their Grade 9 enrollment two years prior to the initial participation in an HSEP, to be served by an HSEP as long as they meet the criteria specified in §89.1403(1) or (2). Minor technical corrections were also made in the section.

Section 89.1405, Application to Operate a High School Equivalency Program, was amended to make minor technical corrections.

Section 89.1409, Assessment, was updated in subsection (a) to reflect the assessment requirement for a student entering an HSEP. A corresponding update was made in subsection (c). Minor technical corrections were also made in the section. At the advice of agency legal counsel, a change was made in subsection (a) at adoption to clarify Grade 9 assessment requirements beginning with the 2011-2012 school year.

Section 89.1411, Attendance, was modified in subsection (a) to reflect an increase from six to ten hours in the maximum number of hours of instruction in an HSEP that a student may attend per day. Subsection (c) was changed to require that school districts or open-enrollment charter schools report total contact minutes instead of total contact hours and identify any excess minutes, instead of hours, not eligible for funding. Minor technical corrections were also made in the section.

Section 89.1413, Funding Under Texas Education Code, Chapters 41, 42, and 46, was changed in subsection (a)(2), regarding the minimum amount of instructional time a student must receive in a given day for instructional contact time to be recorded, from 2 hours to 45 minutes. The existing subsection (a)(4), which requires instructional contact time to be recorded in 30-minute increments, was deleted, and subsequent paragraphs were renumbered. In former subsection (a)(6), renumbered as subsection (a)(5), a sentence stating that school districts are permitted to designate students receiving instruction in HSEP as either full-day eligible or half-day eligible was removed. In that same paragraph, a change was made in the maximum amount of instructional time allowed each school day for a student receiving instruction in an HSEP. In former subsection (a)(7), renumbered as subsection (a)(6), the existing formula for determining instructional contact time for a six-week period for students receiving instruction in an HSEP was removed. Minor technical corrections were also made in the section.

Section 89.1415, Extracurricular Participation, was amended to make minor technical corrections.

Section 89.1417, Conditions of Program Operation, was modified in subsection (a) to allow flexibility in the manner in which data is collected. Subsection (d) was also modified to clarify that a seven-hour school day is the minimum length of time that must be offered to a student enrolled in an HSEP. A minor technical correction was made in subsection (e).

Section 89.1419, Revocation of Authorization to Operate a High School Equivalency Program, was modified in subsection (e) to clarify reference to the TEC. Minor technical edits were also made in the section.

The adopted amendment to §89.1417 allows for flexibility in the manner in which data is collected on behalf of the General Educational Development Testing Service. No additional data collection is anticipated. No new locally maintained paperwork requirements are anticipated.

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 9, 2009, and ended November 9, 2009. No public comments were received.

SUBCHAPTER DD. COMMISSIONER’S RULES CONCERNING HIGH SCHOOL EQUIVALENCY PROGRAMS

19 TAC §89.1401

The repeal is adopted under the TEC, §29.087, which authorizes the commissioner of education to adopt rules to implement the requirement that the TEA develop a process by which a school district or open-enrollment charter school may apply to the commissioner for authority to operate a program to prepare eligible students to take a high school equivalency examination.

The repeal implements the TEC, §29.087.

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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Cristina De La Fuente-Valadez
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19 TAC §§89.1401, 89.1403, 89.1405, 89.1409, 89.1411, 89.1413, 89.1415, 89.1417, 89.1419

The new section and amendments are adopted under the TEC, §29.087, which authorizes the commissioner of education to adopt rules to implement the requirement that the TEA develop a process by which a school district or open-enrollment charter school may apply to the commissioner for authority to operate a program to prepare eligible students to take a high school equivalency examination.

The new section and amendments implement the TEC, §29.087. §89.1409. Assessment.

(a) A student entering a High School Equivalency Program (HSEP) must take:

(1) prior to entering the program, the following assessments, as applicable:

(A) if the student first enters Grade 9 prior to the 2011-2012 school year, the student must take the Grade 9 Texas Assessment of Knowledge and Skills (TAKS) assessment in reading and mathematics; or

(B) if the student first enters Grade 9 during or after the 2011-2012 school year, the student must take the end-of-course (EOC) assessments for Algebra I and English I. Released Grade 9 TAKS assessments may be used until the applicable EOC has been released. The local school district shall be responsible for scoring the released assessment;
The Texas Education Agency (TEA) adopts an amendment to §109.41, concerning the Financial Accountability System Resource Guide. The amendment is adopted without changes to the proposed text as published in the February 12, 2010, issue of the Texas Register (35 TexReg 1005) and will not be republished. The section adopts by reference the Financial Accountability System Resource Guide as the TEA’s official rule. The Resource Guide describes rules for financial accounting in modules for financial accountability and reporting, budgeting, purchasing, auditing, site-based decision making, accountability, data collection and reporting, management, state compen-

The adopted amendment to §109.41 changes the date from “June 2008” to “January 2010” to reflect the most recent version of the Resource Guide. The adopted amendments to the Resource Guide include updates as a result of recent legislative changes as well as updates to accounting and auditing standards. The charter school supplement was also updated to reflect legislative changes as well as updates to accounting and auditing standards.

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 February 12, 2010, and ended March 15, 2010. No public comments were received.

The amendment is adopted under the TEC, §§7.055, 7.102(c)(32), 44.001, 44.007, and 44.008, which authorize the commissioner of education to establish advisory guidelines relating to fiscal management of a school district and the State Board of Education to establish a standard school fiscal accounting system in conformity with generally accepted accounting principles.

The adopted amendment implements the TEC, §§7.055, 7.102(c)(32), 44.001, 44.007, and 44.008.

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
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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING
SUBCHAPTER C. ADOPTIONS BY REFERENCE

19 TAC §109.41
The Texas Education Agency (TEA) adopts an amendment to §109.41, concerning the Financial Accountability System Resource Guide. The amendment is adopted without changes to the proposed text as published in the February 12, 2010, issue of the Texas Register (35 TexReg 1005) and will not be republished. The section adopts by reference the Financial Accountability System Resource Guide as the TEA’s official rule. The Resource Guide describes rules for financial accounting in modules for financial accountability and reporting, budgeting, purchasing, auditing, site-based decision making, accountability, data collection and reporting, management, state compen-

The adopted amendment to §109.41 changes the date from “June 2008” to “January 2010” to reflect the most recent version of the Resource Guide. The adopted amendments to the Resource Guide include updates as a result of recent legislative changes as well as updates to accounting and auditing standards. The charter school supplement was also updated to reflect legislative changes as well as updates to accounting and auditing standards.

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 February 12, 2010, and ended March 15, 2010. No public comments were received.

The amendment is adopted under the TEC, §§7.055, 7.102(c)(32), 44.001, 44.007, and 44.008, which authorize the commissioner of education to establish advisory guidelines relating to fiscal management of a school district and the State Board of Education to establish a standard school fiscal accounting system in conformity with generally accepted accounting principles.

The adopted amendment implements the TEC, §§7.055, 7.102(c)(32), 44.001, 44.007, and 44.008.

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
SUBCHAPTER C. HIGH SCHOOL
The State Board of Education (SBOE) adopts amendments to §§110.46-110.55 and 110.57-110.66 and the repeal of §110.56, concerning Texas essential knowledge and skills (TEKS) for English language arts and reading. The repeal of §110.56 is adopted without changes to the proposed text as published in the February 5, 2010, issue of the Texas Register (35

ADOPTED RULES  April 23, 2010  35 TexReg 3261
The amendments to §§110.46-110.55 and 110.57-110.66 are adopted with changes to the proposed text as published in the February 5, 2010, issue of the Texas Register (35 TexReg 753). The sections establish the TEKS for high school English language arts elective courses. The adopted amendments and repeal revise the English language arts high school electives TEKS with implementation beginning with the 2011-2012 school year.

In February, April, and July 2009, committees were convened to review the high school English language arts electives TEKS. Initial drafts of the recommendations for revisions to the English language arts electives TEKS were posted on the Texas Education Agency (TEA) website for informal feedback. During the September 2009 meeting, the SBOE directed TEA staff to instruct the speech TEKS review committee to attempt to align TEKS for additional speech courses to the Communication Applications TEKS.

The English language arts electives TEKS review committees met again in November 2009 to review feedback and complete recommendations for revisions to the English language arts electives TEKS. The recommendations from the review committees were presented to the SBOE Committee of the Full Board during a discussion item at the November meeting.

The SBOE Committee of the Full Board held a public hearing on the revised English language arts high school electives in 19 TAC Chapter 110, Texas Essential Knowledge and Skills for English Language Arts and Reading, Subchapter C, High School, on January 13, 2010. At the January 15, 2010, meeting, the SBOE approved the proposed revisions for first reading and filing authorization.

The SBOE Committee of the Full Board held a second public hearing on the revised English language arts high school electives on March 10, 2010. At the March 12, 2010, meeting, the SBOE approved the adopted revisions for second reading and final adoption with an effective date of August 22, 2011. The future effective date will allow the revised TEKS to supersed the original TEKS at the appropriate time.

The amendments to §§110.46-110.55 and 110.57-110.66 were modified at adoption to change terminology from "e.g." to "such as." In addition, §§110.46-110.55 and 110.57-110.66 were modified at adoption to include in the introductions an explanation of the use of the terms "including" and "such as."

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.

No public comments were received on the proposal.

19 TAC §§110.46 - 110.55, 110.57 - 110.66

The amendments are adopted under the TEC, §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 amendments implement the TEC, §§7.102(c)(4), 28.002, and 28.025.

§110.46. Independent Study in English (One-Half to One Credit).

(a) Introduction.

(1) Students enrolled in Independent Study in English will focus on a specialized area of study such as the work of a particular author or genre. Students will read and write in multiple forms for a variety of audiences and purposes. High school students are expected to plan, draft, and complete written compositions on a regular basis and carefully examine their papers for clarity, engaging language, and the correct use of the conventions and mechanics of written English.

(2) If this course is being used to satisfy requirements for the Distinguished Achievement Program, a student research/product must be presented before a panel of professionals or approved by the student’s mentor.

(3) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(4) Statements that contain the word “including” reference content that must be mastered, while those containing the phrase “such as” are intended as possible illustrative examples.

(5) The essential knowledge and skills as well as the student expectations for Independent Study in English are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student investigates through reading literature and researching self-selected and assigned topics. The student is expected to:

(A) read widely for further study;

(B) generate relevant, interesting, and researchable questions with instructor guidance and approval; and

(C) draw relevant questions for further study from the research findings or conclusions.

(2) The student uses writing as a tool for learning and research. The student produces visual representations that communicate with others. The student is expected to:

(A) produce research projects and reports in multiple forms for a variety of audiences from primary and secondary sources using available technology;

(B) conduct a research project(s), producing an original work in print or another medium with a demonstration of advanced skill;

(C) use writing to organize and support what is known and needs to be learned about a topic, including discovering, recording, reviewing, and learning;

(D) compile written ideas and representations; interpret information into reports, summaries, or other formats; and draw conclusions; and

(E) use writing as a tool such as to reflect, explore, or problem solve.

§110.47. Reading I, II, III (One-Half to Three Credits).

(a) Introduction.
Reading I, II, III offers students reading instruction to successfully navigate academic demands as well as attain life-long literacy skills. Specific instruction in word recognition, vocabulary, comprehension strategies, and fluency provides students an opportunity to read with competence, confidence, and understanding. Students learn how traditional and electronic texts are organized and how authors choose language for effect. All of these strategies are applied in instructional-level and independent-level texts that cross the content areas.

For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

The essential knowledge and skills as well as the student expectations for Reading I, II, III, elective courses, are described in subsection (b) of this section.

Knowledge and skills.

The student uses a variety of word recognition strategies. The student is expected to:

- apply knowledge of letter-sound correspondences, language structure, and context to recognize words; and
- use reference guides such as dictionaries, glossaries, and available technology to determine pronunciations of unfamiliar words.

The student acquires an extensive vocabulary through reading and systematic word study. The student is expected to:

- expand vocabulary by reading, viewing, listening, and discussing;
- determine word meanings through the study of their relationships to other words and concepts such as content, synonyms, antonyms, and analogies;
- recognize the implied meanings of words such as idiomatic expressions, homonyms, puns, and connotations;
- apply the knowledge of roots, affixes, and word origins to infer meanings; and
- use available reference guides such as dictionary, glossary, thesaurus, and available technology to determine or confirm the meanings of new words and phrases.

The student reads for a variety of purposes with multiple sources, both narrative and expository. The student is expected to:

- read functional texts to complete real-world tasks such as job applications, recipes, and product assembly instructions;
- read to complete academic tasks;
- read using test-taking skills such as highlighting, annotating, previewing questions, noticing key words, employing process of elimination, allotting time, and following directions;
- read to gain content/background knowledge as well as insight about oneself, others, or the world; and
- read for enjoyment.

The student comprehends texts using effective strategies. The student is expected to:

- use prior knowledge and experience to comprehend;
- determine and adjust purpose for reading;
- self-monitor reading and adjust when confusion occurs by using appropriate strategies;
- summarize texts by identifying main ideas and relevant details;
- construct visual images based on text descriptions;
- use study skills such as previewing, highlighting, annotating, note taking, and outlining; and
- use questioning to enhance comprehension before, during, and after reading.

The student draws complex inferences and analyzes and evaluates information within and across texts of varying lengths. The student is expected to:

- find similarities and differences across texts such as explanations, points of view, or themes;
- identify explicit and implicit meanings of texts;
- support inferences with text evidence and experience;
- analyze text to draw conclusions, state generalizations, and make predictions supported by text evidence; and
- distinguish facts from simple assertions and opinions.

The student reads critically to evaluate texts in order to determine the credibility of the sources. The student is expected to:

- identify and analyze the audience, purpose, and message of the text;
- evaluate the credibility and relevance of informational sources;
- analyze the presentation of information and the strength of quality of the evidence used by the author; and
- evaluate the author’s motivation, stance, or position and its effect on the validity of the text.

The student reads with fluency and understanding in increasingly demanding and varied texts. The student is expected to:

- read silently or orally such as paired reading or literature circles for sustained periods of time; and
- adjust reading rate based on purposes for reading.

The student formulates and supports responses to a wide variety of texts. The student is expected to:

- respond actively to texts in both aesthetic and critical ways;
- respond to text in multiple ways such as discussion, journal writing, performance, and visual/symbolic representation;
- support responses with prior knowledge and experience; and
- support responses with explicit textual information.

The student reads and responds to informational texts. The student is expected to:

- generate relevant and interesting questions;
(B) use text features and graphics to form an overview to determine where to locate information;

(C) analyze the use of common expository text structures such as sequence, description, compare/contrast, cause/effect, and problem/solution;

(D) organize and record new information in systematic ways such as outlines, charts, and graphic organizers; and

(E) communicate information gained from reading.

(10) The student reads to increase knowledge of one’s own culture, the culture of others, and the common elements of cultures. The student is expected to:

(A) compare text events with personal and other readers’ experiences; and

(B) recognize literary themes and connections that cross cultures.

§110.48. College Readiness and Study Skills (One-Half Credit).

(a) Introduction.

(1) High school students that require or request additional honing of the study skills, especially as the students prepare for the demands of college, may enroll in the one semester course College Readiness and Study Skills. In this course, students acquire techniques for learning from texts, including studying word meanings, identifying and relating key ideas, drawing and supporting inferences, and reviewing study strategies. In all cases, interpretations and understandings will be presented through varying forms, including through use of available technology. Students accomplish many of the objectives through wide reading as well as use of content texts in preparation for post-secondary schooling.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for College Readiness and Study Skills, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student reads widely for a variety of purposes from numerous sources and cultures. The student is expected to:

(A) read self-selected and assigned texts from varied sources such as literature, literary non-fiction, expository, electronic texts, and other media; and

(B) read for various purposes such as to be entertained, to appreciate a writer’s craft, to be informed, to take action, and to discover models for writing.

(2) The student builds an extensive vocabulary through reading and systematic word study. The student is expected to:

(A) expand vocabulary through wide reading, viewing, listening, and discussion;

(B) apply knowledge of affixes and roots to comprehend;

(C) investigate word origins to understand meanings, derivations, and spellings;

(D) distinguish between the connotative and denotative meanings and interpret the connotative power of words;

(E) use reference material to determine precise meaning and usage such as glossary, dictionary, thesaurus, and available technology; and

(F) use context to determine meanings of words and phrases such as figurative language, idiomatic expressions, homonyms, and technical vocabulary.

(3) The student comprehends texts using a variety of strategies. The student is expected to:

(A) use self-monitoring reading strategies to make modifications when understanding breaks down;

(B) activate and draw upon prior knowledge and experience;

(C) establish purposes for reading such as to discover, to understand, to interpret, to enjoy, and to solve problems;

(D) construct images based on text descriptions; and

(E) create graphic organizers to represent textual information.

(4) The student reads critically to evaluate texts and the authority of sources. The student is expected to:

(A) analyze audience, purpose, and message of text;

(B) evaluate the credibility and relevance of information sources;

(C) evaluate the author’s motivation, stance, or position and its effect on the validity of the text;

(D) analyze aspects of texts such as organizational patterns, diction, format, and tone for their effect on audiences;

(E) identify explicit and implicit textual information in text;

(F) support complex inferences with text evidence and experience; and

(G) recognize persuasive techniques in texts such as bandwagon, glittering generalities, and testimonials.

(5) The student uses study strategies to learn from a variety of texts. The student is expected to:

(A) use effective reading strategies to recall material from text such as previewing, skimming, scanning, rereading, and asking relevant questions;

(B) summarize information from text such as outlines, study guides, annotating, and two-columned note taking;

(C) use text features and graphics such as headings, tables, sidebars, photographs, and captions to form an overview of informational texts and to determine where to locate information; and

(D) use effective test-taking strategies for different types of tests.

(6) The student expresses and supports responses to various types of texts. The student is expected to:

(A) respond to literary and informational texts through various modes of communication such as discussions, further reading, presentations, journals, written responses, or visual arts;
(B) formulate and defend a position with support synthesized from multiple texts; and

(C) evaluate personal responses to reading for evidence of growth.

§110.49. Visual Media Analysis and Production (One-Half Credit). (a) Introduction.

(1) High school students enrolled in Visual Media Analysis and Production will interpret various media forms for a variety of purposes. In addition, students will critique and analyze the significance of visual representations and learn to produce media messages that communicate with others.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Visual Media Analysis and Production, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student recognizes/interprets visual representations as they apply to visual media. The student is expected to:

(A) identify the historical development of visual media;

(B) distinguish the purposes of various media forms such as information, entertainment, and persuasion; and

(C) recognize strategies used by media to inform, persuade, entertain, and transform culture such as advertising, perpetuation of stereotypes, use of visual representations, special effects, and language.

(2) The student analyzes and critiques the significance of visual representations. The student is expected to:

(A) evaluate the persuasive techniques of media messages such as glittering generalities, associations with personalities, logical fallacies, and use of symbols;

(B) compare and contrast media with other art forms;

(C) analyze techniques used in visual media;

(D) explore the emotional and intellectual effects of visual media on viewers; and

(E) recognize how visual and sound techniques convey messages in media such as special effects, editing, camera angles, reaction shots, sequencing, and music.

(3) The student produces visual representations that communicate with others. The student is expected to:

(A) use a variety of forms and technologies to communicate specific messages;

(B) use a range of techniques to create a media text and reflect critically on the work produced; and

(C) study the relationship between subject matter and choice of media for presenting that subject.

§110.50. Contemporary Media (One Credit). (a) Introduction.

(1) Students enrolled in Contemporary Media will understand how media influence tastes, behavior, purchasing, and voting decisions. Students who are media literate understand television, radio, film, and other visual images and auditory messages.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Contemporary Media, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student identifies the history and evolution of media used for mass communication. The student is expected to:

(A) examine the development of the technologies that influence each medium; and

(B) analyze the historical contributions made by various media personnel.

(2) The student recognizes the types and functions of mass media. The student is expected to:

(A) identify the types of mass media such as television, radio, Internet, podcast, YouTube, newspaper, periodicals, blogs, social networking, emailing, texting, search engines, and music; and

(B) analyze the roles of media as sources of information, entertainment, persuasion, and education.

(3) The student identifies and analyzes regulations that govern media. The student is expected to:

(A) identify the appropriate government agencies that regulate media; and

(B) analyze government regulatory issues regarding censorship, political campaigns, news, ethics, and responsibilities.

(4) The student analyzes the influence of media. The student is expected to:

(A) analyze the influence of viewing and listening habits on individuals;

(B) analyze the influence of media in shaping governmental decisions, social choices, and cultural norms;

(C) evaluate standards for "quality programming"; and

(D) analyze possible ways to improve mass media.

(5) The student analyzes, creates, and evaluates visual and auditory messages. The student is expected to:

(A) develop skills for organizing, writing, and designing media messages for specific purposes and effects;

(B) develop technical and communication skills needed by various media personnel; and

(C) plan, organize, produce, and present media messages.
(1) Students enrolled in Literary Genres will spend time analyzing the fictional and poetic elements of literary texts and read to appreciate the writer’s craft. High school students will discover how well written literary texts can serve as models for their writing. High school students respond to oral, written, and electronic text to connect their knowledge of the world. 

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word “including” reference content that must be mastered, while those containing the phrase “such as” are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Literary Genres, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

1. The student builds an extensive vocabulary through reading and systematic word study. The student is expected to:

   (A) expand vocabulary through wide reading, listening, and discussion;
   (B) investigate word origins as an aid to understanding meanings, derivations, and spellings as well as influences on the English language; and
   (C) discriminate between connotative and denotative meanings and interpret the connotative power of words.

2. The student analyzes fictional and poetic elements focusing on how they combine to contribute meaning in literary texts. The student is expected to:

   (A) compare and contrast varying aspects of texts such as themes, conflicts, and allusions;
   (B) propose and provide examples of themes that cross texts;
   (C) connect literature to historical context, current events, and his/her own experiences;
   (D) analyze relevance of setting and time frame to text’s meaning;
   (E) identify basic conflicts;
   (F) describe the development of plot and how conflicts are addressed and resolved;
   (G) analyze characters’ traits, motivations, changes, and stereotypical features;
   (H) describe how irony, tone, mood, style, and sound of language contribute to the effect of the text;
   (I) determine and explain purposes and effects of figurative language, particularly symbolic and metaphoric;
   (J) identify and analyze text structures;
   (K) recognize archetypes, motifs, and symbols across texts;
   (L) analyze distinctive features of text genre such as biography, historical fiction, science fiction, political writing, fantasy fiction, short story, dramatic literature, or poetry;
   (M) identify how authors create suspense; and
   (N) tell how points of view affect tone, characterization, and credibility.

3. The student reads critically to evaluate texts and the authority of sources. The student is expected to:

   (A) analyze the characteristics of well-constructed texts;
   (B) describe how a writer’s point of view may affect text credibility, structure, or tone;
   (C) analyze aspects of texts such as patterns of organization and choice of language for their effect on audiences; and
   (D) examine strategies that writers in different fields use to compose.

4. The student reads to increase knowledge of his/her own culture, the culture of others, and the common elements of cultures. The student is expected to:

   (A) compare text events with personal and other readers’ experiences;
   (B) recognize and discuss themes and connections that cross cultures; and
   (C) recognize how writers represent and reveal their cultures and traditions in texts.

5. The student uses writing as a tool for learning and researching literary genres. The student is expected to:

   (A) use writing to discover, record, review, and learn; and
   (B) link related information and ideas from a variety of sources.

§110.52. Creative Writing (One-Half to One Credit).

(a) Introduction.

1. The study of creative writing allows high school students to earn one-half to one credit while developing versatility as a writer. Creative Writing, a rigorous composition course, asks high school students to demonstrate their skill in such forms of writing as fictional writing, short stories, poetry, and drama. All students are expected to demonstrate an understanding of the recursive nature of the writing process, effectively applying the conventions of usage and the mechanics of written English. The students’ evaluation of their own writing as well as the writing of others ensures that students completing this course are able to analyze and discuss published and unpublished pieces of writing, develop peer and self-assessments for effective writing, and set their own goals as writers.

2. For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

3. Statements that contain the word “including” reference content that must be mastered, while those containing the phrase “such as” are intended as possible illustrative examples.

4. The essential knowledge and skills as well as the student expectations for Creative Writing, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

1. The student writes for a variety of audiences and purposes to develop versatility as a writer. The student is expected to:
(A) write expressive, informative, and persuasive literary texts effectively;
(B) demonstrate the distinguishing characteristics of various written forms such as fictional writing, short stories, poetry, and drama in his/her own writing;
(C) elaborate writing when appropriate such as using concrete images, figurative language, sensory observation, dialogue, and other rhetorical devices to enhance meaning;
(D) employ various points of view to communicate effectively;
(E) choose topics and forms to develop fluency and voice;
(F) use word choice, sentence structure, and repetition to create tone; and
(G) organize ideas in writing to ensure coherence, logical progression, and support for ideas.

(2) The student selects and uses recursive writing processes for self-initiated and assigned writing. The student is expected to:

(A) select and apply prewriting strategies to generate ideas, develop voice, and plan;
(B) develop drafts by organizing ideas such as paragraphing, outlining, adding, and deleting;
(C) use vocabulary, sentence structure, organization, and rhetorical devices appropriate to audience and purpose;
(D) use effective sequence and transitions to achieve coherence and meaning;
(E) revise drafts by rethinking content, organization, and style;
(F) frequently refine selected pieces to publish for general and specific audiences; and
(G) write both independently and collaboratively.

(3) The student applies the conventions of usage and the mechanics of written English to communicate clearly and effectively. The student is expected to:

(A) use correct capitalization and punctuation;
(B) spell with accuracy in the final draft; and
(C) demonstrate control over grammatical elements such as subject-verb agreement, pronoun-antecedent agreement, and verb forms in the final draft.

(4) The student evaluates his/her own writing and the writings of others. The student is expected to:

(A) analyze and discuss published pieces as writing models such as use of suspense, repetition for emphasis, various points of view, literary devices, and figurative language;
(B) generate and apply peer and self-assessment; and
(C) accumulate, review, and evaluate his/her own written work to determine its strengths and weaknesses and to set goals as a writer.

§ 110.53. Research and Technical Writing (One-Half to One Credit).

(a) Introduction.

(1) The study of technical writing allows high school students to earn one-half to one credit while developing skills necessary for writing persuasive and informative texts. This rigorous composition course asks high school students to skillfully research a topic or a variety of topics and present that information through a variety of media. All students are expected to demonstrate an understanding of the recursive nature of the writing process, effectively applying the conventions of usage and the mechanics of written English. The students' evaluation of their own writing as well as the writing of others ensures that students completing this course are able to analyze and discuss published and unpublished pieces of writing, develop and apply criteria for effective writing, and set their own goals as writers.

(2) For high school students whose first language is not English, the students' native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Research and Technical Writing, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student writes for a variety of purposes and audiences. The student is expected to:

(A) write informative and persuasive texts, including essays, reports, and proposals;
(B) use the distinguishing characteristics of various written forms, including essays, scientific reports, speeches, and memoranda;
(C) write in voice and style appropriate to audience and purpose; and
(D) organize ideas in writing to ensure coherence, logical progression, and support for ideas.

(2) The student selects and uses recursive writing processes for self-initiated and assigned writing. The student is expected to:

(A) apply prewriting strategies to generate ideas and plan;
(B) employ precise language and technical vocabulary to communicate ideas clearly and concisely;
(C) use sentence structure, organization, and rhetorical devices appropriate to audience and purpose;
(D) use effective sequence and transitions to achieve coherence and meaning;
(E) revise drafts by rethinking content, organization, and style to better accomplish the task;
(F) edit as appropriate for the conventions of standard written English;
(G) use resources such as texts and other people for editing;
(H) use available technology for aspects of creating, revising, editing, and publishing texts; and
(I) write both independently and collaboratively.

(3) The student writes to investigate self-selected and assigned topics. The student is expected to:

(A) use writing to formulate questions, refine topics, and clarify ideas; and
(B) organize all types of information from multiple sources, including primary and secondary resources, using available technology such as audio, video, print, non-print, graphics, maps, and charts.

(4) The student applies the conventions of usage and mechanics of written English. The student is expected to:

(A) use correct capitalization and punctuation;
(B) use correct spelling in the final draft;
(C) demonstrate control over grammatical elements such as subject-verb agreement, pronoun-antecedent agreement, and verb forms in final drafts;
(D) use appropriate technical vocabulary; and
(E) consistently use a documentation manual or form consistent with the student’s field of study such as Modern Language Association (MLA), American Psychological Association (APA), and The Chicago Manual of Style (CMS).

(5) The student evaluates his/her own writing and the writing of others. The student is expected to:

(A) analyze and discuss published pieces as writing models;
(B) apply criteria to evaluate writing; and
(C) accumulate, review, and evaluate his/her own written work to determine its strengths and weaknesses and to set goals as a writer.

§110.54. Practical Writing Skills (One-Half to One Credit).

(a) Introduction.

(1) The study of writing allows high school students to earn one-half to one credit while developing skills necessary for practical writing. This course emphasizes skill in the use of conventions and mechanics of written English, the appropriate and effective application of English grammar, the reading comprehension of informational text, and the effective use of vocabulary. Students are expected to understand the recursive nature of reading and writing. Evaluation of students’ own writing as well as the writing of others ensures that students completing this course are able to analyze and evaluate their writing.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Practical Writing Skills, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student uses the conventions and mechanics of written English to communicate clearly. The student is expected to:

(A) employ written conventions appropriately such as capitalizing and punctuating for various forms;
(B) use correct spelling;
(C) produce error-free writing by demonstrating control over grammatical elements such as subject-verb agreement, pronoun-antecedent agreement, and appropriate verb forms; and
(D) use varied sentence structures to express meanings and achieve desired effect; and
(E) use appropriate vocabulary.

(2) The student uses recursive writing processes as appropriate for self-initiated and assigned writing. The student is expected to:

(A) apply prewriting strategies to generate ideas and plan;
(B) develop drafts by organizing ideas such as paragraphing, outlining, adding, and deleting;
(C) use vocabulary, sentence structure, organization, and rhetorical devices appropriate to audience and purpose;
(D) use effective sequence and transitions to achieve coherency;
(E) revise drafts by rethinking content, organization, and style to better accomplish the task;
(F) edit as appropriate for the conventions of standard written English such as grammar, spelling, punctuation, capitalization, and sentence structure in the final draft;
(G) use resources such as texts and other people as needed for proofreading, editing, and revising; and
(H) use available technology for creating, revising, editing, and publishing texts.

(3) The student reads and writes for a variety of audiences and purposes. The student is expected to:

(A) read a variety of informational text;
(B) write informational text; and
(C) practice effective, efficient note taking.

(4) The student evaluates his/her own writing and the writing of others. The student is expected to:

(A) evaluate how well writing achieves its purposes;
(B) analyze and discuss published pieces as writing models; and
(C) review written work to determine its strengths and weaknesses and to set goals as a writer.

(5) The student analyzes informational text. The student is expected to:

(A) use effective reading strategies to determine a written work’s purpose and intended audience;
(B) identify explicit and implicit textual information, including main ideas and author’s purpose;
(C) draw and support complex inferences from text to distinguish facts from opinions;
(D) analyze the author’s quality of evidence for an argument;
(E) evaluate the use of both literal and figurative language;
(F) analyze the audience and purpose of informational and persuasive text;
(G) analyze how an author’s use of language creates imagery and mood; and
analyze insights gained from text to text, text to self, and text to world.

(6) The student understands new vocabulary and concepts and uses them accurately in reading, speaking, and writing. The student is expected to:

(A) apply knowledge of roots and affixes to infer the meanings of new words; and

(B) use reference guides to confirm the meanings of new words and concepts.

§110.55. Humanities (One-Half to Two Credits).

(a) Introduction.

(1) Humanities is an interdisciplinary course in which students recognize writing as an art form. Students read widely to understand how various authors craft compositions for various aesthetic purposes. This course includes the study of major historical and cultural movements and their relationship to literature and the other fine arts. Humanities is a rigorous course of study in which high school students respond to aesthetic elements in texts and other art forms through outlets such as discussions, journals, oral interpretations, and dramatizations. Students read widely to understand the commonalities that literature shares with the fine arts. In addition, students use written composition to show an in-depth understanding of creative achievements in the arts and literature and how these various art forms are a reflection of history. All students are expected to participate in classroom discussions and presentations that lead to an understanding, appreciation, and enjoyment of critical, creative achievements throughout history. Understanding is demonstrated through a variety of media.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Humanities, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student reads and views varied literary and art forms. The student is expected to:

(A) recognize the major historical and cultural movements as reflected in various art forms; and

(B) read widely to see connections (commonalities) that literature shares with fine arts and historical and/or philosophical writings.

(2) The student expresses and supports responses to various types of texts and compositions. The student is expected to:

(A) respond to aesthetic elements in texts and other art forms through various outlets such as discussions, journals, oral interpretations, and enactments;

(B) use elements of text and other art forms to defend his/her own responses and interpretations;

(C) compare reviews of literature, film performance, and other art forms with his/her own responses; and

(D) develop and use assessments for evaluating literary work and other art forms as a reflection of history such as political, social, and philosophical movements.

(3) The student uses writing as a tool for learning and research. The student speaks and writes clearly and presents effectively to audiences for a variety of purposes. The student is expected to:

(A) show an in-depth understanding of creative achievements in literature and the arts through writing;

(B) describe how personal creativity is expressed within the requirements of an art form; and

(C) describe and analyze the relationship between form and expression.

(4) The student understands and interprets creativity. The student is expected to participate in discussions that lead to understanding, appreciation, and enjoyment of creative achievements such as:

(A) discuss how personal creativity is expressed within the requirements of an art form;

(B) discuss conditions that encourage creativity;

(C) discuss the relationship between form and expression; and

(D) discuss the major historical and cultural movements as reflected in various art forms.

(5) The student analyzes and critiques the significance of visual representations. The student is expected to:

(A) recognize and evaluate how literature and various other art forms convey messages; and

(B) examine the impact of literature and various other art forms.

§110.57. Public Speaking I, II, III (One-Half to One Credit).

(a) Introduction.

(1) In order to have full participation in the civic process, students must have a good understanding of public dialogue. Students must learn the concepts and skills related to preparing and presenting public messages and to analyzing and evaluating the messages of others. Within this process, students will gain skills in reading, writing, speaking, listening, and thinking and will examine areas such as invention, organization, style, memory, and delivery.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Public Speaking I, II, III, elective courses, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) Rhetoric. The student traces the development of the rhetorical perspective. The student is expected to:

(A) recognize the influence of classical rhetoric in shaping Western thought;

(B) explain and use the classical rhetorical canons of invention, organization, style, memory, and delivery;

(C) analyze how modern public address influences public opinion and policy in a democratic republic.
(D) analyze the ethical responsibilities that accompany freedom of speech;
(E) develop and use critical, deliberative, empathic, and appreciative listening skills to analyze and evaluate speeches; and
(F) apply knowledge and understanding of rhetoric to analyze and evaluate oral or written speeches.

(2) Speech forms. The student recognizes and analyzes varied speech forms. The student is expected to:

(A) identify and analyze the traditional elements of speech form, including introduction, body, and conclusion;
(B) identify and analyze logical patterns of organization for specific speech forms;
(C) identify and analyze the characteristics of a speech to inform;
(D) identify and analyze the characteristics of a speech to persuade, including propositions of fact, value, problem, and/or policy;
(E) identify and analyze characteristics of speeches for special occasions; and
(F) analyze and evaluate the rhetorical elements in models of speeches that inform, persuade, or inspire.

(3) Invention. The student plans speeches. The student is expected to:

(A) identify and analyze the audience and occasion as a basis for choosing speech strategies;
(B) select and limit topics for speeches considering his/her own interests, timeliness, and the importance of the topic;
(C) select and limit purposes for speeches;
(D) research topics using primary and secondary sources, including electronic technology; and
(E) analyze oral and written speech models to evaluate the topic, purpose, audience, and occasion.

(4) Organization. The student organizes speeches. The student is expected to:

(A) apply knowledge of speech form to organize and design speeches;
(B) organize speeches effectively for specific topics, purposes, audiences, and occasions;
(C) choose logical patterns of organization for bodies of speech;
(D) prepare outlines reflecting logical organization; and
(E) analyze and evaluate the organization of oral or written speech models.

(5) Proofs and appeals. The student uses valid proofs and appeals in speeches. The student is expected to:

(A) analyze the implications of the audience, occasion, topic, and purpose as a basis for choosing proofs and appeals for speeches;
(B) choose logical proofs and appeals that meet standard tests of evidence;
(C) use logical, ethical, and emotional proofs and appeals to support and clarify claims in speeches;
(D) choose proofs and appeals that enhance a specific topic, purpose, and tone;
(E) choose and develop appropriate devices for introductions and conclusions;
(F) choose or produce effective visual supports; and
(G) analyze and evaluate the proofs and appeals used in oral or written speech models.

(6) Style. The student develops skills in using oral language in public speeches. The student is expected to:

(A) distinguish between oral and written language styles;
(B) write manuscripts to facilitate language choices and enhance oral style;
(C) use rhetorical and stylistic devices to achieve clarity, force, and aesthetic effect;
(D) use informal, standard, and technical language appropriately;
(E) employ previews, transitions, summaries, signposts, and other appropriate rhetorical strategies to enhance clarity; and
(F) evaluate a speaker’s style in oral or written speech models.

(7) Delivery. The student uses appropriate strategies for rehearsing and presenting speeches. The student is expected to:

(A) employ techniques and strategies to reduce communication apprehension, develop self-confidence, and facilitate command of information and ideas;
(B) rehearse and employ a variety of delivery strategies;
(C) develop verbal, vocal, and physical skills to enhance presentations;
(D) use notes, manuscripts, rostrum, visual aids, and/or electronic devices; and
(E) interact with audiences appropriately.

(8) Evaluation. The student analyzes and evaluates speeches. The student is expected to:

(A) use critical, deliberative, and appreciative listening skills to evaluate speeches; and
(B) critique speeches using knowledge of rhetorical principles.

§110.58. Communication Applications (One-Half Credit).
(a) Introduction.

(1) Understanding and developing skills in communication are fundamental to all other learning and to all levels of human interaction. For successful participation in professional and social life, students must develop effective communication skills. Rapidly expanding technologies and changing social and corporate systems demand that students send clear verbal messages, choose effective nonverbal behaviors, listen for desired results, and apply valid critical-thinking and problem-solving processes. Students enrolled in Communication Applications will be expected to identify, analyze, develop, and evaluate communication skills needed for professional and social success in interpersonal situations, group interactions, and personal and professional presentations.
(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Communication Applications are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) Communication process. The student demonstrates knowledge of various communication processes in professional and social contexts. The student is expected to:

(A) explain the importance of effective communication skills in professional and social contexts;

(B) identify the components of the communication process and their functions;

(C) identify standards for making appropriate communication choices for self, listener, occasion, and task;

(D) identify the characteristics of oral language and analyze standards for using informal, standard, and technical language appropriately;

(E) identify types of nonverbal communication and their effects;

(F) recognize the importance of effective nonverbal strategies such as appearance, a firm handshake, direct eye contact, and appropriate use of space and distance;

(G) identify the components of the listening process;

(H) identify specific kinds of listening such as critical, deliberative, and empathic;

(I) recognize the importance of gathering and using accurate and complete information as a basis for making communication decisions;

(J) identify and analyze ethical and social responsibilities of communicators; and

(K) recognize and analyze appropriate channels of communication in organizations.

(2) Interpersonal. The student uses appropriate interpersonal communication strategies in professional and social contexts. The student is expected to:

(A) identify types of professional and social relationships, their importance, and the purposes they serve;

(B) employ appropriate verbal, nonverbal, and listening skills to enhance interpersonal relationships;

(C) use communication management skills to develop appropriate assertiveness, tact, and courtesy;

(D) use professional etiquette and protocol in situations such as making introductions, speaking on the telephone, and offering and receiving criticism;

(E) send clear and appropriate requests, provide clear and accurate directions, ask appropriate and purposeful questions, and respond appropriately to the requests, directions, and questions of others;

(F) participate appropriately in conversations;

(G) communicate effectively in interviews;

(H) identify and use appropriate strategies for dealing with differences, including gender, ethnicity, and age; and

(I) analyze and evaluate the effectiveness of one’s own and others’ communication.

(3) Group communication. The student communicates effectively in groups in professional and social contexts. The student is expected to:

(A) identify kinds of groups, their importance, and the purposes they serve;

(B) analyze group dynamics and processes for participating effectively in groups;

(C) identify and analyze the roles of group members and their influence on group dynamics;

(D) demonstrate understanding of group roles and their impact on group effectiveness;

(E) use appropriate verbal, nonverbal, and listening skills to promote group effectiveness;

(F) identify and analyze leadership styles;

(G) use effective communication strategies in leadership roles;

(H) use effective communication strategies for solving problems, managing conflicts, and building consensus in groups; and

(I) analyze the participation and contributions of group members and evaluate group effectiveness.

(4) Presentations. The student makes and evaluates formal and informal professional presentations. The student is expected to:

(A) analyze the audience, occasion, and purpose when designing presentations;

(B) determine specific topics and purposes for presentations;

(C) research topics using primary and secondary sources, including electronic technology;

(D) use effective strategies to organize and outline presentations;

(E) use information effectively to support and clarify points in presentations;

(F) prepare scripts or notes for presentations;

(G) prepare and use visual or auditory aids, including technology, to enhance presentations;

(H) use appropriate techniques to manage communication apprehension, build self-confidence, and gain command of the information;

(I) use effective verbal and nonverbal strategies in presentations;

(J) make group presentations to inform, persuade, or motivate an audience;

(K) make individual presentations to inform, persuade, or motivate an audience;
(L) participate in question-and-answer sessions following presentations;
(M) apply critical-listening strategies to evaluate presentations; and
(N) evaluate effectiveness of his/her own presentation.

§110.59. Oral Interpretation I, II, III (One to Three Credits).

(a) Introduction.

(1) Literature and its presentation are integral to understanding the cultural aspects of a society. Students in Oral Interpretation I, II, III will select, research, analyze, adapt, interpret, and perform literary texts as a communication art. Students focus on intellectual, emotional, sensory, and aesthetic levels of texts to attempt to capture the entirety of the author’s work. Individual or group performances of literature will be presented and evaluated.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word “including” reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Oral Interpretation I, II, III, elective courses, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) Definition and theory. The student recognizes oral interpretation as a communication art. The student is expected to:

(A) explain definitions and theories of oral interpretation as a communication art;

(B) analyze the role of the interpreter and the ethical responsibilities to the author, the literary text, and the audience; and

(C) develop and use a workable theory of interpretation as a basis for performance choices.

(2) Selection. The student selects literature for performance. The student is expected to:

(A) select literature appropriate for the reader, the audience, and the occasion;

(B) apply standards of literary merit when selecting literature for individual or group performance;

(C) choose literature that can be appropriately adapted; and

(D) select performance materials from a variety of literary genre.

(3) Research. The student uses relevant research to promote understanding of literary works. The student is expected to:

(A) read the text to grasp the author’s meaning, theme, tone, and purpose; and

(B) research the author, author’s works, literary criticism, allusions in the text, and definitions and pronunciations of words to enhance understanding and appreciation of the chosen text.

(4) Analysis. The student analyzes the chosen text to assess its implications for adaptation, interpretation, and performance. The student is expected to:

(A) identify and analyze the literary form or genre;

(B) identify and analyze structural elements in the chosen text;

(C) identify and analyze the narrative voice and/or other speakers such as personae in the literature;

(D) identify and analyze the time, place, and atmosphere;

(E) analyze the shifts or transitions in speaker, time, and place to determine who is speaking, to whom they are speaking, where they are speaking, when they are speaking, and for what reason they are speaking;

(F) analyze individual units such as paragraphs, verses, sentences, and lines for meaning and specificity;

(G) identify descriptive phrases, figures of speech, stylistic devices, and word choices to analyze the imagery in the text;

(H) trace the emotional progression of the text; and

(I) recognize literal and symbolic meanings, universal themes, or unique aspects of the text.

(5) Adaptation. The student adapts written text for individual or group performance based on appropriate research and analysis. The student is expected to:

(A) maintain ethical responsibility to author, text, and audience when adapting literature;

(B) apply appropriate criteria for lifting scenes and cutting literary selections;

(C) use effective strategies for planning and organizing programs focused on a specific theme, author, or central comment; and

(D) write appropriate introductions, transitions, and/or conclusions to supplement the text.

(6) Interpretation. The student applies research and analysis to make appropriate performance choices. The student is expected to:

(A) justify the use or nonuse of manuscript or other aids;

(B) justify strategies for the use of focus, gesture, and movement;

(C) justify the use of vocal strategies such as rate, pitch, inflection, volume, and pause;

(D) justify the use of dialect, pronunciation, enunciation, or articulation; and

(E) use research, analysis, personal experiences, and responses to the literature to justify performance choices.

(7) Rehearsal and performance. The student uses insights gained from research and analysis to rehearse and perform literature for a variety of audiences and occasions. The student is expected to:

(A) use effective rehearsal strategies to promote internalization and visualization of the text;

(B) use appropriate rehearsal strategies to develop confidence and enhance effective communication of the text to an audience in individual and group performance;

(C) participate in effective group decision-making processes to prepare and present group performances; and

(D) present individual and group performances.
§110.60. Debate I, II, III (One to Three Credits).

(a) Introduction.

(1) Controversial issues arise in aspects of personal, social, public, and professional life in modern society. Debate and argumentation are widely used to make decisions and reduce conflict. Students who develop skills in argumentation and debate become interested in current issues, develop sound critical thinking, and sharpen communication skills. They acquire life-long skills for intelligently approaching controversial issues.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Debate I, II, III, elective courses, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) Role in society. The student examines the historical and contemporary contributions of debate in decision-making and democratic processes. The student is expected to:

(A) identify the historical and contemporary use of debate in social, political, and religious arenas;
(B) examine the role of the forensic progression of discussion, persuasion, and debate in dealing with controversial issues; and
(C) recognize the role of argumentation and debate as an effective means of analyzing issues, discovering truth, finding solutions to problems, and understanding opposing viewpoints.

(2) Analysis of issues. The student analyzes controversial issues. The student is expected to:

(A) use appropriate standards to analyze and interpret propositions of fact, value, problem, and policy;
(B) accurately phrase and define debatable propositions;
(C) analyze and evaluate propositions and related issues presented in academic and public settings; and
(D) recognize, analyze, and use various debate formats to support propositions.

(3) Propositions of value. The student develops and demonstrates skills for debating propositions of value. The student is expected to:

(A) explain the concept of a value as it applies to a debate;
(B) analyze the role of value assumptions in formulating and evaluating argument;
(C) analyze the works of classical and contemporary philosophers;
(D) apply various standards for evaluating propositions of value;
(E) apply value assumptions and/or classical and contemporary philosophies appropriately in formulating arguments;
(F) develop and use valid approaches to construct affirmative and negative cases;
(G) use valid proofs appropriately to support claims in propositions of value;
(H) construct briefs for value propositions; and
(I) apply voting criteria to value propositions.

(4) Propositions of policy. The student develops and demonstrates skills for debating propositions of policy. The student is expected to:

(A) evaluate implications of stock issues in affirmative and negative case construction and refutation;
(B) use and evaluate a variety of valid strategies to construct affirmative and negative cases;
(C) construct debate briefs for policy propositions; and
(D) analyze and adapt approaches to accommodate a variety of judging paradigms.

(5) Logic. The student applies critical thinking, logic, and reasoning in debate. The student is expected to:

(A) analyze and create arguments using various forms of logic such as inductive and deductive reasoning, syllogisms, traditional models of logic, and cause-effect;
(B) identify fallacies in reasoning and apply standards of validity and relevancy in analyzing and constructing argument; and
(C) analyze the role of value assumptions in personal, social, and political conflicts.

(6) Proof. The student utilizes research and proof in debate. The student is expected to:

(A) locate and use a variety of reliable technological and print sources;
(B) identify and apply standard tests of evidence for choosing appropriate logical proofs;
(C) demonstrate skill in recording and organizing information; and
(D) utilize ethical guidelines for debate research and use of evidence.

(7) Case construction. The student identifies and applies the basic concepts of debate case construction. The student is expected to:

(A) identify the roles and responsibilities of the affirmative and negative positions;
(B) explain and apply the distinctive approaches to prima facie case construction; and

ADOPTED RULES  April 23, 2010  35 TexReg 3273
(C) use a variety of approaches to construct logical affirmative and negative cases.

(8) Refutation. The student identifies and applies the basic concepts of argumentation and refutation. The student is expected to:

(A) listen critically to formulate responses;
(B) take accurate notes during argumentation such as flow a debate;
(C) analyze and apply a variety of approaches for refuting and defending arguments;
(D) recognize and use effective cross-examination strategies; and
(E) extend cross-examination responses into refutation.

(9) Delivery. The student uses effective communication skills in debating. The student is expected to:

(A) use precise language and effective verbal skills in argumentation and debate;
(B) use effective nonverbal communication in argumentation and debate;
(C) use effective critical-listening strategies in argumentation and debate;
(D) demonstrate ethical behavior and courtesy during debate; and
(E) develop extemporaneous speaking skills.

(10) Evaluation. The student evaluates and critiques debates. The student is expected to:

(A) use a knowledge of debate principles to develop and apply evaluation standards for various debate formats; and
(B) provide valid and constructive written and/or oral critiques of debates.

§110.61. Independent Study in Speech (One-Half to One Credit).

(a) Introduction.

(1) Communication skills are important in all aspects of life. Students who have mastered concepts and developed skills in introductory courses should be provided with opportunities to extend their knowledge and expand their skills in more advanced study. Independent Study in Speech provides opportunities for advanced students to plan, organize, produce, perform, and evaluate a project that enables them to develop advanced skills in communication, critical thinking, and problem solving.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Independent Study in Speech, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) Propose. The student plans and designs an independent study project. The student is expected to:

(A) select a topic and define a purpose for an independent study project focused on a specific aspect of communication;
(B) review the research related to the topics identified;
(C) develop a formal proposal for the project; and
(D) plan the format and develop the timelines for production and presentation.

(2) Research. The student conducts research to support and develop the approved project. The student is expected to:

(A) locate and gather information from a variety of primary and secondary sources, including electronic technology;
(B) use systematic strategies to organize and record information; and
(C) analyze the research data and develop conclusions to provide a basis for the project.

(3) Produce. The student produces the final product for the project. The student is expected to:

(A) limit the chosen topic, purpose, and format for the presentation;
(B) develop systematic strategies to document the project;
(C) develop appropriate evaluation strategies for each aspect of the production and presentation of the project;
(D) organize and outline the text for the presentation;
(E) choose appropriate proofs, literary texts, and/or scenes to develop and support the text;
(F) produce a written text of superior quality; and
(G) review and revise plans, outlines, and scripts with the teacher.

(4) Rehearse and present. The student presents the final product. The student is expected to:

(A) use rehearsal strategies to gain command of the text and enhance the communication and staging of the presentation;
(B) demonstrate appropriate verbal and nonverbal communication skills to enhance and enliven the presentation;
(C) use appropriate visual and auditory aids to support, create interest, and/or add aesthetic appeal to the final presentation; and
(D) document the progress of the project and submit the final written text or script.

(5) Evaluate. The student and designated individuals evaluate the project. The student is expected to:

(A) use strategies to evaluate the project and the presentation; and
(B) analyze problems related to the project and assess implications for future projects.

§110.62. Journalism (One-Half to One Credit).

(a) Introduction.

(1) Students enrolled in Journalism write in a variety of forms for a variety of audiences and purposes. High school students enrolled in this course are expected to plan, draft, and complete written compositions on a regular basis, carefully examining their papers for clarity, engaging language, and the correct use of the conventions and mechanics of written English. In Journalism, students are expected to write in a variety of forms and for a variety of audiences and purposes. Students will become analytical consumers of media and technology.
to enhance their communication skills. Published work of professional journalists, technology, and visual and electronic media are used as tools for learning as students create, clarify, critique, write, and produce effective communications. Students enrolled in Journalism will learn journalistic traditions, research self-selected topics, write journalistic texts, and learn the principles of publishing.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Journalism, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student demonstrates an understanding of media development, press law, and responsibility. The student is expected to:

(A) identify the history and development of American journalism through people and events;

(B) identify the foundations of press law, including copyright law, the fair use exemption, and the ownership of intellectual property;

(C) identify the foundations of journalistic ethics;

(D) distinguish between responsible and irresponsible media action; and

(E) understand the consequences of plagiarism.

(2) The student demonstrates an understanding of the different forms of media and the different types of journalistic writing. The student is expected to:

(A) distinguish the similarities and differences of print, broadcast, and online media; and

(B) distinguish the similarities and differences of news, feature, and opinion writing.

(3) The student reports and writes for a variety of audiences and purposes and researches self-selected topics to write journalistic texts. The student is expected to:

(A) demonstrate an understanding of the elements of news;

(B) select the most appropriate journalistic format to present content;

(C) locate information sources such as persons, databases, reports, and past interviews; gather background information; and research to prepare for an interview or investigate a topic;

(D) plan and write relevant questions for an interview or in-depth research;

(E) gather information through interviews (in person or telephone);

(F) evaluate and confirm the validity of background information from a variety of sources such as other qualified persons, books, and reports;

(G) write copy synthesizing direct and indirect quotes and other research;

(H) use journalistic style to write copy;

(I) revise and edit copy using appropriate copy editing symbols;

(J) rewrite copy;

(K) create different forms of journalistic writing such as reviews, ad copy, columns, news, features, and editorials to inform, entertain, and/or persuade;

(L) write captions; and

(M) demonstrate an understanding of the function of headlines through the writing of headlines.

(4) The student demonstrates understanding of the principles of publishing through design using available technologies. The student is expected to:

(A) identify the appropriate form of journalistic publication to present content such as newspapers, news magazines, online media, broadcasts, and newsletters;

(B) design elements into an acceptable presentation;

(C) use illustrations or photographs that have been cropped to communicate and emphasize a topic;

(D) use graphic devices such as lines, screens, and art to communicate and emphasize a topic; and

(E) prepare a layout for publication.

(5) The student demonstrates an understanding of the economics of publishing. The student is expected to:

(A) understand general salesmanship in selling professional or student-produced publications;

(B) differentiate between advertising appeals and propaganda;

(C) differentiate between the various types of advertising such as classified, display, public service, and online advertising; and

(D) design an advertisement for a particular audience.

§110.63. Independent Study in Journalism (One-Half to One Credit).

(a) Introduction.

(1) Students enrolled in Independent Study in Journalism write in a variety of forms for a variety of audiences and purposes. High school students enrolled in this course are expected to plan, draft, and complete written communications on a regular basis, carefully examining their copy for clarity, engaging language, and the correct use of the conventions and mechanics of written English. Students will become analytical consumers of media and technology to enhance their communication skills. Published work of professional journalists, technology, and visual and electronic media are used as tools for learning as students create, clarify, critique, write, and produce effective communications. Students enrolled in Independent Study in Journalism will refine and enhance their journalistic skills, research self-selected topics, plan, organize, and prepare a project(s).

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.
(4) The essential knowledge and skills as well as the student expectations for Independent Study in Journalism, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student refines and enhances journalistic skills. The student is expected to:

(A) formulate questions, refine topics, and clarify ideas;

(B) organize and support what is known and what needs to be learned about a topic;

(C) compile information from primary and secondary sources using available technology;

(D) organize information from multiple sources, including primary and secondary sources;

(E) link related information and ideas from a variety of sources;

(F) evaluate product based on journalistic standards;

(G) understand and apply press law and journalistic ethics, including copyright law, the fair use exemption, and the ownership of intellectual property; and

(H) understand the consequences of plagiarism.

(2) The student produces visual representations that communicate with others. The student is expected to:

(A) conduct a research project(s) with instructor guidance and produce an original work in print or another medium demonstrating advanced skill; and

(B) use a range of techniques in planning and creating projects.

§110.64. Advanced Broadcast Journalism I, II, III (One-Half Credit to One Credit).

(a) Introduction.

(1) Students need to be critical viewers, consumers, and producers of media. The ability to access, analyze, evaluate, and produce communication in a variety of forms is an important part of language development. High school students enrolled in this course will apply and use their journalistic skills for a variety of purposes. Students will learn the laws and ethical considerations that affect broadcast journalism; learn the role and function of broadcast journalism; critique and analyze the significance of visual representations; and learn to produce by creating a broadcast journalism product.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word “including” reference content that must be mastered, while those containing the phrase “such as” are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Advanced Broadcast Journalism I, II, III, elective courses, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student demonstrates an understanding of broadcast media development, law, and responsibility to cover subjects of interest and importance to the audience. The student is expected to:

(A) identify the historical development of broadcasting from early radio to present-day formats, including radio, television, and online media;

(B) identify the function and role in society of broadcast media, including radio, television, and online broadcasts;

(C) understand and apply the laws affecting broadcast journalism, including copyright law, the fair use exemption, and the ownership of intellectual property;

(D) understand and apply ethical considerations affecting broadcast journalism;

(E) understand the consequences of plagiarism;

(F) explore the impact of broadcast formats on society;

(G) seek viewer opinions on the broadcast to determine its impact on future programming; and

(H) identify the strategies of broadcasting to reach certain audiences, including programming decisions.

(2) The student understands how broadcast productions are created and disseminated. The student is expected to:

(A) understand the role of various personnel, including producers, station managers, technical directors, camera operators, webmasters, and news anchors, in broadcast journalism;

(B) understand the economics of broadcasting such as advertising and public funds;

(C) consider finances in making decisions, including air time, length of program, and content;

(D) create and execute a financial plan for programming; and

(E) identify technical elements of broadcast production used to create and deliver broadcast programming such as school cable systems and live web streaming.

(3) The student produces programming such as newscasts, interviews, and public service announcements. The student is expected to:

(A) determine which events and issues are newsworthy for an audience and write appropriate copy for the content;

(B) select the most appropriate journalistic format to present content such as school cable systems and websites;

(C) apply pre-production skills such as storyboarding, scriptwriting, and scheduling;

(D) apply skills in reporting and writing to produce programs required to meet entry-level professional expectations;

(E) create programs that involve skills such as camera angles and movements, audio, lighting, and incorporation of graphics;

(F) deliver content that addresses tone, facial expressions, appearance, emphasis on key ideas, fluency, and rate;

(G) deliver content that demonstrates the development of a professional identity in the community;

(H) apply post-production skills such as editing, voice-overs, and transitions;

(I) demonstrate knowledge of new and emerging technologies that may affect the field; and
(J) critique the broadcast to find its strengths and weaknesses to improve products based on those critiques.

(4) The student demonstrates leadership and teamwork abilities. The student is expected to:

(A) determine roles for which different team members will assume responsibility;
(B) work cooperatively and collaboratively through a variety of staff assignments;
(C) listen actively and critically and then respond appropriately to team members;
(D) develop a deadline schedule and a regular means of monitoring progress;
(E) submit work for editing and critiquing and make appropriate revisions; and
(F) edit and critique work of others.

§110.65. Photojournalism (One-Half to One Credit).

(a) Introduction.

(1) Students enrolled in Photojournalism communicate in a variety of forms for a variety of audiences and purposes. High school students are expected to plan, interpret, and critique visual representation, carefully examining their product for publication. Students will become analytical consumers of media and technology to enhance their communication skills. High school students will study the laws and ethical considerations that impact photography. Published photos of professional photojournalists, technology, and visual and electronic media are used as tools for learning as students create, clarify, critique, and produce effective visual representations. Students enrolled in this course will refine and enhance their journalistic skills and plan, prepare, and produce photographs for a journalistic publication, whether print, digital, or online media.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.

(3) Statements that contain the word "including" reference content that must be mastered, while those containing the phrase "such as" are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Photojournalism, an elective course, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student interprets/critiques visual representations. The student is expected to:

(A) recognize the major events in the development of modern-day photography;
(B) recognize composition principles and their impact on photography;
(C) recognize and apply ethical and legal standards to all aspects of photojournalism, including copyright law, the fair use exemption, and the ownership of intellectual property;
(D) recognize the impact of electronic technology and future trends in digital imaging on the traditional field of photojournalism; and
(E) understand the consequences of plagiarism.

(2) The student produces visual representations that communicate with others. The student is expected to:

(A) identify the basic parts of a camera and their functions;
(B) manipulate shutter speed, ISO, and aperture/F-stop to produce different effects in photos;
(C) produce a properly exposed photo where the subject is sharply focused;
(D) produce photos that apply the composition principles;
(E) use lighting and be aware of its qualities such as direction, intensity, color, and the use of artificial light;
(F) stop action by determining appropriate shutter speed or use panning or hand holding with slower shutter speeds;
(G) evaluate technical qualities of photos;
(H) use appropriate equipment to download images and make prints or upload images; and
(I) improve photo quality by using appropriate technology.

(3) The student incorporates photographs into journalistic publications. The student is expected to:

(A) plan photo layouts;
(B) illustrate events with appropriate photos and captions;
(C) plan photographs in relation to assignments from an editor;
(D) create a system for organizing deadlines and camera equipment and for filing photos for publication;
(E) create and publish slideshow packages using available technology; and
(F) publish photos in both print and online formats.


(a) Introduction.

(1) Students enrolled in Advanced Journalism: Yearbook I, II, III/Newspaper I, II, III/Literary Magazine communicate in a variety of forms such as print, digital, or online media for a variety of audiences and purposes. High school students are expected to plan, draft, and complete written and/or visual communications on a regular basis, carefully examining their copy for clarity, engaging language, and the correct use of the conventions and mechanics of written English. In Advanced Journalism: Yearbook I, II, III/Newspaper I, II, III/Literary Magazine, students are expected to become analytical consumers of media and technology to enhance their communication skills. In addition, students will apply journalistic ethics and standards. Published works of professional journalists, technology, and visual and electronic media are used as tools for learning as students create, clarify, critique, write, and produce effective communications. Students enrolled in Advanced Journalism: Yearbook I, II, III/Newspaper I, II, III/Literary Magazine will refine and enhance their journalistic skills, research self-selected topics, and plan, organize, and prepare a project(s) in one or more forms of media.

(2) For high school students whose first language is not English, the students’ native language serves as a foundation for English language acquisition and language learning.
(3) Statements that contain the word “including” reference content that must be mastered, while those containing the phrase “such as” are intended as possible illustrative examples.

(4) The essential knowledge and skills as well as the student expectations for Advanced Journalism: Yearbook I, II, III/Newspaper I, II, III/Literary Magazine, elective courses, are described in subsection (b) of this section.

(b) Knowledge and skills.

(1) The student understands individual and staff responsibilities of coverage appropriate for the publication’s audience. The student is expected to:

(A) understand the role and responsibilities of each staff member and the purpose of the publication;

(B) use the skills necessary to plan and produce a publication;

(C) read both professional publications and other student-produced publications to generate story and design ideas for the local publication;

(D) conduct research using a variety of sources such as interviews with primary sources, databases, or published reports; and

(E) conceive coverage ideas for packaged presentations of material, including, but not limited to, copy, infographics, sidebars, photos, art, and multimedia components.

(2) The student understands media law and journalistic ethics and standards and the responsibility to cover subjects of interest and importance to the audience. The student is expected to:

(A) find a variety of credible sources to provide balanced coverage;

(B) compose the story accurately keeping his/her own opinion out of non-editorial coverage;

(C) provide editorial coverage to inform and encourage the reader to make intelligent decisions;

(D) critique the publication to find its strengths and weaknesses to improve products based on those critiques;

(E) seek non-staff opinion on the publication to determine its impact on future publications;

(F) understand the consequences of plagiarism; and

(G) understand and apply copyright law, the fair use exemption, and the ownership of intellectual property.

(3) The student understands all aspects of a publication and the means by which that publication is created. The student is expected to:

(A) identify elements used to create publications;

(B) create and execute a financial plan for supporting publications such as sales and advertising; and

(C) consider finances in making decisions, including number of pages and cost-incurred extras such as color, paper quality, and number of copies for print publications.

(4) The student produces publications. The student is expected to:

(A) determine which events and issues are newsworthy for the audience;

(B) select the most appropriate journalistic format to present content;

(C) apply skills in reporting and writing to produce publications;

(D) design pages for publications;

(E) plan and produce photographs for publications;

(F) incorporate graphics into publications;

(G) write and design headlines for publications;

(H) research and design captions for publications;

(I) produce publications using available technology; and

(J) evaluate stories and coverage for balance and readability.

(5) The student demonstrates leadership and teamwork abilities. The student is expected to:

(A) determine roles for which different team members will assume responsibility;

(B) work cooperatively and collaboratively through a variety of staff assignments;

(C) determine coverage and concepts for publications;

(D) develop a deadline schedule and a regular means of monitoring progress;

(E) listen actively and critically and then respond appropriately to team members;

(F) submit work for editing and critiquing and make appropriate revisions; and

(G) edit and critique work of others.

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 April 9, 2010.
TRD-201001705
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: August 22, 2011
Proposal publication date: February 5, 2010
For further information, please call: (512) 475-1497

19 TAC §110.56

The repeal is adopted under the TEC, §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 repeal implements the TEC, §§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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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 475-1497

TITLE 22. EXAMINING BOARDS
PART 9. TEXAS MEDICAL BOARD
CHAPTER 183. ACUPUNCTURE
22 TAC §183.4, §183.9
The Texas Medical Board (Board) adopts amendments to §183.4, concerning Licensure, and §183.9, concerning Impaired Acupuncturists, without changes to the proposed text as published in the March 5, 2010, issue of the Texas Register (35 TexReg 1916) and will not be republished.
The amendment to §183.4 allows applicants more than three attempts to pass the Jurisprudence Examination if they can demonstrate good cause.
The amendment to §183.9 establishes requirements for probable cause hearings for physical or mental impairment examinations, and applies Chapter 180 to acupuncturists in relation to rehabilitation orders and the Texas Physician Health Program.
No comments were received regarding adoption of the amendments.
The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.
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 April 12, 2010.
TRD-201001721
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 2, 2010
Proposal publication date: March 5, 2010
For further information, please call: (512) 305-7016

CHAPTER 187. PROCEDURAL RULES
The Texas Medical Board (Board) adopts an amendment to §187.43 and new §§187.83 - 187.89, concerning Procedural Rules, without changes to the proposed text as published in the March 5, 2010, issue of the Texas Register (35 TexReg 1918) and will not be republished.
The amendment to §187.43, concerning Proceedings for the Modification/Termination of Agreed and Disciplinary Orders, will prohibit probationers from requesting modification/termination of an order if the probationer is under investigation for alleged non-compliance with the order, and clarifies that modification/termination requests may be made after one year since the effective date of an order.
New §187.83, concerning Proceedings for Cease and Desist Orders, establishes the procedures for cease and desist orders to be issued by the Executive Director after the opportunity for participation in an informal settlement conference.
New §187.84, concerning Violation of Cease and Desist Orders, establishes the penalties for violation of cease and desist orders.
New §187.85, concerning Purpose and Construction, sets out the statutory authority for the subchapter.
New §187.86, concerning Scope, sets forth the scope of the subchapter.
New §187.87, concerning Definitions, establishes the definitions for the subchapter.
New §187.88, concerning Complaint Process and Resolution, establishes the process and resolution of complaints related to bad faith mediations and improper billing under Chapter 1467 of the Insurance Code.
New §187.89, concerning Notice of Availability of Mandatory Mediation, requires physicians subject to the subchapter to provide notice to patients of the availability of mandatory mediation under certain conditions.
No comments were received regarding adoption of the amendment and new rules.

SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS
22 TAC §187.43
The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.
The amendment is also authorized by Chapter 1467 of the Texas Insurance Code.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2010.
TRD-201001722
Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 2, 2010
Proposal publication date: March 5, 2010
For further information, please call: (512) 305-7016

ADOPTED RULES  April 23, 2010  35 TexReg 3279
SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS
22 TAC §187.83, §187.84

The new sections are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new sections are also authorized by Chapter 1467 of the Texas Insurance Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

SUBCHAPTER J. PROCEDURES RELATED TO OUT-OF-NETWORK HEALTH BENEFIT CLAIM DISPUTE RESOLUTION
22 TAC §§187.85 - 187.89

The new sections are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new sections are also authorized by Chapter 1467 of the Texas Insurance Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Mari Robinson, J.D.
Executive Director
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For further information, please call: (512) 305-7016

CHAPTER 190. DISCIPLINARY GUIDELINES
SUBCHAPTER C. SANCTION GUIDELINES
22 TAC §190.14

The Texas Medical Board (Board) adopts an amendment to §190.14, concerning Disciplinary Sanction Guidelines, without changes to the proposed text as published in the March 5, 2010, issue of the Texas Register (35 TexReg 1922) and will not be republished.

The amendment to §190.14 provides that if a physician is determined to have negated in bad faith in relation to an out-of-network health benefit claim, the licensee may be fined up to $2,000 by the Board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.
The amendment is also authorized by §1467.102, Texas Insurance Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2010.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

The Texas Medical Board (Board) adopts amendments to §§192.1, 192.2, 192.4, and 192.5 and the repeal of §192.7, concerning Office-Based Anesthesia Services, without changes to the proposed text as published in the March 5, 2010, issue of the Texas Register (35 TexReg 1922) and will not be republished.

The amendment to §192.1, concerning Definitions, deletes the definition for "pain management clinic."

The amendment to §192.2, concerning Provision of Anesthesia Services in Outpatient Settings, requires that anesthesia services and equipment provided in an outpatient setting remain available until the patient is discharged.

The amendment to §192.4, concerning Registration, excludes Level I services from registration requirements and deletes languages relating to pain management clinics.

The amendment to §192.5, concerning Inspections, deletes provisions relating to pain management clinics.

The repeal of §192.7, concerning Operation of Pain Management Clinics, deletes the section.

No comments were received regarding adoption of the amendments and repeal.

22 TAC §§192.1, 192.2, 192.4, 192.5

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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-201001727

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 2, 2010
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For further information, please call: (512) 305-7016

22 TAC §192.7

The repeal is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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 April 12, 2010.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

CHAPTER 195. PAIN MANAGEMENT CLINICS

22 TAC §§195.1 - 195.4

The Texas Medical Board (Board) adopts new §§195.1 - 195.4, concerning Pain Management Clinics, without changes to the proposed text as published in the March 5, 2010, issue of the Texas Register (35 TexReg 1924) and will not be republished.

New §195.1, concerning Definitions, establishes definitions that are consistent with those previously found under Chapter 192.

New §195.2, concerning Certification of Pain Management Clinics, sets forth the requirements for the certification of pain management clinics that were previously found under §192.4 of the Board's rules.

New §195.3, concerning Inspections, sets forth the requirements of the inspection of pain management clinics that were previously found under §192.5 of the Board's rules.

New §195.4, concerning Operation of Pain Management Clinics, sets forth the requirements for the operation of pain management clinics that were previously found under §192.7 of the Board's rules, and establishes minimum requirements for quality assurance procedures for the clinics.

No comments were received regarding adoption of the rules.

The new rules are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of
medicine in this state; enforce this subtitle; and establish rules related to licensure.

The new rules are also authorized by §§167.001 - 167.202, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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TRD-201001729
Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

CHAPTER 198. UNLICENSED PRACTICE

The Texas Medical Board (Board) adopts an amendment to §198.3, concerning Investigation of Complaints, and the repeal of §§198.4 - 198.6, concerning Agreed Cease and Desist Order, Contested Cease and Desist Proceeding and Violation of a Cease and Desist Order, without changes to the proposed text as published in the March 5, 2010, issue of the Texas Register (35 TexReg 1926) and will not be republished.

The amendment to §198.3 deletes references that allow formal complaints to be filed with the State Office of Administrative Hearings (SOAH) in relation to cease and desist orders and cites §187.83 for procedures relating to cease and desist orders.

The repeal of §198.4 deletes this section.

The repeal of §198.5 deletes this section.

The repeal of §198.6 deletes this section.

No comments were received regarding adoption of the rules.

22 TAC §198.3

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The amendment is also authorized by §165.052, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
Effective date: May 2, 2010
Proposal publication date: March 5, 2010
For further information, please call: (512) 305-7016

22 TAC §§198.4 - 198.6

The repeals are adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

The repeals are also authorized by §165.052, Texas Occupations Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Mari Robinson, J.D.
Executive Director
Texas Medical Board
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For further information, please call: (512) 305-7016

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.51

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.51, concerning Rabies Control, without changes to the proposed text as published in the November 20, 2009, issue of the Texas Register (34 TexReg 8161) and will not be republished.

The amendment specifically deletes and replaces requirements on rabies vaccination certificates as required by 25 TAC §169.29 (relating to Vaccination Requirements) as promulgated by the Department of State Health Services.

The amendment removes the requirement that the rabies vaccination certificate shall include the vaccine used producer and expiration date and adds the requirements of the vaccine used product name and manufacturer. The proposed amendment conforms the Board’s rule to the requirements promulgated by the Department of State Health Services.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.
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 April 8, 2010.
TRD-201001661
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: April 28, 2010
Proposal publication date: November 20, 2009
For further information, please call: (512) 305-7563

**SUBCHAPTER G. OTHER PROVISIONS**

**22 TAC §573.69**

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.69, concerning Reporting of Criminal Activity, without changes to the proposed text as published in the November 20, 2009, issue of the *Texas Register* (34 TexReg 8162) and will not be republished.

The amendment adds a time period for the required reporting of criminal activity under the rule, specifically no later than the 30th day after the arrest or conviction for the criminal activity. In addition, the amendment clarifies the language in the rule to add the required reporting of the arrest for a felony to the Board. Under the current rule, a licensee is required to report the arrest for or conviction for any misdemeanor related to the practice of veterinary medicine, or any conviction for a felony.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter as well as §801.151(b) which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession.

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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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Proposal publication date: November 20, 2009
For further information, please call: (512) 305-7563

**CHAPTER 575. PRACTICE AND PROCEDURE**

**22 TAC §575.26**

The Texas Board of Veterinary Medical Examiners adopts the repeal of §575.26, concerning Complaint Form, without changes to the proposed text as published in the November 20, 2009, issue of the *Texas Register* (34 TexReg 8163) and will not be republished.

The repeal is in conjunction with adopted new §575.26. The repeal will remove the form from rule and will allow board approved changes to be made to the form when needed without the requirement of a rule change.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the 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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TRD-201001663
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: April 28, 2010
Proposal publication date: November 20, 2009
For further information, please call: (512) 305-7563

**22 TAC §575.26**

The Texas Board of Veterinary Medical Examiners adopts new §575.26, concerning Complaint Form, without changes to the proposed text as published in the November 20, 2009, issue of the *Texas Register* (34 TexReg 8163) and will not be republished.

The new rule requires all complaints filed against a licensee to be submitted to the Board and reviewed by the Board.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the 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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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Proposal publication date: November 20, 2009
For further information, please call: (512) 305-7563

**CHAPTER 577. GENERAL ADMINISTRATIVE DUTIES**

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §577.2, concerning Meetings, and §577.12, concerning Directory of Licensees, without changes
to the proposed text as published in the December 4, 2009, issue of the Texas Register (34 TexReg 8643) and will not be republished.

The proposed amendments result from the Board’s rule review of Chapter 577, conducted in accordance with Texas Government Code, §2001.039.

Elsewhere in this issue of the Texas Register, the Board contemporarily adopts the rule review of Chapter 577.

The Board adopts the following changes to 22 TAC Chapter 577 that clarify the rules regarding general administrative duties of the Board, including but not limited to meetings and the directory of licensees.

Language is revised in §577.2 to conform the rule to the current practice of the Board and other state laws and rules regarding meetings conducted by the Board, including an agenda being posted, Roberts’ Rules of Order governing the meetings, meetings being open to the public, consequences of disruptive behavior, and the procedure for how meetings will be conducted with regards to members of the public and journalists. In addition, the adopted amendment addresses the procedure for the Board to follow with regards to executive sessions.

Language is revised in §577.12 to show the Office of the Attorney General as the correct agency promulgating the guidelines and rules on directories of licensees.

No comments were received regarding adoption of the amendments.

SUBCHAPTER A. BOARD MEMBERS AND MEETINGS--DUTIES

22 TAC §577.2

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the 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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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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Proposal publication date: December 4, 2009
For further information, please call: (512) 305-7563

SUBCHAPTER B. STAFF

22 TAC §577.12

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the 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 April 8, 2010.

TRD-201001665
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: April 28, 2010
Proposal publication date: December 4, 2009
For further information, please call: (512) 305-7563

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS
CHAPTER 850. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS
SUBCHAPTER D. ADVISORY OPINIONS

22 TAC §§850.100 - 850.105

The Texas Board of Professional Geoscientists (TBPG or Board) adopts new §§850.100 - 850.105, regarding advisory opinions. Section 850.103 is adopted with nonsubstantive changes to the proposed text as published in the December 25, 2009, issue of the Texas Register (34 TexReg 9302). Sections 850.100 - 850.102, 850.104, and 850.105 are adopted without changes and will not be republished.

Adopted new §850.100 addresses subjects of Advisory Opinions and states that the Board shall prepare an Advisory Opinion regarding an interpretation of the Act or as an application of the Act regarding a specified existing or factual situation. Section 850.101 specifies the type of information that should be included on written requests for Advisory Opinions. Section 850.102 allows the Board to issue an Advisory Opinion on its own accord. Section 850.103 details the process for receiving, reviewing and processing requests for Advisory Opinions. Section 850.104 requires the Board to classify, number and compile a summary on the agency website of each final Advisory Opinion issued. Section 850.105 requires the Board to respond to requests for Advisory Opinions within 180 days after the Board receives the written request unless the Board affirmatively states its reason for not responding to the request within the time period or for not responding to the request at all.

No public comments were received regarding the new rules.

The new rules are adopted under Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties; §1002.353, which authorizes the Board to issue advisory opinions.

§850.103. Receipt, Review, and Processing of a Request.

(a) The Board, through the appropriate committee, shall review all requests for advisory opinions.

(b) Upon receipt of a request for an advisory opinion, the Executive Director will date stamp the request, issue an Advisory Opinion Request (AOR) tracking number, and make a preliminary determination on the Board’s jurisdiction regarding the request.

(c) The Executive Director will review the request to determine if the request can be answered by reference to the plain language of a statute or a Board rule, or if the request has already been answered by the Board.
(d) If the Executive Director determines the Board has no jurisdiction or the request can be answered by reference to a statute, Board rule, or previous opinion, the Executive Director shall prepare a written response for the appropriate committee addressed to the person making the request that cites the jurisdictional authority, the language of the statute or rule, or the prior determination.

(e) The appropriate committee shall review all requests for advisory opinions and may:

(1) approve jurisdiction and reference responses, as applicable, and report a summary of these actions to the full Board for ratification; or

(2) determine the request warrants an advisory opinion and proceed with developing an advisory opinion.

(f) If a request warrants an advisory opinion, the appropriate committee shall determine if further information is needed to draft an advisory opinion. If additional information is needed, the committee shall determine what information is needed and instruct the Executive Director to obtain expert resources, hold stakeholder meetings, or perform other research and investigation as necessary to provide the information required to draft an advisory opinion and report back to the committee.

(g) If during the process, the committee determines that the request is one the Board cannot answer, then the committee shall have the Executive Director provide written notification to the person making the request of the reason the request will not be answered and this response shall be ratified by the full Board.

(h) When sufficient information exists, the appropriate committee shall draft an advisory opinion and post the request and draft opinion on the agency website and in the Texas Register for comments.

(i) Draft opinions shall be posted for at least 30 days and any interested person may submit written comments concerning an advisory opinion request. Comments submitted should reference the AOR number.

(j) Upon completion of the comment period, the appropriate committee shall consider any comments made and draft a final opinion recommendation to be presented for review and adoption by the full Board.

(k) The full Board shall review and adopt the advisory opinion or determine if further revisions are required and refer the request back to the appropriate committee with guidance on proceeding with completing the request.

(l) Each final advisory opinion adopted by the full Board shall be published in summary form in the Texas Register.

(m) To reconsider or revise an issued advisory opinion, the Board shall process the reconsideration or revision as a new request and follow the process as set forth in this section.

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.

File with the Office of the Secretary of State on April 8, 2010. TRD-201001674

Charles Horton
Interim Executive Director
Texas Board of Professional Geoscientists
Effective date: April 28, 2010
Proposal publication date: December 25, 2009
For further information, please call: (512) 936-4405

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

The Texas Board of Professional Geoscientists (TBPG or Board) adopts new §§851.40 - 851.46 regarding the Geoscientist-in-Training (GIT) Program, an amendment to §§851.80 concerning fees, and an amendment to §§851.106 regarding responsibility to the geoscience profession. The new sections and amendments are adopted without changes to the proposed text as published in the December 25, 2009, issue of the Texas Register (34 TexReg 9303) and will not be republished.

Adopted new §§851.40 - 851.46 establish a Geoscientist-in-Training designation and certification for individuals who meet the necessary education requirements and who have passed an examination on the fundamentals of geosciences.

Adopted amendment to §§851.80 establishes an initial application fee and a subsequent annual renewal fee of $25 for a GIT certificate. Adopted amendment to §§851.106 requires geoscientists to report to the Board any known or suspected violation of the Texas Geoscience Practice Act or Board rules.

One comment was received from the Division of Professional Affairs of the American Association of Petroleum Affairs in opposition to the amendment to §§851.106, because of their concern about the lack of protections extended to those who may report perceived, actual, and/or inferred violations, and who then may be subject to potential civil litigation due to such reporting. The comment suggested that the rule be further amended to include the provision for the protection of professional geoscientists who, in good faith, report to the Board known, suspected or perceived violation(s) of the Texas Geoscience Practice Act. The Board responds that it has no power or authority to protect individuals from civil lawsuits or proceedings. However, the Texas Geoscience Practice Act §1002.154 makes provision for the Board to initiate complaints as a result of information that becomes known to the Board and that may indicate a violation. A person thus has the option of making an anonymous complaint if they have concerns regarding potential civil litigation, and this option would fulfill the geoscientist’s obligation and also afford the protection requested. No other comments were received.

SUBCHAPTER A. LICENSING

22 TAC §§851.40 - 851.46

The new rules are adopted under Texas Occupations Code §1002.151, which authorizes the Board to adopt and enforce rules consistent with the Texas Geoscience Practice Act and necessary for the performance of its duties, and §1002.352 which authorizes the Board to establish a Geoscientist-in-Training 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.
PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 154. PRIVATE SECTOR PRISON INDUSTRIES PROGRAMS

37 TAC §§154.1 - 154.12

The Texas Board of Criminal Justice (Board) adopts new §§154.1 - 154.12, Private Sector Prison Industries Programs, without changes to the proposed text as published in the February 26, 2010, issue of the Texas Register (35 TexReg 1655).

The purpose of these rules is to comply with the provisions of Texas Government Code Chapter 497, relating to the certification and operation of private sector prison industries programs.

Two comments were received. One citizen asked whether the new rules will apply to existing Private Sector Prison Industries Programs, or whether there would be a separate set of rules that apply only to existing programs. He noted that several provisions of House Bill (HB) 1914 did not apply to existing programs, yet there was no exemption included in the rules.

Response: The citizen is correct that several provisions of HB 1914 did not apply to existing programs. HB 1914 included a provision that Texas Government Code §497.051(a-1) only applies to the operation of a private sector prison industries program that was certified on or after June 19, 2009, or to a private sector prison industries program that was certified before June 19, 2009, but was not in operation on June 19, 2009. HB 1914 included a provision that Texas Government Code §497.059 only applies to the certification of a private sector prison industries program that occurs on or after June 19, 2009. HB 1914 also included a provision that Texas Government Code §497.0595 and §497.0596 only applies to a contract that was entered into or renewed in connection with a private sector prison industries program that was certified on or before June 19, 2009, and not in operation on June 19, 2009. Finally, HB 1914 included a provision that Texas Government Code §497.063 only applies to a contract in connection with a private sector prison industries program that was certified after June 19, 2009, but not in operation on June 19, 2009.

Texas Government Code §497.051(a-1) is new and provides that "[t]he board shall ensure that private sector prison industries programs are operated . . . in a manner that is designed to avoid the loss of existing jobs for employees in this state who are not incarcerated or imprisoned." This provision of law is incorporated into Board rule §154.4(c)(1) and §154.8(b). Board rule §154.4(c)(1) only applies to a private industry interested in establishing a Prison Industry Enhancement (PIE) certification program and not to existing private sector prison industries programs. Therefore, no amendment is warranted. Board rule §154.8(b) applies to any cost accounting center designated after June 19, 2009. Therefore, no amendment is warranted.

Texas Government Code §497.059(a) applies only to initial certifications, and does not apply to existing contracts. Subsection (b) requires the Board to adopt rules to determine whether a program would cause the loss of existing jobs of a specific type provided by an employer in this state. As noted above, Board rules §154.4(c)(1) and §154.8(b) address assessing the loss of existing jobs for employees in this state and are limited to private industries interested in establishing a PIE certification program,
or any cost accounting center designated after June 19, 2009, respectively. Therefore, no amendment is warranted.

Texas Government Code §497.0595(a) contains new provisions that address limitations on contracts related to the Board’s determination of whether a contract may negatively affect any employer in this state through the loss of existing jobs. Board rules §154.4(c)(1) and §154.8(b) address assessing the loss of existing jobs for employees in this state and are limited to private industries interested in establishing a PIE certification program, or any cost accounting center designated after June 19, 2009, respectively.

Texas Government Code §497.0595(b) requires the rules adopted by the Board to establish a procedure for an aggrieved employer to submit a sworn statement to the Board alleging that the employer has been or would be negatively affected by the contract to be entered into or renewed. This provision has been incorporated into Board rule §154.5(f) and applies to a private industry proposing to operate a PIE program. Therefore, no amendment is warranted.

Texas Government Code §497.0596 pertains to notice requirements concerning certain contracts. Board rule §154.5 incorporated the notice provisions and applies only to a private industry proposing to operate a PIE program. Therefore, no amendment is warranted.

Texas Government Code §497.063 is a new provision that addresses contract requirements. Board rule §154.8(b) incorporates the new limitations on contracts, and specifies that these new limitations apply only to any cost accounting center designated after June 19, 2009. Therefore, no amendment is warranted.

The second comment was received from the Texas Workforce Commission (TWC). TWC expressed concern that Board rule §154.4 appears to place them in the de facto role of certifying whether a private industry will result in the displacement of employees or the loss of existing jobs of a similar nature by an employer in this state and whether the private industry will be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the state. Board rule §154.4 requires the Texas Department of Criminal Justice, Texas Youth Commission, or county correctional facility to request information from the TWC in order to make the required certifications. The rule does not require the TWC to make the certification. Therefore, no amendment is warranted.

In addition, TWC wanted to confirm that the affected employer notification will be accomplished by the relevant governmental entity. Board rule §154.5(e) provides that the governmental entity will send the notices as required by law. Texas Government Code §497.0596(a)(4) requires the affected employers to be notified. Therefore, the governmental entities will notify the affected employers. No amendment is warranted.

The rules are adopted under Texas Government Code §§492.0011, 497.004(a), 497.006(b) and (c), 497.051, 497.0527, 497.056(a), 497.057, 497.058, 497.0581, 497.059, 497.0595, 497.0596, 497.060, 497.062-497.064, Texas Labor Code §302.016.


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 April 12, 2010.
TRD-201001736
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Effective date: May 2, 2010
Proposal publication date: February 26, 2010
For further information, please call: (936) 437-6003

CHAPTER 195. PAROLE
37 TAC §195.81
The Texas Board of Criminal Justice adopts new §195.81, Temporary Housing Assistance, without changes to the proposed text as published in the February 26, 2010, issue of the Texas Register (35 TexReg 1659).

The purpose of the rule is to provide housing assistance for offenders who have been approved for parole, but have no home plan, and to assist offenders in the transition from community residential facilities and transitional treatment centers.

No comments were received.

The rule is adopted under Texas Government Code §508.157.


This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
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Proposal publication date: February 26, 2010
For further information, please call: (936) 437-6003

PART 8. PRIVATE SECTOR PRISON INDUSTRIES OVERSIGHT AUTHORITY

CHAPTER 245. GENERAL PROVISIONS
37 TAC §§245.10 - 245.14, 245.20 - 245.23, 245.30, 245.40, 245.41, 245.43, 245.45, 245.47

The Texas Board of Criminal Justice (Board) adopts the repeal of §245.10, Establishment of the Private Sector Prison Industries Oversight Authority; §245.11, Payments by Industries to the Private Sector Prison Industries Expansion Account; §245.12, Policy and Procedural Requirements for Participating Agencies/Entities; §245.13, Program Inquiries; §245.14, Complaint Investigation; §245.20, Designation of Cost Accounting Centers; §245.21, PIECP Wages and Non-displacement of Workers; §245.22, Consultation with Labor and Business Organizations; §245.23, Worker’s Compensation for Work Program Participants; §245.30, Distribution of Wages of Work Program Participants; §245.40 Recidivism Studies; §245.41, Program
Compliance; §245.43, Public Access to Speak Before the Authority; §245.45, Policymaking and Management Responsibilities; and §245.47, Removal Provisions, without changes to the proposal as published in the February 26, 2010, issue of the Texas Register (35 TexReg 1660).

The purpose of the repeal is the 81st Legislature through House Bill 1914 abolished the Private Sector Prison Industries Oversight Authority and transferred responsibility to the Board. The Board is adopting new rules.

No comments were received.

The repeal is adopted under Texas Government Code, §§492.0011, 497.051, and 497.057.


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 April 12, 2010.

TRD-201001734
Melinda Hoyle Bozarth
General Counsel
Private Sector Prison Industries Oversight Authority
Effective date: May 2, 2010
Proposal publication date: February 26, 2010
For further information, please call: (936) 437-6003

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS

The Texas Juvenile Probation Commission (TJPC) adopts the repeal of Chapter 349, §§349.1, 349.2, 349.7 - 349.15, 349.21 - 349.32, 349.37, 349.52, 349.57 - 349.64, and 349.69 - 349.72, relating to general administrative standards. This repeal is adopted without changes as published in the February 12, 2010, issue of the Texas Register (35 TexReg 1036) and will not be republished.

TJPC adopts this repeal in an effort to not overlap with newly adopted standards for Chapter 349.

No public comment was received.

SUBCHAPTER A. DEFINITIONS

37 TAC §349.1

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on April 9, 2010.

TRD-201001682

Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission

Effective date: May 1, 2010
Proposal publication date: February 12, 2010
For further information, please call: (512) 424-6710

SUBCHAPTER B. WAIVER

37 TAC §349.2

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on April 9, 2010.

TRD-201001683
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission

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Proposal publication date: February 12, 2010
For further information, please call: (512) 424-6710

SUBCHAPTER C. CERTIFICATION AND RECERTIFICATION

37 TAC §§349.7 - 349.15

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.

No other code or article is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on April 9, 2010.

TRD-201001684
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission

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Proposal publication date: February 12, 2010
For further information, please call: (512) 424-6710

SUBCHAPTER D. DISCIPLINARY HEARINGS

37 TAC §§349.21 - 349.32

This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.
No other code or article is affected by this repeal.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on April 9, 2010.
TRD-201001685
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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Proposal publication date: February 12, 2010
For further information, please call: (512) 424-6710

SUBCHAPTER E. COMPLAINTS AGAINST JUVENILE BOARDS
37 TAC §349.37
This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.
No other code or article is affected by this repeal.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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TRD-201001686
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

SUBCHAPTER F. ABUSE, EXPLOITATION AND NEGLECT INVESTIGATIONS
37 TAC §349.52
This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.
No other code or article is affected by this repeal.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

Filed with the Office of the Secretary of State on April 9, 2010.
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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

SUBCHAPTER G. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION AND NEGLECT INVESTIGATION RECORDS
37 TAC §§349.57 - 349.64
This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.
No other code or article is affected by this repeal.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

SUBCHAPTER H. MEMORANDA OF UNDERSTANDING
37 TAC §§349.69 - 349.72
This repeal is adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with rulemaking authority.
No other code or article is affected by this repeal.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.

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TRD-201001689
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: May 1, 2010
Proposal publication date: February 12, 2010
For further information, please call: (512) 424-6710

CHAPTER 349. GENERAL ADMINISTRATIVE STANDARDS
The Texas Juvenile Probation Commission (TJPC) adopts new Chapter 349, §§349.100, 349.200, 349.300, 349.305, 349.310, 349.315, 349.320, 349.325, 349.330, 349.335, 349.340, 349.345, 349.355, 349.360, 349.365, 349.370, 349.375, 349.380, 349.385, 349.400, 349.410, 349.500, 349.510, 349.520, 349.530, 349.540, 349.550, 349.560, and 349.570, relating to general administrative standards. These new rules, except §349.315, are adopted without changes as published in the Texas Register (35 TexReg 1039) and will not be republished. Section 349.315 is adopted with changes and will be republished.

TJPC adopts these rules in an effort to address recent statutory changes relating to disciplinary procedures initiated by the Commission.

No public comment was received during the official public comment period.

SUBCHAPTER A. DEFINITIONS

37 TAC §349.100

These rules are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2010.
TRD-201001690
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: May 1, 2010
Proposal publication date: February 12, 2010
For further information, please call: (512) 424-6710

SUBCHAPTER B. WAIVER

37 TAC §349.200

These rules are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these adopted rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 9, 2010.
TRD-201001691

SUBCHAPTER C. DISCIPLINARY ACTIONS AND HEARINGS


These rules are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these adopted rules.

§349.315. Computation of Time.

(a) Unless otherwise required by law, in computing any period of time prescribed or allowed by these sections, the date of the act, event or default after which the designated period of time begins to run is not to be included, and the last day of the period is to be included, unless it is a Saturday, Sunday or legal holiday, in which case the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(b) When this chapter specifies a deadline or set a number of days for filing documents or taking other actions, the computation of time shall be by calendar days rather than business days unless otherwise provided for by this chapter, applicable law, SOAH rules or judge order. However, if the period specified is five days or less, the intervening Saturdays, Sundays and legal holidays are not counted.

(c) When by this chapter, SOAH rules or judge order, an act is required or allowed to be done at or within a specified time period, the Executive Director, Board or judge (if SOAH has acquired jurisdiction) may, for good cause shown, order the period extended if application is made before the expiration of the specified time period. In addition, where good cause is shown for the failure to act within the specified time period, the Executive Director, Board or judge may permit the act to be done after the expiration of the specified period.

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-201001692
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
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For further information, please call: (512) 424-6710

SUBCHAPTER D. COMPLAINTS AGAINST JUVENILE BOARDS
37 TAC §349.400, §349.410
These rules are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.
No other rule or standard is affected by these adopted rules.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.
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TRD-201001693
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: February 12, 2010
Proposal publication date: May 1, 2010
For further information, please call: (512) 424-6710

SUBCHAPTER E. CONFIDENTIALITY AND RELEASE OF ABUSE, EXPLOITATION AND NEGLECT INVESTIGATION RECORDS
37 TAC §§349.500, 349.510, 349.520, 349.530, 349.540, 349.550, 349.560, 349.570
These rules are adopted under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.
No other rule or standard is affected by these adopted rules.
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency’s legal authority.
Filed with the Office of the Secretary of State on April 9, 2010.
TRD-201001694
Lisa A. Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: May 1, 2010
Proposal publication date: February 12, 2010
For further information, please call: (512) 424-6710

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
CHAPTER 700. CHILD PROTECTIVE SERVICES
SUBCHAPTER L. PERMANENCY PLANNING
40 TAC §700.1203, §700.1207
The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.1203 and §700.1207, without changes to the proposed text published in the February 12, 2010, issue of the Texas Register (35 TexReg 1090).
The justification for the repeals is to implement Senate Bill (SB) 939, enacted in the 81st Regular Legislative Session. SB 939 added §263.3026 to the Family Code to set forth the list of permissible permanency goals for foster children under federal statute and clarified surrounding requirements under Texas law. As a result, DFPS is repealing §700.1203 because it no longer serves a purpose. In addition, SB 939 amended Family Code §263.3025 to require that a child’s permanency plan include a concurrent goal, in part as a response to the state’s most recent Child and Family Services Review, which identified concurrent planning as an area in need of improvement for DFPS. This statutory change conflicts with the current §700.1207, which only requires staff to notify the court of the primary permanency goal. Because the Family Code has superseded the DFPS’s rule, the rule no longer serves a purpose and is being repealed.
The repeals will function by ensuring that the rules are consistent with the Family Code.
No comments were received regarding adoption of the repeals.
The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.
The repeals implement Family Code, §263.3025 and §263.3026.
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 April 7, 2010.
TRD-201001649
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2010
Proposal publication date: February 12, 2010
For further information, please call: (512) 438-3437

SUBCHAPTER R. STRENGTHENING FAMILIES THROUGH ENHANCED IN-HOME SUPPORT PROGRAM
The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.1802 - 700.1804, the repeal of §700.1805, and new §§700.1805 - 700.1807, without changes to the proposed text published in the February 12, 2010, issue of the Texas Register (35 TexReg 1090).

ADOPTED RULES April 23, 2010 35 TexReg 3291
The justification for the amendments, repeal, and new sections is to expand and enhance opportunities for using federal Temporary Assistance for Needy Families (TANF) funds for the Strengthening Families Through Enhanced In-Home Support Program by increasing the maximum total amount of existing benefits and adding the benefit of "traditional services," which a family may otherwise receive from CPS. An additional benefit allows funds to be utilized more effectively; thus freeing up funds for families who do not qualify for the Strengthening Families Through Enhanced In-Home Support Program.

Section 700.1802 is revised to: (1) replace monetary assistance with goods and services for Family Empowerment benefits; (2) include monetary assistance with goods and services in Family Empowerment benefits; and (3) add traditional services as a new category of benefits.

Section 700.1803 is revised to: (1) establish $600 as the maximum allowable amount for goods and services provided as Family Empowerment benefits; and (2) specify TANF-related restrictions that bar the use of such funds for supporting a family's basic daily needs.

Section 700.1804 is revised to: (1) establish $300 as the maximum allowable amount for Family Empowerment benefits, of which $250 or less may be in the form of monetary assistance; and (2) specify TANF-related restrictions for such benefits.

New §700.1805 describes the "traditional services," which are ordinarily purchased by DFPS for clients as a new category of benefit.

New §700.1806 regroups language from the existing rules for the sake of clarity, and for the sake of applicability to the proposed new category of benefits. The rule states that the family makes the decision on how the benefits should be used to meet the family's needs, subject to federal guidelines and DFPS approval.

New §700.1807 specifies the federal objectives for which the TANF benefits must be used, but they do not represent a substantive change to the program's objectives. Also existing §700.1805, which contained eligibility requirements, is adopted in new §700.1807. The eligibility criteria remain the same.

The amendments, repeal, and new sections ensure that children will remain with their families or will be returned to their families more quickly.

No comments were received regarding adoption of the sections.

40 TAC §§700.1802 - 700.1807

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement the Texas Family Code, §264.2011.

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 April 7, 2010.
TRD-201001650
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: May 1, 2010
Proposal publication date: February 12, 2010
For further information, please call: (512) 438-3437

40 TAC §700.1805

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements the Texas Family Code, §264.2011.

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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Gerry Williams
General Counsel
Department of Family and Protective Services
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Proposal publication date: February 12, 2010
For further information, please call: (512) 438-3437

TITLE 43. TRANSPORTATION
PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES
CHAPTER 208. EMPLOYMENT PRACTICES
SUBCHAPTER D. SUBSTANCE ABUSE PROGRAM

43 TAC §§208.51 - 208.66

The Texas Department of Motor Vehicles adopts new Subchapter D, §§208.51 - 208.66, all concerning the department's substance abuse program. New §§208.51 - 208.66 are adopted without changes to the proposed text as published in the January 29, 2010, issue of the Texas Register (35 TexReg 619) and will not be republished.

EXPLANATION OF ADOPTED NEW SUBCHAPTER

New Subchapter D is necessary to implement the provisions of House Bill 3097, 81st Legislature, Regular Session, 2009, which created the Department of Motor Vehicles from the motor carrier, motor vehicle, vehicle titles and registration, and automobile
burglary and theft prevention authority divisions of the Texas Department of Transportation.

The department has an obligation to the taxpayers to work safely and productively. If employees are working under the influence of alcohol or drugs, they may be unable to work in a safe, efficient, and effective manner. The new subchapter establishes the department’s program to achieve an alcohol- and drug-free workplace, which will help protect the department’s most valuable resource, its employees, and help maintain an efficient organization responsive to the public.

The subchapter establishes an employees’ assistance program (EAP) to help employees who voluntarily use the program or who are mandatorily referred for violations of this subchapter. The subchapter also establishes reasonable cause testing based on a reasonable suspicion of drug or alcohol use in the workplace including observations and information regarding a pattern of unusual physical appearance, poor work performance, excessive absences, tardiness, poor judgment, carelessness, erratic behavior, or the odor of marijuana or alcohol.

A reasonable suspicion of working under the influence of alcohol or drugs will be based upon the decision of a supervisor trained in recognizing and documenting the signs and symptoms of alcohol and drug use. Reasonable cause testing will be conducted as soon as possible when there are physical and/or behavioral indicators of drug and alcohol use. Furthermore, all decisions will require validation by the substance control officer, and with written approval by the division director or division administrative manager.

Testing will provide the additional objective facts needed to provide consistency throughout the department in policies and procedures for handling employees who are working under the influence. Testing procedures will require a strict chain of custody procedure and reliable drug and alcohol testing methods.

Confidentiality of testing information is protected. Established policies, procedures, and guidelines for reasonable cause testing will apply to all department employees, and all employees will be given advance written notice and information regarding these policies and procedures.

The department requires that all employees who violate substance abuse prohibitions and are mandatorily referred to the EAP provide a form completed by a medical doctor or licensed practitioner to ensure employees are fit to return to duties.

The department also requires that employees who test positive on any type of drug or alcohol test in their initial probationary period will be terminated. This will deter new employees from violating the substance abuse policy and eliminate the undue hardship imposed upon supervisors and co-workers because of an employee’s absence after being referred for treatment.

New §208.51 establishes the purposes of the subchapter to achieve an alcohol- and drug-free workplace.

New §208.52 provides the definitions for the program.

New §208.53 provides that an employee who violates the subchapter may be subject to discipline, including termination; may be mandatorily referred to the EAP; and may be encouraged to use the EAP voluntarily. Each employee will sign a form acknowledging the standards of conduct.

New §208.54 specifies that employees are prohibited from consuming or possessing an alcoholic beverage, inappropriately using an inhalant, or selling, distributing, transporting, or manufac-
turing drugs in or out of the workplaces. An employee is prohibited from working if impaired by a lawful medication. Supervisors are prohibited from allowing employees to continue to perform official duties if they have knowledge that an employee is using alcohol or drugs in the workplace.

New §208.55 provides that an employee will be terminated if convicted of a criminal drug violation relating to the sale, distribution, transportation, or manufacture of drugs. A final applicant will not be hired, or will be terminated later when it is discovered, if the applicant is on probation or parole for a felony conviction related to the sale, distribution, transportation, or manufacture of drugs or the possession with the intent to sell, distribute, transport, or manufacture drugs.

If a suspicious substance is found in the workplace, an employee is reasonably suspected of selling, distributing, transporting, or manufacturing drugs, or conspiring to sell, distribute, transport, or manufacture drugs, or there is a reasonable suspicion of such use or possession, the employee’s supervisor will immediately place the employee on emergency leave pending investigation by the department. The employee will immediately be provided with a letter explaining the facts and advising the employee of the procedures for providing a reasonable explanation and that the employee may be terminated. An employee who is suspected of involvement in selling, distributing, transporting, or manufacturing drugs will be terminated from the department if the employee fails to respond within the specified time or to provide a sufficient and acceptable explanation, the substance control officer confirms the illegal acts, or investigation by law enforcement or other governmental authorities confirms the illegal acts.

An employee who used or possessed drugs in the workplace, but did not sell, distribute, transport, or manufacture drugs, or conspire to sell, distribute, transport, or manufacture drugs, will be mandatorily referred to the EAP and required to complete treatment. An employee will be made aware of the EAP if it is determined that the employee used drugs outside the workplace.

If an employee is reasonably suspected of selling, distributing, transporting, or manufacturing drugs, or conspiring to sell, distribute, transport, or manufacture drugs, the substance control officer shall immediately contact the Office of General Counsel or the substance abuse program staff of the Human Resources Division before turning the matter over to law enforcement authorities.

An employee shall notify the department if the employee is arrested, charged, or indicted for an offense related to selling, distributing, transporting, or manufacturing drugs. If the employee fails to make this notification within one day after returning to work following the occurrence, the employee will be suspended three days without pay. An employee shall notify the employee’s supervisor in writing if the employee is convicted of such an offense. If the employee fails to make this notification within one day after returning to work following the occurrence, the employee will be terminated from the department.

An employee shall notify the employee’s supervisor in writing if the employee is convicted of any violation of any other criminal drug statute based on the employee’s conduct in the workplace within one work day after the employee returns to work. If the employee fails to make this notification on time, the department will suspend the employee for three days without pay within 30 days after it discovers the conviction.

New §208.56 requires that an employee who is suspected of violating this subchapter will be removed from critical duties. An
employee will be tested for cause if a supervisor has a reasonable suspicion that the employee was working under the influence of alcohol or drugs. This determination must be based on observed and documented physical, behavioral, or performance indications. If an employee provides a sufficient and acceptable explanation, the employee will remain subject to administrative and disciplinary actions if it is later discovered that the employee has worked under the influence of alcohol or drugs. An employee will be mandatorily referred to the EAP and required to complete treatment if there is a reasonable suspicion or the employee refuses to offer an explanation. The department may take disciplinary action and the employee will be prohibited from working for 24 hours. If an employee is impaired by lawful medications, the employee will be reassigned to temporary modified duties or will be required to take leave. The department will not hire a final applicant if the applicant has engaged in conduct that would justify terminating an employee from the department.

New §208.57 provides that an employee will be notified in writing that the employee is subject to drug and alcohol testing before being required to submit. Any employee who is reasonably suspected of using alcohol or drugs in the workplace will be required to undergo an alcohol or drug test. This decision must be based on the reasonable belief of a supervisor who has been trained on the signs and symptoms of alcohol and drug use, and it must be based on specific, contemporaneous, articulable observations concerning appearance, behavior, speech, body odor, performance, or other indications of probable use. When a supervisor reasonably suspects an employee of using alcohol or drugs in the workplace, the supervisor will contact the substance control officer immediately. The substance control officer will document whether testing is justified and submit that person’s observations to the substance abuse program staff in the Human Resources Division. Testing for cause must be approved by the director of the Human Resources Division or designee and by the relevant division director or division administrative manager. Pending a decision to test, the employee will be removed from critical duties, and reassigned to temporary modified duties or be required to take leave until an alcohol test indicates a result of less than 0.02, a negative drug test result is reported, or 24 hours have elapsed after the decision to test. An alcohol or drug test should be administered as soon as possible, preferably within two hours for alcohol and 32 hours for drugs.

New §208.58 provides that if the employee has a positive drug test result or an alcohol result of .04 or greater, or if the employee refuses to test, the employee will be required to complete EAP treatment, and undergo a return-to-duty alcohol or drug test. An employee who fails the test will be terminated. The employee will undergo follow-up testing for alcohol or drugs for up to 60 months which will include at least 6 tests in the first 12 months after the employee’s return to duty. An employee who fails to pass a follow-up drug or alcohol test or refuses to take the test will be terminated. An employee will be terminated if the employee is within the initial probationary period, is a project employee, or is a temporary employee, and refuses to test or has a positive drug test result or an alcohol result of .04 or greater. If an employee has an alcohol test with a result of 0.02 or greater but less than 0.04, the supervisor or the substance control officer will prohibit the employee from working for 24 hours and will require the employee to take leave.

New §208.59 provides that a person to be tested shall report to the test site designated by the department and follow the directions of testing officials. The employee must pay for a split specimen test, which occurs when the employee requests separate testing of the second of two contemporaneous samples.

New §208.60. The department will mandatorily refer an employee to the EAP if the employee refuses to test, including failing to follow directions.

New §208.61. An employee who has a problem associated with alcohol or drug use will be mandatorily referred to the EAP if the problem may affect the employee’s conduct or performance in the workplace. Until an employee provides a return-to-work form, the employee will be removed from critical duties. The department will pay for the cost of counseling sessions provided by the EAP vendor. Employees are responsible for the cost of an outside treatment provider. An employee may be referred to an inpatient rehabilitation treatment program or in an intensive outpatient treatment program. An employee participating in an outpatient program will normally be able to continue to work while participating in the program. The EAP counselor will then refer the employee to a medical doctor or other licensed practitioner to complete a return-to-work form. The EAP counselor will notify the department if the employee does not need assistance in resolving a problem associated with alcohol or drug use in which case a completed return-to-work form will not be required. An employee will be terminated if the employee fails to complete mandatory EAP.

New §208.62 establishes that an employee who voluntarily admits to an alcoholic or drug problem will be removed from critical duties until the employee completes mandatory EAP treatment and provides a return-to-work form. No disciplinary action will be taken against an employee solely because the employee voluntarily admitted having a drug or alcohol problem.

In an effort to deter employees from violating the substance abuse policy for a second time, new §208.63 provides that an employee will be terminated on the need to be mandatorily referred to the EAP a second time, including a referral made prior to November 1, 2009, while an employee of the Texas Department of Transportation. A second referral after a break in service will be treated as if there had been no break in service. A mandatory referral is not counted the first time if the employee is assessed by the EAP as not needing assistance with a chemical dependency problem or if the referral is for an alcohol or drug related driving offense.

New §208.64 provides that each employee’s driving record will be checked at least once each year. Each employee who drives for the department shall sign a form acknowledging awareness of the department’s driving policies. An employee must have a valid driver’s license to drive for the department. Employees without a valid driver’s license will be removed from all driving duties, and the supervisor will assign non-driving duties, if available. An employee shall notify the employee’s supervisor if the employee loses the legal authority to drive as a result of any alcohol or drug related driving offense or has an alcohol or drug related driving offense. If the employee fails to make this report within one day after returning to work, the employee will be suspended three days without pay. An employee will be terminated if the employee drives for the department after losing the legal authority to drive as a result of any alcohol or drug related driving offense. The employee will be mandatorily referred to the EAP and required to complete treatment, given a letter summarizing these actions, and removed from critical duties until the employee provides a completed return-to-work form. The employee will be reassigned to temporary modified duties or will be required to take leave. An employee will be terminated from the
department after a second alcohol or drug related driving offense within five years. The department will not hire a final applicant for a position that may involve driving for the department if the final applicant has two alcohol or drug related driving offenses within three years before the date of application. A final applicant with one offense may be hired if the final applicant agrees to complete treatment and comply with department procedures. The department will not hire a final applicant for a seasonal position that requires driving for the department if the final applicant has one alcohol or drug related driving offense within the three years before the date of application.

New §208.65 prohibits the disclosure of alcohol and drug test information except as required by law. Records will be maintained by the substance control officer in a locked file that is separate from that employee’s standard personnel file.

New §208.66 requires the department to conduct an alcohol- and drug-free awareness program for all employees and supervisors.

COMMENTS
No comments on the proposed new sections were received.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §1002.001, which provides the Texas Motor Vehicles Board with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE
Transportation Code, §1002.001.

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 April 9, 2010.
TRD-201001680
Jennifer Soldano
Legal Counsel
Texas Department of Motor Vehicles
Effective date: April 29, 2010
Proposal publication date: January 29, 2010
For further information, please call: (512) 463-8683

◆ ◆ ◆ ◆
This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of plan to review; (2) notices of intention to review, which invite public comment to specified rules; and (3) notices of readoption, which summarize public comment to specified rules. The complete text of an agency’s plan to review is available after it is filed with the Secretary of State on the Secretary of State’s web site (http://www.sos.state.tx.us/texreg). The complete text of an agency’s rule being reviewed and considered for readoption is available in the Texas Administrative Code on the web site (http://www.sos.state.tx.us/tac).

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

Agency Rule Review Plans

General Land Office
Title 31, Part 1
TRD-201001798
Filed: April 14, 2010

Boards for Lease of State-Owned Lands
Title 31, Part 5
TRD-201001801
Filed: April 14, 2010

School Land Board
Title 31, Part 4
TRD-201001799
Filed: April 14, 2010

Texas Veterans Land Board
Title 40, Part 5
TRD-201001800
Filed: April 14, 2010

Proposed Rule Reviews

Texas Board of Criminal Justice
Title 37, Part 6

The Texas Board of Criminal Justice files this notice of intent to review §159.1 concerning Substance Abuse Felony Punishment Facilities Eligibility Criteria. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the public should be received within 30 days of the publication of this proposed rule review.
TRD-201001737

Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: April 12, 2010

The Texas Board of Criminal Justice (TBCJ) files this notice of intent to review §159.15, GO KIDS Initiative. This review is conducted pursuant to Texas Government Code §2001.039, which requires rule review every four years.

Comments should be directed to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P.O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us. Written comments from the general public should be received within 30 days of the publication of this notice.
TRD-201001738
Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: April 12, 2010

Adopted Rule Reviews

Texas Board of Veterinary Medical Examiners
Title 22, Part 24

The Texas Board of Veterinary Medical Examiners (Board) adopts the review of Chapter 577, General Administrative Duties, pursuant to Texas Government Code, §2001.039.

The proposed review of Chapter 577 was published in the December 4, 2009, issue of the Texas Register (34 TexReg 8808).

No comments were received regarding adoption of the rule review.

The Board finds that the reasons for adoption continue to exist and readopts the rules with amendments to §577.2 and §577.12. Elsewhere in this issue, the Board contemporaneously adopts the amendments to §577.2 and §577.12 that were proposed in the December 4, 2009, issue of the Texas Register (34 TexReg 8642).

This concludes the review of Chapter 577, General Administrative Duties.
TRD-201001667
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Filed: April 8, 2010
Cancer Prevention and Research Institute of Texas

Request For Applications R-10-RML-1

Recruitment of Missing Links

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for to support the recruitment of critically important researchers who are needed to complete existing, excellent teams ("missing links"). Institutions must apply for a specific candidate who must hold an appropriate appointment at an accredited academic or research institution. The candidate must not reside in Texas at the time the application is submitted. Successful applicants would be eligible for a grant award of up to $2,000,000 for a period not to exceed four years. A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on April 12, 2010, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. This is an ongoing grant opportunity with no deadline for applications.

TRD-201001660
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: April 8, 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. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 2, 2010, through April 8, 2010. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on April 14, 2010. The public comment period for this project will close at 5:00 p.m. on May 14, 2010.

FEDERAL AGENCY ACTIONS:

Applicant: South Texas Nuclear Operating Company; Location: The project is located at the existing South Texas Nuclear Power Plant, on FM 521 approximately 8 miles west of Wadsworth, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Blessing SE, Texas. Approximate UTM Coordinates in NAD 83 (meters):

Zone 14; Easting: 787732; Northing: 3189480. Project Description: The applicant proposes to construct and operate two new nuclear units at the South Texas Project site. The U.S. Nuclear Regulatory Commission (NRC) has completed the "Draft Environmental Impact Statement for the Combined Licenses for South Texas Project Electric Generating Station Units 3 and 4" (NUREG-1973). The U.S. Army Corps of Engineers, Galveston District (Corps), is a cooperating agency on the Draft Environmental Impact Statement (DEIS). A Department of the Army Permit is required for the applicant to conduct maintenance dredging and expansion of two existing barge slips located on the Colorado River and to construct a heavy-haul road from the barge-slip to the construction site by placing 6 culverts into waters of the United States. Dredged material will be placed in an existing confined dredge material placement area with no return water. CCC Project No.: 10-0090-F1. Type of Application: U.S.A.C.E. permit application #SWG-2007-00786 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Suemaur Exploration and Production, LLC; Location: The project is located approximately 17.4 miles southeast of Winnie, Texas, and partially on the McFaddin National Wildlife Refuge (MNWR) in Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled High Island, TX and Mud Lake, TX. Approximate UTM coordinates in NAD 27 (meters): Zone 15; Easting: 368602.732; Northing: 3272290.844. Project Description: The applicant proposes to impact a total of 9.28 acres of herbaceous wetlands during the construction of a boarded drill site (Pieces of Eight Prospect), boarder access road, installation of structures and three 10-inch pipelines which lead to a tank battery site. Such activities will result in long term impacts to approximately 6.6 acres of herbaceous wetlands as a result of the construction of a drill site, access road and tank battery and temporary impacts to approximately 2.68 acres of herbaceous wetlands during pipeline installation. CCC Project No.: 10-0092-F1. Type of Application: U.S.A.C.E. permit application #SWG-2008-00268 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Harris County Public Infrastructure Department; Location: The project site is located in wetlands and Spring Gully, between Genoa-Red Bluff Road/Red Bluff Road intersection and the Fairmont Parkway/Canada Street intersection in LaPorte, Pasadena, and unincorporated areas, in Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: LaPorte, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 296796.10; Northing: 3281086.11. Project Description: The applicant proposes to fill 2.54 acres of waters of the U.S., including 2.53 acres of wetlands, for the construction of a road extension (Genoa-Red Bluff) and associated stormwater management facilities. The proposed extension includes a 2-lane northbound/2-lane southbound median separated roadway within a project right-of-way that varies from 150 feet wide at the southern portion to 255 feet wide at the northern portion. The proposed improvements are approximately 1.28 miles.
in length and include open drainage ditches along the northern portion and curbs along the southern portion of the project. CCC Project No.: 10-0098-F1. Type of Application: U.S.A.E. permit application #SWG-2009-01007 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §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 action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, 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. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-201001778
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: April 13, 2010

Comptroller of Public Accounts

Notice of Award

Pursuant to Chapters 403, 2305, and Chapter 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces the following contract awards:

The notice of request for proposals (RFP 194c) was published in the July 17, 2009, issue of the Texas Register (34 TexReg 4750).

The contractors will provide energy engineering services for the Local Government Program.

Three contracts were awarded as follows:

1. Texas Energy Engineering Services, Inc., 1301 S. Capital of Texas Hwy., #B325, Austin, Texas 78746. The total amount of this contract is not to exceed $177,779.00. The term of the contract is March 22, 2010 through December 31, 2010, with option to renew for up to two (2) additional one (1) year terms, one (1) year at a time;

2. Energy Systems Associates, Inc., 105 E. Main, Suite 201, Round Rock, Texas 78664. The total amount of this contract is not to exceed $215,000.00. The term of the contract is March 22, 2010 through December 30, 2010, with option to renew for up to two (2) additional one (1) year terms, one (1) year at a time; and

3. Jacobs Engineering Group, Inc., 777 Main Street, Fort Worth, Texas 76102. The total amount of this contract is not to exceed $310,000.00. The term of the contract is April 9, 2010 through December 31, 2010, with option to renew for up to two (2) additional one (1) year terms, one (1) year at a time.

TRD-201001789
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 14, 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 04/19/10 - 04/25/10 is 18% for Consumer\(^1\)/Agricultural/Commercial\(^2\)/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/19/10 - 04/25/10 is 18% for Commercial over $250,000.

\(^1\)Credit for personal, family or household use.

\(^2\)Credit for business, commercial, investment or other similar purpose.

TRD-201001775
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 13, 2010

East Texas Council of Governments

Notice of Request for Proposals

Notice of Request for Proposals for operating plans for programs under Title III of the Older Americans Act to provide senior nutrition services in the East Texas Council of Governments’ planning region.

Notice is given that the East Texas Area Agency on Aging, a program of the East Texas Council of Governments (ETCOG) is soliciting information, in the form of this Request for Proposals (RFP), to provide senior nutrition services. The East Texas Area Agency on Aging is designated by the Texas Department of Aging and Disability Services to coordinate services, in fourteen counties, for persons in East Texas who are 60 or older, with an emphasis on frail, minority, rural, and low-income elderly.

It is anticipated services rendered will take place over a three-year period (2011, 2012, and 2013).
Persons or organizations wanting to receive a Request for Proposal document should inquire by letter, fax, or email to the East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Attn: Claude Andrews. The fax number for ETCOG is (903) 984-4482. The email address is claude.andrews@etcog.org. Questions regarding the RFP process can be addressed by calling (903) 984-8641 ext. 214.

If you wish to respond, the due date for this RFP is June 25, 2010.

TRD-201001790
David Cleveland
Public Information Officer
East Texas Council of Governments
Filed: April 14, 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 May 24, 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 May 24, 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: ALVIN VENTURES, INC. dba Alvin Food Mart; DOCKET NUMBER: 2009-0030-PST-E; IDENTIFIER: RN101909668; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §334.10(b), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; 30 TAC §115.226(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain copies or records of product transfer documents for a minimum of two years; and 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request; PENALTY: $3,380; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77024-1452, (713) 767-3500.

(2) COMPANY: Robert Buck; DOCKET NUMBER: 2010-0050-LIL-E; IDENTIFIER: RN105831697; LOCATION: Allen, Dallas County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §30.5(b) and §344.50(a)(2) and the Code, §37.003, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required; PENALTY: $225; ENFORCEMENT COORDINATOR: John Shelton, (512) 239-2563; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Childress Creek Water Supply Corporation; DOCKET NUMBER: 2010-0040-PWS-E; IDENTIFIER: RN101248904; LOCATION: Bosque County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.46(f)(2), (3)(B)(v), (D)(ii), and (E)(ix), by failing to keep on file and make available for review an up-to-date record of water works operations and maintenance activities for operator review and reference; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual; 30 TAC §290.44(b)(1)(A), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments where an actual or potential contamination hazards exists; 30 TAC §290.46(j) and TCEQ Agreed Order Docket Number 2006-0336-PWS-E, Ordering Provision Number 2.c.i, by failing to complete customer service inspection reports prior to providing continuous water service to new construction; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.43(c)(3), by failing to maintain the overflow on the facility’s standpipe in strict accordance with American Water Works Association (AWWA) standards; 30 TAC §290.44(d)(1), by failing to properly install all air release devices at all points where topography or other factors may create air locks in the lines; and 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; PENALTY: $6,340; Supplemental Environmental Project (SEP) offset amount of $6,340 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: CNBG Cleaning, Limited dba Pilgrim Cleaners of San Antonio; DOCKET NUMBER: 2009-2038-DCL-E; IDENTIFIER: RN105833446; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to register a new dry cleaning facility and/or dry cleaning drop station prior to operation; PENALTY: $1,174; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4880, (210) 490-3096.

(5) COMPANY: Copperas Cove MHC, L.L.C. dba Cedar Grove Mobile Home Park; DOCKET NUMBER: 2009-1980-MLM-E; IDENTIFIER: RN101186724; LOCATION: Coryell County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain a residual disinfectant concentration in the water within the distribution system of at least 0.2 milligrams per liter (mg/L) free chlorine or 0.5 mg/L total chlorine; 30 TAC §290.46(e)(3)(A), by failing to ensure that the facility is at all times operated under the direct
supervision of a water works operator that holds a valid class "D" or higher license; 30 TAC §290.110(c)(4)(A), by failing to monitor the disinfectant residual at representative locations throughout the distribution system; 30 TAC §290.46(f)(2), (3)(A)(ii)(III), and (E)(i), by failing to keep on file and make available for review an up-to-date record of water works operations and maintenance activities for operator review and reference; 30 TAC §290.42(l), by failing to compile and maintain a thorough plant operations manual for operator review and reference; 30 TAC §290.45(f)(5), by failing to obtain a purchase water contract that authorizes a maximum hourly production rate plus the actual service pump capacity of at least two gallons per minute (gpm) per connection; 30 TAC §290.45(f)(4), by failing to obtain a purchase water contract that authorizes a maximum authorized daily purchase rate plus the actual production capacity of at least 0.6 gpm per connection; and 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $5,207; SEP offset amount of $2,083 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: James D. Satterwhite dba Dannys Automotive; DOCKET NUMBER: 2009-1881-PST-E; IDENTIFIER: RN104488648; LOCATION: Ferris, Ellis County; TYPE OF FACILITY: automobile repair shop and hardware retail store; RULE VIOLATED: 30 TAC §334.55(a)(6), by failing to conduct the required release determination in conjunction with permanent removal of the UST system from service; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees and associated late fees; PENALTY: $2,675; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Dover Fluid Management, Inc.; DOCKET NUMBER: 2010-0495-WQ-E; IDENTIFIER: RN103219242; LOCATION: Tyler, Smith County; TYPE OF FACILITY: compressor components; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Tengue Drive, Tyler, Texas 75701-3734, (903) 553-5100.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2009-2024-AIR-E; IDENTIFIER: RN100210319; LOCATION: La Porte, Harris County; TYPE OF FACILITY: polymer manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 18978, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $30,000; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: FIKES WHOLESALE, INC. dba CEFCO 10; DOCKET NUMBER: 2009-1917-PST-E; IDENTIFIER: RN102450533; LOCATION: Waco, McLennan County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(d)(1)(D) and the Code, §26.3475(d), by failing to take required actions within 60 days of a determination by a qualified corrosion protection specialist that components are not protected from corrosion; 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube for each regulated UST; 30 TAC §334.72(3), by failing to maintain the required UST records and make them immediately available for inspection; 30 TAC §334.72(3), by failing to report a suspected release; and 30 TAC §334.74, by failing to investigate a suspected release within 30 days of discovery; PENALTY: $14,725; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.


(12) COMPANY: Hunter Road Investments, LLC dba Blue Agave Mobile Home Park; DOCKET NUMBER: 2009-2008-PWS-E; IDENTIFIER: RN101272581; LOCATION: San Marcos, Hays County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(c)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class "D" or higher license; 30 TAC §290.46(f)(2), (3)(A)(ii)(III) and (ii)(III), and (D)(ii), by failing to provide facility records to commission personnel at time of the inspection; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility’s pressure tank; 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.41(c)(1)(F), by failing to provide a sanitary control easement that covers the land within 150 feet of the facility’s well; 30 TAC §290.41(c)(3)(M), by failing to provide a sampling cock on the facility’s well discharge line; 30 TAC §290.43(c)(4), by failing to provide the ground storage tank with a water level indicator; and 30 TAC §290.43(c)(6), by failing to maintain all water storage tanks thoroughly tight against leakage; PENALTY: $2,780; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3500; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(13) COMPANY: Ben Ly dba Kwik Stop; DOCKET NUMBER: 2009-2085-PST-E; IDENTIFIER: RN102790003; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the USTs for releases; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level for the tank; and 30 TAC §334.48(b), by failing to operate, maintain, and manage UST systems in accordance with ac-
(14) COMPANY: Leverett’s Chapel Water Supply Corporation; DOCKET NUMBER: 2009-2082-PWS-E; IDENTIFIER: RN101457455; LOCATION: Overton, Rusk County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.43(c)(3), by failing to design the overflow on the ground storage tank in strict accordance with current AWWA standards; and 30 TAC §290.45(b)(1)(C)(iv), by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection; PENALTY: $952; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(15) COMPANY: Lisa Lowery Trust; DOCKET NUMBER: 2009-1817-PWS-E; IDENTIFIER: RN102321486; LOCATION: Coastal County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide notice to persons served by the facility regarding the failure to conduct routine coliform monitoring; 30 TAC §290.109(c)(2)(B) §290.122(b)(2)(B), by exceeding the maximum contaminant level (MCL) for total coliform and by failing to provide notice to persons served by the facility regarding the exceedance of the MCL for total coliform; and 30 TAC §290.109(c)(2)(F), by failing to collect at least five distribution coliform samples the month following a total coliform-positive result; PENALTY: $2,382; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(16) COMPANY: M & F HOLDINGS, INC. dba Gas N More; DOCKET NUMBER: 2009-1971-PST-E; IDENTIFIER: RN101737419; LOCATION: Humble, Harris County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain Stage II records at the station; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: $7,268; ENFORCEMENT COORDINATOR: Tate Barrett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Melrose Water Supply Corporation; DOCKET NUMBER: 2009-2010-PWS-E; IDENTIFIER: RN102689346; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(m)(1)(B), by failing to conduct an inspection of the interior of the pressure tanks at least once every five years; 30 TAC §290.43(c)(8), by failing to maintain the facility’s storage tanks so that they are painted, disinfected, and maintained in strict accordance with current AWWA standards; 30 TAC §290.47(c), by failing to issue a boil water notification within 24 hours using the prescribed notification format; 30 TAC §290.46(r), by failing to operate the facility to maintain a minimum pressure of 35 pounds per square inch throughout the distribution system; 30 TAC §290.41(c)(3)(K), by failing to provide a 16-inch or finer corrosion-resistant screen on the casing vent; 30 TAC §290.43(c)(4), by failing to provide all water storage tanks with a water level indicator located at the tank site; 30 TAC §290.43(d)(2), by failing to provide the 2,000 gallon pressure tank with a pressure release device; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices at the facility to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.43(c)(2), by failing to ensure that the roof hatch on the ground storage tank remains locked except during inspections and maintenance; 30 TAC §290.46(m)(4), by failing to maintain all treatment units, storage, pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; 30 TAC §290.46(f)(2), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.46s(1), by failing to calibrate the facility’s well meters at least once every three years; 30 TAC §290.39(j)(1)(A) and THSC, §341.0351, by failing to notify the commission prior to making any significant change or addition where the change in the existing distribution system results in an increase or decrease in production, treatment, storage, or pressure maintenance capacity; 30 TAC §290.44(h)(1)(A), by failing to ensure that a backflow prevention assembly or an air gap is installed at all residences and establishments; 30 TAC §290.46(u), by failing to plug and seal an abandoned PWS or return the well to a non-deteriorated condition; and 30 TAC §290.43(c)(6), by failing to maintain all treatment units, storage, pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition; PENALTY: $20,348; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(18) COMPANY: MST Lumberton Properties, Limited; DOCKET NUMBER: 2010-0066-WQ-E; IDENTIFIER: RN105518153; LOCATION: Lumberton, Hardin County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §305.125(1) and TPDES General Permit Number TXR15KP16, Part III Section D.2., by failing to post a construction site notice containing all required information; 30 TAC §305.125(1) and TPDES General Permit Number TXR15KP16, Part III Section F.2(b), F.3(g)(iii), and F.3, by failing to include all required information in the storm water pollution plan; 30 TAC §305.125(1), TPDES General Permit Number TXR15KP16, Part III Section F.2(a) and F.6., and the Code, §26.121(a), by failing to properly design and maintain sediment controls to retain sediment on-site and prevent the discharge of sediment to any water in the state; and 30 TAC §305.125(1) and TPDES General Permit Number TXR15KP16, Part III Section F.7(c), by failing include certification language in inspection reports when no incidents of noncompliance are identified; PENALTY: $1,530; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(19) COMPANY: Pink Corporation dba Kerker Food Mart 4; DOCKET NUMBER: 2009-1983-PST-E; IDENTIFIER: RN102233046; LOCATION: Dickinson, Galveston 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; PENALTY: $3,076; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 425-6010; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: Post Acute Medical at San Antonio, LLC dba Warm Springs Rehabilitation Hospital of San Antonio, LLC; DOCKET NUMBER: 2009-1825-PST-E; IDENTIFIER: RN103046702; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: rehabilitation; RULE VIOLATED: 30 TAC §334.10(b), by failing to have the required UST records maintained, readily accessible, and made available for inspection; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST; 30 TAC §334.8(c)(4)(B) and (5)(D)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate; 30

IN ADDITION April 23, 2010 35 TexReg 3303
(21) COMPANY: City of Rose City; DOCKET NUMBER: 2010-0202-PWS-E; IDENTIFIER: RN102676269; LOCATION: Rose City, Orange County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by failing to provide corrosion protection to all underground metal components of a UST system; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: Round Rock Independent School District; DOCKET NUMBER: 2010-0151-EAQ-E; IDENTIFIER: RN105569248; LOCATION: Austin, Williamson County; TYPE OF FACILITY: Westwood High School baseball fields; RULE VIOLATED: 30 TAC §213.4(j)(1) and water pollution abatement plan (WPAP) Number 11-08061801, Standard Condition Number 6, by failing to obtain approval for a modification of a previously approved Edwards Aquifer WPAP prior to construction of the modification; 30 TAC §213.5(f)(1)(A)(ii) and WPAP Number 11-08061801, Standard Condition Number 7, by failing to comply with the terms of the approved WPAP; 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.

(23) COMPANY: S & A LEE CORPORATION dba Comet Cleaners; DOCKET NUMBER: 2009-1974-DCL-E; IDENTIFIER: RN103970257; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form for a dry cleaning facility and/or dry cleaning drop station; PENALTY: $950; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(24) COMPANY: SADA BAHAR, INC.; DOCKET NUMBER: 2009-1988-PST-E; IDENTIFIER: RN102966447; LOCATION: Ennis, Ennis County; TYPE OF FACILITY: USTs; RULE VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system; and 30 TAC §334.54(b), by failing to maintain all piping, pumps, manways, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; PENALTY: $4,750; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: City of Santa Rosa; DOCKET NUMBER: 2009-1899-MWD-E; IDENTIFIER: RN101918696; LOCATION: Santa Rosa, Cameron County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and TPDES Permit Number WQ0010330001, Operational Requirements Number

4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; PENALTY: $3,125; SEP offset amount of $2,500 applied to RC&D - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-44980; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(26) COMPANY: Terra Southwest, Inc.; DOCKET NUMBER: 2010-0099-PWS-E; IDENTIFIER: RN101265802; LOCATION: Burleson County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a well capacity of 0.6 gpm per connection; 30 TAC §290.46(f)(2), (3)(D)(ii) and (E)(i), by failing to maintain records of water works operation and maintenance activities and make them available to commission personnel at the time of the investigation; 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement; 30 TAC §290.46(f), by failing to post a legible sign at the facility that contains the name of the water supply and emergency telephone numbers; and 30 TAC §290.42(f), by failing to maintain a plant operations manual for operator review and reference at the facility and make it available to commission personnel at the time of the investigation; PENALTY: $392; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2009-2041-PWS-E; IDENTIFIER: RN105614580; LOCATION: Burleson County; TYPE OF FACILITY: PWS; RULE VIOLATED: 30 TAC §290.46(n)(2), by failing to provide an accurate and up-to-date map of the distribution system; 30 TAC §290.46(f)(2) and (3)(D)(ii), by failing to keep on file and make available for review an up-to-date record of water works operations and maintenance activities; 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap where an actual or potential contamination hazards exist; 30 TAC §290.46(f)(1), by failing to flush all dead-end mains at monthly intervals; 30 TAC §290.110(c)(4)(A), by failing to monitor the residual disinfectant concentration at representative locations in the distribution system; 30 TAC §290.110(b)(4), by failing to maintain a residual disinfectant concentration in the water within the distribution system of at least 0.2 mg/L total chlorine; 30 TAC §290.46(q)(1), by failing to issue a boil water notice; 30 TAC §290.45(d)(2)(B)(v), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence or lockable building to protect the ground storage tanks; 30 TAC §290.41(c)(3)(A), by failing to obtain approval by the executive director prior to placing a well into service as a public drinking water source; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete scaling block that extends at least three feet from the exterior well casing in all directions; 30 TAC §290.41(c)(3)(K), by failing to properly seal the wellhead with the use of gaskets or a pliable crack-resistant caulking compound; and 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for the facility’s well; PENALTY: $3,425; SEP offset amount of $2,740 applied to RC&D - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(28) COMPANY: Total Petrochemicals USA, Inc.; DOCKET NUMBER: 2009-1921-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (e) and §122.143(4), FOP Number O-01267, General Condition Violation, Air Permit Numbers 54026, 9195A, and 54026, SC Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emis-
Enforcement Orders

An agreed order was entered regarding Inara Convenience Inc. dba Rosedale Texaco and dba Flip In Market, Docket No. 2008-0094-PST-E on March 30, 2010 assessing $233,450 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Arnold J. Garcia, Docket No. 2008-0716PST-E on March 30, 2010 assessing $7,350 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 Mooney Airplane Company, Inc., Docket No. 2008-0882-MLM-E on March 30, 2010 assessing $5,450 in administrative penalties with $1,090 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 Equistar Chemicals, LP, Docket No. 2008-1123-AIR-E on March 30, 2010 assessing $5,250 in administrative penalties.

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 Farhan Memon dba Peachtree, Docket No. 2008-1564-PST-E on March 30, 2010 assessing $5,046 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyo, 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 Sook Park dba Park & Buy, Docket No. 2008-1945-PST-E on March 30, 2010 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyo, 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 D & K Development Corp., Docket No. 2009-0143-MWD-E on March 30, 2010 assessing $62,400 in administrative penalties with $19,212 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.

A default order was entered regarding Herlinda Deleon Enterprises, Inc., Docket No. 2009-0614-FWE-D on March 30, 2010 assessing $2,279 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Blanca Cruz dba Las Mananitas Mexican Restaurant, Docket No. 2009-0695-PWS-E on March 30, 2010 assessing $2,535 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 Glen L. Grundy, Jr. dba S & M Vacuum & Liquid Waste Processing Facility, Docket No. 2009-0716-MLM-E on March 30, 2010 assessing $17,706 in administrative penalties with $3,541 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

IN ADDITION  April 23, 2010  35 TexReg 3305
A default order was entered regarding John L. Moore, Docket No. 2009-0905-WOC-E on March 30, 2010 assessing $718 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 Knife River Corporation - South, Docket No. 2009-1006-IWD-E on March 30, 2010 assessing $13,707 in administrative penalties with $2,741 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 INEOS USA LLC, Docket No. 2009-1084-AIR-E on March 30, 2010 assessing $40,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gilbert Rodriguez, Sr., Docket No. 2009-1085-MLM-E on March 30, 2010 assessing $9,386 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-2053, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Custom Water Co., L.L.C., Docket No. 2009-1092-PWS-E on March 30, 2010 assessing $2,373 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.

A default order was entered regarding Susan Richter, Docket No. 2009-1094-WOC-E on March 30, 2010 assessing $1,367 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ella L. Lind, Docket No. 2009-1102-PST-E on March 30, 2010 assessing $3,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary Shiu, Staff Attorney at (713) 422-8916, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magnum Blue Ribbon Feeds, Inc. Docket No. 2009-1113-AIR-E on March 30, 2010 assessing $1,550 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 Coston & Son, Inc., Docket No. 2009-1220-IWD-E on March 30, 2010 assessing $10,440 in administrative penalties with $2,088 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 Exxon Mobil Corporation, Docket No. 2009-1221-IHW-E on March 30, 2010 assessing $40,550 in administrative penalties with $8,110 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill 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 Francis D. Gerrits dba Gerrits Dairy, Docket No. 2009-1267-MWD-E on March 30, 2010 assessing $19,093 in administrative penalties with $3,818 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 The Dow Chemical Company, Docket No. 2009-1251-AIR-E on March 30, 2010 assessing $146,917 in administrative penalties.

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 City of Buffalo, Docket No. 2009-1267-MWD-E on March 30, 2010 assessing $3,425 in administrative penalties with $685 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mart, Docket No. 2009-1302-MWD-E on March 30, 2010 assessing $3,725 in administrative penalties with $745 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of McGregor, Docket No. 2009-1303-MWD-E on March 30, 2010 assessing $3,825 in administrative penalties with $765 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L. Guerrero & Sons Ready-Mix Company, Docket No. 2009-1307-WQ-E on March 30, 2010 assessing $2,100 in administrative penalties with $420 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.
A default order was entered regarding V D N Enterprises, Inc. dba Ridgewood Mart, Docket No. 2009-1311-PST-E on March 30, 2010 assessing $7,721 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 Gary Blackwood, Docket No. 2009-1330-LII-E on March 30, 2010 assessing $188 in administrative penalties with $37 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 Randy Buxton, Docket No. 2009-1332-MSW-E on March 30, 2010 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip Goodwin, P.G., 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 PREMIER RECYCLERS, L.L.C., Docket No. 2009-1336-MLM-E on March 30, 2010 assessing $5,246 in administrative penalties with $1,049 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Body Shop, Inc., Docket No. 2009-1339-MLM-E on March 30, 2010 assessing $4,000 in administrative penalties with $800 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 Helena Chemical Company, Docket No. 2009-1341-AIR-E on March 30, 2010 assessing $2,000 in administrative penalties with $400 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.

An agreed order was entered regarding TARPLEY, INC. dba Texaco Distributing of SW Texas, Docket No. 2009-1349-PST-E on March 30, 2010 assessing $12,584 in administrative penalties with $2,516 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 Tom Green County Fresh Water Supply District 2, Docket No. 2009-1374-PWS-E on March 30, 2010 assessing $2,534 in administrative penalties with $506 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eagle Rock Field Services, L.P., Docket No. 2009-1396-AIR-E on March 30, 2010 assessing $1,976 in administrative penalties with $395 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 City of Hempstead, Docket No. 2009-1401-MWD-E on March 30, 2010 assessing $15,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GTE Southwest Incorporated, Docket No. 2009-1411-PST-E on March 30, 2010 assessing $27,520 in administrative penalties.

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 Eagle Rock Field Services, L.P., Docket No. 2009-1432-AIR-E on March 30, 2010 assessing $2,730 in administrative penalties with $546 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2009-1466-AIR-E on March 30, 2010 assessing $2,650 in administrative penalties with $530 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 Orange County Container Group LLC, Docket No. 2009-1501-AIR-E on March 30, 2010 assessing $5,162 in administrative penalties with $1,032 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Juan Loya dba The Weekenders Complete Lawn Service, Docket No. 2009-1530-LII-E on March 30, 2010 assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.
An agreed order was entered regarding Sac-N-Pac Stores, Inc. dba Sac-N-Pac 108, Docket No. 2009-1537-PST-E on March 30, 2010 assessing $6,900 in administrative penalties with $1,380 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2009-1549-AIR-E on March 30, 2010 assessing $1,230 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3420, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ellinger Sewer and Water Supply Corporation, Docket No. 2009-1569-MWD-E on March 30, 2010 assessing $4,500 in administrative penalties.

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 Capital One, National Association, Docket No. 2009-1578-WQ-E on March 30, 2010 assessing $10,500 in administrative penalties with $2,100 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 Lyondell Chemical Company, Docket No. 2009-1581-AIR-E on March 30, 2010.

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 TIN Inc. dba Temple-Inland, Docket No. 2009-1582-AIR-E on March 30, 2010 assessing $5,877 in administrative penalties with $1,175 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 Lee A. Walker and T-MC LLC, Docket No. 2009-1588-PST-E on March 30, 2010 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Haggard, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Trinidad, Docket No. 2009-1628-PWS-E on March 30, 2010 assessing $1,776 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TORI ROSE LAND, INC. dba Millen Oil Company, Docket No. 2009-1630-PST-E on March 30, 2010 assessing $2,683 in administrative penalties with $539 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Maypearl, Docket No. 2009-1641-MWD-E on March 30, 2010 assessing $17,730 in administrative penalties.

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 AVAIS ENTERPRISES, INC. dba New Shop-N-Drive, Docket No. 2009-1645-PST-E on March 30, 2010 assessing $2,418 in administrative penalties with $483 deferred.

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 THE MACHI CORPORATION, Docket No. 2009-1655-PST-E on March 30, 2010 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AI’s Investments, Inc., Docket No. 2009-1658-PWS-E on March 30, 2010 assessing $535 in administrative penalties with $107 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2009-1718-AIR-E on March 30, 2010 assessing $5,355 in administrative penalties with $1,071 deferred.

Information concerning any aspect of this order may be obtained by contacting Kirk Schoppe, Enforcement Coordinator at (512) 239-0489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Norit Americas, Inc., Docket No. 2009-1722-AIR-E on March 30, 2010 assessing $3,456 in administrative penalties with $691 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B & Y Enterprise Inc dba B & Y Grocery, Docket No. 2009-1723-PST-E on March 30, 2010 assessing $2,870 in administrative penalties with $574 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.
An agreed order was entered regarding City of Berryville, Docket No. 2009-1728-PWS-E on March 30, 2010 assessing $305 in administrative penalties with $61 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wallace Allen Raynor dba Sun Acres Mobile Home Park, Docket No. 2009-1732-PWS-E on March 30, 2010 assessing $405 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 The Consolidated Water Supply Corporation, Docket No. 2009-1746-PWS-E on March 30, 2010 assessing $1,210 in administrative penalties with $242 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Guillermo Romero, Docket No. 2009-1768-LII-E on March 30, 2010 assessing $564 in administrative penalties with $112 deferred.

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 City of Henrietta, Docket No. 2009-1774-MWD-E on March 30, 2010 assessing $5,074 in administrative penalties with $1,014 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 Gonzales, Docket No. 2009-1814-MWD-E on March 30, 2010 assessing $3,525 in administrative penalties with $705 deferred.

Information concerning any aspect of this order may be obtained by contacting Carlie Konkol, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Beaumont, Docket No. 2009-1850-WQ-E on March 30, 2010 assessing $1,500 in administrative penalties with $300 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 Comal County, Docket No. 2009-1908-EAQ-E on March 30, 2010 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding DECOTY COFFEE COMPANY, Docket No. 2009-1873-WQ-E on March 30, 2010 assessing $1,200 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding David Besser Homes, LLC, Docket No. 2009-1874-WQ-E on March 30, 2010 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Scott Passmore, Docket No. 2009-2044-WOC-E on March 30, 2010 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Field Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201001804
LaDonna Castafuqua
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 14, 2010

Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is May 24, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission’s central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on May 24, 2010. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; how-
ever, §7.075 provides that comments on an AO shall be submitted to the commission in writing.

(1) COMPANY: City of Crowell and Foard County; DOCKET NUMBER: 2007-1857-MSW-E; TCEQ ID NUMBER: RIN101478261; LOCATION: Highway 7045 and Farm to Market Road 267, Foard County; TYPE OF FACILITY: municipal solid waste landfill; RULES VIOLATED: 30 TAC §37.111 (formerly 30 TAC §330.9, effective December 30, 1996; amended to be effective March 21, 2000) and TCEQ ADO Docket Number 1998-0666-MSW-E, Ordering Provision 5.b.1.A., by failing to provide financial assurance; 30 TAC §330.165(c), (d), (e), (f), (g), and (h) and §330.219(a) (formerly 30 TAC §330.113(a) and §330.133(e) - (g), effective March 27, 2006), by failing to maintain records at the facility showing the daily, intermediate, and final cover within the landfill; 30 TAC §330.127 (formerly 30 TAC §330.114, effective March 27, 2006), by failing to have an approved Site Operating Plan (SOP) for type 1 landfill; and 30 TAC §330.143(a) (formerly 30 TAC §330.122, effective March 27, 2006), by failing to have grid, buffer, and boundary markers within the type 1 landfill; PENALTY: $11,500; Supplemental Environmental Project offset amount of $17,250 applied to Foard County; STAFF ATTORNEY: Laurencia Fasoiyo, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Downstream Environmental, L.L.C.; DOCKET NUMBER: 2008-1660-WQ-E; TCEQ ID NUMBER: RIN101662617; LOCATION: 3737 Walnut Bend Lane, Houston, Harris County; TYPE OF FACILITY: septic waste disposal facility; RULES VIOLATED: 40 Code of Federal Regulations §§122.26(c) and 30 TAC §281.25(a)(4), by failing to obtain an appropriate wastewater discharge permit; PENALTY: $3,210; STAFF ATTORNEY: Anna Treadwell, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: James Benefield; DOCKET NUMBER: 2009-0081-WR-E; TCEQ ID NUMBER: RIN105659197; LOCATION: approximately 800 feet north of the intersection of Bear Creek Road and County Road 268, Burnet County; TYPE OF FACILITY: concrete embankment that serves as a bridge; RULES VIOLATED: 30 TAC §297.11 and TWC, §11.121, by failing to obtain a water rights permit prior to diverting, impounding, storing, taking or using state water; PENALTY: $1,000; STAFF ATTORNEY: Jim Sillans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Kea Investments, Inc.; DOCKET NUMBER: 2007-1997-PST-E; TCEQ ID NUMBER: RIN101781615; LOCATION: 4632 State Highway 198, Malakoff, Henderson County; TYPE OF FACILITY: three inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $3,125; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: R.C. McBryde Oil Company; DOCKET NUMBER: 2009-0514-PST-E; TCEQ ID NUMBER: RIN101617074; LOCATION: 115 South Segovia Access Road, Junction, Kollum County; TYPE OF FACILITY: five USTs; RULES VIOLATED: 30 TAC §334.51(b)(2)(B)(i) and TWC, §26.3475(c)(2), by failing to equip the UST system with a spill containment device designed to prevent the release of regulated substances into the environment when the transfer hose or line is detached from the fill pipe; 30 TAC §334.48(a) and TWC, §26.121, by failing to prevent an unauthorized discharge of diesel fuel into or adjacent to any water in the state; 30 TAC §334.48(a), by failing to prevent an unauthorized discharge of petroleum substances; 30 TAC §334.72(2), by failing to report a suspected release to the TCEQ within 24 hours of the discovery; and 30 TAC §334.74(1), by failing to investigate a suspected release of regulated substances within 30 days of discovery; PENALTY: $67,600; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(6) COMPANY: Sid Richardson Carbon, Ltd.; DOCKET NUMBER: 2009-1045-AIR-E; TCEQ ID NUMBER: RIN100226026; LOCATION: Midway Road, one-mile north of Interstate Highway 20, Big Spring, Howard County; TYPE OF FACILITY: carbon black production plant; RULES VIOLATED: 30 TAC §101.20(3) and §116.115(c), New Source Review Permit Number 6580/PSD-TX-151, Special Condition (SC) Number 3, and Texas Health Safety Code (THSC), §382.085(b), by failing to record opacity readings three days per week; 30 TAC §101.20(3) and §116.115(c), New Source Review Permit Number 6580/PSD-TX-151, SC Numbers 3 and 11G, and THSC, §382.085(b), by failing to conduct and record three weekly opacity readings as required for each facility authorized by the permit; and 30 TAC §122.145(2)(A) and THSC, §382.085(b), by failing to report each instance of a deviation in the semi-annual deviation reports; PENALTY: $10,602; STAFF ATTORNEY: Laurencia Fasoiyo, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5406, (915) 570-1359.

TRD-2010001773
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality

Filed: April 13, 2010

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director’s preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the Texas Register no later than the 30th day before the date on which the public comment period closes, which in this case is May 24, 2010. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission’s jurisdiction, or the commission’s orders and permits issued in accordance with the commission’s regulatory author-
ity. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission’s central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission’s central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on May 24, 2010. Comments may also be sent by facsimile to the attorney at (512) 239-3434. The commission’s attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in writing.

(1) COMPANY: Devin Borjas; DOCKET NUMBER: 2009-1805-PST-E; TCEQ ID NUMBER: RN101905164; LOCATION: 501 South Main Street, Hale Center, Hale County; TYPE OF FACILITY: four inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: §3,675; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(2) COMPANY: Donald Stewart dba Riviera Truck and Auto Service; DOCKET NUMBER: 2009-0816-PST-E; TCEQ ID NUMBER: RN101680528; LOCATION: one-half mile south of the traffic light in Riviera, Klebberg County; TYPE OF FACILITY: auto repair shop with three inactive USTs; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the date of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0004416U for Fiscal Years 1988 - 2007; PENALTY: $8,925; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-12, (210) 403-4016; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Flat Rock Minerals, L.L.C.; DOCKET NUMBER: 2009-0421-WQ-E; TCEQ ID NUMBER: RN105497176; LOCATION: Lafayette Creek Ranch on Farm-to-Market (FM) Road 2796, 3.2 miles west of the intersection of FM Road 2796 and FM Road 557, Upshur County; TYPE OF FACILITY: sand and gravel mining operation; RULES VIOLATED: TWC, §26.121, by failing to prevent the unauthorized discharge of any pollutant into or adjacent to any water in the state; PENALTY: $10,650; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(4) COMPANY: Fuller Oil Co., Inc.; DOCKET NUMBER: 2009-2055-PST-E; TCEQ ID NUMBER: RN100532803; LOCATION: 535 East Avenue G, Silsbee, Hardin County; TYPE OF FACILITY: former retail gasoline facility; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 23702731 for Fiscal Years 2006 - 2007; PENALTY: $5,425; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: K & R Holdings, Inc.; DOCKET NUMBER: 2009-1883-PST-E; TCEQ ID NUMBER: RN101772572; LOCATION: 7601 East Houston Road, Houston, Harris County; TYPE OF FACILITY: three inactive USTs; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; and 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: $3,675; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Mark William Dailey; DOCKET NUMBER: 2009-0902-LII-E; TCEQ ID NUMBER: RN103281267; LOCATION: 25661 Highway 281 North, Suite 100, San Antonio, Bexar County; TYPE OF FACILITY: landscape irrigation company; RULES VIOLATED: 30 TAC §344.72, by failing to adhere to terms of a warranty for the installation of a new irrigation system; 30 TAC §344.61(b), by failing to note on irrigation plans that the irrigation system did not provide complete coverage of the area to be irrigated; and 30 TAC §344.70(b), by failing to include in all advertisements the irrigator’s license number in the form of “LI______”; PENALTY: $852; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Matthew A. Pryor; DOCKET NUMBER: 2009-1495-PST-E; TCEQ ID NUMBER: RN101737393; LOCATION: 500 Reverendansom Howard Street, Port Arthur, Jefferson County; TYPE OF FACILITY: former retail gasoline station with three USTs; RULES VIOLATED: 30 TAC §334.47(a)(2) and §334.54(b) and (d)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and failing to ensure that any residue from stored regulated substances which remained in a temporarily out of service UST did not exceed 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding USTs, within 30 days from the date of occurrence of the change or addition; PENALTY: $8,925; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: Pedro Sanchez dba Pedro’s Lawn Service; DOCKET NUMBER: 2009-1709-LII-E; TCEQ ID NUMBER: RN105588472; LOCATION: 1213 Warrington Drive, Austin, Travis County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC,
§37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(b) and §344.30(a)(2), by failing to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possessed a current registration or unless he employed an individual who holds a current license; PENALTY: §262; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

CITY OF HEARNE has applied for a renewal of TPDES Permit No. WQ0010046002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at the end of Farm-to-Market Road 50 (Mumford Road), approximately 7,500 feet south-southwest of the intersection of U.S. Highway 190 and U.S. Highway 79 and State Highway 6 in Robertson County, Texas 77859.

CITY OF CUERO has applied for a renewal of TPDES Permit No. WQ0010403002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at the south end of Stockdale Road, approximately 1.5 miles south of the intersection of Stockdale Road and Morgan Street in DeWitt County, Texas 77954.

SHELDON ROAD MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0010541001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 210,000 gallons per day to a daily average flow not to exceed 230,000 gallons per day. The facility is located approximately 1.25 miles south-southwest of the intersection of U.S. Highway 90 and Sheldon Road in Harris County, Texas 77049.

THE GULF COAST TRADES CENTER has applied for a major amendment to TPDES Permit No. WQ0012159001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 16,000 gallons per day to a daily average flow not to exceed 25,000 gallons per day. The facility is located within the Gulf Coast Trades Center Complex, approximately 3.8 miles west of the intersection of Interstate Highway 45 and Farm-to-Market Road 1375 and northeast of Lake Conroe in Walker County, Texas 77358.

HILL COUNTRY HARBOR LP has applied for a renewal of TPDES Permit No. WQ0014173001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 3,500 feet west of the intersection of Farm-to-Market Road 2951 and Park Road 36 in Palo Pinto County, Texas 76449.

DRIFTWOOD UTILITY COMPANY LLC has applied for a renewal of TCEQ Permit No. WQ0014480001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 11.5 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately 4,000 feet southeast of the intersection of Farm-to-Market Road 1826 and Bear Creek Pass, approximately 4,300 feet south of the intersection of Farm-to-Market Road 1826 and proposed Barrett Boulevard in Hays County, Texas 78737.

CITY OF JARRELL has applied for a renewal of TPDES Permit No. WQ0014594001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,000,000 gallons per day. The facility is located at 3600 East Farm-to-Market Road 487 approximately 1,900 feet east of the intersection of Farm-to-Market Road 487 and County Road 304 in Williamson County, Texas 76537.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 112 has applied for a renewal of TPDES Permit No. WQ0014671001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility
is located 4,000 feet north of Farm-to-Market Road 1488 and 10,100 feet west of Interstate Highway 45 in southwest Montgomery County, Texas 77384.

723 FORT BEND PARTNERS LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014953001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility will be located approximately 800 feet northeast of the intersection of Highway 723 and Highway 359 (4750 Farm-to-Market Road 723) in Fort Bend County, Texas 77406.

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

TRD-201001803
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 14, 2010

Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual Report due January 15, 2010 for Candidates and Officeholders

Curtis Wayne Hartfield, 1850 E. Houston St., Ste. 2, San Antonio, Texas 78202-2974
Charles W. Randolph, P.O. Box 1660, Boyd, Texas 76023

Deadline: Semiannual Report due January 15, 2010 for Committees

Dwayne E. Adams, Bexar County Democratic party County Executive Committee (CEC), 3010 N. St. Mary’s St., Ste. 1101, San Antonio, Texas 78212
Shane J. Howard, Jefferson County Republican Party (P), 550 Fannin, Ste. 510, Beaumont, Texas 77701

Deadline: 8-Day Pre-Election Report due February 22, 2010 for Candidates and Officeholders

Alma Ludivina Aguado, 43 Stonewall Bend, San Antonio, Texas 78256
Daniel Anchondo, Sr., 2509 Montana Ave., El Paso, Texas 79903
Josiah J. Ingalls, 2425 E. Riverside Dr. #633, Austin, Texas 78741
Socorro G. Meza, 13707 Cape Bluff, San Antonio, Texas 78216
Ronald E. Reynolds, 6140 Hwy 6 S. #233, Missouri City, Texas 77459

Deadline: 8-Day Pre-Election Report due February 22, 2010 for Committees

Leslie A. Gower, Hidalgo County Texas Democratic Women, 625 E. Dallas, McAllen, Texas 78501

TRD-201001767

David Reisman
Executive Director
Texas Ethics Commission
Filed: April 12, 2010

Office of the Governor

Correction of Error: Texas Military Defense Preparedness Commission Defence Economic Adjustment Assistance Grant Program RFA

(Editor’s Note: This notice appeared in the April 16, 2010, issue of the Texas Register (35 TexReg 3116). The word “capital” should not have been included in the phrase “capital equipment.” The corrected version is republished in its entirety and is shown with the word “capital” struck out.)

Defense Economic Adjustment Assistance Grant Solicitation to Retrain Defense Workers

The Texas Military Preparedness Commission (TMPC) is the recipient of $5 million in American Recovery and Reinvestment Act (ARRA) funds appropriated by the Texas Legislature in Senate Bill 1, General Appropriations Act, Article XII, §25 for the 2010-2011 biennium, to be used as part of its Texas Defense Economic Adjustment Assistance Grant Program (DEAAG).

Use of Grant Proceeds:

The retraining of defense workers defined as veterans, disabled veterans, Department of Defense (DoD) uniformed and civilian personnel as well as non-DoD displaced civilian defense workers.

For the purchase or lease of [capital]* equipment to be used to retrain defense workers.

Qualifying Entities:

A public junior college district all or part of which is located in a defense community in Texas.

A campus or extension center for education purposes of the Texas State Technical College System located in a defense community in Texas.

Targeted Population:

A veteran or disabled veteran.

Uniformed or civilian employee of the United States Department of Defense (DoD).

An employee of a government agency or private business, or entity providing a DoD related function, who is employed on a defense facility.

An employee of a business that provides contracted direct services or products to the DoD and whose job is directly dependent on defense expenditures.

Award amount: The minimum award is $50,000. The maximum award is $2 million. A maximum of $4 million will be awarded for this posting.

Program Coverage: ARRA funds provided under the Defense Economic Adjustment Assistance Grant Program must be expended in full no later than February 28, 2011. Leased [capital]* equipment will not be funded through ARRA after February 28, 2011.

Documentation and Verification:

Applicants will be required to provide adequate documentation that ARRA grant awards are used in the retraining of defense workers
through the purchase or leasing of related training equipment as defined above.

Awards are subject to all relevant federal and state monthly, quarterly and annual reporting requirements concerning the use of ARRA funds.

Application Process: Applicants will need to access TMPC’s application at the Office of the Governor’s eGrants website at https://egrants.governor.state.tx.us to register and apply for funding.

Closing Date for Receipt of Applications: All applications must be certified by the Authorized Official via eGrants website on or before 5:00 p.m., May 10, 2010.

Contact the Texas Military Preparedness Commission at tmpc@governor.state.tx.us with any questions concerning this application. Questions must be received no later than April 20, 2010. Answers will be posted no later than May 3, 2010.

The scoring of the Competitive Grant Solicitation will consider the following factors.

Basis of Eligibility

Adversely Affected Defense Community: The defense community in which the qualifying entity is located meets the requirements of an Adversely Affected Community, as defined in Texas Government Code §486.003(b), with consideration given to the size, scope and significance of any downturn in military mission or defense related economic business, OR

Positively Affected Defense Community: The defense community in which the qualifying entity is located meets the requirements of a Positively Affected Community, as defined in Texas Government Code §486.003(c), with consideration given to the size, scope and significance of any increase in military mission or defense related economic business

Area Impact—the impact of the United States DoD base realignment on the community as measured by the applicant’s employment/unemployment information, considering community population and statewide unemployment figures

Target Population—the applicant’s projected enrollment of targeted students in classes where DEAAG funds are to be used, with consideration given to the likelihood of achieving the projection as demonstrated by community demographics and applicant’s recruitment strategy

***Definition of Targeted Students

i. A veteran or disabled veteran;

ii. Uniformed member of the Armed Services;

iii. A United States Department of Defense (DoD) civilian employee; and

iv. An employee of a business that provides contracted direct services or products to the DoD and whose job is directly dependent on defense expenditures.***

Alignment with DEAAG Program Goals—the likelihood of achieving DEAAG Program Goals with favorable consideration for projects with the greatest impact toward achieving those goals

***DEAAG Program Goals

The purpose of the Texas program is to assist Public Junior Colleges or a campus or extension of the Texas State Technical College System in the retraining of defense workers, including veterans, disabled veterans, DoD uniformed and civilian personnel and non-DoD displaced workers through the purchase or leasing of [capital] equipment for the purpose of (re)training displaced defense workers.***

Project Funding Sources—the applicant’s efforts to secure additional state or federal funding sources or efforts to secure financial partners, such as a local defense contractor, favoring schools that have acquired additional financial backing or secured a local partnership to support the class/project

Project Milestones—Dates for the purchase occurring before February 28, 2011 and the corresponding dates classes will start, with preference given to grants with earlier expenditures and those supporting classes already in progress or earlier start date.

* The word "capital" was removed on April 8, 2010.

TRD-201001703

Martin Fox
Director, Texas Military Preparedness Commission
Office of the Governor
Filed: April 9, 2010

Request for Grant Applications for the Crime Stoppers Assistance Fund Program

The Criminal Justice Division (CJD) of the Governor’s Office is soliciting grant applications to support certified Crime Stoppers organizations in Texas during the state fiscal year 2011 grant cycle.

Purpose: The purpose of the Crime Stoppers Assistance funding is to enhance and assist the community’s efforts in solving serious crimes.

Available Funding: State funding is authorized for these projects under Article 102.013, Texas Code of Criminal Procedure, which designated CJD as the funds administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Funding Levels:

(1) Minimum grant award - $1,500.
(2) Maximum grant award - $10,000.

Required Match: None.

Standards: Grantees must comply with the standards applicable to this funding source cited in the Texas Administrative Code (1 TAC Chapter 3) and all statutes, requirements and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;
(2) lobbying and administrative advocacy;
(3) promotional advertisements of any kind;
(4) entertainment or refreshments;
(5) subscription fees or dues;
(6) fundraising activities;
(7) office space rental;
(8) extended equipment services arrangements;
(9) contributions;
(10) purchase or improvement of real estate;
(11) rewards, except for statewide projects; and
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or

(2) a public organization that is operated on a local or statewide level, that pays rewards to persons who report to the organization information about criminal activity, and that forwards the information to the appropriate law enforcement agency; or

Project Period: Grant-funded projects must begin on or after September 1, 2010, and expire on or before September 30, 2011.

Application Process: Applicants can access CJD’s eGrants website at https://e-grants.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to projects that support information systems such as 24-hour tip hotlines, technology upgrades, and participation in the annual campus conference.

Closing Date for Receipt of Applications: All applications must be certified via CJD’s eGrants website on or before June 18, 2010.

Selection Process: Applications will be 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, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Betty Bosarge at betty.bosarge@governor.state.tx.us or (512) 463-1784.

TRD-201001797
Kate Fite
Assistant General Counsel
Office of the Governor
Filed: April 14, 2010

Texas Health and Human Services Commission
Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on May 12, 2010, at 9:00 a.m. to receive public comment on rates for Levels 1 through 25 under the Attendant Compensation Rate Enhancement in the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), Home and Community-based Services (HCS), and Texas Home Living (TxHmL) programs operated by the Department of Aging and Disability Services (DADS). For ICF/MR, rates for Levels 1 through 25 will be proposed for residential services and day habilitation services; for HCS and TxHmL, rates for Levels 1 through 25 will be proposed for non-day habilitation services and day habilitation services. For HCS and TxHmL, non-day habilitation services include supervised living/residential support services, supported home living/community supports, respite, supported employment and employment assistance. 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 rates for Levels 1 through 25 under the Attendant Compensation Rate Enhancement in the ICF/MR, HCS, and TxHmL programs. For ICF/MR, rates for Levels 1 through 25 will be proposed for residential services and day habilitation services; for HCS and TxHmL, rates for Levels 1 through 25 will be proposed for non-day habilitation services and day habilitation services. The proposed rates will be effective September 1, 2010, and were determined in accordance with the rate setting methodologies listed below under "Methodology and Justification."

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodology at Texas Administrative Code (TAC) Title 1, Chapter 355, Subchapter A, §355.112, Attendant Compensation Rate Enhancement, as proposed to be amended. The proposed amendment of §355.112, which appeared in the March 26, 2010, issue of the Texas Register, updates the rule to describe how attendant compensation rate enhancements are determined for the ICF/MR, HCS and TxHmL programs. These changes are being made in accordance with the General Appropriations Act (Article II, Health and Human Services Commission, S.B. 1, Rider 67, 81st Legislature, Regular Session, 2009), which authorized HHSC to discontinue fiscal accountability spending requirements contingent upon the implementation of a rate enhancement system or other appropriate financial performance standards.

Briefing Package. A briefing package describing the proposed payment rates will be available on April 28, 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-201001770
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 12, 2010

Public Notice

IN ADDITION  April 23, 2010  35 TexReg 3315
The Texas Health and Human Services Commission announces its intent to submit Transmittal Number 10-018, Amendment Number 911, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to add external breast prosthesis to the prosthetics section of the state plan. The benefit will be covered when medically necessary for all Medicaid recipients who have a history of medically necessary mastectomy procedure(s). The proposed amendment is effective June 1, 2010.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $40,450 for the remainder of federal fiscal year (FFY) 2010, consisting of $28,698 in federal funds and $11,752 in state general revenue. For FFY 2011, the estimated additional annual expenditure is $156,199 consisting of $106,870 in federal funds and $49,329 in state general revenue. For FFY 2012, the estimated additional annual expenditure is $159,355 consisting of $106,910 in federal funds and $52,445 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact Marianna Gomez by mail at P.O. Box 13247, MC: H-310, Austin, TX 78711; by telephone at (512) 491-1881; by facsimile at (512) 491-1953; or by e-mail at marianna.gomez@hhsc.state.tx.us.

TRD-2010001670
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 8, 2010

Public Notice

The Texas Health and Human Services Commission (HHSC) announces the submission of Amendment 22 to the Texas State Plan for the Children’s Health Insurance Program (CHIP) under Title XXI of the Social Security Act. The proposed amendment modifies the Texas CHIP Perinatal Program effective September 1, 2010.

Currently, the CHIP Perinatal Program provides 12 months of continuous CHIP coverage to unborn children at or below 200 percent of the federal poverty level (FPL). The CHIP Perinatal Program covers prenatal care, labor with delivery for a woman above 185 percent of FPL, and full CHIP benefits for the newborn after the initial hospital stay. Emergency Medicaid covers labor with delivery for a woman at or below 185 percent of FPL, and the CHIP Perinatal Program provides full CHIP benefits for the newborn after the initial hospital stay.

The federal Centers for Medicare and Medicaid Services (CMS) has directed HHSC to make changes to the CHIP Perinatal Program. Specifically, CMS has directed HHSC to provide 12 months of continuous Medicaid coverage, instead of CHIP Perinatal Program coverage, to the newborns of emergency Medicaid recipients.

Under the proposed State Plan Amendment (SPA), HHSC proposes to continue providing women, statewide, between 186 - 200 percent of FPL with prenatal care, labor with delivery, and CHIP coverage to their newborns for the remainder of the 12 months of coverage. To comply with CMS guidance, HHSC will provide women at or below 185 percent of FPL with prenatal care under CHIP Perinatal, emergency Medicaid for labor with delivery, and 12 months of continuous Medicaid coverage to their newborns.

For fiscal year 2011, HHSC estimates an all funds cost of $17,141,570; a general revenue cost of $15,758,258; and a federal funds savings of ($1,383,312) to implement the proposed SPA. For fiscal year 2012, HHSC estimates an all funds cost of ($25,372,555); a general revenue cost of $28,051,083; and a federal funds savings of ($2,678,528) to implement the proposed SPA.

For additional information or a copy of the amendment, please contact Kimberly Davis, Acute Care Policy Manager, Medicaid and CHIP Division, by telephone at (512) 491-1335 or by e-mail at Kimberly.Davis@hhsc.state.tx.us.

TRD-2010001779
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: April 13, 2010

Texas Department of Housing and Community Affairs

Housing Trust Fund Program

2010-2011 HTF Rural Housing Expansion Program

Notice of Funding Availability (NOFA)

I. Source of Housing Trust Funds.

The Housing Trust Fund was established by the 72nd Legislature, Senate Bill 546, §2306.201 of the Texas Government Code, to create affordable housing for low and very low income individuals and families. Funding sources consist of appropriations or transfers made to the fund, unencumbered fund balances, and public or private gifts, grants, or donations.

II. Notice of Funding Availability (NOFA).

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of $1,750,000 in funding from the 2010-2011 Housing Trust Fund (HTF) appropriation to further the Department’s goal of building capacity in tandem with actual production of affordable housing in rural Texas. The Rural Housing Expansion Program ("Program") will simultaneously provide capacity building resources and funds for direct housing delivery. The Program is designed with the understanding that having a commitment of direct delivery funds will allow a recipient entity to fully develop capacity through training, technical assistance and hands-on experience.

The Program includes three (3) activities for which an application may qualify:

Direct Housing Delivery. A minimum of $1,000,000 may be awarded in the form of zero-interest, deferred, repayable loans or grants, depending on the activity, for the purpose of direct housing delivery, with the requirement that other financial resources be leveraged.

USDA §502 Direct Loan Application Assistance. $450,000 in funding will be set aside and awarded in the form of grants to rural municipalities, rural counties, and Nonprofit Organizations packaging and submitting §502 Rural Housing Direct Loan Applications through the United States Department of Agriculture (USDA).

Capacity Building Grants. Up to $300,000 may be awarded as capacity building grants, with up to $50,000 of this amount of this amount reserved for Applicants to the USDA §502 Direct Loan Application Assistance activity. Capacity building program requirements and funding for each component are further outlined in §2 of the NOFA.

For Applicants who provide evidence of areas of need regarding organizational capacity to complete Direct Housing Delivery and/or USDA §502 Direct Loan Application Assistance activities, the Program includes Organizational Capacity Assessment, Training, and Technical Assistance. Administrators participating in this activity will undergo
an assessment to determine the capacity needs of the Administrator for the purpose of identifying and delivering actions and training needed to increase the Applicant’s long-term capacity to provide affordable housing services in their community. The capacity assessment, training and technical assistance will be provided by a separately procured Technical Assistance Provider.

Persons served by the proposed activities will be limited to those whose incomes do not exceed 80% of the Area Median Family Income (AMFI), as defined by the Department.

III. Applicant Eligibility.

Applicants responding to the NOFA must meet the qualifications of the NOFA and must be rural municipalities and rural counties, Nonprofit Organizations that serve rural communities, or consortia of several such municipalities, counties and/or Nonprofit Organizations.

IV. Proposed Contract Period.

Contracts will be required for funds awarded under this Program. The Contract Period and requirements shall be based upon the timeline of the proposed activity.

V. Maximum Award Per Applicant and Application.

The maximum award amount per Application for the Direct Housing Delivery component of this program may not exceed $550,000. The maximum Capacity Building award per Applicant for the USDA §502 Direct Loan Application Assistance component is $5,000.

VI. Application Deadline and Availability.

The HTF Rural Housing Expansion Program NOFA is posted on the Department’s website: http://www.tdhca.state.tx.us/htf/index.htm and organizations on the Department’s list will receive an e-mail notification that the NOFA is available on the Department’s web-site.

VI. Deadline for Receipt.

Funds for the Direct Housing Delivery component under the NOFA will be awarded through a Competitive Application Cycle. The Application Acceptance Period will open on Wednesday, March 31, 2010, and Applications will be accepted by the Department on regular business days until 5:00 p.m., Central Time, on Friday, May 28, 2010, regardless of method of delivery.

Funds for the USDA §502 Direct Loan Application Assistance component under the NOFA will be awarded through an Open Application Cycle. The Application Acceptance Period will open on Wednesday, March 31, 2010, and Applications will be accepted by the Department on regular business days until all funds have been exhausted, or Friday, December 3, 2010, regardless of method of delivery.

Mailing Address:
Mr. Mark Leonard, Housing Trust Fund Program Specialist
Housing Trust Fund Division
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin, Texas 78711-3941
(All U.S. Postal Service including Express)

Courier Delivery:
221 East 11th Street, 1st Floor
Austin, Texas 78701
(FedEx, UPS, Overnight, etc.)

Hand Delivery: If you are hand delivering the application, contact Mark Leonard at (512) 936-7799 (Mark.Leonard@tdhca.state.tx.us) or Dee Copeland Patience at (512) 475-2567 (Dee.Copeland@tdhca.state.tx.us) when you arrive at the lobby of our building for application acceptance.

Questions. Questions pertaining to the content of the HTF Rural Housing Expansion Program NOFA may only be directed to Mark Leonard at (512) 936-7799 (Mark.Leonard@tdhca.state.tx.us) or Dee Copeland Patience at (512) 475-2567 (Dee.Copeland@tdhca.state.tx.us).

TRD-201001788
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 14, 2010

Texas Department of Insurance

Company Licensing

Application for incorporation in the State of Texas by ASI CORP., assumed name of AMERICAN CAPITAL ASSURANCE CORP., a foreign fire and casualty company. The home office is in St. Petersburg, Florida.

Application to change the name of HCC INSURANCE COMPANY to JOHN DEERE INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Indianapolis, Indiana.

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

TRD-201001795
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: April 14, 2010

Third Party Administrator Applications

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

Application of KELLY & ASSOCIATES INSURANCE GROUP, INC., a foreign third party administrator. The home office is HUNT VALLEY, MARYLAND.

Application of EMERALD CLAIMS MANAGEMENT, INC., a domestic third party administrator. The home office is PORTER, TEXAS.

Application of NBFS, LLC, a foreign third party administrator. The home office is WINSTON-SALEM, NORTH CAROLINA.

Application of DJK GROUP, INC., a domestic third party administrator. The home office is DALLAS, TEXAS.

Any objections must be filed within 20 days after this notice is published in the Texas Register; addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201001796
Texas Lottery Commission

Instant Game Number 1242 "Casino Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1242 is "CASINO BINGO". The play style for the game INSTANT BONUS is "auto win" The play style for the game BINGO is "bingo".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1242 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1242.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, G61, G62, G63, G64, G65, G66, G67, G68, G69, G70, G71, G72, G73, G74, G75, O1, O2, O3, O4, O5, O6, O7, O8, O9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, TWO DOLLARS SYMBOL, THREE DOLLARS SYMBOL, THREE DOLLARS SYMBOL, FIVE DOLLARS SYMBOL, TEN DOLLARS SYMBOL, TWENTY DOLLARS SYMBOL, FIFTY DOLLARS SYMBOL, TRYAGAIN SYMBOL and MAYBE NEXT TIME SYMBOL.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:
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<td>TRY SYMBOL</td>
<td>AGAIN</td>
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<td>MAYBE SYMBOL</td>
<td>NEXT TIME</td>
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</table>

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 $2.00, $3.00, $5.00, $10.00, $15.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $30,000.

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 (1242), 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: 1242-0000001-001.

K. Pack - A pack of "CASINO BINGO" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the back front of the pack and front of ticket 125 will be shown on the back of the 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 "CASINO BINGO" Instant Game No. 1242 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 "CASINO BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 131 (one hundred thirty one) play symbols. For the game INSTANT BONUS, if a player reveals a prize amount play symbol, the player wins that amount instantly. For the game BINGO, the player must scratch off the CALLER’S CARD area to reveal 30 (thirty) Bingo Numbers. The player must scratch all the Bingo Numbers on CARDS 1 through 4 that match the Bingo Numbers on the CALLER’S CARD. Each "CARD" has a corresponding prize box. Players win by matching those same numbers on the four Player’s Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, the player wins a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card, the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card, the player wins prize according to the legend of the respective playing card. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

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

1. Exactly 131 (one hundred thirty one) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery’s codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 131 (one hundred thirty one) 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 previously paid;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 131 (one hundred thirty one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 131 (one hundred thirty one) 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. A ticket will win as indicated by the prize structure.
B. A ticket can win up to four times and only once per Card.
C. There will never be more than one win on a single BINGO CARD.
D. No duplicate numbers will appear on the CALLER’S CARD and BONUS NUMBERS.
E. No duplicate numbers will appear on each individual BINGO CARD.
F. Consecutive non-winning tickets within a pack will not have identical patterns.
G. The highest prize won per card will be paid.
H. Each CALLER’S CARD will have a minimum of four (4) and a maximum of six (6) numbers from each range per letter. The BONUS NUMBERS will have a minimum of one (1) and a maximum of two (2) numbers for each range per letter.
I. The number range used for each letter will be as follows: B (01-15), I (16-30), N (31-45), G (46-60), O (61-75).
J. Each BINGO CARD on the same ticket must be unique.
K. The 24 CALLER’S CARD numbers and 6 BONUS NUMBERS will match 39 to 59 numbers per ticket (not including the FREE spaces).
L. A ‘near win’ is a winner less one number except the "X" where there are two numbers less, one in each diagonal line (one of which must be a corner).

M. INSTANT BONUS: The Play area consists of one (1) Play Symbol.
N. INSTANT BONUS: Winning tickets will display a prize amount: TWO DOLLARS, THREE DOLLARS, FIVE DOLLARS, TEN DOLLARS, TWENTY DOLLARS, FIFTY DOLLARS, OR ONE HUN DOLLARS.

2.3 Procedure for Claiming Prizes.
A. To claim a "CASINO BINGO" Instant Game prize of $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, 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 $30.00, $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
B. To claim a "CASINO BINGO" Instant Game prize of $1,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery’s Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the ticket will be exchanged for a ticket with the same or greater prize value.
Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASINO BINGO" 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 "CASINO BINGO" 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 "CASINO BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor’s family or the minor’s guardian serving as custodian for the minor.

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

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

3.0 Instant Ticket Ownership.

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

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

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 1242. The approximate number and value of prizes in the game are as follows:
A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1242 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. 1242, 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-201001606
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 7, 2010

Instant Game Number 1252 "Cash Vault"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1252 is "CASH VAULT". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1252 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 1252.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 10X SYMBOL, $.50, $10.00, $15.00, $20.00, $25.00, $100, $200, $2,000 and $50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ONE</td>
</tr>
<tr>
<td>2</td>
<td>TWO</td>
</tr>
<tr>
<td>3</td>
<td>THR</td>
</tr>
<tr>
<td>4</td>
<td>FOR</td>
</tr>
<tr>
<td>5</td>
<td>FIV</td>
</tr>
<tr>
<td>6</td>
<td>SIX</td>
</tr>
<tr>
<td>7</td>
<td>SVN</td>
</tr>
<tr>
<td>8</td>
<td>EGT</td>
</tr>
<tr>
<td>9</td>
<td>NIN</td>
</tr>
<tr>
<td>11</td>
<td>ELV</td>
</tr>
<tr>
<td>12</td>
<td>TLV</td>
</tr>
<tr>
<td>13</td>
<td>TRN</td>
</tr>
<tr>
<td>14</td>
<td>FTN</td>
</tr>
<tr>
<td>15</td>
<td>FFN</td>
</tr>
<tr>
<td>16</td>
<td>SXN</td>
</tr>
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<td>17</td>
<td>SVT</td>
</tr>
<tr>
<td>18</td>
<td>ETN</td>
</tr>
<tr>
<td>19</td>
<td>NTN</td>
</tr>
<tr>
<td>20</td>
<td>TWY</td>
</tr>
<tr>
<td>21</td>
<td>TWON</td>
</tr>
<tr>
<td>22</td>
<td>TWTO</td>
</tr>
<tr>
<td>23</td>
<td>TWTH</td>
</tr>
<tr>
<td>24</td>
<td>TWFR</td>
</tr>
<tr>
<td>25</td>
<td>TWFV</td>
</tr>
<tr>
<td>26</td>
<td>TWSX</td>
</tr>
<tr>
<td>27</td>
<td>TWSV</td>
</tr>
<tr>
<td>28</td>
<td>TWET</td>
</tr>
<tr>
<td>29</td>
<td>TWNI</td>
</tr>
<tr>
<td>30</td>
<td>TRTY</td>
</tr>
<tr>
<td>31</td>
<td>TRON</td>
</tr>
<tr>
<td>32</td>
<td>TRTO</td>
</tr>
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<td>TRTH</td>
</tr>
<tr>
<td>34</td>
<td>TRFR</td>
</tr>
<tr>
<td>35</td>
<td>TRFV</td>
</tr>
<tr>
<td>36</td>
<td>TRSX</td>
</tr>
<tr>
<td>37</td>
<td>TRSV</td>
</tr>
<tr>
<td>38</td>
<td>TRET</td>
</tr>
<tr>
<td>39</td>
<td>TRNI</td>
</tr>
<tr>
<td>40</td>
<td>FRTY</td>
</tr>
<tr>
<td>10X SYMBOL</td>
<td>WINX10</td>
</tr>
<tr>
<td>$5.00</td>
<td>FIVE$</td>
</tr>
<tr>
<td>$10.00</td>
<td>TENS$</td>
</tr>
<tr>
<td>$15.00</td>
<td>FIFTN</td>
</tr>
<tr>
<td>$20.00</td>
<td>TWENTY</td>
</tr>
<tr>
<td>$50.00</td>
<td>FIFTY</td>
</tr>
<tr>
<td>$100</td>
<td>ONE HUND</td>
</tr>
</tbody>
</table>
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: 000000000000000.

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

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100 or $200.

H. High-Tier Prize - A prize of $2,000 or $50,000.

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 (1252), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1252-0000001-001.

K. Pack - A pack of "CASH VAULT" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "CASH VAULT" Instant Game No. 1252 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 "CASH VAULT" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "10X" play symbol, the player wins TEN TIMES the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:
1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery’s codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery’s Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and
19. The ticket must have been received by the Texas Lottery by applicable deadlines.

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

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

2.2 Programmed Game Parameters.
A. Consecutive non-winning tickets will not have identical play data, spot for spot.
B. No four or more matching non-winning prize symbols on a ticket.
C. The 10X (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.
D. No duplicate WINNING NUMBERS play symbols on a ticket.
E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.
F. Non-winning prize symbols will never be the same as the winning prize symbol(s).
G. The top prize will appear on every ticket unless otherwise restricted.
H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and $5).

2.3 Procedure for Claiming Prizes.
A. To claim a "CASH VAULT" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, 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 $25.00, $50.00, $100 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
B. To claim a "CASH VAULT" Instant Game prize of $2,000 or $50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery’s Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event 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 "CASH VAULT" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:
1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.
E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:
A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
B. if there is any question regarding the identity of the claimant;
C. if there is any question regarding the validity of the ticket presented for payment; or
D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "CASH VAULT" 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 "CASH VAULT" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor’s family or the minor’s guardian serving as custodian for the minor.

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

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

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

**Figure 2: GAME NO. 1252 - 4.0**

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$5</td>
<td>480,000</td>
<td>12.50</td>
</tr>
<tr>
<td>$10</td>
<td>720,000</td>
<td>8.33</td>
</tr>
<tr>
<td>$15</td>
<td>80,000</td>
<td>75.00</td>
</tr>
<tr>
<td>$20</td>
<td>100,000</td>
<td>60.00</td>
</tr>
<tr>
<td>$25</td>
<td>80,000</td>
<td>75.00</td>
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<td>$50</td>
<td>80,000</td>
<td>75.00</td>
</tr>
<tr>
<td>$100</td>
<td>4,500</td>
<td>1,333.33</td>
</tr>
<tr>
<td>$200</td>
<td>1,250</td>
<td>4,800.00</td>
</tr>
<tr>
<td>$2,000</td>
<td>300</td>
<td>20,000.00</td>
</tr>
<tr>
<td>$50,000</td>
<td>6</td>
<td>1,000,000.00</td>
</tr>
</tbody>
</table>

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

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

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1252 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).

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. 1252, 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-201001607
Kimberly L. Kipin
General Counsel
Texas Lottery Commission
Filed: April 7, 2010

Instant Game Number 1253 "Spicy Hot 7's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1253 is "SPICY HOT 7'S". The play style for this game is "key symbol match".

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

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1252. The approximate number and value of prizes in the game are as follows:

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1253 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1253.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible red play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20 and 7 RED SYMBOL. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 7 BLACK SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $1,000 and $20,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:
<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (red)</td>
<td>ONE</td>
</tr>
<tr>
<td>2 (red)</td>
<td>TWO</td>
</tr>
<tr>
<td>3 (red)</td>
<td>THR</td>
</tr>
<tr>
<td>4 (red)</td>
<td>FOR</td>
</tr>
<tr>
<td>5 (red)</td>
<td>FIV</td>
</tr>
<tr>
<td>6 (red)</td>
<td>SIX</td>
</tr>
<tr>
<td>8 (red)</td>
<td>EGT</td>
</tr>
<tr>
<td>9 (red)</td>
<td>NIN</td>
</tr>
<tr>
<td>10 (red)</td>
<td>TEN</td>
</tr>
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<td>ELV</td>
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</tr>
<tr>
<td>18 (red)</td>
<td>ETN</td>
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<tr>
<td>19 (red)</td>
<td>NTN</td>
</tr>
<tr>
<td>20 (red)</td>
<td>TWY</td>
</tr>
</tbody>
</table>

**7 SYMBOL (red)** DOUBLE

<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (black)</td>
<td>ONE</td>
</tr>
<tr>
<td>2 (black)</td>
<td>TWO</td>
</tr>
<tr>
<td>3 (black)</td>
<td>THR</td>
</tr>
<tr>
<td>4 (black)</td>
<td>FOR</td>
</tr>
<tr>
<td>5 (black)</td>
<td>FIV</td>
</tr>
<tr>
<td>6 (black)</td>
<td>SIX</td>
</tr>
<tr>
<td>8 (black)</td>
<td>EGT</td>
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<td>10 (black)</td>
<td>TEN</td>
</tr>
<tr>
<td>11 (black)</td>
<td>ELV</td>
</tr>
<tr>
<td>12 (black)</td>
<td>TLV</td>
</tr>
<tr>
<td>13 (black)</td>
<td>TRN</td>
</tr>
<tr>
<td>14 (black)</td>
<td>FTN</td>
</tr>
<tr>
<td>15 (black)</td>
<td>FFN</td>
</tr>
<tr>
<td>16 (black)</td>
<td>SXN</td>
</tr>
<tr>
<td>18 (black)</td>
<td>ETN</td>
</tr>
<tr>
<td>19 (black)</td>
<td>NTN</td>
</tr>
<tr>
<td>20 (black)</td>
<td>TWY</td>
</tr>
</tbody>
</table>

**7 SYMBOL (black)** WIN

<table>
<thead>
<tr>
<th>PLAY SYMBOL</th>
<th>CAPTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2.00 (black)</td>
<td>TWO$</td>
</tr>
<tr>
<td>$4.00 (black)</td>
<td>FOURS$</td>
</tr>
<tr>
<td>$5.00 (black)</td>
<td>FIVES$</td>
</tr>
<tr>
<td>$10.00 (black)</td>
<td>TEN$</td>
</tr>
<tr>
<td>$20.00 (black)</td>
<td>TWENTY</td>
</tr>
<tr>
<td>$50.00 (black)</td>
<td>FIFTY</td>
</tr>
<tr>
<td>$100 (black)</td>
<td>ONE HUND</td>
</tr>
<tr>
<td>$1,000 (black)</td>
<td>ONE THOU</td>
</tr>
<tr>
<td>$20,000 (black)</td>
<td>20 THOU</td>
</tr>
</tbody>
</table>
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 $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $20,000.

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 (1253), 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: 1253-0000001-001.

K. Pack - A pack of "SPICY HOT 7'S" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

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 "SPICY HOT 7'S" Instant Game No. 1253 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 "SPICY HOT 7'S" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) Play Symbols. If a player reveals a "BLACK 7" play symbol, the player wins PRIZE shown for that symbol. If a player reveals a "RED 7" play symbol, the player wins DOUBLE the PRIZE shown for that symbol! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

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

1. Exactly 20 (twenty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery’s codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 20 (twenty) 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 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 20 (twenty) Play Symbols on the ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

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

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

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

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

2.2 Programmed Game Parameters.

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

B. No three or more matching non-winning prize symbols will appear on a ticket.
C. No duplicate non-winning play symbols on a ticket regardless of color.

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

E. No prize amount in a non-winning spot will correspond with the play symbol (i.e. 5 and $5).

F. Non-winning play symbols and captions will appear in both black and red imaging.

G. Winning play symbols will only appear in the color designated by the prize structure.

H. There will be a minimum of 4 red play symbols and a maximum of 7 red play symbols on a ticket unless otherwise indicated by the prize structure.

I. The "BLACK 7" (auto win) play symbol will only appear as dictated by the prize structure.

J. The "RED 7" (doubler) play symbol will only appear as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SPICY HOT 7'S" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, 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 $50.00 or $100 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 procedures described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SPICY HOT 7'S" Instant Game prize of $1,000 or $20,000 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 "SPICY HOT 7'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

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

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

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

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

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

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

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

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SPICY HOT 7'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor’s family or the minor’s guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SPICY HOT 7'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor’s family or the minor’s guardian serving as custodian for the minor.

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

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

3.0 Instant Ticket Ownership.

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

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

**Figure 2: GAME NO. 1253 - 4.0**

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2</td>
<td>566,400</td>
<td>12.50</td>
</tr>
<tr>
<td>$4</td>
<td>651,360</td>
<td>10.87</td>
</tr>
<tr>
<td>$5</td>
<td>84,960</td>
<td>83.33</td>
</tr>
<tr>
<td>$10</td>
<td>99,120</td>
<td>71.43</td>
</tr>
<tr>
<td>$20</td>
<td>42,480</td>
<td>166.67</td>
</tr>
<tr>
<td>$50</td>
<td>47,141</td>
<td>150.19</td>
</tr>
<tr>
<td>$100</td>
<td>6,549</td>
<td>1,081.08</td>
</tr>
<tr>
<td>$1,000</td>
<td>47</td>
<td>150,638.30</td>
</tr>
<tr>
<td>$20,000</td>
<td>7</td>
<td>1,011,428.57</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.73. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

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

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1253 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. 1253, 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-201001793
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: April 14, 2010

Instant Game Number 1272 "Veterans Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1272 is "VETERANS CASH". The play style is "row/column/diagonal with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1272 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1272.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, EAGLE SYMBOL, STAR SYMBOL, $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100, $500, $1,000 and $20,000.

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

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IN ADDITION  April 23, 2010  35 TexReg 3333
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 $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $20,000.

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 (1272), 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: 1272-0000001-001.

K. Pack - A pack of "VETERANS CASH" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of one ticket on each pack. Please note the books will be in an A, B, C and D configuration.

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 "VETERANS CASH" Instant Game No. 1272 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 "VETERANS CASH" Instant Game is determined once the latex on the ticket is scratched off to expose 20 (twenty) Play Symbols. For each GAME, if a player reveals three (3) "STAR" play symbols in any one row, column or diagonal, the player wins the PRIZE shown for that GAME. If a player reveals three (3) "EAGLE" play symbols in any one row, column or diagonal, the player wins TRIPLE the PRIZE shown for that GAME. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

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

1. Exactly 20 (twenty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number必须 be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery’s codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 20 (twenty) 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 20 (twenty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 20 (twenty) 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. No matching non-winning prize symbol(s) on a ticket.
C. The "EAGLE" (tripler) play symbol will create a win within a row, column or diagonal on intended winning tickets as dictated by the prize structure.
D. No ticket will contain three or more of a kind other than the "STAR" (win) or "EAGLE" (tripler) play symbols.
E. Each GAME may only win once.

2.3 Procedure for Claiming Prizes.
A. To claim a "VETERANS CASH" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $50.00 or $100, 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 $5.00 or $100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.
B. To claim a "VETERANS CASH" Instant Game prize of $1,000 or $20,000, 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 "VETERANS CASH" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.
D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:
1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.
E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:
A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
B. if there is any question regarding the identity of the claimant;
C. if there is any question regarding the validity of the ticket presented for payment; or
D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "VETERANS CASH" Instant Game, the Texas Lottery shall deliver to an adult member of the minor’s family or the minor’s guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "VETERANS CASH" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor’s family or the minor’s guardian serving as custodian for the minor.

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

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

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

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

4.0 Number and Value of Instant Prizes. There will be approximately 8,040,000 tickets in the Instant Game No. 1272. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1272 - 4.0

<table>
<thead>
<tr>
<th>Prize Amount</th>
<th>Approximate Number of Winners*</th>
<th>Approximate Odds are 1 in**</th>
</tr>
</thead>
<tbody>
<tr>
<td>$2</td>
<td>836,160</td>
<td>9.62</td>
</tr>
<tr>
<td>$4</td>
<td>643,200</td>
<td>12.50</td>
</tr>
<tr>
<td>$5</td>
<td>96,480</td>
<td>83.33</td>
</tr>
<tr>
<td>$10</td>
<td>112,560</td>
<td>71.43</td>
</tr>
<tr>
<td>$20</td>
<td>48,240</td>
<td>166.67</td>
</tr>
<tr>
<td>$50</td>
<td>60,300</td>
<td>133.33</td>
</tr>
<tr>
<td>$100</td>
<td>3,886</td>
<td>2,068.97</td>
</tr>
<tr>
<td>$1,000</td>
<td>50</td>
<td>160,800.00</td>
</tr>
<tr>
<td>$20,000</td>
<td>9</td>
<td>893,333.33</td>
</tr>
</tbody>
</table>

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.46. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

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

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1272 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing the game will be made in accordance with the instant game closing procedures and the Instant Game Rules, 16 TAC §401.302(j).
Due origin, discriminated
tunity

6.0 Governing Law. In purchasing an Instant Game ticket, the player
agrees to comply with, and abide by, these Game Procedures for In-
stant Game No. 1272, 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-201001794
Kimberly L. Kipin
General Counsel
Texas Lottery Commission
Filed: April 14, 2010

North Central Texas Council of Governments

Request for Proposals

This request by the North Central Texas Council of Governments
(NCTCOG) for consultant services is filed under the provisions of
Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG)
is requesting written proposals from consultant firms to develop a Transit
Oriented Development (TOD) plan in the City of Burleson West TOD
District. An analysis will be conducted of current and future market
conditions and development opportunities for the Burleson West TOD
District and the historic downtown, Old Town Overlay District. The
project will include the identification of short- and long-term strate-
gies that can be implemented in Burleson with initial bus service and
a station that has the flexibility to be converted to a commuter rail sta-
tion when demand and demographic thresholds are met and funding
is available. The project will include recommendations to encourage
pedestrian and bicycle access in addition to vehicle travel to the station.

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time,
on Friday, May 21, 2010, to Karla Weaver, AICP, Principal Transpor-
tation Planner, North Central Texas Council of Governments, 616 Six
Flags Drive, Arlington, Texas 76011. For more information regard-
ing the Request for Proposals (RFP), contact Ken Kirkpatrick at (817)
695-9278, or to obtain a copy of the RFP, contact Therese Bergeon at
(817) 695-9267. NCTCOG encourages participation by disadvantaged
business enterprises and does not discriminate on the basis of age, race,
color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be rec-
commended by a Consultant Selection Committee (CSC). The CSC will
use evaluation criteria and methodology consistent with the scope of
services contained in the Request for Proposals. The NCTCOG Ex-
ecutive Board will review the CSC’s recommendations and, if found
acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964,
78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49,
Code of Federal Regulations, Department of Transportation, Subtitle
A, Office of the Secretary, Part 1, Nondiscrimination in Federally As-
sisted Programs of the Department of Transportation issued pursuant
to such act, hereby notifies all proposers that it will affirmatively assure
that in regard to any contract entered into pursuant to this advertise-
ment, disadvantaged business enterprises will be afforded full oppor-
tunity to submit proposals in response to this invitation and will not be
discriminated against on the grounds of race, color, sex, age, national
origin, or disability in consideration of an award.

TRD-201001787
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 14, 2010

Texas Parks and Wildlife Department

Notice of Hearing and Opportunity for Comment

This is a notice of an opportunity for public comment and a public
hearing on an application by the City of Austin Parks and Recreation
Department to obtain a Texas Parks and Wildlife Department (TPWD)
permit to remove or disturb up to 2,000 cubic yards of sand and gravel
from and within the bed of Barton Creek in Travis County. The purpose
is to remove accumulated sediments from Barton Springs Pool. The
location would be approximately 3.8 miles downstream of the Highway
360 crossing and 1,300 feet upstream of Barton Springs Road. Work
would begin no sooner than October 1, 2010.

The hearing will be held on May 28, 2010 at 2:00 p.m. at TPWD
Headquarters, 4200 Smith School Road, Austin, Texas 78744.

Written comments must be submitted within 30 days of the publica-
tion of this notice in the Texas Register or the newspaper, whichever
is later, or at the public hearing. Submit written comments, questions,
or requests to review the application to: Tom Heger, TPWD, by mail
to the above address; e-mail tom.heger@tpwd.state.tx.us; phone (512)
389-4583.

TRD-201001743
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: April 12, 2010

Notice of Proposed Real Estate Transactions

Purchase of Land

Fanthorp Inn State Historic Site - Grimes County

In a meeting on May 27, 2010, the Texas Parks and Wildlife Com-
mission (the Commission) will consider purchasing approximately six
acres of land adjacent to Fanthorp Inn State Historic Site in Grimes
County. At this meeting, the public will have an opportunity to com-
ment on the proposed transaction before the Commission takes action.
The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife
Department Headquarters, 4200 Smith School Road, Austin, Texas
78744. Prior to the meeting, public comment may be submitted to
Corky Kuhllmann, Land Conservation, Texas Parks and Wildlife De-
partment, 4200 Smith School Road, Austin, Texas 78744 or by email
to corky.kuhllmann@tpwd.state.tx.us or through the TPWD web site at
tpwd.state.tx.us.

Granting of Easement

Richland Creek Wildlife Management Area - Harrison County

In a meeting on May 27, 2010, the Texas Parks and Wildlife Com-
mission (the Commission) will consider granting an easement on the
Richland Creek Wildlife Management Area in Freestone and Navarro
counties to the Tarrant Regional Water District. At this meeting,
the public will have an opportunity to comment on the proposed
transaction before the Commission takes action. The meeting will
start at 9:00 a.m. at the Texas Parks and Wildlife Department Head-
quarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the

IN ADDITION  April 23, 2010  35 TexReg 3337
meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD web site at tpwd.state.tx.us.

TRD-201001805
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: April 14, 2010

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 5, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, L.P. d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 38128 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the unincorporated areas of Travis County, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78771-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38128.

TRD-201001672
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2010

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 9, 2010, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 38143 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include Nederland, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78771-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38143.

TRD-201001765

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 12, 2010

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 6, 2010, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Delhart Corporation d/b/a Republic Communications for a State-Issued Certificate of Franchise Authority, Project Number 38129 before the Public Utility Commission of Texas.

The requested CFA service area includes see service area shown on the map attached to application.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78771-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll free) (800) 735-2989. All inquiries should reference Project Number 38129.

TRD-201001673
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2010

Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 5, 2010, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Endless Power, LLC, for Retail Electric Provider (REP) Certification, Docket Number 38126 before the Public Utility Commission of Texas.

Applicant’s requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78771-3326, or by phone at (512) 936-7120 or toll free at (888) 782-8477 no later than April 30, 2010. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 38126.

TRD-201001671
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2010

Public Notice of Workshop
The staff of the Public Utility Commission of Texas (commission) will hold a workshop related to electric vehicles, on Wednesday, May 12, 2010, at 9:30 a.m., in the Commissioners’ Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 37953, Investigation of Issues Relating to Electric Vehicles, has been established for this proceeding. This workshop is intended to be educational and broad in scope. Issues discussed at the workshop will include the development of standards, reliability impacts to the utilities and the state’s infrastructure and environment, and competitive market policy issues as they relate to the charging of vehicles. Future workshops are envisioned in this project.

This notice is not a formal notice of proposed rulemaking; however, the comments of persons participating in the workshop will assist the commission in developing a commission policy changes or determining the necessity for amending existing rules or adopting new rules to address electric vehicles. Ten days prior to the workshop the commission shall make available in Central Records under Project Number 37953 an agenda for the format of the workshop. This workshop will be broadcast on http://www.texasadmin.com/.

Questions concerning the workshop or this notice should be referred to David Smithson, Competitive Markets Division, at (512) 936-7376, or Alan Rivaldo, Infrastructure and Reliability Division (512) 936-7162. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201001764
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 12, 2010

Public Notice of Workshop on Electric Industry Cyber Security

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding Electric Industry Cyber Security on Wednesday, May 5, 2010, at 9:00 a.m. in the Commissioners’ Hearing Room (Room 7-100), located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 37944 has been established for this proceeding. Staff members from the Idaho National Labs (INL) will conduct a workshop session on Electric Industry Cyber Security entitled "Introductory SCADA Security." INL will also address advanced meters and smart grid security issues. These topics will all be addressed at a high level for general understanding.

This notice is not a notice of proposed rulemaking; however, the information discussed during the workshop may assist the commission in developing a commission policy or determining the necessity for a related rulemaking. Funding for this workshop was obtained from an American Reinvestment and Recovery Act (ARRA) grant received by the State Energy Conservation Office from the Department of Energy.

Questions concerning the workshop or this notice should be referred to Brian Davison, Infrastructure and Reliability Division (512) 936-7173 or Alan Rivaldo, Infrastructure and Reliability Division (512) 936-7162. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201001777
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2010

South East Texas Regional Planning Commission

Request for Qualifications

The South East Texas Regional Planning Commission (SETRPC) is facilitating the solicitation of a consultant to update the Hardin County, Jefferson County, Orange County and SETRPC Mitigation Action Plans to current Federal Emergency Management Agency (FEMA) and Texas Division of Emergency Management (TDEM) approved standards.

For a complete Request for Qualifications package, please contact Sue Landry via mail or e-mail. If by USPS: Sue Landry, SETRPC, 2210 Eastex Freeway, Beaumont, Texas 77703. If by e-mail: slandry@setrpc.org.

Final proposals will be due by 12:00 p.m. CDT on May 14, 2010.

Proposals will be reviewed by a technical sub-committee with selection based on Consultant Selection Criteria included in the Request for Qualifications package.

This RFQ is released in anticipation of Hazard Mitigation Grant Program (HMGP) funding. A contract will only be awarded in the event HMGP funding is granted to SETRPC.

TRD-201001763
Shaun P. Davis
Executive Director
South East Texas Regional Planning Commission
Filed: April 12, 2010

Texas Department of Transportation

Notice of Availability - Final Tier One Environmental Impact Statement

Pursuant to Title 43, Texas Administrative Code, §2.5(e)(8)(B), the Texas Department of Transportation (the department) is advising the public of the availability of the approved Tier One Final Environmen­tal Impact Statement (FEIS) for the proposed Trans-Texas Corridor 35 (TTC-35) (the Oklahoma to Mexico/Gulf Coast Element) corridor program. TTC-35 was originally envisioned as a multi-modal transportation corridor that could be up to 1,200 feet wide (at full build-out) with separate lanes for passenger vehicles (three in each direction) and trucks (two in each direction), six rail lines (separate lines in each direction for high-speed rail, commuter rail, and freight rail), and a 200-foot wide utility corridor. It was proposed to extend from the Texas-Oklahoma state line, north of the Dallas-Fort Worth (DFW) metropoli­tan area, through Central Texas, and to the Texas-Mexico border near the City of Laredo, generally paralleling existing I-35 throughout its length.

The TTC-35 environmental study process was initiated using a two-phased or "tiered" approach. Tier One of the environmental process evaluates 13 alternatives, including a No Action Alternative and 12 Reasonable Corridor Alternatives (RCAs). The 12 RCAs are four to 18 miles in width and between 486 and 521 miles long. If the Tier One decision results in the selection of a corridor alternative for TTC-35, the selected corridor would become the study area for Tier Two environmental processes. If, however, FHWA selects the recommended alternative (as described below) in the TTC-35 Tier One Record of Decision (ROD), a study area for a TTC-35 facility(ies) would not be chosen and the TTC-35 project would end. Ongoing transportation needs on I-35 would therefore be addressed by other projects. Those projects
would be studied through separate and independent planning and environmental processes and associated public involvement activities.

The No Action Alternative is being recommended as the Preferred Alternative in the TTC-35 Tier One FEIS. This recommendation is based on technical comments received during the TTC-35 Tier One Draft Environmental Impact Statement (DEIS), as well as the department’s decision to drop the multimodal "one-size fits all" Trans-Texas Corridor approach to addressing transportation challenges in the I-35 corridor.

The TTC-35 Tier One FEIS is available for public review at department district and area offices, public libraries in the study area, and online at www.keeptexasmoving.com. Visit the website for a complete listing of locations to view the FEIS. Copies (paper or CD) of the FEIS can be obtained for the actual cost of reproduction. To order a copy call toll-free at (877) 872-6789.

Comments regarding the TTC-35 Tier One FEIS should be submitted to the Texas Department of Transportation, Mr. Ed Pensock, P.O. Box 14707, Austin, Texas 78761-4707, or via e-mail at www.keeptexasmoving.com. Comments must be received by or postmarked by May 24, 2010. Substantive comments received or postmarked by this date that were not addressed in the TTC-35 Tier One FEIS will be addressed in the Tier One Record of Decision.

Obtener informacion en espanol. Llamada gratis: (877) 872-6789.

TRD-201001659
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 8, 2010

Public Notice of Final Environmental Impact Statement (US 290 Corridor from FM 2920 to IH 610, Harris County, Texas)

Pursuant to Title 43, Texas Administrative Code, §2.5(e)(8)(B), the Texas Department of Transportation is advising the public of the availability of the Final Environmental Impact Statement (FEIS) for proposed improvements to the US 290 Corridor, from FM 2920 near the community of Waller, Texas to IH 610 in Houston, Harris County, Texas. Comments regarding the FEIS should be submitted the Director of Project Development at the Texas Department of Transportation’s Houston District Office located at 7600 Washington Avenue, Houston, Texas prior to 5:00 p.m. on May 24, 2010. The Texas Department of Transportation’s mailing address is P.O. Box 1386, Houston, Texas 77251-1386.

The US 290 study corridor extends approximately 38 miles from Farm-to-Market (FM) 2920 near the community of Waller to the US 290/Interstate Highway (IH) 610/IH 10 interchange area in Houston, and includes Hempstead Road from approximately Beltway (BW) 8 to IH 610. In general, the proposed project evaluated includes the following roadway improvements: additional general-purpose lanes on US 290 and reconstruction of US 290 frontage roads; managed lane (toll) facility along the US 290 corridor from Bauer Road to BW 8, and continuing along Hempstead Road from BW 8 to IH 610; frontage roads (Hempstead Road) adjacent to managed lanes from BW 8 to IH 610; direct connectors from US 290 and the managed lanes to IH 610 and IH 10 via the Northwest Transit Center; and a reserved high-capacity transit corridor along US 290 from future Grand Parkway/State Highway 99 to BW 8, and along Hempstead Road from BW 8 to IH 610. The purpose of the proposed action is to reduce traffic congestion in the US 290 Corridor within Harris County, improve level of service and mobility on US 290 and Hempstead Road, and bring the roadway facilities up to current design standards, all of which will help to improve safety. The alternatives that were identified and evaluated include various configurations of the locally preferred modal alternative identified in the major investment study (MIS); alternative alignments for proposed improvements along US 290, Hempstead Road, and IH 610 (to provide for direct connectors); and doing nothing beyond what is already planned or programmed. Throughout the development of alternatives, efforts were made to avoid potential impacts to existing residential, commercial, and public properties, and other developed areas. Four alternatives were developed for the US 290 portion of the project. Five alternatives were developed for the Hempstead Road Corridor. Three alternatives were developed for IH 610 to integrate with the US 290 and Hempstead Road alternatives. The US 290, Hempstead Road, and IH 610 alternatives were evaluated at a comparable level of detail in the Draft Environmental Impact Statement (DEIS). Based on environmental, planning, and engineering considerations, and public and agency input, a Recommended alternative was identified for the US 290, Hempstead Road, and IH 610 areas of the project. Subsequent to the DEIS public hearings, the Recommended alternative was modified to incorporate suggestions made by the public and agencies, and revised designs. The FEIS contains the evaluation of the Preferred alternative and the No Build alternative, and provides a summary of the alternatives considered and evaluated during the MIS and DEIS studies.

The Recommended alternative as presented in the DEIS, was selected after careful consideration and assessment of the potential environmental impacts and evaluation of agency and public comments. After consideration of all agency and public comments received on the DEIS, as well as updated environmental data, TxDOT, in coordination with FHWA, selected a Preferred alternative alignment. It was determined after careful review of the DEIS comments that the Recommended alternative as presented in the DEIS be carried forward as the Preferred alternative. The Preferred alternative has the same general configuration as the Recommended alternative, with some changes in the number of proposed main lanes on US 290: 12 lanes from West 34th Street to Pinemont Drive (revised from 10 lanes), 12 lanes from FM 529 to Eldridge Parkway (revised from 10 lanes), and 10 lanes from Eldridge Parkway to Telge Road (revised from eight lanes). Some direct connector and access ramp modifications were also revised. The other major change in the Preferred alternative is the relocation of the transit reserve from north of the managed lanes along Hempstead Road to between the managed lanes and the Union Pacific railroad, from BW 8 to IH 610. The Preferred build alternative that has resulted from the study was proposed on the basis of its ability to best facilitate the project’s Need and Purpose, while minimizing impacts to the natural, physical, and social environments. The Preferred build alternative begins at FM 2920 and ends at the US 290/IH 610/IH 10 interchanges area in Houston, and includes Hempstead Road from approximately BW 8 to IH 610. It is approximately 38 miles in length. The Preferred alternative would require the acquisition of new right-of-way (ROW) (approximately 780 acres), the adjustment of utility lines, and the filling of aquatic resources including jurisdictional wetlands (18.63 acres, based on the preliminary determination, to be verified by the U.S. Army Corps of Engineers). The Preferred alternative as presented in the FEIS would displace 87 single-family residences, 225 multi-family residential units, 134 businesses, and 16 mini-storage units along US 290, and 49 single-family residences and 224 businesses along Hempstead Road. Single-family residences that would be displaced are primarily in Oak Forest and White Oak Falls neighborhoods. Several mobile home communities would be impacted. The multi-family units that would be displaced are in Creekwood, Vintage, Wynnewood at Wortham, The Promenade, Carrington Place, and Stonehaven apartment complexes. The US 290 portion of the Preferred alternative would require the relocation of two churches (St. Peter’s Anglican and Celebration Lutheran Church), and
several areas with pipeline transfer facilities and pipeline equipment. The Hempstead Road portion of the Preferred alternative would require the relocation of the Christ Family Church, a Southwestern Bell facility, and the Precision Emergency Medical Services (EMS) station. The archeological survey is incomplete because right-of-entry (ROE) was denied by several landowners to parcels in the proposed ROW. The archeological survey will remain incomplete until ROE to the remaining proposed ROW has been acquired. TxDOT coordinated the archeological survey report, recommended that the NEPA process be allowed to proceed and the archeological inventory be deferred until ROE or the parcels in question have been acquired. Once ROE or the parcels have been acquired, the archeological survey of the remainder of the area of potential effect will be completed, as well as any coordination/consultation that is required, prior to commencing with construction. If archeological sites are identified within the Selected alternative, additional investigations may be necessary to determine if they are eligible for nomination to the National Register of Historic Places (NRHP). If unanticipated archeological deposits are encountered during construction, work in the immediate area will cease, and TxDOT archeological staff will be contacted to initiate post-review discovery procedures under the provisions of the Programmatic Agreement-Transportation Undertakings (PA-TU) and Memorandum of Understanding (MOU). If any site identified by archeological field survey within the Selected alternative is found to be eligible for the NRHP, actions and consultation will be initiated to avoid, minimize, or mitigate adverse effects to that site. If an NRHP-eligible site cannot be avoided in the final design process, consultation will include development of a mitigation plan. The mitigation plan will be developed and reviewed by TxDOT in consultation with the Texas Historical Commission and FHWA. Design modifications may be sufficient to reduce the severity of the effect to a non-adverse level. Mitigation of unavoidable adverse effects typically includes archeological data recovery and full archival documentation. Section 4(f) coordination will only be performed for archeological sites warranting preservation in place. No historic properties or endangered species are expected to be affected.

Copies of the FEIS and DEIS (both electronic and paper, at cost of reproduction) and other information about the project may be obtained by contacting the Director of Project Development, TxDOT Houston District at 713-802-5243. The FEIS and DEIS may also be reviewed at the following locations: (1) TxDOT District Office, 7600 Washington Avenue, Houston, TX 77007; (2) TxDOT Area Office, 14838 Northwest Freeway, Houston, TX 77040; (3) US 290 Program Office, 2950 North Loop West, Suite 1150, Houston, TX 77092; (4) Spring Branch Library, 930 Corbendale, Houston, TX 77027; (5) Fairbanks Library, 7122 North Gessner Road, Houston, TX 77040; (6) Cy-Fair Library, 9191 Barker-Cypress Road, Cypress, TX 77433; (7) Collier Regional Library, 6200 Pinemont Drive, Houston, TX 77092; (8) Hildendale Library, 2436 Gessner Road, Houston, TX 77080; (9) M. Smith Memorial Library, 2103 Main Street, Waller, TX 77484; (10) Northwest Library, 11355 Regency Green Drive, Cypress, TX 77429; (11) Hockley Community Center, 28515 Old Washington Road, Hockley, TX 77447; and (12) Houston Library Central Branch, 500 McKinney, Houston, TX 77002. An electronic version of the FEIS and DEIS may be reviewed or downloaded from the US 290 Program Office website at www.my290.com.

TRD-201001806
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 14, 2010

Stephen F. Austin State University

Notice of Consultant Contract Availability

This request for consulting services is filed under the provisions of the Government Code, Chapter 2254.

Stephen F. Austin State University, Nacogdoches, Texas, requests responses from individuals to provide consulting and training in the Responsive Classrooms philosophy.

The SFASU Charter School and Department of Elementary Education utilizes the Responsive Classroom philosophy of instruction which correlates with the Early Childhood philosophy upon which the school was founded. Such correlation offers the school consistency of language and expectations.

The consultant will have thorough knowledge of the Responsive Classrooms philosophy, including in depth study of the many Responsive Classrooms publications. Specifically the consultant will have the knowledge and ability to conduct training in Part 2 of the program. The consultant must have obtained all necessary permissions and/or licenses necessary to conduct training in the program. The individual selected to perform this project will be chosen on the basis of competitive responses received.

Proposals must be received in the office of Lysa Hagan, Leader - SFA Charter School, Stephen F. Austin State University, P.O. Box 13017, 2428 Raguate Street, Nacogdoches, Texas 75961 by May 17, 2010 in order to be considered. Please contact Lysa Hagan at (936) 468-5899 for further information.

TRD-201001658
R. Yvette Clark
General Counsel
Stephen F. Austin State University
Filed: April 8, 2010

Sul Ross State University

Request for Proposals

Pursuant to Texas Government Code, Chapter 2254, Sul Ross State University, a member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the management and administration of a minimum of one U.S. Department of Education Grant.

Project Summary: Sul Ross State University is applying for a federally funded U.S. Department of Education grant(s). The university plans to utilize the five-year grant(s) to increase the number of Hispanic and other low-income students attaining degrees. The university may also work with regional community colleges to develop model transfer and articulation agreements in the same fields. The successful vendor will share in the responsibility for assurance of the attainment of the grant objectives, compliance with the terms and conditions of the grant and will provide services such as assistance in budget management, consultations, performance reporting, and review and editing of reports. Similar services have previously been provided by a consultant. Sul Ross State University intends to award the contract for the consulting services to a previously used consultant unless a better offer is received.

In accordance with the provisions of V.C.T.A. Government Code §2254.028(c), the president of Sul Ross State University has approved the use of a private consultant and has determined that the required fact exists.

Proposals are to be received no later than 4:00 p.m., Friday, May 28, 2010. A copy of the request for proposal packet is available upon request from Noe Hernandez, Director of Purchasing, Sul Ross State Uni-
versity, P.O. Box C-116, Alpine, Texas 79832, phone (432) 837-8045, fax (432) 837-8046.

Vendors will be evaluated on credentials for the work to be done, previous successful experience on similar grant projects and interpersonal and written communication skills. Proposals will be evaluated on the fulfillment of the requirements as outlined in the specifications, a fee schedule which is appropriate to the proposed activities, and the quality of performance on previous contracts or experience on similar projects.

The University reserves the right to reject any and all proposals received if it is determined to be in the best interest of the University. All material submitted in response to this request becomes the property of the University and may be reviewed by other vendors after the official review of the proposals.

TRD-201001766
Ricardo Maestas
Executive Director
Sul Ross State University
Filed: April 12, 2010

Workforce Solutions Capital Area

Request for Proposals

Workforce Solutions Capital Area Workforce Board is soliciting proposals from qualified organizations to provide comprehensive, year-round services to eligible youth under the Workforce Investment Act (WIA).

The Request for Proposal (RFP) is available beginning Wednesday, April 7, 2010, 1:00 p.m. (CST). Copies of the RFP are available at the Board office located at 6505 Airport Blvd., Suite 101E, Austin, Texas 78752, during normal business hours (Monday-Friday, 8:00 a.m. to 5:00 p.m.) except for holidays. A copy of the RFP may also be requested via e-mail by sending a request to niki.sanders@twc.state.tx.us with the following information: name of organization, contact person, complete physical address, phone and fax numbers, and e-mail address. You may also download the RFP from our website www.wscapitalarea.com.

A bidder’s conference will be held at the Board office on April 15, 2010, 1:00 p.m. Proposals must be received by Workforce Solutions Capital Area no later than 12:00 p.m. (noon, CST), on Monday, May 10, 2010.

TRD-201001608
Niki Sanders
Executive Assistant/HR
Workforce Solutions Capital Area
Filed: April 7, 2010

Texas Youth Commission

Request for Proposals

RFP Number: 694-0-L107

The Texas Youth Commission (TYC) is advertising this solicitation in accordance with Texas Government Code, §2155.067 and §2254.029. TYC is of the opinion that the requested consulting services are proprietary to one provider and/or to the specifications. Only responses conforming exactly to theses specifications will be considered in determining an award. TYC strongly encourages responses from all qualified providers who may be able to provide the specified services.

TYC is soliciting a proposal from Eugene W. Wang, Ph.D. Dr. Wang will be utilized as a consultant to participate in training the Statewide Positive Behavior Interventions and Support (PBIS) Team, and will train internal evaluation teams in accordance with Attachment A, TYC PBIS Project Evaluation Plan. Attachment A may be viewed by accessing the web address included below. Dr. Wang is considered to be the leading industry expert in this area. He possesses the expertise and specialized technical knowledge of the PBIS Program.

Consultant will establish any new data collection processes in collaboration with TYC, and determine how best to digitize existing hardcopy data needed for evaluation.

Consultant will meet quarterly via videoconference to monitor TYC evaluation teams, and will visit each facility once to observe progress.

Consultant will conduct data analyses for TYC at the facility level and individual youth level to determine PBIS program fidelity.

Consultant will also prepare a report for TYC’s review, and indicate factors related to implementation of PBIS that yield the best outcomes in terms of academic achievement and successful transition to the community.

Proposals must be received at TYC prior to April 30, 2010 at 5:00 p.m. CDT.

Proposals must be submitted to: TYC Central Office, 4900 North Lamar Blvd., Austin, Texas 78751. Attn: Shannon Pleasant, Contracts Section.

Proposals must be placed in a sealed envelope/package and correctly identified with RFP number and submittal opening date and time. It is the respondent’s responsibility to appropriately mark and deliver the offer to TYC by the specified date.

Respondents to this RFP are responsible for all costs of offer preparation.

TYC anticipates awarding a firm fixed price contract for these services.

To obtain a copy of the RFP, interested bidders may download this RFP from the Texas Electronic State Business Daily (ESBD) at the following address: http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=87923

Please check the ESBD frequently for amendments that may be posted. Amendments will be posted on the ESBD; however, TYC will not be responsible for a respondent’s failure to check for any amendments or changes regarding this RFP. Respondents submitting a bid are required to acknowledge all amendments by attaching a signed copy of the amendment to the proposal.

If respondents do not have Internet access, copies may be obtained by submitting a written request noting the RFP number to:

Texas Youth Commission

Attn: Shannon Pleasant
4900 North Lamar Blvd.
Austin, Texas 78751
Telephone: (512) 424-6233
Facsimile: (512) 424-6337
E-mail: shannon.l.pleasant@tyc.state.tx.us

TRD-201001609
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Filed: April 7, 2010
Request for Proposals

RFP Number: 694-0-L109

The Texas Youth Commission (TYC) is advertising this solicitation in accordance with Texas Government Code, §§2155.067 and 2254.029. TYC is of the opinion that the requested consulting services are proprietary to one provider and/or to the specifications. Only responses conforming exactly to theses specifications will be considered in determining an award. TYC strongly encourages responses from all qualified providers who may be able to provide the specified services.

TYC is soliciting a proposal from Bray Associates for the purpose of providing training, consultation, and technical assistance. Bray Associates will be utilized as a consultant to help develop and improve reform services to girls at the Ron Jackson State Juvenile Correctional Complex. Bray Associates are considered to be an industry leader for these services. They possess the expertise and specialized technical knowledge required for this consulting contract. The scope of work will include the following outcomes:

a. Strengthen program structure, systems, and accountability to increase compliance with gender responsive principles.

b. Reallocation of staffing resources to increase program effectiveness and therapeutic interventions.

c. Strengthen Gender and Trauma Responsive Care Management.

d. Increase Gender and Trauma Responsive Mental Health Services.

e. Increase level of safety across the six developmental domains.

f. Reduction of acting out behaviors and increase in emotional, relational, and physical safety.

g. Institutionalize behavioral incentives, levels, and value-based teaching model.

h. Increase skill level of staff to reflect a therapeutic, competent, and compassionate approach to girls.

i. Increase institutional capacity to exercise professional judgment consistent with quality assurance standards.

j. Eliminate protocols that re-traumatize girls.

k. Increase alignment of comprehensive individualized needs with care management, safety, and treatment plans.

Proposals must be received at TYC prior to April 30, 2010 at 5:00 p.m. CDT.

Proposals must be submitted to: TYC Central Office, 4900 North Lamar Blvd., Austin, Texas 78751. Attn: Shannon Pleasant, Contracts Section.

Proposals must be placed in a sealed envelope/package and correctly identified with RFP number and submittal opening date and time. It is the respondent’s responsibility to appropriately mark and deliver the offer to TYC by the specified date.

Respondents to this RFP are responsible for all costs of offer preparation.

TYC anticipates awarding a firm fixed price contract for these services.

To obtain a copy of the RFP, interested bidders may download this RFP from the Texas Electronic State Business Daily (ESBD) at the following address: http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=87923

Please check the ESBD frequently for amendments that may be posted. Amendments will be posted on the ESBD; however, TYC will not be responsible for a respondent’s failure to check for any amendments or changes regarding this RFP. Respondents submitting a bid are required to acknowledge all amendments by attaching a signed copy of the amendment to the proposal.

If respondents do not have Internet access, copies may be obtained by submitting a written request noting the RFP number to:

Texas Youth Commission
Attn: Shannon Pleasant
4900 North Lamar Blvd.
Austin, Texas 78751
Telephone: (512) 424-6233
Facsimile: (512) 424-6337
E-mail: shannon.1.pleasant@tyc.state.tx.us
TRD-201001610
Cheryl K. Townsend
Executive Director
Texas Youth Commission
Filed: April 7, 2010

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How to Use the Texas Register

Information Available: The 14 sections of the Texas Register represent various facets of state government. Documents contained within them include:

- **Governor** - Appointments, executive orders, and proclamations.
- **Attorney General** - summaries of requests for opinions, opinions, and open records decisions.
- **Secretary of State** - opinions based on the election laws.
- **Texas Ethics Commission** - summaries of requests for opinions and opinions.
- **Emergency Rules** - sections adopted by state agencies on an emergency basis.
- **Proposed Rules** - sections proposed for adoption.
- **Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.
- **Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the Texas Administrative Code from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.


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
2. Agriculture
3. Banking and Securities
4. Community Development
5. Cultural Resources
6. Economic Regulation
7. Education
8. Examining Boards
9. Health Services
10. Insurance
11. Environmental Quality
12. Natural Resources and Conservation
13. Public Finance
14. Public Safety and Corrections
15. Social Services and Assistance
16. 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)