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# TEXAS REGISTER

*Volume 36 Number 20*

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*Aaron Guzman  
11th Grade*

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

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# THE GOVERNOR

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

## Appointments

### Appointments for April 29, 2011

Designating Lee Chayes as presiding officer of the Assistive and Rehabilitative Services Council for a term at the pleasure of the Governor. Ms. Chayes is replacing Timothy Flannery of Seabrook as presiding officer.

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2013, Dallas J. Barrington of Silsbee (replacing Michael Valdez of Conroe whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2013, Stefani D. Carter of Dallas (replacing Jim McReynolds of Lufkin whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2013, Ann Matthews of Jourdanton (replacing Terry Gilmour of Midland whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2013, Ruben G. Reyes of Lubbock (replacing Lana Myers of Coppell whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2013, Stephanie Anne Schulte of El Paso (Ms. Schulte is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2013, Kel Seliger of Amarillo (Senator Seliger is being reappointed).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2013, Janie "Jane" L. Shafer of San Antonio (replacing Stephanie Pecora of Houston whose term expired).

Appointed to the Crime Victims' Institute Advisory Council for a term to expire January 31, 2013, Mark H. Wilson of Brandon (replacing Anthony York of Pearland whose term expired).

Rick Perry, Governor

TRD-201101671



# THE ATTORNEY GENERAL

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

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

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

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

Requests for Opinions

**RQ-0965-GA**

**Requestor:**

The Honorable Joseph Deshotel  
Chair, Committee on Business and Industry  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a member of the Legislature may serve as the state chair  
of a political party (RQ-0965-GA)

**Briefs requested by May 30, 2011**

**RQ-0966-GA**

**Requestor:**

The Honorable Ryan Guillen  
Chair, Committee on Culture, Recreation and Tourism  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a public housing authority is required to reimburse a political  
subdivision that furnishes improvements, services, or facilities  
for a housing project (RQ-0966-GA)

**Briefs requested by June 1, 2011**

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

TRD-201101713  
Jay Dyer  
Deputy Attorney General  
Office of the Attorney General  
Filed: May 11, 2011



Opinions

**Opinion No. GA-0857**

Mr. Jeff May

Collin County Auditor

2300 Bloomdale Road, Suite 3100  
McKinney, Texas 75071

Re: Authority of a commissioners court with regard to working hours,  
overtime and compensatory time, and timekeeping by county employ-  
ees (RQ-0930-GA)

## SUMMARY

A county commissioners court exercising its authority under subsection  
157.021(a), Local Government Code, to establish by rule a 40-hour  
workweek for county employees likely may withhold partial salaries  
and benefits of county employees working less than the required hours  
so long as doing so does not prevent an independent, elected officer  
from fulfilling his or her core functions.

Under subsection 157.021(b)(1), Local Government Code, when an  
emergency has been declared by a county or district officer, a county  
commissioners court is without discretion to withhold the payment of  
unbudgeted overtime.

A county commissioners court may be precluded from seeking to re-  
coup salary payments from employees for the time period the employ-  
ees were dismissed by the officer's declaring an emergency under sub-  
section 157.021(b)(1), Local Government Code, if such an action pre-  
vents the elected officer from performing his or her core duties. More-  
over, because an elected officer is in control of the assets accorded to  
his or her office, we believe a county commissioners court may not,  
without the officer's consent, deduct the emergency overtime from an  
officer's budgeted allowances.

A county commissioners court exercising its authority under Local  
Government Code subsection 157.021(a) to establish a 40-hour work-  
week likely has authority to mandate the method of timekeeping used  
by county employees.

**Opinion No. GA-0858**

The Honorable Jim Jackson  
Chair, Committee on Judiciary and Civil Jurisprudence  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768

Re: Whether section 271.121, Local Government Code, prohibits a  
governmental entity from requiring a contractor or other vendor to sign

a project labor agreement as a condition of submitting a bid (RQ-0931-GA)

**S U M M A R Y**

Whether a project labor agreement's terms violate section 271.121, Local Government Code, is a fact question that will depend on the terms of the specific agreement and would involve the investigation and resolution of facts beyond the opinion process.

**Opinion No. GA-0859**

The Honorable R. Lowell Thompson  
Navarro County Criminal District Attorney  
300 West 3rd Avenue, Suite 203  
Corsicana, Texas 75110

Re: Whether a sheriff or a fire department is responsible for determining where to land a helicopter during the investigation of a traffic accident (RQ-0932-GA)

**S U M M A R Y**

The helicopter pilot rather than a fire department or sheriff's office has the final say on where to land a helicopter for the purpose of transporting patients from a motor vehicle accident.

**Opinion No. GA-0860**

Ms. Cheryl K. Townsend  
Executive Director  
Texas Youth Commission

Post Office Box 4260  
Austin, Texas 78765

Re: Information that must be provided by the Texas Youth Commission to an independent school district pursuant to article 15.27, Code of Criminal Procedure (RQ-0933-GA)

**S U M M A R Y**

The Texas Youth Commission (the "TYC") is required by article 15.27, Code of Criminal Procedure, to provide a "statement of the offense," both orally and in writing, when one of its parolees who enrolls in a school district in which he was not previously enrolled is convicted or otherwise adjudicated. A "statement of the offense" for purposes of article 15.27 of the Code of Criminal Procedure is a statement that in some discernible manner describes the offense. It includes relevant information about the offense and not merely the conduct charged in the indictment. The TYC is not required to furnish additional information beyond that described in article 15.27(b). Attorney General Opinion DM-294 (1994) is applicable to arrest information but not to the conviction notice required by article 15.27(b).

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

TRD-201101714  
Jay Dyer  
Deputy Attorney General  
Office of the Attorney General  
Filed: May 11, 2011



# PROPOSED RULES

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

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

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

#### CHAPTER 1. ADMINISTRATION

##### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

###### 10 TAC §1.19

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 1, §1.19, concerning Deobligated Funds. The proposed amendments make changes to the existing rules to monitor the activities under the Neighborhood Stabilization Program (NSP), to ensure that program benchmarks are achieved and to effectively ensure that NSP funds are expended in a timely manner.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as proposed.

Mr. Gerber has also determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons as a result of the proposed amendments. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed. The proposed amendments will not impact local employment.

The public comment period will be held between May 20, 2011 to June 20, 2011 to receive input on the amended section. Written comments may be submitted to Texas Department of Housing and Community Affairs, ATTN: Megan Sylvester, NSP Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us), or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. June 20, 2011.

The amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The proposed amended section affects no other code, article or statute.

§1.19. *Deobligated Funds.*

(a) Purpose. The Governing Board and the Department seek to facilitate the use of public funds to provide for safe decent and affordable housing for Texans in a timely manner. From time-to-time, it becomes necessary to make changes to previously awarded funds to either expedite the delivery of the funds, meet state or federal guidelines or statutes, or to meet unexpected needs like disaster relief or leveraging of additional funds. To best achieve these goals, the Department has determined that a policy is necessary to provide the public with clear and consistent rules as to how Deobligated funds occur, the reporting of Deobligated Funds and how the Department will treat Deobligated funds after an initial award has been made. The funds covered by this section are previously awarded funds under a program administered by the Department, or funds that become available to the Department through program income. The purposes of this section are:

(1) To establish procedures and Board policy on the events creating Deobligated Funds for applicable Department programs;[7]

(2) To identify standards for reporting and maintaining Deobligated Fund balances;[7] and

(3) To provide guidance for the reprogramming and reobligation of Deobligated or otherwise unexpended funds and program income.

(b) Definitions.

(1) Administrator--A unit of government, non-profit entity or other party who has a written signed Agreement with the Department committing the Department to provide funds upon the completion of certain actions called for in the Agreement.

(2) Agreement--A written executed agreement between the Department and an Administrator or Contractor outlining the obligations of all parties involved in the related transaction.

(3) Contract--A written executed contract between the Department and an Administrator or Contractor outlining the obligations of all parties involved in the related transaction.

(4) Contractor--A party who has a Contract with the Department to administer a program using funds provided under explicit terms and conditions in a written Contract with the Department.

(5) Deobligated Funds--The funds released by an Administrator or Contractor or recovered by the Department canceling a contract or award involving some or all of a contractual financial obligation between the Department and an Administrator or Contractor.

(6) Department--The Texas Department of Housing and Community Affairs as authorized in Chapter 2306 of the Texas Government Code.

(7) Expenditure--Approved expense evidenced by documentation submitted by the Administrator or Contractor to the Department for purposes of drawing funds from HUD's Integrated Disbursement and Information System (IDIS) for work completed,



inspected and certified as complete, and as otherwise required by the Department.

(8) Executive Director--The person hired by the Governing Board with administrative duties to manage the affairs of the Department as provided under Texas Government Code §2306.036.

(9) Governing Board--The Governing Board of the Department.

(10) HOME--The HOME Investment Partnership Program at 42 United States Code §§12701-12839 and the regulations promulgated thereafter at 24 CFR Part 92 and governed by the Rules in 10 TAC [Texas Administrative Code] §53.50 [et seq].

(11) Housing Trust Fund--The fund created under Texas Government Code §2306.201 and governed by the Rules found at 10 TAC [Texas Administrative Code] §51.1 [et seq].

(12) HUD--United States Department of Housing and Urban Development.

(13) Program Income--Funds generated through the activities related to a program that are made available to the Department for use in funding authorized actions of the Department.

(14) Neighborhood Stabilization Program or "NSP" as authorized by the Housing and Economic Recovery Act of 2008 as an adjunct to the Community Development Block Grant Program. Housing and Economic Recovery Act of 2008, Pub. L. 110-289, 112 STAT 2850. It also refers to funds provided under §1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010) ("Dodd-Frank Act") and to future allocations from HUD.

(c) Events Creating Deobligated Funds.

(1) The Department reserves the right to release their commitment to any Administrator or Contractor resulting in Deobligated funds in the event of any one of the following circumstances:

(A) Department has notified Administrator or Contractor of any outstanding compliance issues and the Administrator or Contractor has failed to either resolve the issue or take sufficient action to correct the compliance matter;

(B) Department has notified Administrator or Contractor that they have failed to meet the required timelines and/or commitment deadlines, including Expenditure of funds, per the Agreement or Contract and Administrator or Contractor has not sufficiently corrected the deficiency;

(C) The Department provides notice of default to Administrator or Contractor on any Agreement or Contract by and between Administrator and Contractor and the default has not been cured within the required time frame;

(D) Applicant materially misrepresents facts to the Department during an application process, award of contract, request for amendment, or administration of any contract;

(E) Department has notified Administrator or Contractor of their inability to provide adequate financial support to administer the contract as called for in the Agreement or Contract or meet any other material conditions and the Administrator or Contractor has failed to sufficiently correct the matter;

(F) Department has notified Administrator or Contractor of their inadequate or insufficient management controls and the Administrator or Contractor has failed to sufficiently correct the matter;

(G) Administrator or Contractor declines funds;

(H) Administrator or Contractor fails to expend all funds awarded and voluntarily releases the funds;

(I) Program income received by the Department that is used in lieu of awarded contract funds; or

(J) Other circumstances approved by the Board as warranting Deobligation.

(2) The Department shall have the sole discretion to determine whether sufficient progress or cure has been made under paragraph (1)(A) - (C) of this subsection and the sole discretion to determine what constitutes materiality in paragraph (1)(D) of this subsection, subject to appeal under 10 TAC [Texas Administrative Code] §1.7.

(3) During the pendency of a challenge of an event described under paragraph (1) of this subsection by Administrator or Contractor, the Department shall not take any action resulting in Deobligated funds until an appeal as provided for under 10 TAC §1.7 has been completed. The Department may suspend reimbursement of funds during the appeal. If an appeal has not been requested, the Department may take action as allowed under this policy.

(d) Maintenance of Deobligated funds.

(1) The Department will produce a report for the Executive Director and the Board related to Deobligated funds separate from original balances and program income, including fees earned and loan repayments, as part of the accounting of program funds at both the program and Department level.

(2) The Department will ensure that HOME Deobligated fund balances are reconciled at least monthly against the unexpended fund balances maintained by HUD. The Department shall confirm balances with HUD prior to recommendation to the Board for the use of any Deobligated funds.

(3) Housing Trust Fund Deobligated funds, or any other Deobligated funds deriving from a state general revenue source, will be included in the report in paragraph (1) of this subsection, but shall not be used to establish reserve balances. The Department will initiate efforts to reprogram and reassign Deobligated funds from the Housing Trust Fund or any other state general revenue source within three months of Deobligation upon reaching a cumulative amount of Deobligated funds that facilitates reprogramming.

(4) The Department shall not retain Deobligated funds from any program in any amount that exceeds 15% of the most current annual allocation for three consecutive months and must initiate efforts to reprogram or reassign funds in excess of that standard within 90 days of the figure reaching the 15% threshold. For purposes of determining the 15% threshold, funds that are subject to disbursement under a Notice of Federal Funding, but are not yet committed are not included in the 15% threshold. Submitting a proposal for reprogramming or reassigning Funds to the Board for approval shall constitute an initiation of efforts.

(e) Reassignment of Funds. Under this policy, the Governing Board and the Department, intend to create a policy to direct staff and the public on the uses of funds that are either characterized as Deobligated Funds under this policy or Program funds.

(1) The Department shall not recommend to reprogram or reassign Deobligated funds from the HOME Program or other programs with Deobligated funds other than state general revenue funds described in subsection (d)(3) of this section for purposes other than disaster relief unless the remaining Deobligated fund balance after reprogramming of funds is an amount equivalent to or greater than 5% of the most current annual allocation of such funds, for example the annual allocation of HOME funds from HUD.

(2) NSP funds may be partially or wholly deobligated from contracts and must be reassigned to NSP-eligible uses as determined by HUD.

(3) [(2)] It is the policy of the Department that funds not reserved for disaster relief may be used for any of the activities listed below as needed in the Department's discretion subject to the approval of the Governing Board:

(A) Successful appeals related directly to the program funds available as allowable under program rules and regulations;

(B) Leveraging of funds with other local, state or federal resources for applications made to the Department for any one or more of the programs operated by the Department;

(C) Funding of projects identified as beneficial by the Department and identified in a Notice of Funding Availability approved by the Board;

(D) Disaster relief including but not limited to disaster declarations or documented extenuating circumstances such as imminent threat to health and safety;

(E) Funding of applications for program funds on existing Department waiting lists or reservation systems;

(F) Funding to existing previously awarded eligible contracts in need of additional resources for circumstances considered unique or extenuating by the Department's Board;

(G) Funding of applications or programs that serve individuals with special needs;

(H) Settlement of litigation or HUD compliance matters;

(I) Use in Asset Resolution/Enforcement Rule activities;

(J) Funding applications or programs that serve Colonias; or

(K) Other projects/uses as determined by the Executive Director and/or Board including the next year's funding cycle for each respective program.

(f) After adoption in final form and publication in the Texas Register, this policy shall supersede any other rule or policy governing the use of Deobligated funds for the Department regardless of where published, unless any portion of this rule conflicts with statutory language or Federal rules, in which case those shall be controlling.

(g) Any portion of this rule may be waived for good cause by the Governing Board of 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 May 9, 2011.

TRD-201101688

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 475-3916



## 10 TAC §1.20

*(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 Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Housing and Community Affairs ("Department") proposes the repeal of 10 TAC Chapter 1, §1.20, concerning Asset Resolution and Contract Enforcement. Repeal of the rule is necessary because the Department is separately proposing a new rule which greatly changes the scope and content of the current rule.

Mr. Michael Gerber, Executive Director, has determined that for each year of the first five-year period the proposed repeal is in effect there will be no fiscal implications for state or local governments as a result of the repeal.

Mr. Gerber has also determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be compliance with the procedures under §2001.024 of the Texas Government Code, and there are no probable economic costs to persons required to comply with the repeal. The proposed repeal will not impact local employment.

The proposed repeal will not have an adverse economic effect on small businesses or micro-businesses. The proposed repeal will not affect a local economy.

The public comment period will be held between May 20, 2011 to June 20, 2011 to receive input on this proposed repeal. Written comments may be submitted to Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Jeffrey Pender, Deputy General Counsel; by email to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us); or by fax to (512) 472-7500. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. June 20, 2011.

The repeal is proposed pursuant to authority under §2306.142 of the Texas Government Code, which provides that the Department may adopt rules regarding the making of mortgage loans, the regulation of borrowers, and the resale or disposition of real property, or an interest in the property that is financed by the department.

The proposed repeal affects no other code, article or statute.

*§1.20. Asset Resolution and Contract Enforcement.*

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

Filed with the Office of the Secretary of State on May 6, 2011.

TRD-201101676

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 475-3916



## 10 TAC §1.20

The Texas Department of Housing and Community Affairs ("Department") proposes new 10 TAC Chapter 1, §1.20, concerning the Asset Review Committee. The purpose of this rule is to abolish the Review Committee and establish a new Asset Review Committee that operates under a more efficient structure and

reduced scope of authority; to remove debarment authority from the Review Committee function, and to eliminate the authority of the Review Committee to impose penalty actions for the non-performance of Department contracts. If adopted as proposed, the role of the new Asset Review Committee will be limited to resolving issues with the Department's single and multifamily loan portfolio.

Mr. Michael Gerber, Executive Director, has determined that for each year of the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section.

Mr. Gerber has also determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of the new section will be the more efficient implementation of the Department's asset resolution function and there will be no probable economic costs to persons required to comply with the proposed new section.

The proposed new section will not have an adverse economic effect on small businesses or micro-businesses. The proposed new section will not affect a local economy. The proposed new section will not impact local employment.

The public comment period will be held between May 20, 2011 to June 20, 2011 to receive input on this proposed new section. Written comments may be submitted to Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, ATTN: Jeffrey Pender, Deputy General Counsel; by email to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us); or by fax to (512) 472-7500. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. June 20, 2011.

The new section is proposed pursuant to authority under §2306.142 of the Texas Government Code which provides that the Department may adopt rules regarding the making of mortgage loans, the regulation of borrowers and the resale or disposition of real property, or an interest in a property, that is financed by the Department.

The proposed new section affects no other code, article or statute.

§1.20. Asset Review Committee.

(a) Purpose. The purposes of this section are:

(1) to establish a committee within the Department to oversee the development of asset specific strategies to address risks of falling into non-compliance;

(2) to resolve non-performing real estate loans;

(3) to dispose of real estate owned; and

(4) to set forth a non-exclusive list of options available to the Committee to accomplish these tasks. Except as otherwise provided herein, capitalized terms shall have the same meaning as assigned in §1.1 of this chapter (relating to Definitions for Housing Program Activities).

(b) Asset Review Committee is established.

(1) The executive director shall appoint six (6) employees of the Department to serve on the Asset Review Committee ("Committee"). The appointees shall designate an alternate who shall attend Committee meetings and vote in the absence of the appointee. An appointee and its alternate shall serve at the pleasure of the executive director. The Committee shall exercise the authority of the Department

in resolving non-performing real estate loans, disposing of real estate owned, and may delegate decisions to the asset management division.

(2) The legal services division shall advise the Committee.

(3) A Committee Secretary shall be appointed by the Committee and shall serve at the pleasure of the Committee. The Committee Secretary shall be responsible for overseeing the development of the Committee agenda, calling meetings, which may be held electronically when necessary, keeping minutes and communicating with department staff and with outside parties on administrative matters.

(c) Resolving non-performing real estate loans.

(1) Upon referral of an asset, the Committee shall meet to evaluate options for resolving the issues presented. The Committee may invite the Responsible Party or any other person to meet with the Committee if the Committee believes such invitation(s) will assist the Committee in choosing or developing the appropriate resolution for the non-performing loan or other issue.

(2) The Committee shall have the sole discretion to implement none or any one or more of the following resolutions, or to devise a different resolution as circumstances require. Subparagraphs (A) - (G) of this paragraph do not preclude the Committee from using any other legal or equitable remedies otherwise available to the Committee or to the Department in carrying out its responsibilities:

(A) Debt forgiveness;

(B) Charge-off;

(C) Forbearance;

(D) Loan Modification;

(E) Pre-foreclosure sale;

(F) Deed-in-lieu of foreclosure; or

(G) Foreclosure.

(d) Resolving non-performance of properties in bankruptcy. A Responsible Party or other Person receiving information that a property receiving loan assistance from the Department may be involved in bankruptcy proceedings shall notify the Compliance and Asset Oversight Division Director or the Department's General Counsel of that fact. All Department efforts regarding collection of past due amounts, and efforts to require compliance with program requirements shall cease until it is determined that such actions are not prohibited by an automatic stay or other court order.

(e) Disposing of real estate owned. The Committee shall exercise the authority of the Department regarding the transfer, acquisition and disposition of all real, personal, or mixed property, or an interest in property owned by the Department to the full extent authorized under §2306.174 and §2306.175 of the Texas Government Code.

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

Filed with the Office of the Secretary of State on May 6, 2011.

TRD-201101677

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 475-3916



## CHAPTER 9. TEXAS NEIGHBORHOOD STABILIZATION PROGRAM

### 10 TAC §§9.1 - 9.7

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 9, §§9.1 - 9.6 and new §9.7, concerning the Texas Neighborhood Stabilization Program. The proposed amendments make changes to the existing rules to monitor the activities under the Neighborhood Stabilization Program (NSP), to ensure that program benchmarks are achieved and to effectively ensure that NSP funds are expended in a timely manner.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended and new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections as proposed.

Mr. Gerber has also determined that for each year of the first five years the amended and new sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended and new sections as proposed. The proposed amendments and new section will not impact local employment.

The public comment period will be held between May 20, 2011 to June 20, 2011 to receive input on this proposal. Written comments may be submitted to Texas Department of Housing and Community Affairs, ATTN: Megan Sylvester, NSP Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: [tdhcarulecomments@tdhca.state.tx.us](mailto:tdhcarulecomments@tdhca.state.tx.us), or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m. June 20, 2011.

The amendments and new section are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The proposed amendments and new section affect no other code, article or statute.

#### §9.1. Purpose.

This chapter clarifies the administration of the Texas Neighborhood Stabilization Program (Texas NSP). Texas NSP funds are administered by the Texas Department of Housing and Community Affairs (Department) in partnership with the Texas Department of Rural Affairs (TDRA). The Texas NSP awards funding to Subgrantees [~~Subrecipients~~] to acquire foreclosed, ~~or~~ abandoned, or vacant property in order to redevelop that property to prevent it from otherwise becoming a source of blight and a contributor to declining property values.

#### §9.2. Definitions.

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

- (1) Board--The Governing Board of the Department.
- (2) Department--The Texas Department of Housing and Community Affairs.

(3) Developer--A nonprofit entity that receives NSP assistance for the purpose of:

(A) acquiring homes and residential properties to rehabilitate for use for residential purposes; and

(B) constructing new housing in connection with the re-development of demolished or vacant properties.

(4) Executive Director--Executive Directors of either the Texas Department of Housing and Community Affairs or the Texas Department of Rural Affairs.

(5) Expended--For the purposes of contract milestones and thresholds, "Expended" means that a complete drawdown request is submitted with back-up documentation adequate to process a draw; it is not necessary for staff to have processed a draw to meet a benchmark. For all other purposes, "Expended" means that an eligible cost was incurred and staff has processed a draw to reimburse the expense with Texas NSP funds.

(6) HUD--U.S. Department of Housing and Urban Development.

(7) Land Bank--A governmental or nongovernmental nonprofit organization established, at least in part, to assemble, temporarily manage and dispose of vacant land for the purposes of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property.

(8) NOFA--Notice of Funding Availability.

(9) Obligated--When NSP funding has been encumbered through contracts for goods, services or acquisition of property or other forms of similar transactions requiring payment that have been determined by the Department to meet NSP requirements.

(10) Subgrantee--A Subrecipient or a Developer.

(11) Subrecipient--Units of General Local Government and nonprofit organizations with whom the Department contracts and provides funding in order to undertake activities eligible for such assistance.

(12) TDRA--Texas Department of Rural Affairs.

(13) Texas NSP--Texas Neighborhood Stabilization Program.

(14) The "State"--Collectively refers to either or both the Texas Department of Housing and Community Affairs and the Texas Department of Rural Affairs.

~~{(1) Department--The Texas Department of Housing and Community Affairs.}~~

~~{(2) Executive Director--Executive Directors of either the Texas Department of Housing and Community Affairs or the Texas Department of Rural Affairs.}~~

~~{(3) Expended--For the purposes of contract benchmarks, "Expended" means that a complete drawdown request is submitted with back-up documentation adequate to process a draw; it is not necessary for staff to have processed a draw to meet a benchmark. For all other purposes, "Expended" means that an eligible cost was incurred and staff has processed a draw to reimburse the expense with Texas NSP funds.}~~

~~{(4) Board--The Governing Board of the Department.}~~

~~{(5) HUD--U.S. Department of Housing and Urban Development.}~~

~~{(6) Land Bank--A governmental or nongovernmental nonprofit organization established, at least in part, to assemble,~~

temporarily manage and dispose of vacant land for the purposes of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property.}]

[(7) NOFA—Notice of Funding Availability.}]

[(8) Obligated—When NSP funding has been encumbered through contracts for goods, services or acquisition of property or other forms of similar transactions requiring payment that have been determined by the Department to meet NSP requirements.}]

[(9) Subrecipient—Units of General Local Government and nonprofit organizations with whom the Department contracts and provides funding in order to undertake activities eligible for such assistance.}]

[(10) TDRA—Texas Department of Rural Affairs.}]

[(11) Texas NSP—Texas Neighborhood Stabilization Program.}]

[(12) The "State"—Collectively refers to either or both the Texas Department of Housing and Community Affairs and the Texas Department of Rural Affairs.}]

### §9.3. General Provisions.

(a) All assisted properties must be located in eligible areas as defined by HUD and by the applicable Notice of Funding Availability (NOFA).

(b) [(a)] The contract term is based upon varying types of activities included in the contract between the State and the State's Subgrantee [Subrecipient]. Exhibit C, Project Implementation Schedule, of the contract, provides an outline of [activity-]specific timelines, milestones and thresholds.

[(1) Milestones.}] Performance under the contract will be evaluated according to the [following] benchmarks described in each contract. [from the contract begin date:}]

[(A) Three-month milestone. If performing a tiered environmental review, the broad portion of the tiered review (necessary to receive general environmental clearance), must be submitted to the State;}]

[(B) Six-month milestone. Funds designated in Exhibit B, Budget, of the contract, as acquisition funds must be 100% Obligated through purchase contract offers; site-specific environmental reviews must be submitted to the State; addresses (activities) must be set up in the Department's housing contract system; a complete environmental assessment must submitted to the State (if not performing a tiered review);}]

[(C) Nine-month milestone. All contract funds must be 100% Obligated. The Nine-month Milestone is a contract benchmark established to ensure that the State will meet the eighteen-month requirement placed upon the State by the U.S. Department of Housing and Urban Development (HUD) through the grant agreement to obligate 100% of NSP funds. The eighteen-month obligation requirement started when the grant agreement was executed by HUD on March 3, 2009 and is due to be met on September 3, 2010. Failure to meet the nine-month benchmark will subject the Subrecipient to the requirements found in §9.5 of this chapter (relating to Sanctions/Deobligation);}]

[(D) Twelve-month milestone. All rehabilitation, reconstruction and/or new construction activities must be initiated. If Davis-Bacon Labor Standards (40 U.S.C. §§3141 et seq.) are required for construction activities, a Start of Construction form evidences compliance. If Labor Standards are not required, an adequately

documented drawdown request for construction expenses evidences compliance;}]

[(E) Twenty-four-month milestone. All rehabilitation, reconstruction and/or new construction activities must be completed and in final NSP-eligible use; loan repayment to the Department must be initiated or completed;}]

[(F) Thirty-six-month milestone. Repayment by the Subrecipient to the Department for Eligible Use e, Redevelopment, activities must be complete (refer to Texas NSP NOFA published in the March 27, 2009, issue of the *Texas Register* (34 TexReg 2174);}]

[(G) One hundred-twenty-month milestone. All land banked properties must be in final NSP-eligible use. Repayment by Subrecipient to the Department for Land Bank activities must be complete; and}]

[(H) Activity milestone dated are established in each NSP contract. Subrecipients must comply with the milestone requirement as determined in the contract, which shall not be any longer than the milestones listed in subparagraphs (A) - (G) of this paragraph.}]

[(2) Thresholds. Expenditures of funds as budgeted in Exhibit B, Budget, of the contract, will be controlled according to the following benchmarks from the contract begin date:}]

[(A) Nine-month threshold. This threshold applies only to contracts performing financing mechanisms without acquisition of property or demolition of blighted structures. Financing mechanisms only and/or demolition activities must be 30% Expended;}]

[(B) Twelve-month threshold. Contract must be 30% Expended;}]

[(C) Fifteen-month threshold. This threshold applies only to contracts performing financing mechanisms without acquisition of property or demolition of blighted structures. Financing mechanisms only and/or demolition activities must be 100% Expended;}]

[(D) Eighteen-month threshold. Contract must be 70% Expended;}]

[(E) Twenty-four-month threshold. Contract must be 100% Expended less any administrative funds designated for ongoing support of Land Bank activities, the administrative retainage and any other reservations of administrative funds approved by the State on contract close-out documents;}]

[(F) Forty-three-month Threshold. All administrative funds for ongoing support of Land Bank activities must be Expended less the required administrative retainage; and}]

[(G) Threshold dates are established in each NSP contract. Subrecipients must comply with the threshold requirements as determined in the contract, which shall not be any longer than the milestones listed in subparagraphs (A) - (F) of this paragraph.}]

(c) [(b)] Administrative Threshold. Administrative draw requests are funded from the administration or developer fee line item in Exhibit B, Budget, of the contract. Reimbursement of eligible administrative expenses is regulated as follows:

(1) Threshold 1. Cumulative [The initial] administrative draw requests may allow [request allows] up to 10% of the administration or developer fee line item to be drawn down prior to the start of any project activity included in the performance statement of the contract (provided that all pre-draw requirements, as described in the contract, for administration have been met). This draw may be limited by NOFA, underwriting report, or by contract. Subsequent administrative expenditures will be reimbursed in the percentage amounts indicated,

provided that all contract benchmark requirements have been met, as identified in subsection (a) of this section;

(2) Threshold 2. Subsequent administrative draw requests are allowed in proportion to the direct project funds drawn on the contract; up to 90% of the total administration or developer fee ~~[administrative]~~ line item. The cumulative total percentage of administrative funds requested may not exceed the cumulative total percentage of project funds expended ~~[Expended]~~ for hard and soft costs directly attributable to activities under the contract;

(3) Threshold 3. The final 10% of the administration or developer fee ~~[administrative]~~ line item is the administrative retainage. Half of the retainage or, in other words, an additional 5% (95% of the total), may be drawn down after submission of complete contract close-out documents;

(4) Threshold 4. The final 5% (100% of the total), less any administrative funds reserved for audit costs as noted on the Project Completion Report, may be drawn down following receipt of the programmatic contract close-out letter issued by the State; and

(5) Threshold 5. Any funds reserved for audit costs will be released upon completion and submission of an acceptable audit and a documented drawdown request for the expenses. Only the portion of audit expenses reasonably attributable to the contract is eligible.

(d) ~~[(e)]~~ Forbearances. Contract expenditure thresholds and milestones are included in Exhibit C, Project Implementation Schedule, of the contract; violations of which will subject the Subgrantee ~~[Subrecipient]~~ to the requirements found in §9.5 of this chapter (relating to Sanctions/Deobligation). At the Department's discretion, forbearances of thresholds and milestones may be granted upon request and documentation of extenuating circumstances.

(e) ~~[(f)]~~ Waivers. Program administrative regulations set forth in any [the] Texas NSP NOFA ~~[published in the March 27, 2009, issue of the Texas Register (34 TexReg 2174)]~~ by the Department's Governing Board or terms in the contract may be waived by the Department, acting by and through its Executive Director or his/her designee, up to the limits of Texas NSP regulations and guidance as previously established, periodically updated, or updated in the future by HUD. The Executive Director or his/her designee may waive the Texas NSP purchase discount to the limits of the purchase discount as allowed by the NSP Bridge Notice. The Texas NSP NOFA and the NSP *Federal Register* Notice (Docket No. FR-5255-N-01) published in the *Federal Register* (73 FR 58330), require a minimum discount of 5% for any individual property and 15% for a portfolio of properties to be acquired utilizing Texas NSP funds. (If only acquiring one property, the one property constitutes a portfolio.) The NSP Bridge Notice allows for up to a 1% discount for individual properties and portfolios.

#### §9.4. Amendments.

The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any NSP ~~[program]~~ written agreement provided that:

(1) Contract Time Extensions. Extensions ~~[Initial one-time extensions]~~ of up to one (1) year may be granted due to extenuating circumstances demonstrated by the Subgrantee ~~[Subrecipient]~~;

(2) Contract Modifications and Amendments. Modifications or amendments to the contract or to the Exhibits of the contract may be approved provided that the changes do not, in the estimation of the Executive Director, significantly decrease the benefits to be received by the Department;

(3) Award Increase. Up to a 25% increase in individual contracts may be added to the funding originally awarded by the Department's Governing Board. Requests for increases in funding will be evaluated by staff on a first-come, first-served basis to assess the ~~[administrative]~~ capacity to manage additional funding, the demonstrated need for additional funding in the project ~~[designated service areas]~~ and the ability of the increase in funding to contribute to the stabilization of neighborhoods. The minimum requirement for an increase in funding will be adherence to Contract benchmarks and reporting requirements. Funding may come from deobligated awards or program income. Qualifying requests will be recommended to the Executive Director; ~~[and]~~

(4) Award Decrease. The Executive Director may decrease an award for any good cause including but not limited to at the request of the subgrantee, if NSP eligible project costs are insufficient to support the award, or for failure to meet project deadlines;

(5) Budget Transfers. The Executive Director may approve a transfer of funds among budget items for good cause; and

(6) ~~[(4)]~~ Any amendments requests exceeding the above parameters may be taken to a regularly scheduled meeting of the Department's Governing Board for consideration.

#### §9.5. Sanctions/Deobligation.

The Department will apply §1.19 of this title (relating to Deobligated Funds), if applicable. ~~[Funds deobligated from Texas NSP contracts must be reassigned to NSP-eligible uses.]~~

#### §9.6. Reassignment of Funds.

(a) Funds deobligated may either be reassigned utilizing the Amendment procedure or be subject to redistribution through a methodology to be approved by the Department's Governing Board. ~~[Funds deobligated prior to and due to the requirements of the nine-month milestone will be reassigned to existing Contracts following the Amendment procedure or redistributed under new Contracts.]~~

(b) If the NSP Program Income Reservation System has a fund balance of \$1,000,000 for more than 30 days, the Executive Director may lower the target score required for funding of a project to twelve, if the project fulfills a local at-risk priority as identified on the Texas NSP website. ~~[Funds deobligated after the nine-month milestone may either be reassigned utilizing the Amendment procedure or be subject to redistribution through a methodology to be approved by the Department's Governing Board.]~~

#### §9.7. Compliance and Monitoring.

(a) All properties will be monitored using the procedures outlined in Chapter 60 of this title (relating to Compliance Administration).

(b) All owners will be required to file reports with the Department as outlined in Chapter 60 of this title.

(c) Owners of rental properties will be required to pay the monitoring and compliance fees established by the Department from time to time, as assessed, in this title, by NOFA, or by contract.

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

Filed with the Office of the Secretary of State on May 9, 2011.

TRD-201101700

Michael Gerber  
Executive Director  
Texas Department of Housing and Community Affairs  
Earliest possible date of adoption: June 19, 2011  
For further information, please call: (512) 475-3916

◆ ◆ ◆  
**TITLE 16. ECONOMIC REGULATION**

**PART 3. TEXAS ALCOHOLIC  
BEVERAGE COMMISSION**

**CHAPTER 45. MARKETING PRACTICES**

The Texas Alcoholic Beverage Commission (commission) proposes the repeal of Chapter 45, Subchapter A, §§45.1 - 45.7, 45.10, and 45.17 - 45.33, relating to Standards of Identity for Distilled Spirits, and proposes new Chapter 45, Subchapter A, §§45.1 - 45.19, relating to Registration and Advertising of Distilled Spirits.

Chapter 45, Subchapter A was reviewed under Government Code §2001.039, which requires that each state agency reviews and considers for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting rules relating to the prior approval of distilled spirits continue to exist. However, the commission has determined that the existing rules are outdated and should be repealed and that new rules should be adopted to replace the repealed rules.

Alcoholic Beverage Code (Code) §101.671(a) provides that distilled spirits may not be shipped into the state or sold in the state until they are registered with the state. Section 101.671(d) of the Code requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration. Chapter 45, Subchapter A sets forth the procedures for registering distilled spirits by obtaining label and product approval. The subchapter also addresses restrictions on advertising distilled spirits.

Steve Greinert, Excise Tax Manager, has determined that for each year of the first five years that the new chapter will be in effect, there will be no impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Greinert has determined that for each year of the first five years the new chapter is in effect, the public will benefit from adoption of the chapter because outdated regulations are eliminated and the label and product approval process will be clarified.

Comments on the proposed repeal and new sections may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at

[http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

**SUBCHAPTER A. STANDARDS OF IDENTITY  
FOR DISTILLED SPIRITS**

**16 TAC §§45.1 - 45.7, 45.10, 45.17 - 45.33**

*(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 Texas Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §101.671(d), which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed repeal affects Alcoholic Beverage Code §5.31 and §101.671, and Government Code §2001.039.

- §45.1. *Scope.*
- §45.2. *Definitions.*
- §45.3. *Application of Standards.*
- §45.4. *The Standards of Identity.*
- §45.5. *Alteration of Class and Type.*
- §45.6. *Label Required.*
- §45.7. *Alteration of Labels.*
- §45.10. *Labels: Brand Names.*
- §45.17. *Bottle Cartons, Booklets, and Leaflets.*
- §45.18. *Labels: Prohibited Practices.*
- §45.19. *Container and Fill Standards Required.*
- §45.20. *Standard Liquor Bottles.*
- §45.21. *Standards of Fill.*
- §45.22. *Design and Fill Exceptions.*
- §45.23. *Withdrawal from Customs Custody.*

- §45.24. *Advertising: Standards Required.*
- §45.25. *Advertisement Defined.*
- §45.26. *Advertising: Mandatory Statements.*
- §45.27. *Advertising: Lettering.*
- §45.28. *Advertising: Prohibited Statements.*
- §45.29. *Certain Products Prohibited.*
- §45.30. *Damaged Stock.*
- §45.31. *Intrastate Bottling.*
- §45.32. *Exhibiting Authority.*
- §45.33. *Certificate of Registration.*

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

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101613

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 206-3443



## SUBCHAPTER A. REGISTRATION AND ADVERTISING OF DISTILLED SPIRITS

### 16 TAC §§45.1 - 45.19

The proposed new sections are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §101.671(d), which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed new sections affect Alcoholic Beverage Code §5.31 and §101.671, and Government Code §2001.039.

#### §45.1. Authority and Scope.

(a) This subchapter implements Alcoholic Beverage Code §101.671, which provides for the registration of distilled spirits with the state.

(b) This subchapter does not apply to distilled spirits for export or for industrial use.

#### §45.2. Definition.

When used in this subchapter, "distilled spirits" means alcohol, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, other distilled spirits, and any liquor produced in whole or in part by the process of distillation, including all mixtures and dilutions thereof.

#### §45.3. Alteration of Labels.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on distilled spirits held for sale in this state except:

- (1) as authorized by Texas law;

(2) that the administrator may, on written application, permit additional labeling or relabeling of bottled distilled spirits with labels covered by certificates of label approval which comply with the requirements of this subchapter and with state law; and

(3) application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels together with a statement of the reasons for relabeling, the quantity and location of the distilled spirits, and the name, address, and permit number of the person by whom they will be relabeled.

#### §45.4. Bottle Cartons, Booklets, and Leaflets.

(a) General. An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial or emblematic representation that is prohibited by this subchapter.

(b) Sealed opaque cartons. If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping coverings, cartons, or other containers) must bear all mandatory label information.

(c) Other cartons. If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable and the covering carton or container is not sufficiently transparent to permit visibility of the mandatory label information on the bottle, and if it displays any written or printed material, other than the brand name and the name and address of the manufacturer, bottler, or importer (omitting any reference to the function performed by the permittee), such covering, carton, or other container must bear all mandatory label information.

(d) Shipping container. Each shipping container shall have imprinted on the outside the number and size of containers packed therein, and the brand name of the product.

#### §45.5. Labels: Prohibited Practices.

(a) Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain the following:

(1) Any statement that is false or untrue in any particular or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the administrator finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited.



(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; provided, that this paragraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) No label shall contain any brand name which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the administrator finds that such brand name (when appropriately qualified if required) conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(b) Labels shall not contain any statement, design, device, or pictorial representation which the administrator finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flags or armed forces; nor shall any label contain any statement, design, device or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(c) Labels shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

#### §45.6. Container and Fill Standards Required.

No permittee, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce into the commerce of this state, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled in conformity with §§45.7 - 45.9 of this title (relating to Standard Liquor Bottles; Standards of Fill; and Design and Fill Exceptions).

#### §45.7. Standard Liquor Bottles.

(a) General. A standard liquor bottle shall be one so made and formed, and so filled, as not to mislead the purchaser. An individual carton or other container of a bottle shall not be so designed as to mislead purchasers as to the size of the bottles.

(b) Headspace. A liquor bottle of a capacity of 1/2 pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8.0% of the total capacity of the bottle after closure.

(c) Design. A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions or purchase or use.

#### §45.8. Standards of Fill.

(a) Authorized standards of fill. The standards of fill for all distilled spirits, whether domestically manufactured, domestically bottled, or imported, subject to the tolerances allowed in this section. In addition to these stated container sizes and standards of fill authorized for the importation and sale of distilled spirits in this state, any other container sizes and standards of fill based on international metric units of measure and authorized by the United States Department of the Treasury are hereby authorized. However, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this section.

Figure: 16 TAC §45.8(a)

(b) Tolerances. The following tolerances are allowed:

(1) discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice;

(2) discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity; provided, that no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity; and

(3) discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) Unreasonable shortages. Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

#### §45.9. Design and Fill Exceptions.

The provisions of the "headspace" and "design" requirements in §45.7 of this title (relating to Standard Liquor Bottles) shall not apply to liquor bottles of unusual design as may, from time to time, be specifically exempted from these requirements by the administrator pursuant to application filed with the administrator by the bottler or importer, as the case may be.

#### §45.10. Withdrawal from Customs Custody.

No person shall withdraw distilled spirits from U.S. Customs custody in this state except in full compliance with federal and state law and the regulations of the commission.

#### §45.11. Advertising: Standards Required.

No person, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits if such advertisement is in this state, is calculated to induce sales in this state, or is disseminated by mail in this state, unless such advertisement is in conformity with §§45.12 - 45.15 of this title (relating to Advertisement Defined; Advertising: Mandatory Statements; Advertising: Lettering; and Advertising: Prohibited Statements). However, §§45.12 - 45.15 of this title shall not apply to the publisher of any newspaper, periodical or other publication, or radio broadcaster, unless such publisher or radio broadcaster is a permittee.

#### §45.12. Advertisement Defined.

(a) Except as provided in subsection (b) of this section, as used in §§45.11 - 45.15 of this title (relating to Advertising: Standards Required; Advertisement Defined; Advertising: Mandatory Statements;

Advertising: Lettering; and Advertising: Prohibited Statements), the term "advertisement" includes any statement provided by or at the behest of a permittee promoting the purchase of a brand of distilled spirits through the medium of radio broadcast; or of television broadcast; or of newspapers, periodicals, or other publications; or of any sign or outdoor advertisement, or of any other printed or graphic matter, including trade booklets, menus, and cards, if such advertisement is in, or is calculated to induce sales in, this state, or is disseminated by mail.

(b) Notwithstanding subsection (a) of this section, the term "advertisement" does not include:

(1) any label affixed to any bottle of distilled spirits; or any individual covering, carton, or other container of the bottle, or any written, printed, graphic, or other matter accompanying the bottle, which constitutes a part of the labeling under this subchapter; or

(2) any editorial or other reading matter in any periodical newspaper, or other publication for which no money or other valuable consideration is paid or promised, directly or indirectly, by any permittee.

#### §45.13. Advertising: Mandatory Statements.

(a) Responsible advertiser. An advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) Class and type. The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) Alcoholic content. The alcoholic content shall be stated by proof for distilled spirits except that it may be stated in percentage by volume of cordials and liqueurs, cocktails, highballs, and such other specialties as may be specified by the administrator.

(d) Percentage of neutral spirits and name of commodity.

(1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "\_\_\_\_\_% neutral spirits distilled from \_\_\_\_ (insert grain, cane products, or fruit, as appropriate)"; or "\_\_\_\_\_% neutral spirits (vodka) distilled from \_\_\_\_ (insert grain, cane products, or fruit, as appropriate)"; or "\_\_\_\_\_% grain (cane products), (fruit) neutral spirits"; or "\_\_\_\_\_% grain spirits."

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "distilled from grain," or "distilled from cane products," or "distilled from fruit."

(3) Retailers shall be exempt from the provisions of this subsection.

#### §45.14. Advertising: Lettering.

Statements required under §§45.11 - 45.13 and 45.15 of this title (relating to Advertising: Standards Required; Advertisement Defined; Advertising: Mandatory Statements; and Advertising: Prohibited Statements) to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

#### §45.15. Advertising: Prohibited Statements.

(a) Restrictions. An advertisement of distilled spirits shall not contain:

(1) Any statement that is false or untrue in any particular or that irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression;

(2) any statement that is disparaging of a competitor's product;

(3) any statement, design, device, or representation which is obscene or indecent;

(4) any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited;

(6) any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, state, federal, or foreign authorization, law or regulation, unless such statement appears in the manner authorized by §45.5 of this title (relating to Labels: Prohibited Practices) for labels of distilled spirits. If a municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statements relating thereto.

(b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of distilled spirits which is prohibited from appearing on the label or which is inconsistent with any statement on the label thereof.

(c) Statement of age. The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required by the United States Department of the Treasury to be made on the label. An advertisement for any whiskey or brandy (except immature brandies) which is not required to bear a statement of age on the label or an advertisement for any rum, tequila or mescal, which has been aged for not less than four years may, however, contain inconspicuous, general representation as to age, maturity or other similar representation even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

(d) Curative and therapeutic effects. The advertisement shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effect, if such statement is untrue in any particular, or tends to create a misleading impression.

(e) Place of origin. The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) Confusion of brands. Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter

the representations contravene any provisions of this regulation or are in any respect untrue.

(g) Flags, seals, coats of arms, crests, and other insignia. An advertisement shall not contain any statement, design, device, or pictorial representation which the administrator finds relates to or is capable of being construed as relating to the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) Cooperative advertising by retailers. It shall be unlawful for any person holding a package store permit to share the same advertisement of distilled spirits with any other person or persons holding a package store permit or permits, provided, however, that members of a partnership or corporation may share the same distilled spirits advertisement when said distilled spirits are offered for sale under the permit or permits held by the said partnership or corporation.

(i) Price advertising. All distilled spirits advertised with prices by package store permittees shall state the brand name of the distilled spirits offered for sale.

§45.16. Damaged Stock.

No distilled spirits may be sold or possessed for the purpose of sale in this state which have had fire, smoke, or water damage to the label, container, or contents, unless so authorized by the administrator.

§45.17. Intrastate Bottling.

It shall be unlawful for any distiller, rectifier, or other bottler of distilled spirits in this state to bottle or remove such distilled spirits from his premises unless he has first procured a certificate of label approval, or clearance of export procedure, from the administrator.

§45.18. Exhibiting Authority.

It shall be unlawful for any person holding an original or duplicate original of a certificate or label approval, or clearance of export procedure, to fail or refuse to exhibit the same upon request to any duly authorized representative of the commission.

§45.19. Certificate of Registration.

(a) No distilled spirit may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Distiller's and Rectifier's Permit or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an Application to Register a Distilled Spirit (application) on the form prescribed by the commission along with the application fee to the commission. The application must contain the following information:

(1) A certificate of label approval (COLA) issued by the United States Department of the Treasury;

(2) product brand name; and

(3) product class and type.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to

the distilled spirit as shipped or sold, or an exact color copy of a label must be included with the application.

(e) The application fee for a Certificate is \$25.

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

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101614

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 206-3443



## CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (commission) proposes the repeal of Chapter 45, Subchapter B, §§45.41 - 45.45, 45.47 - 45.50, and 45.52 - 45.58, relating to Standards of Identity for Wine, and proposes new Chapter 45, Subchapter B, §§45.41 - 45.51, relating to Registration and Advertising of Wine.

Chapter 45, Subchapter B was reviewed under Government Code §2001.039, which requires that each state agency periodically reviews and considers for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting rules relating to the prior approval of wine continue to exist. However, the commission has determined that the existing rules are outdated and should be repealed and that new rules should be adopted to replace the repealed rules.

Alcoholic Beverage Code (Code) §101.671(a) provides that wine may not be shipped into the state or sold in the state until it is registered with the state. Section 101.671(d) of the Code requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration. Chapter 45, Subchapter B sets forth the procedures for registering wine by obtaining label and product approval. The subchapter also addresses restrictions on advertising wine.

Steve Greinert, Excise Tax Manager, has determined that for each year of the first five years that the new chapter will be in effect, there will be no impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Greinert has determined that for each year of the first five years the new chapter is in effect, the public will benefit from adoption of the chapter because outdated regulations are eliminated and the label and product approval process will be clarified.

Comments on the proposed repeal and new sections may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

## SUBCHAPTER B. STANDARDS OF IDENTITY FOR WINE

### 16 TAC §§45.41 - 45.45, 45.47 - 45.50, 45.52 - 45.58

*(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 Texas Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The proposed repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §101.671(d), which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed repeal affects Alcoholic Beverage Code §5.31 and §101.671, and Government Code §2001.039.

§45.41. *Definitions.*

§45.42. *Application of Standards.*

§45.43. *Standards of Identity.*

§45.44. *Grape Type Designation.*

§45.45. *Appellation of Origin.*

§45.47. *Imitation and Substandard Wine.*

§45.48. *Coined Names.*

§45.49. *Containers.*

§45.50. *Certificate of Registration.*

§45.52. *Label: Prohibited Statements.*

§45.53. *Customs Custody.*

§45.54. *Advertising.*

§45.55. *Advertising: Prohibited Statements.*

§45.56. *Examination.*

§45.57. *Illicit Beverage.*

§45.58. *Exemption.*

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

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101615

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 206-3443

## SUBCHAPTER B. REGISTRATION AND ADVERTISING OF WINE

### 16 TAC §§45.41 - 45.51

The proposed new sections are authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §101.671(d), which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed new sections affect Alcoholic Beverage Code §5.31 and §101.671, and Government Code §2001.039.

§45.41. *Authority and Scope.*

(a) This subchapter implements Alcoholic Beverage Code §101.671, which provides for the registration of wine with the state.

(b) This subchapter does not apply to wine produced pursuant to §109.21, Alcoholic Beverage Code, or to wine which is to be exported in bond.

§45.42. *Definitions.*

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

(1) Brand label--The label carrying, in the usual distinctive design, the brand name of the wine.

(2) Container--Any bottle, barrel, cask, tank car, or other closed receptacle irrespective of size or of the material from which made, for use for the sale of wine.

(3) Wine--A product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers and other alcoholic beverages made in the manner of wine, including sparkling and carbonated wine, vermouth, cider, sake, and perry.

§45.43. *Coined Names.*

The sale in this state of wines or combinations of wine and other alcoholic beverages which contain on the labels statements such as "whiskey wine," "rum and wine," "gin and wine," "beer and wine," or simulations of such combinations, is prohibited.

§45.44. *Containers.*

(a) The sale of wine in any container originally designed for a product other than wine or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents is hereby prohibited.

(b) The sale of wine in containers which have blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a wine producer, importer, wholesaler, or bottler, or any other person, different from the person whose name is required to appear on the brand label, is hereby prohibited.

(c) The capacity of containers authorized for the importation and sale of wine in this state and other container sizes and standards of fill based on international metric units of measure which are authorized by the United States Department of the Treasury are hereby authorized. However, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this section.

§45.45. Certificate of Registration.

(a) No wine may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Winery or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit to the commission an Application to Register a Wine (application) on the form prescribed by the commission along with the application fee. The application must contain the following information:

(1) A certificate of label approval (COLA) issued by the United States Department of the Treasury;

(2) product brand name;

(3) product class and type;

(4) fanciful name;

(5) appellation and vintage;

(6) alcohol content; and

(7) size of container.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the wine as shipped, sold, or marketed, or an exact color copy of a label must be included with the application. A sample of the wine, along with a set of labels, is required if the alcohol content is below 7% by volume and a federal COLA is not required.

(e) The application fee for a Certificate of Registration is \$25.

§45.46. Label: Prohibited Statements.

(a) No label for wine shall contain:

(1) Any statement, design, device, or representation which is false or misleading in any material particular.

(2) Any statement which is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, other than a bona fide guarantee to refund the purchase price if the consumer is dissatisfied.

(b) No label for wine without a COLA from the United States Department of the Treasury shall contain:

(1) Any statement that the wine is produced, blended, bottled, or sold under, or in accordance with, any municipal, state or federal authorization, law, or regulation; and if a municipal, state or federal license, registry or permit number is stated, the number shall not be accompanied by any statement relating thereto except the kind or character of the license, registration or permit to which the number pertains, in relatively inconspicuous type size.

(2) Any statement, design, or pictorial representation relating to the armed forces of the United States or the American flag.

(3) Any statement, design, or representation (other than a statement of alcoholic content) which tends to create the impression that the wine has been fortified or contains distilled spirits, or has intoxicating qualities.

(4) Any statement of age or representation relative to age (including words or devices in any brand name or mark), except that, in the case of vintage wine, the label may state the year of vintage, but no other age representation in respect thereto. The use of the word "old" or other word denoting age, as part of the brand name, shall not be deemed to be a representation relative to age if the word "brand" appears in direct conjunction with such brand name, in letters of equally conspicuous color and at least one-half the size of the lettering in which such brand name appears. Truthful reference of a general and informative nature relating to methods of wine production involving storage or aging, such as "this wine has been mellowed in oak casks," "stored in small barrels," or "matured at regulated temperatures in our cellars," may appear, but only in an inconspicuous manner and then only on back labels or on other matter accompanying the container.

(5) Any statement of a date, except as provided in the foregoing paragraph, unless, in addition thereto, and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date; provided, that if any date refers to the date of establishment of any business, such date shall be stated without due emphasis and in direct conjunction with the name of the person to whom it refers; and provided further, that the date of bottling appears in lettering not greater than eight-point gothic caps and the word "bottled" or its equivalent appears in direct conjunction therewith.

§45.47. Customs Custody.

(a) It shall be unlawful for any person to withdraw from customs custody any imported wine in this state unless the same conforms in every way with all provisions set forth in this subchapter relative to labeling.

(b) Imported wine in customs custody, which is not labeled in conformity herewith must be relabeled prior to release in accordance with the terms of this subchapter.

§45.48. Advertising.

(a) General. No person shall publish or disseminate, or cause to be published or disseminated, by radio or television broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other graphic or printed matter, in this state, any advertisement of wine unless such advertisement is in conformity with the provisions of this subchapter.

(b) Responsible advertiser. The advertisement shall state the name and address of the person responsible for its publication or broadcast. Street number and name may be omitted in the address.

(c) Class and type designation. If the advertisement contains any reference to a particular class or type of wine, there shall appear

a conspicuous statement of the class and type to which the product belongs, corresponding with the statement of class and type which is required to appear on the label of the product.

(d) Price advertising. All wines advertised with prices by package store permittees and wine only package store permittees shall state the brand name, class, and type of the wine offered for sale.

(e) Institutional advertising. The provisions of this section shall not apply to the institutional advertising of wines inside any building in an area where the sale of such wines is legal; provided, such advertising has been submitted to and approved by the administrator.

§45.49. Advertising: Prohibited Statements.

(a) General. An advertisement shall not contain the following:

(1) Any statement, design, device or representation which is prohibited from appearing on the label of the advertised product.

(2) Any statement of, or any statement likely to be regarded as a statement of, alcoholic content.

(b) Confusion of brands. Two or more different brands or lots of wine shall not be advertised in one advertisement, or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter, if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and such impression is in any respect untrue.

(c) Cooperative advertising. It shall be unlawful for any person holding a package store permit or a wine only package store permit to share the same advertisement of wines with any other person holding a package store permit or a wine only package store permit. A person holding permits for more than one location may advertise wines for sale at any or all such locations in the same advertisement.

(d) Fire sale prohibited. No wine possessed for the purpose of sale in this state shall be advertised for sale as the result of fire, smoke, or water damage to the label, container or contents.

§45.50. Examination.

(a) Samples of wine and vinous liquor shall be taken for examination by representatives of the commission whenever deemed necessary by the administrator. Examinations may include any chemical or physical determinations for the measurement of contents, the detection of alteration, and lack of conformity to standards of identity, quality, and purity, as set forth in the code and the rules of the commission.

(b) It shall be unlawful for any producer or bottler of wine to accept as a return or to purchase or to use any container permanently branded or imprinted with the name of another producer or bottler of any alcoholic beverage.

(c) The alcoholic content requirements set forth in this section shall not apply to sacramental or altar wines where ecclesiastical regulations limit the alcoholic content to not more than 18% by volume. Provided, however, that such wines shall be labeled "Sacramental" or "Altar" wines.

(d) It shall be unlawful for any permittee to bring into this state, store, sell, or possess for the purpose of sale, any bottles of wine which are not protected from tampering or contamination by being sealed with seals of a type which must be irreparably mutilated or destroyed before the bottle can be opened. Such seals shall not be made of paper.

§45.51. Illicit Beverage.

Any wine or container of which does not meet all the requirements of this subchapter shall be an illicit beverage and subject to seizure without warrant. The administrator may authorize such disposition as facts and circumstances may warrant of any wine which has been seized

as the result of an accidental shipment or other reasonable mistake. All wine which cannot be restored to meet the standards of purity shall be destroyed.

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

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101616

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3443



## SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

### 16 TAC §45.71

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.71, relating to Definitions.

Section 45.71 was reviewed under Government Code §2001.039, which requires that each state agency periodically reviews and considers for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting a rule relating to this topic continue to exist. However, the commission has determined that the existing rule should be amended.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Code §101.67(e) requires the commission to establish by rule procedures to accept independent laboratory analysis in lieu of performing its own analysis. Section 45.71 of the commission's rules defines terms used in Chapter 45, Subchapter C, related to Standards of Identity for Malt Beverages. The amendment deletes unnecessary definitions.

Steve Greinert, Excise Tax Manager, has determined that for each year of the first five years that the amendment will be in effect, there will be no impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Greinert has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment because it will clarify the regulatory framework for malt beverage label approval.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §101.67, which requires the commission to adopt rules to establish procedures to accept independent laboratory analysis on samples in lieu performing its own analysis, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed amendment affects Alcoholic Beverage Code §5.31 and §101.67, and Government Code §2001.039.

#### §45.71. Definitions.

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

(1) Beer--A malt beverage containing one half of one percent or more of alcohol by volume and not more than 4.0% of alcohol by weight, and shall not be inclusive of any beverage designated by label or otherwise by any other name than beer.

(2) Bottler--Any person who places malt beverages in containers.

(3) Brand label--The label carrying, in the usual distinctive design, the brand names of the malt beverage.

(4) Container--Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. This provision does not in any way relax or modify [~~§101.44 and~~] §1.04(18) of the Alcoholic Beverage Code.

(5) Domestic malt beverages--A malt beverage manufactured in the United States.

(6) Gallon--United States gallon of 231 cubic inches of malt beverages at 39.2 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions or multiples of the gallon as so defined.

(7) Independent laboratory--A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.

~~[(8) Independent, reputable laboratory--A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.]~~

~~(8) [(9)] Malt beverage--A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.~~

~~(9) [(10)] Malt liquor--Any malt beverage containing more than 4.0% of alcohol by weight.~~

~~[(11) Territory--Puerto Rico.]~~

~~[(12) United States--The several states and territories and the District of Columbia; the term "state" includes a territory and the District of Columbia; and the term "territory" means the Commonwealth of Puerto Rico.]~~

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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Alan Steen  
Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3443



## 16 TAC §45.72

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.72, relating to Scope.

Section 45.72 was reviewed under Government Code §2001.039, which requires that each state agency periodically reviews and considers for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting a rule relating to this topic continue to exist. However, the commission has determined that the existing rule should be amended.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Code §101.67(e) requires the commission to establish by rule procedures to accept independent laboratory analysis in lieu of performing its own analysis. Section 45.72 of the commission's rules describes the applicability of various sections in the subchapter. The proposed amendment changes the name of the section, adds the statutory authority for the subchapter, and makes some editorial changes to the text.

Steve Greinert, Excise Tax Manager, has determined that for each year of the first five years that the amendment will be in effect, there will be no impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Greinert has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment because it will clarify the regulatory framework for malt beverage label approval.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §101.67, which requires the commission to adopt rules to establish procedures to accept independent laboratory analysis on samples in lieu performing its own analysis, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed amendment affects Alcoholic Beverage Code §5.31 and §101.67, and Government Code §2001.039.

§45.72. *Authority and Scope.*

(a) This subchapter implements Alcoholic Beverage Code §101.67, which provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage.

(b) ~~(a)~~ Sections 45.73 - 45.82 of this title (relating to Label: General; Misbranding; Mandatory Label Information for Malt Beverages; Brand Names; Class and Types; Name and Address; Alcoholic Content; Net Contents; General Requirements for Malt Beverages; and Prohibited Practices) shall apply to all malt beverages manufactured, sold, or possessed for the purpose of sale in this state.

(c) ~~(b)~~ Section 45.83 and §45.84 of this title (relating to Label Approval and Release and Relabeling), shall apply to withdrawals of malt beverages from customs custody.

(d) ~~(c)~~ Section 45.85 and §45.86 of this title (relating to Approvals of Labels and Exhibiting Certificates to Representatives of the Commission) shall apply to any person who manufactures, imports into, transports, sells or offers for sale any malt beverages in this state.

(e) ~~(d)~~ It shall be unlawful for any person to publish or disseminate, or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter any advertisement of malt beverages if such advertisement is in this state, ~~(e)~~ is calculated to induce sales in this state, or is disseminated by mail in this state, unless such advertisement is in conformity with this subsection and §§45.87 - 45.90 of this title (relating to Advertisement Defined; Advertisement: Mandatory Statement; Advertisement: Legibility of Requirements; and Advertisement: Prohibited Statements).

(f) ~~(e)~~ This subchapter shall not apply to outdoor advertising in place as of June 1, 1937, but shall apply upon replacement, restoration, or renovation of any such advertising.

(g) ~~(f)~~ This subchapter shall not apply to the publisher of any newspaper, periodical or other publication, or radio or television broadcaster, unless such publisher or broadcaster is engaged in business as a manufacturer, brewer, wholesaler, distributor, bottler, importer, or retailer of malt beverages, directly or indirectly, or through an affiliate.

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

Filed with the Office of the Secretary of State on May 2, 2011.

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Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 206-3443



**16 TAC §45.85**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.85, relating to Approval of Labels.

Section 45.85 was reviewed under Government Code §2001.039, which requires that each state agency periodically reviews and considers for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting rules relating to this topic continue to exist. However, the commission has determined that the existing rule should be amended.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Code §101.67(e) requires the commission to establish procedures to accept independent laboratory analysis in lieu of performing its own analysis. Section 45.85 of the commission's rules prescribes procedures for approval of labels and samples for malt liquors and beer. The proposed amendment clarifies those procedures.

Steve Greinert, Excise Tax Manager, has determined that for each year of the first five years that the amendment will be in effect, there will be no impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.



Mr. Greinert has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment because it will clarify the procedures for approval of labels and samples.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, Alcoholic Beverage Code §101.67, which requires the commission to adopt rules to establish procedures to accept independent laboratory analysis of samples in lieu of performing its own analysis, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed amendment affects Alcoholic Beverage Code §5.31 and §101.67, and Government Code §2001.039.

§45.85. *Approval of Labels.*

(a) No beer, ale or malt liquor may be shipped into the state, imported into the state, manufactured and offered for sale in the state, or distributed, sold or stored in the state until a sample of the beverage has been analyzed and the label approved by the commission. [Application for label approval shall be made to the administrator at Austin, Texas, and shall be accompanied by a legible copy of the Federal Label Approval issued by the Department of Treasury.]

(b) An applicant for label approval under this section must hold a brewer's or non-resident brewer's permit, or a manufacturer's or non-resident manufacturer's license issued by the commission. [A sample of the beverage must be submitted to the commission for analysis to verify alcohol content. A product analysis provided by an independent laboratory may be submitted in lieu of the actual samples.]

(c) An applicant must submit to the commission an application on the form prescribed by the commission and the application fee. The application must be accompanied by: [A fee in the amount of \$25.00 is required for each size requested on the application.]

(1) a legible copy of the certificate of label approval issued by the United States Department of the Treasury; and

(2) an actual label that is affixed to the product as shipped, sold, or marketed, or an exact color copy of the label.

(d) A sample of the beverage must be submitted to the commission for analysis to verify alcohol content. A product analysis provided by an independent laboratory may be submitted in lieu of the actual sample.

(e) The application fee for label approval of beer, ale, or malt liquor is \$25 for each size requested on the application.

(f) This section implements Alcoholic Beverage Code §101.67(e).

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

Filed with the Office of the Secretary of State on May 2, 2011.

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Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3443



**16 TAC §45.86**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.86, relating to Exhibiting Certificates to Representatives of the Commission.

Section 45.86 was reviewed under Government Code §2001.039, which requires that each state agency periodically reviews and considers for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting rules relating to this topic continue to exist. However, the commission has determined that the existing rule should be amended.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Section 45.86 of the commission's rules makes it unlawful to refuse to exhibit a certificate of label approval upon request by an authorized representative of the commission. The proposed amendment updates a reference to the authority issuing certificates of label approval at the federal level.

Steve Greinert, Excise Tax Manager, has determined that for each year of the first five years that the amendment will be in effect, there will be no impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Greinert has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment because it will clarify the requirements of the rule.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas

78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed amendment affects Alcoholic Beverage Code §5.31 and §101.67, and Government Code §2001.039.

*§45.86. Exhibiting Certificates to Representatives of the Commission.*

It shall be unlawful for any person to fail or refuse to exhibit, upon demand or request by any authorized representative of the commission, the certificate of approval as issued by the United States Department of the Treasury [Federal Bureau of Alcohol, Tobacco and Firearms] or the administrator.

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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Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3443



**16 TAC §45.88**

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.88, relating to Mandatory Statement.

Section 45.88 was reviewed under Government Code §2001.039, which requires that each state agency periodically reviews and considers for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting rules relating to this topic continue to exist.

However, the commission has determined that the existing rule should be amended.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Section 45.88 of the commission's rules requires the statement of class of a malt beverage in an advertisement to match the class designated on the label. The proposed amendment changes the title of the section to indicate the topic covered and makes an editorial change.

Steve Greinert, Excise Tax Manager, has determined that for each year of the first five years that the amendment will be in effect, there will be no impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Greinert has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment because it will clarify the requirements of the rule.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed amendment affects Alcoholic Beverage Code §5.31 and §101.67, and Government Code §2001.039.

*§45.88. Advertisement: Mandatory Statement.*

Any advertisement shall contain a conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required to appear on the label of the product.

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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Alan Steen

Administrator

Texas Alcoholic Beverage Commission

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For further information, please call: (512) 206-3443



### 16 TAC §45.89

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.89, relating to Legibility of Requirements.

Section 45.89 was reviewed under Government Code §2001.039, which requires that each state agency periodically reviews and considers for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting rules relating to this topic continue to exist. However, the commission has determined that the existing rule should be amended.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Section 45.89 of the commission's rules requires that the statements required by Chapter 45, Subchapter C in advertisements of malt beverages be conspicuous and legible. The proposed amendment changes the title of the section to indicate the topic covered and makes editorial changes.

Steve Greinert, Excise Tax Manager, has determined that for each year of the first five years that the amendment will be in effect, there will be no impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Greinert has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment because it will clarify the requirements of the rule.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that

the commission will respond to them formally under Government Code §2001.033. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed amendment affects Alcoholic Beverage Code §5.31 and §101.67, and Government Code §2001.039.

§45.89. *Advertisement: Legibility of Requirements.*

Statements required under §§45.72, 45.87, 45.88 and 45.90 of this title (relating to Authority and Scope; Advertisement Defined; Advertisement; Mandatory Statement; and Advertisement: Prohibited Statements) to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

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

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101623

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 206-3443



### 16 TAC §45.90

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §45.90, relating to Prohibited Statements.

Section 45.90 was reviewed under Government Code §2001.039, which requires that each state agency periodically reviews and considers for re-adoption each rule adopted by that agency. The commission has determined that the reasons for initially adopting rules relating to this topic continue to exist. However, the commission has determined that the existing rule should be amended.

Alcoholic Beverage Code (Code) §101.67(a) provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage. Section 45.90 of the commission's rules sets forth requirements for advertisements of malt beverages. The proposed amendment changes the title of the section to clarify that the section refers to advertisements.

Steve Greinert, Excise Tax Manager, has determined that for each year of the first five years that the amendment will be in effect, there will be no impact on state or local government.

There will be no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Greinert has determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amendment because it will clarify the requirements of the rule.

Comments on the proposed amendment may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed amendment is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §101.67, and Government Code §2001.039.

§45.90. *Advertisement: Prohibited Statements.*

(a) General. An advertisement of malt beverages shall not contain the following:

- (1) any statement that is false or misleading in any material particular;
- (2) any statement that is disparaging of a competitor or his products;
- (3) any statement, design, device or representation which is obscene or indecent;
- (4) any statement, design, device, or representation of or relating to analyses, standards, or tests irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
- (5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(6) any statement that the malt beverages are brewed, made, bottled, labeled, or sold under, or in accordance with, any municipal, state, or federal authorization, law or regulation; and if a municipal or state permit number is stated, the permit number shall not be accompanied by any additional statement relating thereto;

(7) the words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, or bottling.

(b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.

(c) Class.

(1) No product containing less than 0.5% of alcohol by volume shall be designated in any advertisement as "beer," or by any other class or type designation commonly applied to fermented malt beverages containing 0.5% or more of alcohol by volume.

(2) No malt beverage containing 4.0% of alcohol by weight or less shall be designated in any advertisement as an "ale" or "malt liquor."

(d) Curative and therapeutic effect. The advertisement shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects if such statement is untrue in any particular, or tends to create a misleading impression.

(e) Confusion of brands. Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations made as to one brand or lot applied to the other or others, and if as to such latter the representations contravene any provision of this subchapter or are in any respect untrue.

(f) Statements, seals, flags, coat of arms, crests, or other insignia, or graphic or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by or produced for or under the supervision of or in accordance with, the specifications of the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited.

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

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101624

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 206-3443



**SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES**

**16 TAC §45.102**

(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 Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Alcoholic Beverage Commission (commission) proposes the repeal of §45.102, Retailer Transmitting Order to Another Retailer.

Section 45.102 was reviewed under Government Code §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency. The commission previously determined that the reasons for initially adopting this rule continued to exist and proposed amendments to the section. The proposal to amend the section was published in the September 24, 2010, issue of the *Texas Register* (35 TexReg 8634). After receiving informal comments and upon further consideration, the commission withdrew the proposed amendment on February 24, 2011. The commission now finds that the original meaning and intent of the rule have been obscured and that the reasons which led to its original adoption no longer exist. Therefore, the commission proposes to repeal the section.

Dexter K. Jones, Director of the Compliance and Marketing Practices Division, has determined that for each year of the first five years that the proposed repeal will be in effect, there will be no impact on state or local government.

The proposed repeal will have no fiscal or regulatory impact on micro-businesses and small businesses or persons regulated by the commission. There is no anticipated negative impact on local employment.

Mr. Jones has determined that for each year of the first five years that the proposed repeal will be in effect, the public will benefit because the public will not be confused by the meaning of the section and will not be subject to enforcement actions based on an unclear regulatory requirement.

Comments on the proposed repeal may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. The commission designates this public hearing as the opportunity to make oral comments if you wish to assure that the commission will respond to them formally under Government Code §2001.033. Staff will not respond to comments at the public hearing. The commission's response to comments received at the public hearing will be in the adoption preamble. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

The proposed repeal is authorized by Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Government Code §2001.039, which requires an agency to periodically review its rules to determine if the need for them continues to exist.

Cross Reference: The proposed repeal affects Alcoholic Beverage Code §§5.31, 11.05, 11.06, 22.01(2), 22.15, 24.01(a)(2), 25.01(1), 26.01(a), 27.01, 28.01(2), 30.01, 32.08(a), 61.04, 61.06, 61.71(a)(15), 69.01, 71.01 and 109.53, and Government Code §2001.039.

§45.102. *Retailer Transmitting Order to Another Retailer.*

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

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101625

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 206-3443



## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 73. ELECTRICIANS

#### 16 TAC §73.100

The Texas Department of Licensing and Regulation (Department) proposes amendments to 16 Texas Administrative Code (TAC) Chapter 73, §73.100, regarding technical requirements in the electricians program.

The Texas Commission of Licensing and Regulation (Commission) previously adopted the 2008 National Electrical Code (NEC) as its electrical standard. The rule change is necessary to update the currently adopted 2008 NEC edition to the most recent 2011 NEC edition as it existed on August 25, 2010, as adopted by the National Fire Protection Association, Inc. This edition becomes effective September 1, 2011. This rule change assures the regulated industry and the public that the prevalent industry standard will be consistent, up-to-date, and uniformly recognized by industry participants.

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

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public will benefit from enhanced protection to public health and safety as determined by the standards adopted by the National Fire Protection Association, Inc.

There will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the amendments as proposed.

Since the agency has determined that the proposed amendments will have no adverse economic effect on small busi-

nesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to [erule.comments@license.state.tx.us](mailto:erule.comments@license.state.tx.us). The deadline for comments is 30 days after publication in the *Texas Register*.

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

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

*§73.100. Technical Requirements.*

Effective September 1, 2011 [2008] the Department adopts the National Electrical Code, 2011 [2008] Edition as it existed on August 25, 2010, [15, 2007] as adopted by the National Fire Protection Association, Inc.

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

Filed with the Office of the Secretary of State on May 2, 2011.

TRD-201101627

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 463-7348



## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 175. FEES AND PENALTIES

##### 22 TAC §175.1

The Texas Medical Board (Board) proposes amendments to §175.1, concerning Application Fees.

The amendment raises the fees for initial registration to be a non-certified radiologic technician (NCT) to \$115.50 to be consistent for the fees for renewals of NCT certificates.

Nancy Leshikar, General Counsel for the Board, has determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed.

Ms. Leshikar has also determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this proposal will be to create an incentive for NCTs to renew their certificates rather than to allow the license to lapse and then reapply for initial certification at a lower rate that requires more agency time to process. This section will also procedure a disincentive to allow a license to lapse and pay a lower initial fee versus a higher renewal fee. The ef-

fect to individuals required to comply with the rule as proposed will be \$63.50 per applicant who applies for initial NCT certification. There will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Jennifer Kaufman, P.O. Box 2018, Austin, Texas 78768-2018, or e-mail comments to: [rules.development@tmb.state.tx.us](mailto:rules.development@tmb.state.tx.us). A public hearing will be held at a later date.

The amendments are proposed 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 amendments are also authorized by Chapter 601 of the Texas Occupations Code.

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

*§175.1. Application Fees.*

The board shall charge the following fees for processing an application for a license or permit:

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

(4) Non-Certified Radiologic Technician permit (includes surcharge of \$3 [\$2])--\$115.50 [\$52].

(5) - (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 May 9, 2011.

TRD-201101687

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 305-7016



## PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

### CHAPTER 465. RULES OF PRACTICE

#### 22 TAC §465.1

The Texas State Board of Examiners of Psychologists proposes amendments to §465.1, concerning Definitions. The amendments would clarify the rule by ensuring that legal procedures within the definition include federal benefits determinations, fitness for duty evaluations, psychological evaluations conducted after an employment offer has been made in high risk professions, and risk assessment evaluations of employees as a result of their aggressive or threatening behavior.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email [brenda.skiff@tsbep.state.tx.us](mailto:brenda.skiff@tsbep.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

*§465.1. Definitions.*

The following terms have the following meanings:

- (1) "Client" has the same meaning as "patient."
- (2) "Dual Relationship" means a situation where a licensee and another individual have both a professional relationship and a non-professional relationship. Dual relationships include, but are not limited to, personal friendships, business or financial interactions, mutual club or social group activities, family or marital ties, or sexual relationships.
- (3) "Forensic psychology" is the provision of psychological services involving courts, legal claims, [a court of law] or the legal system. The provision of forensic psychological services includes any and all preliminary and exploratory services, testing, assessments, evaluations, interviews, examinations, depositions, oral or written reports, live or recorded testimony, or any psychological service provided by a licensee concerning a current or potential legal case at the request of a party or potential party, an attorney for a party, or a court, or any other individual or entity, regardless of whether the licensee ultimately provides a report or testimony that is utilized in a legal proceeding. A person who is the subject of forensic evaluation is not considered to be a patient under these rules. "Forensic evaluation" is an evaluation conducted, not for the purpose of providing mental health treatment, but rather at the request of a court, an attorney, or an administrative body including federal benefits providers to assist in addressing a forensic referral question. Additionally, forensic services would include fitness for duty evaluations, psychological evaluations conducted after an employment offer has been made in high risk professions, and risk assessment evaluations of employees as a result of their aggressive or threatening behavior.

(4) "Informed Consent" means the written documented consent of the patient, client and other recipients of psychological services only after the patient, client or other recipient has been made aware of the purpose and nature of the services to be provided, including but not limited to: the specific goals of the services; the procedures to be utilized to deliver the services; possible side effects of the services, if applicable; alternate choices to the services, if applicable; the possible duration of the services; the confidentiality of and relevant limits thereto; all financial policies, including the cost and methods of payment; and any provisions for cancellation of and payments for missed appointments; and right of access of the patient, client or other recipient to the records of the services.

(5) "Licensee" means a licensed psychologist, provisionally licensed psychologist, licensed psychological associate, licensed specialist in school psychology, applicants to the Board, and any other

individual whom the Board has the authority to discipline under these Rules.

(6) "Multiple Relationship" means any relationship between a licensee and another individual involving a professional relationship and more than one non-professional relationship.

(7) "Patient" means a person who consults or is interviewed by a licensee for a diagnosis, evaluation, or treatment of any mental or emotional condition or disorder of that person regardless of whether the patient or some other individual or entity paid for the consultation or interview except as identified in paragraph (3) of this section, where the subject of forensic evaluation is not considered to be a patient.

(8) "Professional relationship" is any relationship between a licensee and another individual, group or organization in which the licensee delivers psychological services to the individual, group, or organization.

(9) "Professional standards" are determined by the Board through its rules, regulations, policies and any other sources adopted by the Board.

(10) "Provision of psychological services" means any use by a licensee of his or her education or training in psychology in the context of a professional relationship. Psychological services include, but are not limited to, therapy, diagnosis, testing, assessments, evaluation, treatment, counseling, supervision, consultation, providing forensic opinions, rendering a professional opinion, performing research, or teaching to an individual, group, or organization.

(11) "Recognized member of the clergy," as used in Section 501.004(a)(4) of the Act, means a member in good standing of and accountable to a denomination, church, sect or religious organization legally recognized under the Internal Revenue Code, Section 501(c)(3).

(12) "Records" are any information, regardless of the format in which it is maintained, that can be used to document the delivery, progress or results of any psychological services including, but not limited to, data identifying a recipient of services, dates of services, types of services, informed consents, fees and fee schedules, assessments, treatment plans, consultations, session notes, test results, reports, release forms obtained from a client or patient or any other individual or entity, and records concerning a patient or client obtained by the licensee from other sources.

(13) "Report" includes any written or oral assessment, recommendation, psychological diagnostic or evaluative statement containing the professional judgment or opinion of a licensee.

(14) "Test data" refers to testing materials, test booklets, test forms, test protocols and answer sheets used in psychological testing to generate test results and test reports.

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

Filed with the Office of the Secretary of State on May 4, 2011.

TRD-201101663

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: June 19, 2011

For further information, please call: (512) 305-7700

◆ ◆ ◆  
**22 TAC §465.18**

The Texas State Board of Examiners of Psychologists proposes amendments to §465.18, concerning Forensic Services. The amendments would clarify the rule by ensuring that forensic services include fitness for duty evaluation for high risk personnel, disability claim, or risk assessment evaluations of employees.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700 or email [brenda.skiff@tsbep.state.tx.us](mailto:brenda.skiff@tsbep.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§465.18. *Forensic Services.*

(a) In General.

(1) A licensee who provides services concerning a matter which the licensee knows or should know will be utilized in a legal proceeding, such as a divorce, child custody determination, fitness for duty evaluation for high risk personnel, disability claim, or risk assessment evaluations of employees, [~~or a divorce~~] must comply with all applicable Board rules concerning forensic services regardless of whether the licensee is acting as a factual witness or an expert.

(2) Licensees who engage in forensic services must have demonstrated appropriate knowledge of and competence in all underlying areas of psychology about which they provide such services.

(3) All forensic opinions, reports, assessments, and recommendations rendered by a licensee must be based on information and techniques sufficient to provide appropriate substantiation for each finding.

(4) A licensee who provides forensic services must comply with all other applicable Board rules and state and federal law relating to the underlying areas of psychology relating to those services.

(b) Limitation on Services.

(1) A licensee who is asked to provide an opinion concerning an area or matter about which the licensee does not have the appropriate knowledge and competency to render a professional opinion shall decline to render that opinion.

(2) A licensee who is asked to provide an opinion concerning a specific matter for which the licensee lacks sufficient information to render a professional opinion shall decline to render that opinion unless the required information is provided.

(3) A licensee shall not render a written or oral opinion about the psychological characteristics of an individual without con-

ducting an examination of the individual unless the opinion contains a statement that the licensee did not conduct an examination of the individual.

(4) A written or oral opinion about the psychological characteristics of an individual rendered by a licensee who did not conduct an examination of that individual must contain clarification of the extent to which this limits the reliability and validity of the opinion and the conclusions and recommendations of the licensee.

(5) When seeking or receiving court appointment or designation as an expert for a forensic evaluation a licensee specifically avoids accepting appointment or engagement for both evaluation and therapeutic intervention for the same case. A licensee provides services in one but not both capacities in the same case.

(c) Describing the Nature of Services. A licensee must document in writing that subject(s) of forensic evaluations or their parents or legal representative have been informed of the following:

(1) The nature of the anticipated services (procedures);

(2) The specific purpose and scope of the evaluation;

(3) The identity of the party who requested the psychologist's services;

(4) The identity of the party who will pay the psychologist's fees and if any portion of the fees is to be paid by the subject, the estimated amount of the fees;

(5) The type of information sought and the uses for information gathered;

(6) The people or entities to whom psychological records will be distributed;

(7) The approximate length of time required to produce any reports or written results;

(8) Applicable limits on confidentiality and access to psychological records; and

(9) Whether the psychologist has been or may be engaged to provide testimony based on the report or written results of forensic psychological services in a legal proceeding.

(d) Child Custody Evaluations.

(1) The primary consideration in a child custody evaluation is to assess the individual and family factors that affect the best psychological interests of the child. Other factors or specific factors may also be addressed given a specific forensic services engagement.

(2) Child custody evaluations generally involve an assessment of the adults' capacity for parenting, an assessment of the psychological functioning, developmental needs, and wishes of the child, and the functional ability of each parent to meet such needs. Other socioeconomic factors, family, collateral and community resources may also be taken into secondary consideration.

(3) The role of the psychologist in a child custody forensic engagement is one of a professional expert. The psychologist cannot function as an advocate and must retain impartiality and objectivity, regardless of whether retained by the court or a party to the divorce. The psychologist must not perform an evaluation where there has been a prior therapeutic relationship with the child or the child's immediate family members, unless required to do so by court order.

(4) The scope of the evaluation is determined by the psychologist based on the referral question(s). Licensees must comprehensively perform the evaluation based on the scope of the referral, but not exceed the scope of the referral.



(e) Child Visitation. Forensic opinions as to child visitation and parenting arrangements must be supported by forensic evaluations.

(1) Licensees may provide treatment or evaluation, but not both in the same case.

(2) A treating psychologist may express an opinion as to the progress of treatment, but shall refrain from rendering an opinion about child visitation or parenting arrangements, unless required to do so by court order.

(f) Parenting Facilitators.

(1) The title "parenting facilitator" is defined in the Texas Family Code, Title 5, Subtitle B, Chapter 153, Subchapter K, Parenting Plan, Parenting Coordinator, and Parenting Facilitator.

(2) The Board's jurisdiction over licensees who also accept engagements as parenting facilitators is limited to its enforcement of Board rules. The Family Code sets forth procedures for the qualifications, duties, appointment and removal, reporting, record retention, and compensation of parenting facilitators. The Family Code also provides procedures for disclosure of conflicts of interest by parenting facilitators. In the event of conflict between the Family Code and Board rules, the Family Code controls, pursuant to Board rule §461.14 pertaining to conflict between laws and board rules.

(3) A parenting facilitator who is also a licensed psychologist in Texas is a provider of forensic psychological services and must comply with all other applicable Board rules and state and federal laws relating to the underlying areas of psychology relating to those services.

(4) Participants in parenting facilitation are not patients as defined in these rules and in Texas Health and Safety Code §611.001. Records created during parenting facilitation are not confidential.

(5) Parenting facilitators must comply with the Texas Family Code at §153.6061 as to duties and §153.6101 as to qualifications, and with the "Guidelines for Parenting Coordination" developed by the Association of Family and Conciliation Courts Task Force on Parenting Coordination, dated May 2005.

(6) The following psychologist-parenting facilitator practice standards are set forth consistent with Texas Family Code §153.6101.

(A) Parenting facilitators licensed by the Board shall comply with the standard of care applicable to the license to practice psychology in Texas.

(B) Psychologist-parenting facilitators meet all requirements of Texas Family Code §153.6101, including active licensure to practice as a psychologist in Texas; completion of 8 hours of family violence dynamics training provided by a family violence service provider; 40 classroom hours of training in dispute resolution techniques in a course conducted by an alternative dispute resolution system or other dispute resolution organization approved by the court; 24 classroom hours of training in the fields of family dynamics, child development, and family law; and 16 hours of training in the laws governing parenting coordination and parenting facilitation and the multiple styles and procedures used in different models of service.

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

Filed with the Office of the Secretary of State on May 4, 2011.

TRD-201101664

Sherry L. Lee  
Executive Director  
Texas State Board of Examiners of Psychologists  
Earliest possible date of adoption: June 19, 2011  
For further information, please call: (512) 305-7700

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**PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS**

**CHAPTER 711. DIETITIANS**  
**SUBCHAPTER A. LICENSED DIETITIANS**

**22 TAC §711.3**

The Texas State Board of Examiners of Dietitians (board) proposes an amendment to §711.3, concerning the licensing and regulation of dietitians, specifically criminal history evaluations.

**BACKGROUND AND PURPOSE**

The proposed amendment complies with House Bill (HB) 963, 81st Legislature, 2009, which amended Occupations Code, §53.102, by setting out the requirements and procedures for issuance of criminal history evaluation letters.

**SECTION-BY-SECTION SUMMARY**

Section 711.3(d)(6) has been added which authorizes the board to charge a new fee of \$50 per person for pre-evaluation of a criminal history for future licensure. New subsections (l) - (p) stipulate the policies and procedures applicable in criminal history evaluation.

**FISCAL NOTE**

Bobbe Alexander, Executive Director, has determined that for each year of the first five years the section is in effect, there will be a fiscal impact to state government as a result of enforcing or administering the section as proposed. There will be a revenue increase from criminal history letters in general revenue each year of the first five years the section is in effect. Approximately 20 individuals are estimated to request criminal history letters annually. The annual revenue is projected to increase by \$1,000. There are no fiscal implications for local governments.

**SMALL AND MICRO-BUSINESS IMPACT ANALYSIS**

Ms. Alexander has also determined that there will be no economic costs to small businesses or micro-businesses. This was determined by interpretation of the rule that small business or micro-businesses will not be required to alter their business practices to comply with the section as proposed. This section only applies to individuals, not businesses.

**ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT**

There is an anticipated economic cost to persons who are required to comply with the section as proposed. A cost of \$50 is assessed to a person who requests a criminal history evaluation letter. There is no anticipated negative impact on local employment.

**PUBLIC BENEFIT**

Ms. Alexander has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result

of enforcing or administering the section is to effectively regulate the practice of dietetics in Texas, which will protect and promote public health, safety, and welfare, and to ensure that statutory directives are carried out.

#### REGULATORY ANALYSIS

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

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Director, State Board of Examiners of Dietitians, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to dietitian@dshs.state.tx.us. When emailing comments to the board, please indicate "Comments on Proposed Rule" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

#### STATUTORY AUTHORITY

The amendment is proposed under Occupations Code, §701.152, which authorizes the board to adopt rules necessary for the performance of the board's duties; and §53.102, which authorizes the adoption of rules regarding fees for criminal history evaluation letters.

The amendment affects Occupations Code, Chapters 53 and 701.

#### §711.3. Fees.

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

(d) Additional fees for licensure as a dietitian, temporary licensed dietitian, and a provisional licensed dietitian:

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

(4) written verification of licensure fee--\$25; ~~and~~

(5) returned check fee--\$25; and [-]

(6) criminal history evaluation letter fee--\$50.

(e) - (k) (No change.)

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

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

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

(m) A person making a request for issuance of a criminal history evaluation letter shall submit the request on a form prescribed by the department, accompanied by the criminal history evaluation letter fee and the required supporting documentation, as described on the form. The request shall state the basis for the person's potential ineligibility.

(n) The department has the same authority to investigate a request submitted under this subsection and the requestor's eligibility that the department has to investigate a person applying for a license.

(o) If the department determines that a ground for ineligibility does not exist, the department shall notify the requestor in writing of the determination. The notice shall be issued not later than the 90th day after the date the department received the request form, the criminal history evaluation letter fee, and any supporting documentation as described in the request form.

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

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

Filed with the Office of the Secretary of State on May 9, 2011.

TRD-201101699

Janet Hall

Chair

Texas State Board of Examiners of Dietitians

Earliest possible date of adoption: June 19, 2011

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



# WITHDRAWN RULES

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 19. EDUCATION

### PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

#### CHAPTER 21. STUDENT SERVICES

##### SUBCHAPTER NN. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

###### 19 TAC §§21.2105, 21.2107 - 21.2110

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §21.2105 and §§21.2107 - 21.2110 which appeared in the February 18, 2011, issue of the *Texas Register* (36 TexReg 893).

Filed with the Office of the Secretary of State on May 6, 2011.

TRD-201101678

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: May 6, 2011

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



###### 19 TAC §21.2111

The Texas Higher Education Coordinating Board withdraws the proposed repeal of §21.2111 which appeared in the February 18, 2011, issue of the *Texas Register* (36 TexReg 894).

Filed with the Office of the Secretary of State on May 6, 2011.

TRD-201101679

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: May 6, 2011

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



##### SUBCHAPTER SS. EXEMPTION PROGRAM FOR CHILDREN OF DEPLOYED MEMBERS OF THE MILITARY

###### 19 TAC §§21.2270 - 21.2273

The Texas Higher Education Coordinating Board withdraws the proposed new §§21.2270 - 21.2273 which appeared in the February 18, 2011, issue of the *Texas Register* (36 TexReg 894).

Filed with the Office of the Secretary of State on May 6, 2011.

TRD-201101680

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Effective date: May 6, 2011

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



# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 10. COMMUNITY DEVELOPMENT PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

#### SUBCHAPTER H. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM

##### 10 TAC §5.802

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 5, Subchapter H, §5.802, concerning Local Operators for the Section 8 Housing Choice Voucher Program, without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1782) and will not be republished.

The new section identifies a process for potential expansion of the Department's Section 8 program to additional areas of the state and outlines procedures to renew existing Local Operators (LOs) and procure new LOs. In addition, the new section clarifies the roles and duties of the LOs for the Section 8 program.

The Department accepted comments on the proposed new section in writing and by email from March 18, 2011 to April 18, 2011. No comments were received on the new section.

The Board approved the final order adopting the new section on May 5, 2011.

The new section is adopted pursuant to the authority of the Texas Government Code, Chapter 2306, which provides the Department the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2011.

TRD-201101681

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: May 26, 2011

Proposal publication date: March 18, 2011

For further information, please call: (512) 475-3916



## CHAPTER 53. HOME PROGRAM RULE

## SUBCHAPTER C. HOMEOWNER REHABILITATION ASSISTANCE (HRA) PROGRAM ACTIVITY

### 10 TAC §53.31

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 53, Subchapter C, §53.31, concerning Homeowner Rehabilitation Assistance (HRA) Program Requirements, without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1785) and will not be republished.

The amendments are adopted in order to clarify the program requirements for refinancing existing mortgages within the HRA Program Activity including establishing a maximum refinancing amount and to differentiate the terms of refinancing HOME funds as compared to other Project funds.

The Department accepted comments on the proposed amendments in writing and by email from March 18, 2011 to April 18, 2011. No comments were received on the proposed amendments.

The Board approved the final order adopting the amended section on May 5, 2011.

The amendments are adopted pursuant to the authority of Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2011.

TRD-201101682

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: May 26, 2011

Proposal publication date: March 18, 2011

For further information, please call: (512) 475-3916



## CHAPTER 60. COMPLIANCE ADMINISTRATION

### SUBCHAPTER C. ADMINISTRATIVE PENALTIES

#### 10 TAC §§60.301 - 60.309

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC Chapter 60, Subchapter C, §§60.301 - 60.309, concerning Administrative Penalties, without changes to the proposal as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1788) and will not be republished.

The adopted repeal allows for the adoption of new sections to ensure compliance with all statutory requirements, enable streamlining of processes, improve the equity of penalty amounts, and add a debarment process to the rules.

The public comment period ran through April 11, 2011. No comments were received concerning the proposed repeal.

The Board approved the final order adopting the repeal on May 5, 2011.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to repeal and adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2011.

TRD-201101675

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: May 26, 2011

Proposal publication date: March 18, 2011

For further information, please call: (512) 475-3916



## 10 TAC §§60.301 - 60.309

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC Chapter 60, Subchapter C, §§60.301 - 60.309, concerning Administrative Penalties, without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1788) and will not be republished.

The adoption of the new sections ensures compliance with all statutory requirements, enables streamlining of processes, improves the equity of penalty amounts, and adds a debarment process to the rules.

The public comment period ran through April 11, 2011. No comments were received concerning the proposed new sections.

The Board approved the final order adopting the new sections on May 5, 2011.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to repeal and adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2011.

TRD-201101674

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: May 26, 2011

Proposal publication date: March 18, 2011

For further information, please call: (512) 475-3916



## TITLE 16. ECONOMIC REGULATION

### PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

#### CHAPTER 22. PROCEDURAL RULES

##### SUBCHAPTER D. NOTICE

###### 16 TAC §22.52

The Public Utility Commission of Texas (commission) adopts amendments to §22.52, relating to Notice in Licensing Proceedings, with changes to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1637).

The amendments change references to routes for a proposed transmission line for which a certificate of convenience and necessity (CCN) is sought by a utility, require that newspaper notice for such a line include a map, insert language establishing notice requirements to the Texas Parks and Wildlife Department, and establish a requirement that each notice document include language that all proposed routes are available for selection in a CCN proceeding.

The commission received comments on the proposed amendments from Southwestern Public Service Company (SPS); CenterPoint Energy Houston (CenterPoint); Office of Public Utility Counsel (OPUC); Texas Industrial Energy Consumers (TIEC); Lower Colorado River Authority Transmission Service Company (LCRA TSC); and Entergy Texas (ETI). In addition, Oncor Electric Delivery Company, LLC; Electric Transmission Texas, LLC; Lone Star Transmission, LLC; Cross Texas Transmission, LLC; Southwestern Electric Power Company; AEP Texas Central Company, AEP Texas North Company and Wind Energy Transmission Texas, LLC (together the Joint Commenters) filed comments together. The commission received reply comments from CenterPoint, Oncor, and AEP North Texas Company, AEP Texas Central Company, Southwestern Electric Power Company, and Electric Transmission Texas, LLC (together AEP and ETT). A public hearing on the rule was not requested.

Generally, the commenters welcomed the changes as improvements to the CCN process. Some suggestions for modifications or additions to the rule were recommended, which are summarized below.

###### *Summary of Comments*

###### *Subsection (a)(1)(B)*

Most of the commenters supported the changes requiring the addition of a map to published notice. Several commenters stated that they already publish a map as a standard practice. SPS, CenterPoint, and ETI disagreed that the published maps should conform with the requirements of subsection (a)(1)(C), however. SPS and ETI stated that compliance with this notice requirement would add significant costs, which would ultimately be borne by

the ratepayers. SPS stated it is working on an upcoming CCN application to build a 190-mile transmission line and, after researching the costs, determined that using an 11" x 17" size map depicting the overall project on one newspaper page would cost \$3,500 but that conforming to proposed subsection (a)(1)(C) could comprise ten pages, at a cost of \$35,000, a substantial difference. ETI stated that, depending on the county and the newspaper, one time publication of a map could be as expensive as \$55,000. Both SPS and ETI stated that detailed maps are mailed to landowners and other directly affected parties, and published notice requires reference to where a copy of a detailed map can be viewed or obtained. SPS requested that any map that is required be a high-level overview of the affected geographic area, generally illustrating the location of proposed routes. ETI requested that the proposed inclusion of a map in published notice be deleted and that a new sentence be added that would impose additional requirements on the written description of the routes. CenterPoint stated that the cost of a one-page advertisement in the *Houston Chronicle* is \$45,000. CenterPoint stated that, while in the past it has published maps in its notices, they did not provide the level of detail required by proposed subsection (a)(1)(C) and offered alternative language for proposed subsection (a)(1)(B), which reads: "The notice shall include a map with the all of the alternative locations of the proposed routes and major roads and streets as described in subparagraph (C) of this paragraph and shall describe in clear, precise language the geographic area for..." In their reply comments, AEP and ETT stated that it is standard practice for them to publish such maps and that their experience leads them to believe that, in spite of the cost, there are benefits to including a map with published notice, because a potentially directly impacted landowner gains a good visual understanding for how his property could be impacted by the alternative routes proposed by a utility. Similarly, Oncor supported the addition of the detailed map. Oncor stated that it is standard practice for the company to publish such map and that commonly landowners have shown up to Oncor's public meetings, technical conferences, and prehearing conferences with the maps they have cut out of the newspaper and utilized to understand the impact of a proposed project on a particular piece of property. According to Oncor, these individuals included both directly and non-directly affected landowners who would not otherwise have received a map of the project area.

#### *Commission Response*

The commission appreciates the cost issues raised by SPS and ETI but disagrees with ETI's recommendation to eliminate the requirement for a map in the published notice. While the addition of a map does increase the costs, the commission believes that it will be an important tool for potentially affected parties to more clearly understand the areas that may be affected by the proposed project. The commission agrees with SPS, however, that the level of detail required by subsection (a)(1)(C) may not be necessary to convey sufficient information to potentially affected parties. Instead of requiring a map that meets the requirements of subsection (a)(1)(C), the commission is changing subsection (a)(1)(B) to use broader language similar to that recommended by CenterPoint. The commission has modified subsection (a)(1)(C) to take out the requirement to state from whom a copy of the map may be obtained because a map will be provided in the newspaper notice. In addition, the commission has modified subsection (a)(1)(C) to clarify that the map that is available for review must be a detailed routing map.

*Requests to Address Notice to the Texas Parks and Wildlife Department*

In conjunction with the proposed rule amendments in this proceeding, the commission published notice of proposed changes to the CCN application forms, including changes to the application form entitled *Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line (non-CREZ form)*, specifying how the utility must notify the Texas Parks and Wildlife Department (TPWD) of a pending transmission CCN application and how the commission would be notified that the information was provided to TPWD. These requirements are already included in the existing form entitled *Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line Pursuant to P.U.C. SUBST. R. 25.174 (CREZ form)*. SPS and ETI stated that the notice requirements to TPWD are appropriate to include in the rule as subsection (a)(1)(E).

ETI and CenterPoint opposed the proposed deadline of nine days from the date an application is filed to file an affidavit for notice to TPWD. ETI recommended allowing an applicant to attest to notice to TPWD at the same time that it provides other attestations of notice. CenterPoint recommended that applicants be allowed to confirm transmittal of the TPWD letter in the affidavit confirming other forms of notice.

AEP and ETT agreed with SPS and ETI that it is more appropriate to address the TPWD notice requirements in P.U.C. SUBST. R. §22.52 than the application forms. AEP and ETT and Oncor also supported the elimination of the requirement to file an affidavit within nine days, because it would be more efficient to combine all notice verifications into one affidavit attesting to the required notices being provided.

#### *Commission Response*

The commission agrees that the requirements concerning TPWD are appropriately included in the rule, and has therefore added subsection (a)(1)(E). It disagrees, however, that the requirements should be taken out of the application forms, as many substantive requirements found in the rules are also included in commission application forms to help ensure that they are addressed. In addition, it is helpful to the applicant to include the TPWD address in the application forms, and including the requirements concerning TPWD in these forms provides context for providing the TPWD address. The commission has not included a nine-day filing deadline for the TPWD affidavit as that can be addressed by an Administrative Law Judge on a case-by-case basis.

#### *Joint Commenters Request to Add Subsection (a)(7)*

Joint Commenters requested that additional information that has been provided in the past by utilities be added to the notice. Specifically, Joint Commenters requested a paragraph (7), which would state: "All notices of an applicant's intent to secure a certificate of convenience and necessity whether provided by publication or direct mail shall include the following language: All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."

#### *Commission Response*

The commission agrees that the language would be helpful and has accordingly added a new subsection (a)(7).

#### *Effective Date of Amendments*

LCRA TSC stated that utilities are always in the process of planning new CCN amendments, and requested that the commission

determine an effective date for the rule amendments to take effect. Oncor supported the adoption of a specific effective date.

#### *Commission Response*

In order to provide utilities sufficient time to prepare to comply with the amendments, the amendments shall take effect June 1, 2011.

#### *Submission of Documents in CCN proceedings*

OPUC recommended that pro se intervenors, during the course of a CCN proceeding, should be required to submit documents only to the commission where they will be posted to the commission's online interchange system. OPUC stated that the filing and service of documents can be an onerous requirement in particular for landowners that lack the resources to hire legal counsel and may discourage potential intervenors from participating in the CCN proceeding due to lack of sufficient resources.

#### *Commission Response*

The commission appreciates OPUC's comments. However, requirements for filing documents and serving them on other parties is addressed in rules other than §22.52. OPUC's request is outside the scope of this rulemaking.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which requires the commission to adopt and enforce rules reasonably required in the exercise of its power and jurisdiction; PURA §14.052 and Administrative Procedure Act (APA), Texas Government Code §2001.004 (Vernon 2008 & Supp. 2010), which require the commission to adopt procedural rules; and PURA §§37.053 - 37.057, which provide the commission authority over applications for certificates of convenience and necessity.

Cross Reference to Statutes: PURA §§14.002, 14.052, and 37.053 - 37.057 and APA §2001.004.

#### *§22.52. Notice in Licensing Proceedings.*

(a) Notice in electric licensing proceedings. In all electric licensing proceedings except minor boundary changes, the applicant shall give notice in the following ways:

(1) Applicant shall publish notice once of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, no later than the week after the application is filed with the commission. This notice shall identify the commission's docket number and the style assigned to the case by the Central Records Division. In electric transmission line cases, the applicant shall obtain the docket number and style no earlier than 25 days prior to making the application by filing a preliminary pleading requesting a docket assignment. The notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall describe all routes without designating a preferred route or otherwise suggesting that a particular route is more or less likely to be selected than one of the other routes.

(A) The notice shall include all the information required by the standard format established by the commission for published notice in electric licensing proceedings. The notice shall state the date established for the deadline for intervention in the proceeding (date 45 days after the date the formal application was filed with the commission; or date 30 days after the date the formal application was filed with the commission for an application for certificate of convenience and necessity filed pursuant to the Public Utility Regulatory Act §39.203(e))

and that a letter requesting intervention should be received by the commission by that date.

(B) The notice shall describe in clear, precise language the geographic area for which the certificate is being requested and the location of all alternative routes of the proposed facility. This description shall refer to area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area. In addition, the notice shall include a map that identifies all of the alternative locations of the proposed routes and all major roads, transmission lines, and other features of significance to the areas that are used in the utility's written notice description.

(C) The notice shall state a location where a detailed routing map may be reviewed. The map shall clearly and conspicuously illustrate the location of the area for which the certificate is being requested including all the alternative locations of the proposed routes, and shall reflect area landmarks, including but not limited to geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference, unless no such references exist for the geographic area.

(D) Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published, the county or counties in which the newspaper(s) is or are of general circulation, the dates upon which the notice was published, and a copy of the notice as published. Proof of publication shall be submitted to the commission as soon as available.

(E) The applicant shall provide a copy of each environmental impact study and/or assessment for the project to the Texas Parks and Wildlife Department (TPWD) for its review within seven days of filing the application. Proof of submission of the information to TPWD shall be provided in the form of an affidavit to the commission, which shall specify the date the information was mailed or otherwise provided to TPWD, and shall provide a copy of the cover letter or other documentation that confirms that the information was provided to TPWD.

(2) Applicant shall, upon filing an application, also mail notice of its application to municipalities within five miles of the requested territory or facility, neighboring utilities providing the same utility service within five miles of the requested territory or facility, and the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. The notice shall contain the information as set out in paragraph (1) of this subsection and a map as described in paragraph (1)(C) of this subsection. An affidavit attesting to the provision of notice to municipalities, utilities, and counties shall specify the dates of the provision of notice and the identity of the individual municipalities, utilities, and counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to municipalities, utilities, and counties affected by the modification which have not previously received notice. The notice of modification shall state such entities will have 20 days to intervene.

(3) Applicant shall, on the date it files an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate. For purposes of this paragraph, land is directly affected if an easement or other property interest would be obtained over all or any portion of it, or if it contains a habitable structure that would be within 300 feet of the centerline of a transmission project of 230 kV or less, or

within 500 feet of the centerline of a transmission project greater than 230 kV.

(A) The notice must contain all information required in paragraph (1) of this subsection and shall include all the information required by the standard notice letter to landowners prescribed by the commission. The commission's docket number pertaining to the application must be stated in all notices. The notice must also include a copy of the "Landowners and Transmission Line Cases at the PUC" brochure prescribed by the commission.

(B) The notice must include a map as described in paragraph (1)(C) of this subsection.

(C) Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under subparagraphs (A) and (B) of this paragraph to all directly affected landowners who have not already received such notice.

(D) Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). The proof of notice shall include a list of all landowners to whom notice was sent and a statement of whether any formal contact related to the proceeding between the utility and the landowner other than the notice has occurred. This proof of notice shall be filed with the commission no later than 20 days after the filing of the application.

(E) Upon the filing of proof of notice as described in subparagraph (D) of this paragraph, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied. If, however, the utility finds that an owner of directly affected land has not received notice, it shall immediately advise the commission by written pleading and shall provide notice to such landowner(s) by priority mail, with delivery confirmation, in the same form described in subparagraphs (A) and (B) of this paragraph, except that the notice shall state that the person has fifteen days from the date of delivery to intervene. The utility shall immediately file a supplemental affidavit of notice with the commission.

(4) The utility shall hold at least one public meeting prior to the filing of its licensing application if 25 or more persons would be entitled to receive direct mail notice of the application. Direct mail notice of the public meeting shall be sent by first-class mail to each of the persons listed on the current county tax rolls as an owner of land within 300 feet of the centerline of a transmission project of 230 kV or less, or within 500 feet of the centerline of a transmission project greater than 230 kV. In the notice for the public meeting, at the public meeting, and in other communications with a potentially affected person, the utility shall not describe routes as preferred routes or otherwise suggest that a particular route is more or less likely to be selected than one of the other routes.

(5) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.

(6) Upon entry of a final, appealable order by the commission approving an application, the utility shall provide notice to all owners of land who previously received direct notice. Proof of notice under this subsection shall be provided to the commission's staff.

(7) All notices of an applicant's intent to secure a certificate of convenience and necessity whether provided by publication or direct mail shall include the following language: "All routes and route segments included in this notice are available for selection and approval by the Public Utility Commission of Texas."

(b) Notice in telephone licensing proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:

(1) Applicants shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission, P.O. Box 13326, Austin, Texas 78711-3326, or call the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. The deadline for intervention in the proceeding is (date 70 days after the date the application was filed with the commission) and you must send a letter requesting intervention to the commission which is received by that date." Proof of publication of notice shall be in the form of a publisher's affidavit, which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; the dates upon which the notice was published and a copy of the notice as published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and to neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

(3) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention.

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-201101669

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

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For further information, please call: (512) 936-7223

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CHAPTER 25. SUBSTANTIVE RULES  
APPLICABLE TO ELECTRIC SERVICE  
PROVIDERS

SUBCHAPTER E. CERTIFICATION,  
LICENSING AND REGISTRATION

**16 TAC §25.101**

The Public Utility Commission of Texas (commission) adopts amendments to §25.101, relating to Certification Criteria, without changes to the proposed text as published in the March 11, 2011, issue of the *Texas Register* (36 TexReg 1639).

The amendments change the reference to routes from "preferred and alternate routes" to "alternative routes," for a proposed transmission line for which a certificate of convenience and necessity is sought by a utility. These amendments are adopted under Project Number 39125.

The commission received comments on the proposed amendments in this project from Southwestern Public Service Company (SPS); Office of Public Utility Counsel (OPUC); and Lower Colorado River Authority Transmission Service Company (LCRA TSC). In addition, Oncor Electric Delivery Company, LLC; Electric Transmission Texas, LLC; Lone Star Transmission, LLC; Cross Texas Transmission, LLC; Southwestern Electric Power Company; AEP Texas Central Company, AEP Texas North Company and Wind Energy Transmission Texas, LLC (together the Joint Commenters) filed comments together. The commission did not receive any reply comments. A public hearing on the amendments was not requested.

*Summary of Comments*

SPS, OPUC, LCRA TSC, and Joint Commenters supported the amendments as an improvement to the existing rule, and indicated that the amendments will help alleviate landowner confusion and increase landowner participation in the certificate of convenience and necessity (CCN) proceedings. STEC did not offer comments but stated that it did not oppose the proposed amendments to §25.101.

*Commission Response*

The commission adopts the amendments to §25.101 as originally proposed.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2010) (PURA), which requires the commission to adopt and enforce rules reasonably required in the exercise of its power and jurisdiction; and PURA §§37.053 - 37.057, which provide the commission authority over applications for certificates of convenience and necessity.

Cross Reference to Statutes: PURA §14.002 and §§37.053 - 37.057.

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.

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Adriana A. Gonzales  
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Public Utility Commission of Texas  
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**TITLE 19. EDUCATION**

**PART 1. TEXAS HIGHER EDUCATION  
COORDINATING BOARD**

**CHAPTER 4. RULES APPLYING TO  
ALL PUBLIC INSTITUTIONS OF HIGHER  
EDUCATION IN TEXAS**

**SUBCHAPTER P. APPROVAL OF DISTANCE  
EDUCATION COURSES AND PROGRAMS FOR  
PUBLIC INSTITUTIONS**

**19 TAC §4.261**

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.261, concerning Standards and Criteria for Distance Education Programs, without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 699) and will not be republished. The intent of the amendments to this section is to streamline the process by which previously approved doctoral programs at public institutions may be approved for distance delivery. Presently, any institution wishing to deliver an existing doctoral program by a distance education modality must receive Board approval prior to offering the program. The amendments would enable institutions approved to offer a doctoral program to do so via a distance education modality with the approval of the Commissioner or the Commissioner's designee.

One comment was received during the comment period concerning the amendments.

Comment: The University of Texas-Pan American expressed concern that, if the Commissioner appoints an independent organization as the designee to approve the delivery of Doctoral or special professional degree programs that have been previously approved by the board by other delivery methods, it might use criteria different than those of the Coordinating Board.

Response: As with other rules that give the Commissioner the authority to appoint a designee, any designee would be a Coordinating Board staff member. No changes have been made in response to this comment.

The amendments are adopted under the Texas Education Code, §61.051(j), which provides the Coordinating Board with the authority to approve courses for credit and distance education programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz  
General Counsel  
Texas Higher Education Coordinating Board  
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## SUBCHAPTER Q. APPROVAL OF OFF-CAMPUS AND SELF-SUPPORTING COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

### 19 TAC §4.275

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §4.275, concerning Standards and Criteria for Off-Campus and Self-Supporting Programs, without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 699) and will not be republished. The intent of the amendments to this section is to streamline the process by which previously approved doctoral programs at public institutions of higher education may be approved for distance delivery. Presently, any institution wishing to deliver an existing doctoral program by a distance education modality must receive Board approval prior to offering the program. The proposed changes would enable institutions approved to offer a doctoral program to do so via a distance education modality with the approval of the Commissioner or the Commissioner's designee.

One comment was received during the comment period concerning the amendments.

Comment: The University of Texas-Pan American expressed concern that the rules would not allow study abroad courses to receive formula funding.

Response: The current and proposed rules do not prevent an institution from receiving formula funding for students enrolled in courses offered out-of-country and out-of-state if those students are regularly enrolled students. Only degree programs offered for non-Texas residents out-of-state or out-of-country are excluded from receiving formula funding.

The amendments are adopted under the Texas Education Code, §61.051(j), which provides the Coordinating Board with the authority to approve courses for credit and distance education programs, including off-campus and self-supporting programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Higher Education Coordinating Board  
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## CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

### SUBCHAPTER C. APPROVAL OF NEW ACADEMIC PROGRAMS AND ADMINISTRATIVE CHANGES AT PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND REVIEW OF EXISTING DEGREE PROGRAMS

### 19 TAC §§5.43, 5.44, 5.52

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§5.43, 5.44, and 5.52, concerning Definitions, Presentation of Requests and Steps for Implementation, and Assessment of Existing Degree Programs. Section 5.52 is being adopted with changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 700) and will be republished, and §5.43 and §5.44 are being adopted without changes and will not be republished. The intent of the proposed amendments to §5.43 is to create definitions for terms related to the implementation of new degree programs and the review of existing programs. Section 5.44 adds a condition for the automatic approval of new bachelor's programs specifying that the minimum number of semester credit hours required to complete the program would not be greater than 120. The proposed amendments also state that if an institution proposes a bachelor's program requiring more than 120 semester credit hours, the institution must provide detailed written documentation regarding programmatic accreditation requirements, statutory requirements, or licensure/certification requirements that cannot be met without exceeding the 120-hour limit. The proposed amendments to §5.52 add requirements for the periodic evaluation of master's and doctoral programs at public universities and health-related institutions. The additions include a seven-year review cycle, specific criteria to be used in evaluations, and a requirement to provide the results of all evaluations to the Board shortly after they are conducted.

Several comments were received during the comment period concerning these amendments.

Comment: The University of Texas Health Science Center at Houston and the University of Texas System Office of Health Affairs asked if the requirements in these proposed rule amendments would apply to professional doctorates such as Medical, Dental, and Nurse Practitioner.

Response: Yes, the requirements for periodic review of doctoral programs are intended to apply to all doctoral programs, including professional doctoral degrees. No additional changes were made as a result of this comment.

Comment: The University of Texas Southwestern Medical Center, the University of Texas Health Science Center at San Antonio, and the University of Texas at El Paso stated that many of their doctoral programs undergo regular, rigorous reviews for reasons of accreditation and licensure. They asked if such reviews could substitute for the reviews required by these proposed rule amendments.

Response: Based upon the public comments received from institutions, staff are adding §5.52(c)(11) and §5.52(d)(11) to the rule. This allows institutions to submit the results of professional or specialized accreditation reviews in satisfaction of the program review and reporting required by these proposed rule amendments.

Comment: The University of Texas Health Science Center at San Antonio notes that some of its bachelor's programs for professional students can exceed the 120 credit hours due to accreditation and licensure requirements.

Response: These rule amendments are written to allow institutions to request exceptions based on accreditation and licensure requirements. No additional changes were made as a result of this comment.

Comment: The University of Texas Health Science Center at San Antonio said that the timing of program reviews is a critical issue and asked for institutions to be able to give input on the timing of the review of particular programs.

Response: The rule amendments allow institutions to submit a review schedule of their own creation, so long as it follows a seven-year cycle. No additional changes were made as a result of this comment.

Comment: The University of Texas at El Paso requested changes to the definitions of the terms "doctoral graduation rate" and "faculty publications."

Response: The definitions for these terms come directly from the "18 Characteristics of Doctoral Education". Board staff believes that keeping the definitions for these terms consistent with the "18 Characteristics of Doctoral Education" will help maintain the accuracy and consistency of both program review and the publishing of doctoral data. No additional changes were made as a result of this comment.

Comment: The University of Texas at El Paso requests that the review cycle for master's and doctoral programs be changed from every seven years to every fifth and tenth year in accordance with the accreditation reviews of the Southern Association of Colleges and Schools.

Response: The proposed amendments represent the recommendations of the Graduate Education Advisory Committee, which recommended graduate program reviews take place at least every 7 years. In addition, some institutions may not wish to undergo both institutional and programmatic accreditation reviews simultaneously. No additional changes were made as a result of this comment.

Comment: The University of Texas at El Paso requests that the rule amendments be altered to allow institutions to conduct a "virtual review" of doctoral programs, using teleconferencing, rather than an on-site review.

Response: Board staff maintains that an on-site review of a doctoral program would be a better method for evaluating program quality. No additional changes were made as a result of this comment.

Comment: The University of Texas at El Paso requests that the rule amendments be altered by adding an additional criterion for the review of doctoral programs: "faculty credentials."

Response: In response to this request, staff is changing §5.52(c)(9) to include the additional criterion, "faculty qualifica-

tions," which matches the criterion listed in the requirements for the review of master's programs.

The amendments are adopted under the Texas Education Code, §61.051(e), which provides that the Coordinating Board shall review all degree programs offered by public institutions of higher education to assure that they meet the present and future needs of the state and that no new departments, school, degree program, or certificate program may be added at any public institution of higher education except with specific prior approval of the Coordinating Board.

*§5.52. Review of Existing Degree Programs.*

(a) In accordance with the requirements of the Southern Association of Colleges and Schools, each public institution of higher education shall have a process to review the quality and effectiveness of existing degree programs and for continuous improvement.

(b) The Coordinating Board staff shall develop a process for conducting a periodic audit of the quality, productivity, and effectiveness of existing bachelor's, master's, and doctoral degree programs at public institutions of higher education and health-related institutions.

(c) Each public university and health-related institution shall review all doctoral programs at least once every seven years.

(1) On a schedule to be determined by the Commissioner, institutions shall submit a schedule of review for all doctoral programs to the Assistant Commissioner of Academic Affairs and Research.

(2) Institutions shall begin each review of a doctoral program with a rigorous self-study.

(3) As part of the required review process, institutions shall use at least two external reviewers with subject-matter expertise who are employed by institutions of higher education outside of Texas.

(4) External reviewers must be provided with the materials and products of the self-study and must be brought to the campus for an on-site review.

(5) External reviewers must be part of a program that is nationally recognized for excellence in the discipline.

(6) External reviewers must affirm that they have no conflict of interest related to the program under review.

(7) Closely-related programs, defined as sharing the same 4-digit Classification of Instructional Programs code, may be reviewed in a consolidated manner at the discretion of the institution.

(8) Institutions shall review master's and doctoral programs in the same discipline simultaneously, using the same self-study materials and reviewers. Institutions may also, at their discretion, review bachelor's programs in the same discipline as master's and doctoral programs simultaneously.

(9) Criteria for the review of doctoral programs must include, but are not limited to:

- (A) The 18 Characteristics of Texas Doctoral Programs;
- (B) Student retention rates;
- (C) Student enrollment;
- (D) Graduate licensure rates (if applicable);
- (E) Alignment of program with stated program and institutional goals and purposes;
- (F) Program curriculum and duration in comparison to peer programs;

- (G) Program facilities and equipment;
- (H) Program finance and resources;
- (I) Program administration; and
- (J) Faculty Qualifications.

(10) Institutions shall submit a report on the outcomes of each review, including the evaluation of the external reviewers and actions the institution has taken or will take to improve the program, and shall deliver these reports to the Academic Affairs and Research Division no later than 90 days after the reviewers have submitted their findings to the institution.

(11) Institutions may submit reviews performed for reasons of programmatic licensure or accreditation in satisfaction of the review and reporting requirements in this subsection.

(d) Each public university and health-related institution shall review all stand-alone master's programs at least once every seven years.

(1) On a schedule to be determined by the Commissioner, institutions shall submit a schedule of review for all master's programs to the Assistant Commissioner of Academic Affairs and Research.

(2) Institutions shall begin each review of a master's program with a rigorous self-study.

(3) As part of the required review process, institutions shall use at least one external reviewer with subject-matter expertise who is employed by an institution of higher education outside of Texas.

(4) External reviewers shall be provided with the materials and products of the self-study. External reviewers may be brought to the campus for an on-site review or may be asked to conduct a remote desk review.

(5) External reviewers must be part of a program that is nationally recognized for excellence in the discipline.

(6) External reviewers must affirm that they have no conflict of interest related to the program under review.

(7) Closely-related programs, defined as sharing the same 4-digit Classification of Instructional Programs code, may be reviewed in a consolidated manner at the discretion of the institution.

(8) Master's programs in the same 6-digit Classification of Instructional Programs code as doctoral programs shall be reviewed simultaneously with their related doctoral programs.

(9) Criteria for the review of master's programs must include, but are not limited to:

- (A) Faculty qualifications;
- (B) Faculty publications;
- (C) Faculty external grants;
- (D) Faculty teaching load;
- (E) Faculty/student ratio;
- (F) Student demographics;
- (G) Student time-to-degree;
- (H) Student publication and awards;
- (I) Student retention rates;
- (J) Student graduation rates;
- (K) Student enrollment;

(L) Graduate licensure rates (if applicable);

(M) Graduate placement (i.e. employment or further education/training);

(N) Number of degrees conferred annually;

(O) Alignment of program with stated program and institutional goals and purposes;

(P) Program curriculum and duration in comparison to peer programs;

(Q) Program facilities and equipment;

(R) Program finance and resources; and

(S) Program administration.

(10) Institutions shall submit a report of the outcomes of each review, including the evaluation of the external reviewer(s) and actions the institution has taken or will take to improve the program, and shall deliver these reports to the Academic Affairs and Research Division no later than 90 days after the reviewer(s) have submitted their findings to the institution.

(11) Institutions may submit reviews performed for reasons of programmatic licensure or accreditation in satisfaction of the review and reporting requirements in this subsection.

(e) The Coordinating Board shall review all reports submitted for master's and doctoral programs and shall conduct analysis as necessary to ensure high quality. Institutions may be required to take additional actions to improve their programs as a result of Coordinating Board review.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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



## CHAPTER 9. PROGRAM DEVELOPMENT IN PUBLIC TWO-YEAR COLLEGES SUBCHAPTER A. DEFINITIONS

### 19 TAC §9.1

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.1, concerning Definitions, without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1793) and will not be republished. The amendments to this section permit public two-year colleges to award an academic certificate to students who complete fifty percent of the curriculum specified in a voluntary transfer compact.

No comments were received during the comment period concerning these amendments.

The amendments are adopted under the Texas Education Code, Chapter 61, Subchapter C, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER J. ACADEMIC ASSOCIATE DEGREE AND CERTIFICATE PROGRAMS

### 19 TAC §9.183, §9.185

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §9.183 and §9.185, concerning Degree Titles, Program Length, and Program Content and Academic Certificates, without changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1794) and will not be republished. The amendments to these sections permit public two-year colleges to award an academic certificate to students who complete fifty percent of the curriculum specified in a voluntary transfer compact.

No comments were received during the comment period concerning these amendments.

The amendments are adopted under the Texas Education Code, Chapter 61, Subchapter C, which provides the Coordinating Board with the authority to regulate the awarding or offering of degrees, credit toward degrees, and the use of certain terms.

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 22. GRANT AND SCHOLARSHIP PROGRAMS

### SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

#### 19 TAC §22.24

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.24, concerning Provisions for the Tuition Equalization Grant Program, without changes to the proposed text as published in the February 18, 2011, issue of the *Texas Register* (36 TexReg 895) and will not be republished.

Specifically, subsection (b)(1) is added to clarify that persons entering the Tuition Equalization Grant Program on or after September 1, 2005, may qualify for a renewal award in a subsequent year if they complete their initial year in the program in compliance with their institution's academic progress requirements and meet the requirements of this section. Amendments to subsection (b)(2), currently located at subsection (b) clarify that to receive continuation awards, persons completing their second or subsequent year in the Tuition Equalization Grant Program must be in compliance with the program requirement of completion of at least 75 percent of all hours attempted and with the requirements listed in subsection (a), in addition to the program requirements already listed in the current subsection (b).

No comments were received during the comment period concerning the amendments.

The amendments are adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt reasonable regulations to implement the Tuition Equalization Grant 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.

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Bill Franz

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



## SUBCHAPTER S. PROFESSIONAL NURSING SHORTAGE REDUCTION PROGRAM

### 19 TAC §22.508

The Texas Higher Education Coordinating Board adopts amendments to §22.508, concerning Rules Applying to Professional Nursing Shortage Reduction Program, without changes to the proposed text as published in the February 11, 2011, issue of the *Texas Register* (36 TexReg 704) and will not be republished. The language regarding when an audit report is due has been changed to reflect that the report is due after all funds from the award in question have been expended. Specifically, this amendment is necessary in order to clarify the rule to require one audit report after the expenditure of all funds. Without this amendment, the rule could be interpreted that an audit report would be necessary for each year there was an expenditure of funds, since institutions have up to five years to expend their funds.

No comments were received during the comment period concerning these amendments.

The amendments are adopted under the Texas Education Code, §61.9624.

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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## PART 2. TEXAS EDUCATION AGENCY

### CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

#### SUBCHAPTER A. GIFTED/TALENTED EDUCATION

##### 19 TAC §89.4

The State Board of Education (SBOE) adopts the repeal of §89.4, concerning gifted and talented education. The repeal is adopted without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1430) and will not be republished. The section addresses fiscal responsibility for gifted and talented education funds. The adopted repeal removes the rule relating to the indirect cost allotment for gifted and talented education from 19 TAC Chapter 89 since the maximum allowable indirect cost referenced in 19 TAC Chapter 105, Foundation School Program, Subchapter B, Use of State Funds, §105.11, Maximum Allowable Indirect Cost, includes in rule the indirect cost for gifted and talented education.

Through 19 TAC §105.11, the SBOE establishes the maximum percentage of Foundation School Program (FSP) special allotments under the Texas Education Code (TEC), Chapter 42, Subchapter C, that school districts may expend for indirect costs for specific programs. Previously, no more than 15% of FSP special allotments could be expended on indirect costs related to the following programs: compensatory education, gifted and talented education, bilingual education and special language programs, and special education.

House Bill (HB) 3646, 81st Texas Legislature, 2009, amended the TEC, §42.152(c), to provide that up to 45%, rather than 15%, may be expended from FSP special allotments for indirect costs. HB 3646 also added the TEC, §42.1541, directing the SBOE to by rule increase the indirect cost allotments established for special education, compensatory education, bilingual education, and career and technical education programs. Accordingly, the SBOE took action to amend 19 TAC §105.11 at the November 2009 meeting to increase the percent allowances for indirect costs for FSP special allotments. The adopted amendment, which took effect December 31, 2009, included an increase of the indirect cost for gifted and talented education.

The adopted repeal of 19 TAC §89.4 removes the provision relating to fiscal responsibility from 19 TAC Chapter 89, Subchapter A, to avoid potential conflict with the governing rule, 19 TAC §105.11, if future revisions to statute would change the allowable percentage for indirect costs for special program allotments.

At the January 2011 meeting, the SBOE approved the proposed repeal of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter A, Gifted/Talented Education, §89.4, Fiscal Responsibility, for first reading and filing authorization.

The SBOE approved the proposed repeal of 19 TAC Chapter 89, Subchapter A, §89.4, for second reading and final adoption at the April 2011 meeting.

The adopted repeal has no procedural and reporting implications. The adopted repeal has no locally maintained paperwork requirements.

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

In accordance with the TEC, §7.102(f), the SBOE approved the repeal for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2011-2012 school year in order to remove an outdated provision related to the use of state funds for special program allotments that is already adopted elsewhere in SBOE rule. The effective date for the amendment is 20 days after filing as adopted.

No public comments were received on the proposal.

The repeal is adopted under the Texas Education Code (TEC), §42.156(b), which authorizes the SBOE to by rule establish how each district must account for the expenditure of state funds allocated for the gifted and talented education program.

The repeal implements the Texas Education Code, §42.156(b).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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



## TITLE 22. EXAMINING BOARDS

### PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

#### CHAPTER 571. LICENSING

The Texas Board of Veterinary Medical Examiners (Board) adopts the repeal of Chapter 571, Subchapter A, Examination, §§571.1, 571.3, 571.4, 571.14, and 571.18; Subchapter B, Reciprocal Licensing Agreements, §571.31; and Subchapter C, License Renewals, §§571.51 - 571.59 and 571.61, without

changes to the proposal as published in the February 18, 2011, issue of the *Texas Register* (36 TexReg 896) and will not be republished. The Board also adopts new Subchapter A, General, §§571.1, 571.3, 571.5, 571.7, 571.9, 571.11, 571.13, and 571.15; Subchapter B, Examinations, §§571.21, 571.23, and 571.25; Subchapter C, Reciprocal Licensing Agreements, §571.31; and Subchapter D, License Renewals, §§571.51 - 571.59 and 571.61 - 571.63. New §§571.1, 571.3, 571.9, 571.11, 571.13, 571.21, 571.23, 571.25, 571.31, 571.51 - 571.59, 571.62 and 571.63 are adopted without changes to the proposed text as published in the February 18, 2011, issue of the *Texas Register* (36 TexReg 896) and will not be republished. Sections 571.5, 571.7, 571.15, and 571.61 are adopted with grammatical changes to the proposed text as published in the February 18, 2011, issue of the *Texas Register*. The text of the rules will be republished.

The repeal and replacement result from the Board's rule review conducted in accordance with Texas Government Code, §2001.039. Elsewhere in this issue of the *Texas Register*, the Board adopts the review of Chapter 571.

Section 571.5(a)(3) is adopted with a minor grammatical change. A period has been added at the end of the sentence. No comments were received regarding adoption of the rule review of 22 TAC Chapter 571 or the repeal or new rules.

The Board adopts the following changes to 22 TAC Chapter 571 that would clarify and organize the rules of licensing before the Board, including but not limited to definitions, criminal history evaluation letters, qualifications and eligibility for licensure, temporary licensure, special licenses, provisional licensure, and application for the state board exam.

New §571.1 regarding definitions, defines terms used throughout the Veterinary Licensing Act and rules of the board regarding licensing, specifically the Board, locally derived scaled score, name on license, National Board of Veterinary Medical Examiners, national examination, North American Veterinary Licensing Examination, passing score, SBE (state board examination), and school or college of veterinary medicine. The terms were previously defined in §571.3 and have been broken out and placed at the beginning of the chapter for ease of use. The definition of name on license is a definition previously set out in §571.14, that the name on a license issued by the Board will be the name of the individual as it appears on the birth certificate, court order, marriage license, or document of naturalization. The definition for passing score adds the further clarification to state current Board practice that the examination score for the SBE is valid for one year past the date of the examination. The definition for testing window is no longer included as the Board is no longer administering the registration for NAVLE, rather the NBVME. The definition for school or college of veterinary medicine is also from §571.3(b) which defined the eligibility for licensure before the Board.

New §571.3, regarding criminal history evaluation letters, was previously §571.1. No new language was added.

New §571.5, regarding qualifications for veterinary license, was, in large part, contained in the previous §571.3(b). To be eligible for licensure, the licensee shall be the age of majority, which is currently 18 years old, rather than specifically 18 years old, so that the rule would not have to be changed if the age of majority is ever changed by law.

New §571.7, regarding licensing eligibility, was, in large part, also contained in the previous §571.3(d)(1) and (2). Language

was added that clarified that the application for NAVLE is through NBVME. In addition, language was added that states a candidate for NAVLE must take the examination within the testing window in which the candidate is authorized for testing. It also states that a candidate who fails to take the examination within the appropriate testing window or fails to obtain a passing score on the NAVLE and desires to take the examination during a subsequent testing window must comply with NBVME application requirements. This is placing into rule the current Board practice.

New §571.9, regarding special licenses, was, in large part, contained in §571.4. Language was changed to be eligible for a special license, the licensee shall be the age of majority, which is currently 18 years old, rather than specifically 21 years old, so that the rule would not have to be changed if the age of majority is ever changed by law. In addition, language was changed that in order to be eligible for a special license, a licensee must present proof of a current active license in good standing in another state or jurisdiction of the United States that has substantially equivalent licensing requirements as set forth in the Texas Veterinary Licensing Act, rather than just to be simply licensed in another United States jurisdiction. This is only for unrepresented or under-represented areas of practice. This is placing into rule the current Board practice, so that someone who is under suspension, for example in another state, would not be eligible for a special license.

New §571.11, regarding provisional licensure, was, in large part, contained in §571.18. Language was added that requires an active license, rather than just a license, to be eligible for a provisional licensure. In addition, language was added clarifying the letters of reference must be from two licensed veterinary employers or licensed veterinary colleagues with direct knowledge of the applicant's veterinary practice and experience, rather than just persons with direct knowledge of the applicant's veterinary practice and experience. This is placing into rule the current Board practice.

New §571.13, regarding temporary licensure during declared state of disaster, sets forth the process for temporary licensure of veterinarians licensed in other states other than Texas who enter the state to provide relief services during a state of emergency declared by the Office of the Governor. The adopted rule is the rule that has in the past been adopted on an emergency basis by the board at the time a state of emergency was declared.

New §571.15, regarding temporary veterinary licenses, sets forth the process for the temporary licensure of a veterinarian in Texas. The Texas Veterinary Licensing Act provides for the issuance of a temporary license, with certain restrictions set forth in Occupations Code, §801.252, as placed on every license issued in Texas. As the veterinary medical field has become more specialized, more specialists are located in other licensing jurisdictions. There has been an increased desire by licensed veterinarians in Texas, as well as by the clients of these veterinarians, to have the very best in a certain field be able to practice in Texas on a limited basis. The licensee under the rule would be under general supervision of a Texas licensed veterinarian who possesses an active, current Texas license. The temporary license would be valid for thirty days and is not renewable, nor can it be reissued. An applicant may request a second temporary veterinary license within the same calendar year, provided that no more than two veterinary licenses are issued within the same calendar year. The licensing fee for the temporary license will cover any additional state resources re-

quired by the board to process the application for the temporary license.

New §571.21, regarding application for the SBE (state board examination), sets forth the process for applying to the board to take the SBE, and was, in large part, contained in §571.3(c). The rule clarifies that the completion of any terms and conditions as set forth in a board order is required prior to the date of the examination for which the applicant intends to sit.

New §571.23, regarding licensing examination, sets forth which certified scores will be accepted on national board examinations, as well as setting out the process for requests for information on examination scores. The adopted rule was, in large part, contained in §571.3(d)(3) and (4). The adopted rule further clarifies that the board will not disclose any actual examination documents or materials.

New §571.25, regarding reapplication for SBE, sets forth the process by which an applicant may reapply to take the SBE, as well as when a refund may be due to an applicant, defining an "emergency" as used in this rule. The rule was, in large part, previously contained in §571.3(d)(7).

New §571.31, regarding reciprocal licensing agreements, added language which clarifies the board shall not license by endorsement, which is the process where a licensing board recognizes another state's license as adequate to become licensed in Texas. This is the current practice of the board to not license by endorsement.

New §571.59, regarding expired licenses, added clarifying language that when a veterinarian's license expires on March 1st of each calendar year, the license is considered delinquent. This is the current practice of the board.

New §571.62, regarding defaults on student loans, is based on §57.491 of the Texas Education Code, which provides that a licensing agency shall not renew the license of a licensee whose name is provided by the lender as being in default on a student loan. The rule is intended to prevent individuals from renewing veterinary licenses if the individual is in default on payment of a student loan, and to give the board discretion to deny veterinary licenses to applicants for licensure that are in default on repayment of their student loans. This process is currently in practice by the board, as authorized by the Texas Education Code.

New §571.63, regarding defaults on child support payments, sets forth the requirement under Chapter 232 of the Texas Family Code that the board is required to suspend and/or deny a renewal of a license upon receipt of a final order suspending a license, as further defined under Chapter 232 of the Texas Family Code, for failure to pay child support and/or where the Office of the Attorney General has notified the board to suspend and/or not renew a license for failure to pay child support.

#### *Technical Changes*

Throughout Chapter 571, numerous grammatical, conforming and non-substantive changes were made. Also, statutory citation references are updated and standardized to reflect current law and *Texas Register* formatting requirements.

### **SUBCHAPTER A. EXAMINATION**

#### **22 TAC §§571.1, 571.3, 571.4, 571.14, 571.18**

The repeals are 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 May 9, 2011.

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Loris Jones

Executive Assistant

Texas Board of Veterinary Medical Examiners

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For further information, please call: (512) 305-7563



### **SUBCHAPTER B. RECIPROCAL LICENSING AGREEMENTS**

#### **22 TAC §571.31**

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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### **SUBCHAPTER C. LICENSE RENEWALS**

#### **22 TAC §§571.51 - 571.59, 571.61**

The repeals are 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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### **SUBCHAPTER A. GENERAL**



**22 TAC §§571.1, 571.3, 571.5, 571.7, 571.9, 571.11, 571.13, 571.15**

The new rules are 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.

*§571.5. Qualifications for Veterinary License.*

(a) To be eligible for licensure, an applicant must present satisfactory proof to the Board that the applicant:

- (1) is at least the age of majority;
- (2) has obtained at least a passing score on:

(A) the NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(B) the national examination if an applicant sat for that examination prior to the inauguration date of the NAVLE; and

(C) the SBE; and

(3) is a graduate of a school or college of veterinary medicine that is approved by the Board.

(b) The Board may refuse to issue a license to an applicant who meets the qualification criteria but is otherwise disqualified as provided in the Texas Occupations Code, §801.401.

(c) An applicant may petition the Board in writing for an exception to subsection (a)(2)(A) or (B) of this section. In deciding whether to grant the petition, the Board may consider:

(1) the availability of the national examination or NAVLE at the time the petitioner originally applied for licensure;

(2) the number of years the petitioner has been in active practice;

(3) petitioner's license status and standing in other jurisdictions;

(4) petitioner's status as a diplomate in an AVMA recognized veterinary specialty; and

(5) any other factors that may be related to petitioner's request for an exception.

(d) As a condition of granting an exception under subsection (c)(2) of this section, the Board may impose additional requirements that are reasonably necessary to assure that the petitioner is competent to practice veterinary medicine in Texas.

*§571.7. Licensing Eligibility.*

(a) An applicant may apply for the SBE provided that the applicant is a graduate of an approved and accredited veterinary medical school or college, as defined in §571.1(9) of this title (relating to Definitions).

(b) An applicant may sit for the NAVLE provided that the applicant is a graduate of:

(1) an approved and accredited veterinary medical school or college, as defined in §571.1(9) of this title; or

(2) a veterinary medical school or college not approved and accredited, but who is enrolled in the ECFVG or PAVE certification program, and meets the requirements of subsection (c) of this section, if applicable.

(c) When applying for the NAVLE through NBVME, an applicant who is a graduate of a veterinary medical school or college not

approved and accredited, and is enrolled in the ECFVG or PAVE certification program, shall submit proof that the applicant passed all English language proficiency tests required by the certification program of choice and must have completed all other requirements of each program to be considered eligible to apply for the NAVLE.

(d) A person must first take and pass the national examination or the NAVLE in order to apply for the SBE.

(e) A candidate for the NAVLE must take the examination within the testing window in which the candidate is authorized for testing. A candidate, who fails to take the examination within the appropriate testing window or fails to obtain a passing score on NAVLE, and desires to take the examination during a subsequent testing window must comply with NBVME application requirements.

(f) Eligibility Prior to Graduation. An applicant who has not graduated from veterinary medical school may apply for the SBE provided the following conditions have been met:

(1) An applicant must be enrolled in an approved and accredited veterinary medical school or college as defined in §571.1(9) of this title and must obtain a document from the dean of the school or college from which the applicant expects to graduate certifying that the applicant is within 60 days of completion of a veterinary college program and is expected to graduate.

(2) An applicant enrolled in a joint or combined degree program who has completed the applicant's veterinary medical education but has not received a diploma or transcript certifying the award of the applicant's DVM degree, must obtain a letter from the dean of the school or college of veterinary medicine stating that the applicant did in fact graduate before the applicant is eligible to sit for the SBE.

(3) To apply for the NAVLE through NBVME, a candidate shall, at the time an application is submitted, demonstrate that the candidate is:

(A) a student enrolled in an approved and accredited school or college of veterinary medicine as defined in §571.1(9) of this title, and who has submitted a document from the dean of the school or college from which the student expects to graduate, certifying that the applicant is within eight months of the student's expected graduation date and is expected to graduate, and has demonstrated compliance with all of the NBVME's testing requirements for the NAVLE; or

(B) a graduate of a school or college of veterinary medicine not approved and accredited, who is enrolled in the ECFVG or PAVE certification program and shall submit proof that the applicant passed all English language proficiency tests required by the certification program of choice and must have completed all other requirements of each program.

*§571.15. Temporary Veterinary License.*

(a) The board may issue a temporary veterinary license to an applicant who:

(1) is at the age of majority; and

(2) is a graduate of a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA); or

(3) is a graduate of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA and presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG)

Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate. The Board may refuse to issue a license to an applicant who meets the qualification criteria but is otherwise disqualified as provided in the Texas Occupations Code, §801.401; and

(4) has attained a passing score of at least 75% on:

(A) The NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(B) The national examinations referred to as the NBE (National Board Examination) and the CCT (Clinical Competency Test) required prior to the inauguration date of the NAVLE; and

(5) presents proof of a current active license in good standing in another state or jurisdiction of the United States that has licensing requirements substantially equivalent to the requirements of the Veterinary Licensing Act, Texas Occupations Code Chapter 801; and

(6) at the time of application, is not subject to final or pending disciplinary action in any state or jurisdiction in which the applicant is now licensed or has ever held a license; and

(7) presents proof of having earned a minimum of 17 hours of acceptable continuing education related to veterinary medicine or general scientific subjects within 12 months preceding application for temporary license.

(b) The applicant who earns the temporary veterinary license must be under general supervision of a Texas licensed veterinarian who possesses an active, current license in the state of Texas.

(c) The applicant for a temporary license shall submit to the Board a complete application in the form designated by the Board with the supporting required documentation as set out in subsection (a) of this section, as well as:

(1) A letter of good standing not older than six months from each jurisdiction in which the applicant is currently actively licensed or has been previously licensed;

(2) a certified copy of the applicant's veterinary school transcript including a graduation date;

(3) a certified copy of the applicant's birth certificate;

(4) a certified report from the official reporting service verifying that the applicant passed the national examination or the NAVLE, subject to a petition by the applicant for an exception to this requirement in accordance with §571.5(c) of this title (relating to Qualifications for Veterinary License);

(5) official verification of board certification if applicant is certified by a nationally recognized veterinary specialty board, if applicable; and

(6) an application fee in an amount set by the Board and contained in §577.15 of this title (relating to Fee Schedule).

(d) The temporary license application and all supporting documentation must be received in the board office PRIOR to being issued a temporary license. A temporary license will only be issued once the applicant's file is complete and ALL required, supporting documentation and fee has been received, and the applicant has passed the SBE. The Board's Executive Director will issue a temporary license to an applicant following verification of the requirements set out in subsections (a) - (c) of this section, successfully completing the SBE, and receipt of the documents and fee required. The SBE results are valid for two years following passage date. If an applicant fails the SBE for the temporary veterinary license, the applicant may take the SBE once more within a year, with no additional fee.

(e) The temporary veterinary license is valid only for a specific purpose per issuance. A temporary veterinary license granted under this section is valid for 30 days from the date of original issue, per temporary veterinary license issued. The temporary veterinary license should be available for review at the place of practice for the period the applicant is in Texas under the temporary veterinary license.

(f) The temporary veterinary license is not renewable nor can it be reissued. The applicant must cease and desist the practice of veterinary medicine the day after the expiration of the temporary veterinary license. Continued practice of veterinary medicine without the valid, temporary veterinary license is a violation of current laws and rules and is viewed as the practice of veterinary medicine without a license. Disciplinary action can be taken and includes, but is not limited to, the refusal of the board to issue a second temporary veterinary license, for which the applicant may otherwise be eligible, and possibly the issuance of a future, regular license.

(g) An applicant may request a second temporary veterinary license within the same calendar year, provided no more than two temporary veterinary licenses are issued per applicant. After the second temporary veterinary license, if the applicant wishes to continue to practice in the State of Texas, he/she must seek regular licensing and must be eligible for such regular license as set out in current laws and rules governing the issuance of a regular license in the State of Texas.

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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## SUBCHAPTER B. EXAMINATIONS

### 22 TAC §§571.21, 571.23, 571.25

The new rules are 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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## SUBCHAPTER C. RECIPROCAL LICENSING AGREEMENTS

## 22 TAC §571.31

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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## SUBCHAPTER D. LICENSE RENEWALS

### 22 TAC §§571.51 - 571.59, 571.61 - 571.63

The new rules are 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.

#### §571.61. *Inactive License Status.*

(a) Application. A licensee may request his/her license be placed on inactive status, whether or not he/she is practicing within the State of Texas, provided:

- (1) his or her current license is active and is in good standing;
- (2) a request in writing, on the form prescribed by the board, is made for his or her license to be placed on official inactive status; and
- (3) the original request is made during the annual license renewal period between January 1 and February 28; provided however, that subsequent requests for continued inactive status may be accepted by the Board at any time during the renewal year if accompanied by the appropriate delinquent penalty.

(b) Restrictions. The following restrictions shall apply to licensees whose licenses are on inactive status:

(1) Except as provided in §801.004, Texas Occupations Code, the licensee may not engage in the practice of veterinary medicine or otherwise provide treatment to any animal in the State of Texas.

(2) If the licensee possesses or obtains a federal Drug Enforcement Administration (DEA) and/or a Department of Public Safety (DPS) controlled substances registration for a Texas location, the licensee must comply with §573.43 and §573.50 of this title (relating to Misuse of DEA Narcotics Registration and Controlled Substances Records Keeping for Drugs on Hand, respectively).

(c) Return to Active Status. A licensee on inactive status wishing to practice veterinary medicine within the State of Texas must receive written approval from the Board prior to returning to active status. In addition to other information which may be requested or required by the Board, the following conditions apply to licensees applying to return to active status.

(1) A veterinarian licensed and practicing in another state or jurisdiction must prove he or she is in good standing in that state or jurisdiction.

(2) A licensee on inactive status must pay the total annual renewal fee, less the amount of the inactive annual renewal fee, plus a \$25 administrative processing fee to obtain a regular license. The regular annual renewal fee shall not be prorated for applications to return to active status made after the annual renewal period.

#### (d) Continuing Education Requirements

(1) If a licensee on inactive status requesting a return to regular license status has maintained an annual average of 17 hours of continuing education, not including any portion of the reactivation year, the licensee will be placed on regular license status without any additional requirements. If the average annual continuing education is less than 17 hours, the licensee will be placed on regular license status but must complete 34 hours of continuing education in the twelve months immediately following the licensee's attaining of regular license status.

(2) For the year of reactivation, proof of 17 hours of continuing education shall not be required for an active license renewal in the year following reactivation.

(3) For purposes of this subsection, the terms "year" and "annual" mean the calendar year.

(e) Cancellation of Inactive License. A license maintained on inactive status will be automatically cancelled after ten years. A new license will be issued only upon completion of all requirements for licensure. During the ninth year of inactive status, the Board will notify the inactive licensee that during the following year, his or her license must be on regular status or the license will be cancelled.

(f) Annual Renewal Fees. The annual fee for a license on inactive status shall be as set by the Board in §577.15 of this title (relating to Fee Schedule).

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 577. GENERAL ADMINISTRATIVE DUTIES

### SUBCHAPTER B. STAFF

#### 22 TAC §577.15

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §577.15, concerning Fee Schedule, without changes to the proposed text as published in the February 18, 2011, issue of the *Texas Register* (36 TexReg 908) and will not be republished.

The amendment to §577.15 adds an additional fee for a temporary license as proposed under the Chapter 571 Licensing rule

review, specifically §571.15, and reletters the subsections to reflect the additional fee.

The Board did not receive any comments regarding this rule.

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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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 21. TRADE PRACTICES

#### SUBCHAPTER QQ. HEALTH INFORMATION TECHNOLOGY

##### 28 TAC §§21.5101 - 21.5103

**INTRODUCTION.** The Commissioner of Insurance (Commissioner) adopts new Subchapter QQ, §§21.5101 - 21.5103, concerning waiver of a health benefit plan issuer's requirement to use information technology to provide physicians and patients with real-time health insurance information electronically. Section 21.5102 and §21.5103 are adopted with changes to the proposed text as published in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10416). Section 21.5101 is adopted without changes.

**REASONED JUSTIFICATION.** The new sections are necessary to: (i) implement the Insurance Code §1661.008 as added by House Bill (HB) 1342, enacted by the 81st Legislature, Regular Session, effective May 30, 2009; (ii) identify circumstances that justify a waiver of the requirement for a health benefit plan issuer under Chapter 1661 to use information technology; and (iii) specify the waiver application process.

House Bill 1342 added new Insurance Code Chapter 1661 to require a health benefit plan issuer to use information technology that provides a participating health care provider and a plan enrollee with real-time information relating to the enrollee's cost and coverage by September 1, 2013. Under §1661.008(a), a health benefit plan issuer may apply to the Commissioner for a waiver of the requirements under Chapter 1661 to use information technology. Under §1661.008(b), the Commissioner is required by rule to identify circumstances that justify a waiver, including: (1) undue hardship, including a financial or operational hardship; (2) the geographical area in which the health benefit plan issuer operates; (3) the number of enrollees covered by a health benefit plan issuer; and (4) other special circumstances.

The HB 1342 bill analysis (Texas House Insurance Committee, Bill Analysis (Committee Substitute), HB 1342, 81st Legislature, Regular Session) states that the purpose of Chapter 1661 is to provide physicians and patients with information, at the point of care, about copayment, coinsurance, and deductibles; what benefits and services the health plan covers; and an estimate of what the health plan's and patient's financial responsibilities are. Further, the bill analysis states that the chapter will provide transparency to health insurance and better inform patients about their health insurance coverage. This will allow patients to be better consumers of health care and streamline and simplify the overly complex and administratively burdensome systems that exist today, which should provide cost savings throughout the entire system.

A waiver application is optional on the part of a health benefit plan issuer. The authority of a health benefit plan issuer to apply for a waiver under this subchapter expires January 1, 2012, pursuant to the Insurance Code §1661.008(d). An approved waiver under this subchapter expires September 1, 2013, pursuant to the Insurance Code §1661.008(e). Therefore, all health benefit plan issuers, even those that have a waiver application granted under these rules, will have to comply with the real-time information technology requirements of the Insurance Code Chapter 1661 by September 1, 2013.

The Department has previously received requests for waivers from a number of carriers and is holding those requests as pending until this rule becomes effective. At that time, the carriers will be expected to renew their requests and submit any additional information required by this rule.

The Department posted an informal draft of the proposal on its website August 18, 2010, and invited further public comment by September 1, 2010. The Department published the proposed rule in the November 26, 2010, issue of the *Texas Register* (35 TexReg 10416). No public hearing on the proposal was held. The Department has determined that it is necessary for purposes of clarification and internal consistency to revise §21.5102 and §21.5103 as proposed. None of these changes to the proposed text, however, materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice.

Proposed §21.5102 is revised to add a new subsection (c) to provide that the authority of a health benefit plan issuer to apply for a waiver under this subchapter expires January 1, 2012, pursuant to the Insurance Code §1661.008(d). This addition is necessary to clarify that health benefit plan issuers are limited in the time in which they can apply for a waiver from the information technology requirement in §1661.008 of the Insurance Code.

Proposed §21.5103(b) is revised to include an additional special circumstance to support the request for a waiver from the information technology requirements of the Insurance Code Chapter 1661. The Department has added new §21.5103(b)(5)(G) to provide an additional minimum special circumstance to support the request for a waiver from the information technology requirements of the Insurance Code Chapter 1661. Under §21.5103(b)(5) as adopted, a health benefit plan issuer may apply to the Commissioner for a waiver of the Chapter 1661 information technology requirements on the basis of the special circumstances listed in proposed subsection (b)(5)(A) - (F) and the added subsection (b)(5)(G) special circumstance regarding "whether the issuer is a small business or micro business as defined by the Government Code §2006.001." The change is necessary to implement the Department's intent

that was expressed in the rule proposal Introduction. The rule proposal Introduction stated: "Proposed §21.5103 provides the specifications for the format for the waiver applications, where the requests should be sent, and the circumstances identified by the Commissioner that justify a waiver. In addition to the circumstances that a waiver application may include as provided by statute, the Department has further included four additional specific special circumstances: (i) the actions by the health benefit plan issuer to progress toward compliance; (ii) the estimated date compliance will be achieved if prior to September 1, 2013; (iii) the estimated cost of compliance with Insurance Code §1661.002 by the date proposed in the request for waiver and a description of any increase in cost if earlier compliance is required; and (iv) *whether the issuer is a small business or micro business as defined by the Government Code §2006.001 [emphasis added]*." Section 21.5103(b)(5)(G) states the special circumstance listed as number (iv) in the rule proposal Introduction. The Government Code §2006.001(1) defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. The Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than \$6 million in annual gross receipts.

Additionally, the Department has determined that editorial changes to the proposed text in §21.5102(b) and §21.5103(c) and (d) are necessary. These changes are: (i) in §21.5102(b) as adopted, §21.5102(b)(2)(A) - (H) are redesignated as (b)(3) - (10); this redesignation is necessary to clarify the non-applicability of the rules to separate products, lines, or programs of insurance rather than to subsets of proposed subsection (b)(2) "disability income protection coverage, as defined in §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage)"; (ii) in §21.5103(c) as adopted, the term "shall" is changed to "must" to comply with the rule of statutory construction that the term "shall" be used only to denote a duty and therefore, must be used only with persons; and (iii) in proposed §21.5103(d) as adopted, the reference to "subsection (b)" is changed to "subsection (b) of this section" for purposes of clarity and to conform to Texas Register style.

The following provides an overview of and explains additional reasoned justification for the new rules.

#### §21.5101. Purpose.

The rules are necessary to specify the waiver application requirements for health benefit plan issuers regarding the use of certain required real-time information technology pursuant to the Insurance Code Chapter 1661. Section 21.5101 sets forth this purpose.

#### §21.5102. Applicability.

Section 21.5102 identifies the health benefit plan issuers to which the new subchapter applies and does not apply in accordance with the Insurance Code §1661.001 and §1661.003. Section 21.5102(a) specifies that the subchapter applies to an entity authorized to issue a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or

group evidence of coverage, except as provided in §21.5102(b). The entities subject to these rules are: (i) an insurance company operating under the Insurance Code; (ii) a group hospital service corporation operating under the Insurance Code Chapter 842; (iii) a fraternal benefit society operating under the Insurance Code Chapter 885; (iv) a stipulated premium insurance company operating under the Insurance Code Chapter 884; (v) a Lloyd's plan operating under the Insurance Code Chapter 941; (vi) an exchange operating under the Insurance Code Chapter 942; (vii) a health maintenance organization operating under the Insurance Code Chapter 843; (viii) a multiple employer welfare arrangement that holds a certificate of authority under the Insurance Code Chapter 846; (ix) an approved nonprofit health corporation that holds a certificate of authority under the Insurance Code Chapter 844; and (x) an entity not authorized under the Insurance Code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis.

Section 21.5102(b) specifies that the subchapter does not apply to certain health benefit plans. A health benefit plan issuer may be subject to the rule because it offers a health benefit plan subject to §21.5102(a), but may also offer health benefit plans for which providing of certain required real-time information technology is not required pursuant to Insurance Code §1661.003. Health benefit plans that are exempted from the rule are not required to provide real-time information technology required pursuant to Insurance Code §1661.003. However, a health benefit plan not exempt is required to comply with the rule, and a health benefit plan issuer that issues a non-exempt plan may request a waiver pursuant to these rules. The issuers that are not subject to these rules include: (i) a health benefit plan issuer offering a health benefit plan that provides coverage only for: (a) a specified disease, (b) accidental death or dismemberment, (c) a supplement to a liability insurance policy, or (d) for dental or vision care; (ii) disability income protection coverage, as defined in §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage); (iii) credit accident and health insurance, as defined in the Insurance Code §1153.003; (iv) hospital confinement indemnity insurance, as defined in §3.3073 of this title (relating to Minimum Standards for Hospital Confinement Indemnity Coverage); (v) Medicare supplement benefit plans, as defined in the Insurance Code Chapter 1652; (vi) workers' compensation insurance; (vii) medical payment insurance coverage under a motor vehicle insurance policy; (viii) long-term care insurance policy, including a nursing home fixed indemnity policy, unless the Commissioner determines that the policy provides benefits so comprehensive that the policy is a health benefit plan and should not be subject to the exemption provided under this section; (ix) the child health plan program under the Health and Safety Code Chapter 62, or the health benefits plan for children under the Health and Safety Code Chapter 63; or (x) a Medicaid managed care program operated under the Government Code Chapter 533, or a Medicaid program operated under the Human Resources Code Chapter 32.

Section 21.5102(c) provides that the authority of a health benefit plan issuer to apply for a waiver under this subchapter expires January 1, 2012. This expiration is in accordance with Insurance Code §1661.008(d).

#### §21.5103. Waiver.

Section 21.5103 is necessary to provide the specifications for the format for the waiver application, where the waiver requests should be sent, and the special circumstances identified by the

Commissioner that justify a waiver. In addition to the statutorily specified circumstances that a waiver application may include, §21.5103(b)(5) includes four additional specific special circumstances: (i) the actions by the health benefit plan issuer to progress toward compliance; (ii) the estimated date compliance will be achieved if prior to September 1, 2013; (iii) the estimated cost of compliance with Insurance Code §1661.002 and an estimate of the increased cost for compliance at an earlier date; and (iv) whether the issuer is a small business or micro business as defined by the Government Code §2006.001.

In addition, the statutorily specified special circumstance in §21.5103(b)(5)(C) related to the number of enrollees covered by a health benefit plan issuer also includes the number of enrollees impacted by the waiver. The Department determined that this additional factor is necessary because there may be instances where the total number of enrollees covered differs from the total number of enrollees impacted by the waiver. For example, some health benefit plan issuers may already be able to be compliant with Insurance Code §1661.002, but, because of obsolete information technology for a portion of those enrollees, may not be able to provide for all of their enrollees the real-time information required under §1661.002. Additionally, there may be other reasons that the issuer may not be able to provide all of the required real-time information. For example, there may be a situation in which the insurer can provide the real-time information for most enrollees, but cannot do so for a small fraction of enrollees. This may be because the remaining fraction is covered by a particular type of plan or that the book of business was recently acquired. In such situations, the provision of only the number of total enrollees may not provide enough detail to determine whether the waiver should be approved or denied. For example, if the cost for providing the real-time information for that small fraction of enrollees would be costly, then the case for the waiver may be stronger from a cost/benefit perspective. Therefore, this additional factor will help provide a more accurate assessment of the facts stated in the waiver application weighed against the purposes of Insurance Code Chapter 1661.

Section 21.5103(b)(5) only describes the minimum facts and circumstances to include in a waiver application. Therefore, health benefit plan issuers with other concerns or relevant factors may also submit specific facts and circumstances to support these concerns in the waiver application.

Section 21.5103(c) specifies where the waiver applications must be filed.

Section 21.5103(d) provides additional guidance about the 60-day time frame for approval or denial of the waiver application. Insurance Code §1661.008(c) specifies that the Commissioner shall approve or deny a waiver application under §1661.008 not later than the 60th day after the date of receipt of the application. Under §21.5103(d), a waiver is deemed received when the Commissioner has received sufficient information to approve or deny the waiver application, including any additional relevant information requested from the health benefit plan issuer.

Additionally, §21.5103(e) describes how the Commissioner will determine whether to grant a waiver. The Commissioner will weigh facts demonstrated by the applicant against the purposes of Chapter 1661, including the objective to provide better information to physicians and enrollees regarding what is covered by insurance policies and what portion of the cost is to be borne by the patient, as well as the objective of streamlining and simplifying complex and administrative processes of the health insur-

ance systems, thus providing cost savings throughout the health care system. Section 21.5103(f) provides that the effective date of the rules is June 29, 2011. This effective date provision is necessary to allow health benefit plan issuers adequate time to decide whether to request and draft a waiver application and, consistent with the proposal, is based on an effective date that is 40 days after publication of the adoption order notice in the *Texas Register*.

#### HOW THE SECTIONS WILL FUNCTION.

Section 21.5101 states the purpose of the new subchapter.

Section 21.5102 identifies the health benefit plan issuers to which the new subchapter applies and does not apply.

Section 21.5103 provides the specifications for the format for the waiver applications, where the waiver requests should be sent, and the special circumstances identified by the Commissioner that justify a waiver. Additionally, §21.5103(e) describes how the Commissioner will determine whether to approve or deny a waiver application upon submission. Section 21.5103(f) provides that the effective date of the rules is June 29, 2011.

**SUMMARY OF COMMENTS AND AGENCY RESPONSE.** The Department received comments from one commenter on the published proposal.

**Comment:** A commenter urges that the Department amend the rule to specifically recognize the requirements of the Patient Protection and Affordable Care Act of 2010 (PPACA) as a special circumstance that provides for an automatic approval of a waiver request. The commenter's reasons are: (i) Section 1104 of PPACA directs the federal Department of Health and Human Services (HHS) to establish business rules and guidelines for the electronic exchange of information related to administration and financial transactions; and (ii) PPACA amends Section 1173 of the Social Security Act (42 U.S.C. 1320d-2) by adding requirements for financial and administrative transactions that the standards and associated operating rules adopted by the Secretary shall "to the extent feasible and appropriate, enable determination of an individual's eligibility and financial responsibility for specific services prior to or at the point of care."

**Agency Response:** The Department declines to make the requested change for the following three reasons. First, the Department is of the opinion that the waiver application process already includes a means for health benefit plan issuers to justify a waiver based on PPACA. The rules at §21.5103(b) allow for a health benefit plan issuer to provide specific facts and circumstances in support of the request for a waiver, and a health benefit plan issuer's explanation of PPACA's effect on the listed factors is an appropriate fact or circumstance to assert in the waiver application for the Commissioner's consideration. The Department agrees that the broader regulatory environment, including PPACA, may create evidence of undue hardship, including financial or operational hardship. Further, the Department recognizes that PPACA may impact the past and planned actions by the health benefit plan issuer to progress toward compliance and the cost of compliance. Because §21.5103(b)(5) only describes the minimum facts and circumstances to include in a waiver application, health benefit plan issuers expressing concerns regarding PPACA are welcome to detail those specific facts and circumstances in a waiver application. In accordance with §21.5103(e), the Commissioner will consider the facts demonstrated by the applicant weighed against the purposes of Chapter 1661, including the objective to provide better information to physicians and enrollees regarding what is covered by insurance policies

and what portion of the cost is to be borne by the patient. The Commissioner will also consider the purpose of Chapter 1661 to streamline and simplify complex and administrative processes of the health insurance systems, thus providing cost savings throughout the health care system.

Second, the Insurance Code Chapter 1661 was effective prior to the passage of PPACA and constitutes potentially different regulatory requirements regarding the provision of real-time health insurance information. Until the HHS adopts federal regulations implementing PPACA Section 1104, the Department cannot be certain that health benefit plan issuers compliant with federal requirements would be providing the same information required by the Insurance Code Chapter 1661. Third, waivers granted through this rule will expire September 1, 2013, but it is not clear when similar provisions in PPACA will be implemented. PPACA requires varying implementation dates from the HHS Secretary for PPACA Section 1104. Depending on the HHS final rules, the "health claims or equivalent encounter information" required by PPACA Section 1104 may be similar to the real-time information required by Chapter 1661. The federal rules may be adopted as late as July 1, 2014, and effective as late as January 1, 2016. Alternatively, the federal operating rules for eligibility for a health plan and health claim status transactions must be adopted not later than July 1, 2011, in a manner ensuring that such operating rules are effective not later than January 1, 2013. It is not clear which set of dates PPACA Section 1104 will require for transactions similar to the real-time information required by Chapter 1661. Providing automatic waivers on the basis of PPACA may mean that the waivers expire prior to the federal rules being adopted. Therefore, it is consistent with the intent of HB 1342 to have all applicable insurers providing the real-time information technology requirements of the Insurance Code Chapter 1661 prior to PPACA's implementation.

#### NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For, with changes: Texas Association of Health Plans (TAHP).

Against: None.

**STATUTORY AUTHORITY.** The new sections are adopted under HB 1342, as enacted by the 81st Legislature, Regular Session, effective May 30, 2009, and the Insurance Code §§1661.008, 1661.009, and 36.001. Section 1661.008, enacted by HB 1342, requires that the Commissioner establish circumstances that justify a waiver so that a health benefit plan issuer may apply for a waiver of the requirement under the Insurance Code §1661.002 to provide real-time information relating to the enrollee's cost and coverage at the point of care. Section 1661.001 defines *health benefit plan issuer* as an entity authorized to issue a health benefit plan in this state. *Health benefit plan* is defined in §1661.001 as a plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage. Section 1661.009 requires the Commissioner to adopt rules as necessary to implement Insurance Code Chapter 1661. Section 36.001 authorizes the Commissioner of Insurance to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.5102. *Applicability.*

(a) Pursuant to the Insurance Code §1661.001, this subchapter applies to an entity authorized to issue a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage that is offered by:

- (1) an insurance company operating under the Insurance Code;
- (2) a group hospital service corporation operating under the Insurance Code Chapter 842;
- (3) a fraternal benefit society operating under the Insurance Code Chapter 885;
- (4) a stipulated premium insurance company operating under the Insurance Code Chapter 884;
- (5) a Lloyd's plan operating under the Insurance Code Chapter 941;
- (6) an exchange operating under the Insurance Code Chapter 942;
- (7) a health maintenance organization operating under the Insurance Code Chapter 843;
- (8) a multiple employer welfare arrangement that holds a certificate of authority under the Insurance Code Chapter 846;
- (9) an approved nonprofit health corporation that holds a certificate of authority under the Insurance Code Chapter 844; and
- (10) an entity not authorized under the Insurance Code or another insurance law of this state that contracts directly for health care services on a risk-sharing basis, including a capitation basis.

(b) Pursuant to the Insurance Code §1661.003, this subchapter does not apply to:

- (1) a health benefit plan issuer offering a health benefit plan that provides coverage only:
  - (A) for a specified disease or diseases as defined in §3.3077 of this title (relating to Minimum Standards for Specified Disease and Specified Accident Coverage); or under a limited benefit policy;
  - (B) for accidental death or dismemberment;
  - (C) as a supplement to a liability insurance policy; or
  - (D) for dental or vision care;
- (2) disability income protection coverage, as defined in §3.3075 of this title (relating to Minimum Standards for Disability Income Protection Coverage);
- (3) credit accident and health insurance, as defined in the Insurance Code §1153.003;
- (4) hospital confinement indemnity insurance; as defined in §3.3073 of this title (relating to Minimum Standards for Hospital Confinement Indemnity Coverage);
- (5) Medicare supplement benefit plans, as defined in the Insurance Code Chapter 1652;
- (6) workers' compensation insurance;
- (7) medical payment insurance coverage under a motor vehicle insurance policy;

(8) long-term care insurance policy, including a nursing home fixed indemnity policy, unless the commissioner determines that the policy provides benefits so comprehensive that the policy is a health benefit plan and should not be subject to the exemption provided under this section;

(9) the child health plan program under the Health and Safety Code Chapter 62, or the health benefits plan for children under the Health and Safety Code Chapter 63; or

(10) a Medicaid managed care program operated under the Government Code Chapter 533, or a Medicaid program operated under the Human Resources Code Chapter 32.

(c) Pursuant to the Insurance Code §1661.008(d), the authority of a health benefit plan issuer to apply for a waiver under this subchapter expires January 1, 2012.

§21.5103. *Waiver.*

(a) A health benefit plan issuer may apply to the commissioner for a waiver of the information technology requirements of the Insurance Code Chapter 1661.

(b) Waiver applications are required to:

(1) be submitted on 8 1/2 by 11 inch paper;

(2) be legible;

(3) be in typewritten, computer generated, or printer's proof format;

(4) be signed by an officer of the health benefit plan issuer; and

(5) provide specific facts and circumstances in support of the request for a waiver, which must include at a minimum:

(A) evidence of undue hardship, including financial or operational hardship;

(B) the geographical area in which the insurer operates;

(C) the total number of enrollees covered by the insurer and the number of enrollees impacted by the waiver;

(D) the past and planned actions by the health benefit plan issuer to progress toward compliance;

(E) the estimated date compliance will be achieved if prior to September 1, 2013;

(F) the estimated cost of compliance with Insurance Code §1661.002 and an estimate of the increased cost for compliance at an earlier date; and

(G) whether the issuer is a small business or micro business as defined by the Government Code §2006.001.

(c) Waiver applications must be mailed to Filings Intake Division, Mail Code 106-1E, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or 333 Guadalupe, Austin, Texas 78701.

(d) The waiver application is received when the commissioner has received a waiver application containing all specific facts and circumstances as listed in subsection (b) of this section, including any addendums provided by the health benefit plan issuer.

(e) The commissioner may grant a waiver under this subchapter considering the facts demonstrated by the applicant weighed against the purposes of Chapter 1661, including the objective to provide better information to physicians and enrollees regarding what is covered by insurance policies and what portion of the cost is to be borne by the patient, as well as streamlining and simplifying complex and administrative processes of the health insurance systems, thus providing cost savings throughout the health care system.

(f) This subchapter becomes effective June 29, 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 May 3, 2011.

TRD-201101638

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: June 29, 2011

Proposal publication date: November 26, 2010

For further information, please call: (512) 463-6327





# REVIEW OF AGENCY RULES

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

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

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

## Proposed Rule Reviews

Texas Alcoholic Beverage Commission

### Title 16, Part 3

The Texas Alcoholic Beverage Commission (commission) will review and consider whether to readopt, readopt with amendments, or repeal these sections of Chapter 45, Subchapter C, pursuant to Government Code §2001.039: §§45.74, relating to Misbranding; 45.75, relating to Mandatory Label Information for Malt Beverages; 45.76, relating to Brand Names; 45.77, relating to Class and Type; 45.78, relating to Name and Address; 45.79, relating to Alcoholic Content; 45.81, relating to General Requirements for Malt Beverages; 45.83, relating to Label Approval and Release; 45.84, relating to Relabeling; 45.87, relating to Advertisement Defined; and 45.91, relating to Exports.

The Commission will assess whether the reasons for adopting or readopting these sections continue to exist. Each of these sections will be reviewed to determine whether it is obsolete, reflects current legal and policy considerations, and reflects current Commission procedures and practices.

Comments on the review may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. They may also be submitted electronically through the commission's public website at [http://www.tabc.state.tx.us/laws/proposed\\_rules.asp](http://www.tabc.state.tx.us/laws/proposed_rules.asp). Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on May 25, 2011 in the Commission Meeting Room on the first floor of the commission's headquarters at 5806 Mesa Drive in Austin, Texas. The public hearing will begin at 1:30 p.m. Persons with disabilities who plan to attend this hearing and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Gloria Darden Reed at (512) 206-3221 (voice), (512) 206-3259 (fax), or (512) 206-3270 (TDD), at least three days prior to the meeting so that appropriate arrangements can be made.

If the commission determines that a section being reviewed should be repealed or readopted with amendments, the proposed change will be published in the Proposed Rules Section of the *Texas Register* and will be open for an additional public comment period prior to final adoption of the repeal or amendment. If the commission determines that a section being reviewed should be readopted without amendment, the commission will notify the Secretary of State and publish an Adopted Rule Review in the *Texas Register*.

TRD-201101617

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
Filed: May 2, 2011

## Adopted Rule Reviews

State Securities Board

### Title 7, Part 7

Pursuant to the notice of proposed rule review published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1569), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 105, Rules of Practice in Contested Cases, and Chapter 106, Guidelines for the Assessment of Administrative Fines.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Government Code.

No comments were received regarding the readoptions of Chapters 105 and 106.

This concludes the review of 7 TAC Chapters 105 and 106.

TRD-201101673  
Benette L. Zivley  
Securities Commissioner  
State Securities Board  
Filed: May 6, 2011

Pursuant to the notice of proposed rule review published in the December 17, 2010, issue of the *Texas Register* (35 TexReg 11399), the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal all sections of the following chapters of Title 7, Part 7, of the Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 113, Registration of Securities; Chapter 114, Federal Covered Securities; Chapter 123, Administrative Guidelines for Registration of Open-End Investment Companies; Chapter 125, Minimum Disclosures in Church and Nonprofit Institution Bond Issues; Chapter 135, Industrial Development Corporations and Authorities; and Chapter 137, Administrative Guidelines for Regulation of Offers.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Government Code.

As part of the review process, the Board is proposing to amend §113.12 and §113.14. Notices of the proposed amendments will be published in the "Proposed Rules" section of a future issue of the *Texas Register*, in accordance with the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

No comments were received regarding the readoptions of Chapters 113, 114, 123, 125, 135, and 137.

This concludes the review of 7 TAC Chapters 113, 114, 123, 125, 135, and 137.

TRD-201101668  
Benette L. Zivley  
Securities Commissioner  
State Securities Board  
Filed: May 5, 2011



Texas Board of Veterinary Medical Examiners

**Title 22, Part 24**

The Texas Board of Veterinary Medical Examiners (Board) adopts the review of Chapter 571, Licensing. The review was conducted in accordance with Government Code, §2001.039.

The proposed rule review was published in the February 18, 2011, issue of the *Texas Register* (36 TexReg 1161).

Chapter 571 contains the following rules:

- §571.1. Criminal History Evaluation Letters.
- §571.3. Eligibility for Examination and Licensure.
- §571.4. Special Licenses.

- §571.14. Name on License.
- §571.18. Provisional Licensure.
- §571.31. Reciprocal Licensing Agreements.
- §571.51. Application.
- §571.52. Renewal Certificates.
- §571.53. Exemptions.
- §571.54. Retired License Status.
- §571.55. Delinquent Letters.
- §571.56. Military Service Fee Waiver.
- §571.57. Application of Monetary Funds to Unpaid Administrative Penalties.
- §571.58. Application Form and Photograph.
- §571.59. Expired Licenses.
- §571.61. Inactive License Status.

The Board has conducted a review of the rules in Chapter 571 and has determined that the reasons for adopting the chapter continue to exist, with the repeal and replacement of Chapter 571. The repeal and replacement are contemporaneously adopted elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 571.

TRD-201101697  
Loris Jones  
Executive Assistant  
Texas Board of Veterinary Medical Examiners  
Filed: May 9, 2011



# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §45.8(a)

1/2 gallon	4/5 pint
1 quart	1/2 pint
4/5 quart	1/8 pint
1 pint	1/10 pint
1 gallon	1/16 pint (brandy only)

**IN**

**ADDITION**

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

**Department of Assistive and Rehabilitative Services**

**Notice of Public Hearing and Solicitation of Public Comment**

The Texas Department of Assistive and Rehabilitative Services Division for Early Childhood Intervention Services (ECI) provides comprehensive early intervention services to families with infants and toddlers who have developmental delays, have diagnosed physical or mental conditions with a high probability of developmental delay, or exhibit atypical development. Early intervention services are provided as required by the Individuals with Disabilities Education Act (IDEA), Part C as Amended in 2004.

ECI is soliciting public comments on proposed amendments, new rules, and repeals to:

Title 40, Texas Administrative Code, Part 2, Chapter 108, Division for Early Childhood Intervention Services.

The proposed revisions to Title 40, Texas Administrative Code, Part 2, Chapter 108, Division for Early Childhood Intervention Services are available for viewing on the Texas Department of Assistive and Rehabilitative Services website at <http://www.dars.state.tx.us/ecis/index.shtml> and will be published in the *Texas Register* at [www.sos.state.tx.us/texreg/](http://www.sos.state.tx.us/texreg/) on approximately May 27, 2011.

ECI will host public hearings around the state to collect testimony and respond to comments. Public hearings will be held according to the following schedule, and each of these hearings will be held from 4:00 p.m. to 7:00 p.m.

**June 21, 2011**

United Way of Greater Houston  
50 Waugh Drive  
Houston, Texas 77007

**June 23, 2011**

American Foundation of the Blind  
11030 Ables Lane  
Dallas, Texas 75229

Written comments or requests for copies of the draft proposal may be submitted to [ECI.policy@dars.state.tx.us](mailto:ECI.policy@dars.state.tx.us) or mailed to:

Texas Department of Assistive and Rehabilitative Services  
Division for Early Childhood Intervention Services  
4900 North Lamar Boulevard  
Austin, Texas 78751-2399

For persons with disabilities requesting accommodations, please contact DARS Inquiries at 1-800-628-5115 TDD/TTY 1-866-581-9328, preferably 72 hours before the scheduled meeting.

TRD-201101711

Sylvia F. Hardman  
General Counsel  
Department of Assistive and Rehabilitative Services  
Filed: May 11, 2011

**Office of the Attorney General**

**Texas Health and Safety and Texas Water Code Settlement Notice**

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and Texas Water Code. Before the State may settle a judicial enforcement action under the Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. CES Environmental Services, Inc. and Port Arthur Chemical & Environmental Services, LLC.*; Cause No. D-1-GV-09-001952; in the 419th Judicial District Court, Harris County, Texas.

Nature of Defendants' Operations: Port Arthur Chemical & Environmental Services, LLC ("PACES") owns and operated a waste management and caustic treatment facility in Port Arthur, Texas. Defendant committed numerous violations of the Texas Commission on Environmental Quality rules and regulations relating to air emissions, permitting, wastewater, and industrial and hazardous solid waste.

Proposed Agreed Judgment: The Agreed Judgment orders the Defendant PACES to pay \$841,000.00 in civil penalties to the State along with attorney's fees. The Agreed Judgment also includes injunctive relief.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Environmental Protection and Administrative Law Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.*

TRD-201101672  
Jay Dyer  
Deputy Attorney General  
Office of the Attorney General  
Filed: May 6, 2011

## 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 05/16/11 - 05/22/11 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/16/11 - 05/22/11 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-201101708

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: May 10, 2011

## Texas Council for Developmental Disabilities

### Notice of Revision for Request for Proposals

The Texas Council for Developmental Disabilities published a Request for Proposals for higher education for people with developmental disabilities in the March 25, 2011, issue of the *Texas Register* (36 TexReg 2017). That Request for Proposals has been revised to read as follows:

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to 3 projects that will demonstrate how appropriate supports may help individuals with developmental disabilities to complete post-secondary education that will help them achieve their employment goals.

The Council has approved funding for up to \$225,000 per project per year, for up to 5 years, for the projects funded under this announcement. Funds available for this project are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of an independent review process established by the Council and the availability of funds. **Continuation funding for the subsequent years will not be automatic**, but will be based on continued availability of federal funds, a review of the project's accomplishments, and other items. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Proposals (RFP) or more information about TCDD may be obtained through TCDD's website at <http://www.txddc.state.tx.us>. All questions pertaining to this RFP should be directed to Joanna Cordry, Planning Coordinator, at (512) 437-5410 or via email [Joanna.Cordry@tcdd.state.tx.us](mailto:Joanna.Cordry@tcdd.state.tx.us). Application packets must be requested in writing or downloaded from the Internet.

**Deadline:** One hard copy, with original signatures, and one electronic copy must be submitted. All proposals must be received by TDD not later than 5:00 p.m. Central Time, Wednesday, June 29, 2011, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509, to the attention of Jeri-

anne Barnard. Faxed proposals cannot be accepted. Electronic copies should be addressed to [Jerianne.Barnard@tcdd.state.tx.us](mailto:Jerianne.Barnard@tcdd.state.tx.us).

**Proposals will not be accepted after the due date.**

**Grant Proposers' Workshops:** The Texas Council for Developmental Disabilities will conduct telephone conferences to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at <http://www.txddc.state.tx.us> for a schedule of conference calls for this RFP.

TRD-201101715

Roger Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: May 11, 2011

### Request for Proposals

The Texas Council for Developmental Disabilities (TCDD) announces the availability of funds for up to 4 projects that will each develop and host 2 Symposiums, approximately one year apart, for faith-based communities to gain and share information about how to support and fully include people with developmental disabilities and their families in their communities.

The Council has approved funds no more than \$75,000 per year, for up to 3 years, for each project funded under this Announcement. Funds available for this project are provided to TCDD by the U.S. Department of Health and Human Services, Administration on Developmental Disabilities, pursuant to the Developmental Disabilities Assistance and Bill of Rights Act. Funding for the project is dependent on the results of an independent review process established by the Council and the availability of funds. **Continuation funding for the subsequent years will not be automatic**, but will be based on a review of the project's accomplishments and other items. Non-federal matching funds of at least 10% of the total project costs are required for projects in federally designated poverty areas. Non-federal matching funds of at least 25% of total project costs are required for projects in other areas.

Additional information concerning this Request for Proposals (RFP) or more information about TCDD may be obtained through TCDD's website at <http://www.txddc.state.tx.us>. All questions pertaining to this RFP should be directed to Joanna Cordry, Planning Coordinator, at (512) 437-5410 or email [Joanna.Cordry@tcdd.state.tx.us](mailto:Joanna.Cordry@tcdd.state.tx.us). Application packets must be requested in writing or downloaded from the Internet.

**Deadline:** One hard copy, with original signatures, and one electronic copy must be submitted. All proposals must be received by TCDD, not later than 5:00 p.m. Central Time, Wednesday, July 20, 2011, or, if mailed, postmarked prior to midnight on the date specified above. Proposals may be delivered by hand or mailed to TCDD at 6201 East Oltorf, Suite 600, Austin, Texas 78741-7509 to the attention of Jerianne Barnard. Faxed proposals cannot be accepted. Electronic copies should be addressed to [Jerianne.Barnard@tcdd.state.tx.us](mailto:Jerianne.Barnard@tcdd.state.tx.us).

**Proposals will not be accepted after the due date.**

**Grant Proposers' Workshops:** The Texas Council for Developmental Disabilities will conduct telephone conferences to help potential applicants understand the grant application process and this specific RFP. In addition, answers to frequently asked questions will be posted on the TCDD website. Please check the TCDD website at

<http://www.txddc.state.tx.us> for a schedule of conference calls for this RFP.

TRD-201101716

Roger Webb

Executive Director

Texas Council for Developmental Disabilities

Filed: May 11, 2011

## 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 (TWC), §7.075. TWC, §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. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 20, 2011**. TWC, §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 June 20, 2011**. 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, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Am-Go Group, Incorporated dba Xpressway; DOCKET NUMBER: 2011-0335-PST-E; IDENTIFIER: RN101555498; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Amin Ladha dba Express Mart; DOCKET NUMBER: 2011-0393-PST-E; IDENTIFIER: RN102274917; LOCATION: Cleburne, Johnson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tanks; PENALTY: \$2,135; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512)

239-0577; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Ascend Performance Materials LLC; DOCKET NUMBER: 2011-0222-AIR-E; IDENTIFIER: RN100238682; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: New Source Review Permit Numbers 18251 and N-011, Special Conditions Number 1, 30 TAC §116.115(c), and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions during Incident Number 145043; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3420; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: BARAKATS CORPORATION dba Caddo Mill Crossing; DOCKET NUMBER: 2011-0333-PST-E; IDENTIFIER: RN101558930; LOCATION: Caddo Mills, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A) and TWC, §26.3475(a), by failing to provide release detection for the piping associated with the underground storage tank system; PENALTY: \$4,629; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Blackthorne Services, L.L.C. dba Waller County Line; DOCKET NUMBER: 2010-0855-PST-E; IDENTIFIER: RN102425279; LOCATION: Waller, Waller County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), (2)(A)(i)(III), (d)(1)(B)(ii), and (iii)(I) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 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; 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to ensure that all spill and overflow prevention devices are maintained in good operating condition; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free from liquid and debris; and 30 TAC §115.242(3)(G) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system; PENALTY: \$21,696; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Century Asphalt, Ltd.; DOCKET NUMBER: 2011-0224-AIR-E; IDENTIFIER: RN102180437; LOCATION: Rosenberg, Fort Bend County; TYPE OF FACILITY: hot mix asphalt production plant; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code (THSC), §382.085(b) and Permit Number 34293, Special Conditions Number 5, by failing to comply with the opacity limit of 5% averaged over a six-minute period; 30 TAC §116.115(c), THSC, §382.085(b) and Permit Number 34293, Special Conditions Number 6(C), by failing to comply with the maximum hot mix temperature limit for Binder PG-64-22; 30 TAC §116.115(b)(2)(E)(i) and (iv), and (c), THSC, §382.085(b) and Permit Number 34293, Special Conditions Number 16, by failing to maintain sufficient records in order to demonstrate compliance with Permit

Number 34293; PENALTY: \$6,500; SEP offset amount of \$2,600 applied to Texas Association of Resource Conservation and Development Areas, Incorporated, Clean School Buses; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Austin; DOCKET NUMBER: 2011-0276-AIR-E; IDENTIFIER: RN100215052; LOCATION: Del Valle, Travis County; TYPE OF FACILITY: power generation plant; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(b)(2)(F), Texas Health and Safety Code, §382.085(b) and New Source Review Permit Numbers 48106 and PSD-TX-1012M1 Maximum Allowable Emission Rates Table, by failing to adhere to the permitted allowable limit for particulate matter less than 10 microns in aerodynamic diameter (PM10); PENALTY: \$1,875; SEP offset amount of \$1,500 applied to Restoration and Rehabilitation of the Barton Springs Bypass Tunnel; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(8) COMPANY: City of Lovelady; DOCKET NUMBER: 2011-0351-MWD-E; IDENTIFIER: RN102185543; LOCATION: Houston County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010734001, Monitoring and Reporting Requirements Number 1; and 30 TAC §305.125(1) and §319.7(d), by failing to timely submit the monthly discharge monitoring reports by the 20th day of the following month; TPDES Permit Number WQ0010734001, Sludge Provisions and 30 TAC §305.125(17), by failing to timely submit monitoring results at the intervals specified in the permit; TPDES Permit Number WQ0010734001, Effluent Limitations and Monitoring Requirements Numbers 1, 3 and 6; and 30 TAC §305.125(1) and TWC, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$3,972; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: City Ready Mix, Incorporated; DOCKET NUMBER: 2010-2020-AIR-E; IDENTIFIER: RN101984821; LOCATION: Laredo, Webb County; TYPE OF FACILITY: concrete batch plant and screening operation; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a rock crusher; 30 TAC §101.201(e) and THSC, §382.085(b), by failing to notify the TCEQ within 24 hours after the discovery of an excess opacity event; 30 TAC §116.115(c), THSC, §382.085(b), and New Source Review (NSR) Permit Number 6324, General Conditions Number 9 and Special Conditions Number 3, by failing to prevent unauthorized emissions from an excess opacity event and by failing to maintain air pollution emission capture and abatement equipment in good working order and operating properly; 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 6324, General Conditions Number 8, by failing to remain at or below the maximum allowable concrete batch plant production rate of 60 cubic yards per hour; 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 6324, Special Conditions Number 8B, by failing to maintain screening operation throughput records for a rolling 24-month period; 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 6324, Special Conditions Number 5E, by failing to install a visible and/or audible overflow warning device on each silo; 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 6324, Special Conditions Number 5F, by failing to vent the weigh hopper to the cement silo; 30 TAC §116.115(c), THSC, §382.085(b) and NSR Permit Number 6324, Special Conditions Number 3, by failing to

maintain at or below 5% opacity at truck batch drop point Number 1; 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 6324, Special Conditions Number 5I, by failing to install permanently mounted spray bars at all material transfer points; and 30 TAC §116.115(c), THSC, §382.085(b), and NSR Permit Number 6324, General Conditions Number 9, by failing to maintain emission control devices; PENALTY: \$8,985; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(10) COMPANY: Concho Rural Water Corporation; DOCKET NUMBER: 2011-0294-PWS-E; IDENTIFIER: RN101215853; LOCATION: San Angelo, Tom Green County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(j), by failing to notify the executive director prior to making any significant change to the facility's production, treatment, storage, pressure maintenance, or distribution system; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence or lockable building for all potable water storage tanks and pressure maintenance facilities; and 30 TAC §290.46(t), by failing to post a legible sign at each production, treatment and storage facility that contains the name of the facility and an emergency telephone number where a responsible official can be contacted; PENALTY: \$355; ENFORCEMENT COORDINATOR: Kelly Wisian, (512) 239-2570; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(11) COMPANY: Dominion Homes, L.P.; DOCKET NUMBER: 2011-0239-WQ-E; IDENTIFIER: RN104741004; LOCATION: Amarillo, Randall County; TYPE OF FACILITY: residential construction; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization under a Texas Pollutant Discharge Elimination System Construction General Permit to discharge storm water associated with construction activities; PENALTY: \$750; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(12) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2011-0208-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: ethylene-based copolymer production plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), New Source Review (NSR) Permit Number 9176, Special Conditions Number 1, and Federal Operating Permit (FOP) Number O2001, Special Terms and Conditions Number 1.A., by failing to maintain an emission rate below the allowable emission limits for Incident Number 146789; 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a copy of the final record for a reportable emissions event for Incident Number 145301; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), NSR Permit Number 20204, Special Conditions Number 1 and FOP Permit Number O2055, Special Terms and Conditions Number 1.A., by failing to maintain an emission rate below the allowable emission limits for Incident Number 145301; PENALTY: \$20,484; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2010-1153-AIR-E; IDENTIFIER: RN100221662; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Texas Health and Safety Code, §382.085(b) and Permit Number 4682B, General Condition Number 8, by failing to prevent unauthorized emissions; PENALTY: \$0; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(14) COMPANY: Ernest Yanez Sr.; DOCKET NUMBER: 2011-0293-MLM-E; IDENTIFIER: RN105951313; LOCATION: Woodsboro, Refugio County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste (MSW); and 30 TAC §111.201 and Texas Health and Safety Code, §382.085(b), by failing to prohibit the burning of MSW for the purpose of disposal; PENALTY: \$2,313; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: FOSTER CONSOLIDATED INVESTMENTS, L.L.C. dba Chaparral III; DOCKET NUMBER: 2011-0094-PWS-E; IDENTIFIER: RN101219384; LOCATION: Weir, Williamson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(6) and TCEQ Agreed Order Docket Number 2009-0406-PWS-E, Ordering Provision Number 2.c., by failing to maintain all storage tanks and associated appurtenances in a watertight condition; PENALTY: \$705; ENFORCEMENT COORDINATOR: Amanda Henry, (713) 767-3672; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(16) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2011-0358-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit Number O-01320, Special Conditions Number 15, New Source Review Permit Number 5972A, Special Conditions Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Federal Operating Permit Number O-02288, Special Conditions Number 19, New Source Review Permit Number 19823, Special Conditions Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$20,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Khun Heng dba Billy's Beer & Wine; DOCKET NUMBER: 2011-0414-PST-E; IDENTIFIER: RN102785490; LOCATION: West Tawakoni, Hunt County; TYPE OF FACILITY: retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide a method of release detection for the piping associated with the underground storage tank system; PENALTY: \$2,629; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: La Joya Independent School District; DOCKET NUMBER: 2011-0070-MWD-E; IDENTIFIER: RN103914230; LOCATION: Hidalgo County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(2) and §305.65(a) and TWC, §26.121(a), by failing to maintain authorization for the operation of the facility; PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Thomas Jecha, P.G., (512) 239-2576; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: LBC Houston, L.P.; DOCKET NUMBER: 2011-0329-AIR-E; IDENTIFIER: RN101041598; LOCATION: Seabrook, Harris County; TYPE OF FACILITY: industrial bulk chemical liquid storage; RULE VIOLATED: 30 TAC §§117.335(a)(1) and (4), 117.9020(2)(C) and 122.143(4), Federal Operating Permit Number O-01001, Special Terms and Conditions Numbers 1A and 17A(i)(2), and Texas Health and Safety Code, §382.085(b), by failing to conduct an initial stack test on vapor oxidizer VO-1 by March

31, 2007; PENALTY: \$1,920; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: LDH Energy Mont Belvieu L.P.; DOCKET NUMBER: 2011-0212-AIR-E; IDENTIFIER: RN105231831; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: petroleum terminal; RULE VIOLATED: 30 TAC §122.121 and Texas Health and Safety Code, §382.054 and §382.085(b), by failing to submit an initial Federal Operating Permit application within 12 months of the Houston-Galveston-Brazoria area being designated as severe non-attainment for ozone; PENALTY: \$41,250; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: MANKI LLC; DOCKET NUMBER: 2011-0154-MWD-E; IDENTIFIER: RN103759106; LOCATION: Polk County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System Permit Number WQ0014960001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; PENALTY: \$1,540; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Mohammad Shafiq dba Spin-N-Market 6; DOCKET NUMBER: 2010-2087-PST-E; IDENTIFIER: RN102546504; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.248(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee received in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II vapor recovery system; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification; PENALTY: \$3,668; ENFORCEMENT COORDINATOR: Theresa Hagood, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: N H A J, L.C. dba Bestop 4; DOCKET NUMBER: 2011-0323-PST-E; IDENTIFIER: RN101839207; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II vapor recovery system at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$2,461; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Norma Kluna; DOCKET NUMBER: 2011-0140-MLM-E; IDENTIFIER: RN105918965; LOCATION: Hempstead, Waller County; TYPE OF FACILITY: private property; RULE VIOLATED: 30 TAC §111.201 and §111.219(7) and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized outdoor burning; and 30 TAC §330.15(c), by failing to comply with the general prohibition of dumping or disposal of municipal solid waste within the State of Texas; PENALTY: \$2,114; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.



(25) COMPANY: PSJS ENTERPRISES INCORPORATED dba Texaco Beer & Wine; DOCKET NUMBER: 2010-1700-PST-E; IDENTIFIER: RN100536549; LOCATION: Irving, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(a)(1) and §334.8(c)(4)(B), by failing to register the underground storage tank (UST) system with the agency; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detector at least once per year for performance and operational reliability; 30 TAC §334.10(b), by failing to maintain the required UST records and making them immediately available for the inspection upon request by agency personnel; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST involved in the retail sale of petroleum substances used as motor fuel; 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 non-removable point in the immediate area of the fill tube for each regulated UST; 30 TAC §334.42(i) and §334.45(d)(1)(E)(iv), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; 30 TAC §115.246(7)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain Stage II records at the station and making them immediately available for review upon request by agency personnel; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; and 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; PENALTY: \$20,263; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5825; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: SCHILLING OIL COMPANY INCORPORATED; DOCKET NUMBER: 2011-0369-PST-E; IDENTIFIER: RN101566818; LOCATION: Muenster, Cooke County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the UST system; PENALTY: \$5,550; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Shanil Oil Company dba Sunshine Beaumont; DOCKET NUMBER: 2011-0477-PST-E; IDENTIFIER: RN102408614; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage

II equipment at least once every 12 months; and 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system by successfully completing a training course approved by the executive director, and each current employee receives in-house Stage II vapor recovery training regarding the purpose and correct operation of the Stage II vapor recovery system; PENALTY: \$3,884; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(28) COMPANY: Speedy Shop, LLC dba Kold Spot #31; DOCKET NUMBER: 2011-0277-PST-E; IDENTIFIER: RN101551281; LOCATION: Lake Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,550; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: YATIM CAPITAL INVESTMENTS, L.L.C. dba Ramy's Mart; DOCKET NUMBER: 2011-0231-PST-E; IDENTIFIER: RN101534667; LOCATION: Allen, Collin County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,250; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201101707  
Kathleen C. Decker  
Director, Litigation Division  
Texas Commission on Environmental Quality  
Filed: May 10, 2011

◆ ◆ ◆  
**Enforcement Orders**

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2009-0131-AIR-E on April 29, 2011 assessing \$130,575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding epower Investments, LLC, Docket No. 2009-1115-WQ-E on April 29, 2011 assessing \$1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Miros Stritz, Docket No. 2009-1313-PST-E on April 29, 2011 assessing \$6,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, 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 Thomas Osborn Hammond dba Loco Coyote Grill Music Ranch, Docket No. 2009-1348-PWS-E on April 29, 2011 assessing \$15,443 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, 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 Arthur E. Longron dba Texas HogWallow, Docket No. 2009-1383-MLM-E on April 29, 2011 assessing \$2,499 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, 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 Mobil Chemical Company Inc., Docket No. 2009-1397-AIR-E on April 29, 2011 assessing \$12,600 in administrative penalties with \$2,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding The Family of God, of Abilene, Texas and Jose P. Jimenez, Docket No. 2009-1430-MLM-E on April 29, 2011 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gary K. 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 BA PROPERTIES MANAGEMENT, INC., Docket No. 2009-1615-PST-E on April 29, 2011 assessing \$4,203 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, 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 BA PROPERTIES MANAGEMENT, INC. dba Sunmart 317, Docket No. 2009-1653-PST-E on April 29, 2011 assessing \$3,112 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, 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 Shiloh Ridge Water Supply Corporation, Docket No. 2010-0061-MLM-E on April 29, 2011 assessing \$7,282 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, 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 Bruce F. Neibrandt dba 5 O' Clock Somewhere Bar, Docket No. 2010-0133-PWS-E on April 29, 2011 assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. 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 Nickie Joe Sublett dba Uphill Dairy, Docket No. 2010-0144-AGR-E on April 29, 2011 assessing \$2,600 in administrative penalties with \$520 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 Dolphin Petroleum, LP, Docket No. 2010-0193-AIR-E on April 29, 2011 assessing \$3,175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Treadwell, 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 Rogelio Saenz dba Roys 1 and Roys 2 and Odilia Saenz dba Roys 1 and Roys 2, Docket No. 2010-0227-PST-E on April 29, 2011 assessing \$26,208 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, 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 INEOS NOVA LLC, Docket No. 2010-0261-AIR-E on April 29, 2011 assessing \$10,250 in administrative penalties with \$2,050 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2010-0328-AIR-E on April 29, 2011 assessing \$10,000 in administrative penalties with \$2,000 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 Equistar Chemicals, LP, Docket No. 2010-0335-AIR-E on April 29, 2011 assessing \$10,000 in administrative penalties with \$2,000 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 Trudy J. Gillem dba Country Villa Mobile Home Park, Docket No. 2010-0447-PWS-E on April 29, 2011 assessing \$6,341 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, 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 INEOS USA LLC, Docket No. 2010-0507-AIR-E on April 29, 2011 assessing \$10,050 in administrative penalties with \$2,010 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 Equistar Chemicals, LP, Docket No. 2010-0591-AIR-E on April 29, 2011 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Newton, Docket No. 2010-0907-MLM-E on April 29, 2011 assessing \$7,000 in administrative penalties with \$1,400 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.

A default order was entered regarding Sami Awad dba Sammy's Memorial Texaco, Docket No. 2010-0910-PST-E on April 29, 2011 assessing \$15,997 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Houston Corner Store, Inc., Docket No. 2010-0914-PST-E on April 29, 2011 assessing \$11,589 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. 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 Northshore, Docket No. 2010-1159-PWS-E on April 29, 2011 assessing \$4,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Eugene O. Boeck and Irma Boeck, Docket No. 2010-1177-PST-E on April 29, 2011 assessing \$3,745 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. 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 Linde Gas North America LLC, Docket No. 2010-1187-AIR-E on April 29, 2011 assessing \$55,650 in administrative penalties with \$11,130 deferred.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E Z Stop, L.L.C. dba E Z Stop, Docket No. 2010-1249-PST-E on April 29, 2011 assessing \$7,785 in administrative penalties with \$1,557 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Villatoro, Enforcement Coordinator at (512) 239-4930, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coastway Inc. dba Kwick Stop 1, Docket No. 2010-1253-PST-E on April 29, 2011 assessing \$4,130 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. 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 SOUTH LAKE PARK SERVICES, INC., Docket No. 2010-1324-PWS-E on April 29, 2011 assessing \$7,717 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Uvalde, Docket No. 2010-1340-MWD-E on April 29, 2011 assessing \$8,400 in administrative penalties with \$1,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAILEY BARK MATERIALS, INC., Docket No. 2010-1370-MLM-E on April 29, 2011 assessing \$1,040 in administrative penalties with \$208 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pamela Sue Hughes dba Big Q Mobile Home Estates, Docket No. 2010-1409-PWS-E on April 29, 2011 assessing \$5,075 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Technologies Inc., Docket No. 2010-1430-AIR-E on April 29, 2011 assessing \$5,250 in administrative penalties with \$1,050 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 Shell Oil Company, Docket No. 2010-1439-IHW-E on April 29, 2011 assessing \$97,020 in administrative penalties with \$19,404 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 The Dow Chemical Company, Docket No. 2010-1450-AIR-E on April 29, 2011 assessing \$96,975 in administrative penalties with \$19,395 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 City of Elkhart, Docket No. 2010-1462-MWD-E on April 29, 2011 assessing \$21,070 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 MUNRO DRY CLEANING COMPANY, Docket No. 2010-1479-IHW-E on April 29, 2011 assessing \$6,525 in administrative penalties with \$1,305 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike 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 Crockett, Docket No. 2010-1501-MWD-E on April 29, 2011 assessing \$9,850 in administrative penalties with \$1,970 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Crude Pipeline LLC, Docket No. 2010-1506-AIR-E on April 29, 2011 assessing \$8,400 in administrative penalties with \$1,680 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprise LLC, Docket No. 2010-1514-AIR-E on April 29, 2011 assessing \$85,125 in administrative penalties with \$17,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pasadena Cogeneration L.P., Docket No. 2010-1517-AIR-E on April 29, 2011 assessing \$883 in administrative penalties with \$176 deferred.

Information concerning any aspect of this order may be obtained by contacting Gena Hawkins, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Roy Harris, Docket No. 2010-1520-MSW-E on April 29, 2011 assessing \$2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, 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 Bp Products North America Inc., Docket No. 2010-1527-IWD-E on April 29, 2011 assessing \$242,900 in administrative penalties.

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 Rusk, Docket No. 2010-1532-PWS-E on April 29, 2011 assessing \$267 in administrative penalties with \$53 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Schumann, Enforcement Coordinator at (512) 239-2602, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delek Refining, Ltd., Docket No. 2010-1547-AIR-E on April 29, 2011 assessing \$70,250 in administrative penalties with \$14,050 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 City of Midland, Docket No. 2010-1549-MLM-E on April 29, 2011 assessing \$11,200 in administrative penalties with \$2,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, Enforcement Coordinator at (512) 239-2574, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Custom Crushed Stone, Inc., Docket No. 2010-1560-EAQ-E on April 29, 2011 assessing \$8,250 in administrative penalties with \$1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilgrim's Pride Corporation, Docket No. 2010-1564-IWD-E on April 29, 2011 assessing \$80,149 in administrative penalties with \$16,029 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., 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 DIRT FREE CARPET & UP-HOLSTERY CLEANING, INC., Docket No. 2010-1573-MSW-E on April 29, 2011 assessing \$1,443 in administrative penalties with \$288 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 GB Biosciences Corporation, Docket No. 2010-1612-AIR-E on April 29, 2011 assessing \$9,850 in administrative penalties with \$1,970 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding American Marazzi Tile, Inc., Docket No. 2010-1613-AIR-E on April 29, 2011 assessing \$16,350 in administrative penalties with \$3,270 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 RAS ENTERPRISE, INC. dba Lakewood Texaco, Docket No. 2010-1621-PST-E on April 29, 2011 assessing \$2,159 in administrative penalties with \$431 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Muhammad Altaf dba Country Food Store, Docket No. 2010-1626-PST-E on April 29, 2011 assessing \$1,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven M. Fishburn, 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 Lowe Precast, Inc. dba Lowe Precast, Docket No. 2010-1627-IHW-E on April 29, 2011 assessing \$1,270 in administrative penalties with \$254 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike 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 Alloy Polymers Orange, LLC, Docket No. 2010-1645-IWD-E on April 29, 2011 assessing \$17,160 in administrative penalties with \$3,432 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., 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 FireWeed Corporation dba Kwik Fuels, Docket No. 2010-1649-PST-E on April 29, 2011 assessing \$2,300 in administrative penalties with \$460 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2010-1654-AIR-E on April 29, 2011 assessing \$5,875 in administrative penalties with \$1,175 deferred.

Information concerning any aspect of this order may be obtained by contacting Roshondra Lowe, Enforcement Coordinator at (713) 767-3553, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Old Marbach School Water Supply Corporation, Docket No. 2010-1659-PWS-E on April 29, 2011 assessing \$2,415 in administrative penalties with \$483 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 Huntsman Petrochemical LLC, Docket No. 2010-1661-AIR-E on April 29, 2011 assessing \$21,700 in administrative penalties with \$4,340 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 Town of Lakewood Village, Docket No. 2010-1664-MWD-E on April 29, 2011 assessing \$9,922 in administrative penalties with \$1,984 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enbridge G & P (North Texas) L.P., Docket No. 2010-1676-AIR-E on April 29, 2011 assessing \$10,125 in administrative penalties with \$2,025 deferred.

Information concerning any aspect of this order may be obtained by contacting Allison Fischer, 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 OHMSTEDE, LTD., Docket No. 2010-1682-IWD-E on April 29, 2011 assessing \$6,030 in administrative penalties with \$1,206 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., 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 Santa Rita Motors, Inc., Docket No. 2010-1691-AIR-E on April 29, 2011 assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONTINENTAL HOMES OF TEXAS, L.P., Docket No. 2010-1694-EAQ-E on April 29, 2011 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sherwin Alumina Company, LLC, Docket No. 2010-1705-AIR-E on April 29, 2011 assessing \$4,550 in administrative penalties with \$910 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, P.G., 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 United States Gypsum Company, Docket No. 2010-1710-AIR-E on April 29, 2011 assessing \$10,500 in administrative penalties with \$2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMERICAN GROCERIES MANAGEMENT NO. 8 INC. dba Shop N Run, Docket No. 2010-1716-PST-E on April 29, 2011 assessing \$2,213 in administrative penalties with \$442 deferred.

Information concerning any aspect of this order may be obtained by contacting Brianna Carlson, Enforcement Coordinator at (956) 430-6021, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BASF Corporation, Docket No. 2010-1726-AIR-E on April 29, 2011 assessing \$4,100 in administrative penalties with \$820 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2010-1730-AIR-E on April 29, 2011 assessing \$25,200 in administrative penalties with \$5,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BOLLINGER TEXAS CITY, L.P., Docket No. 2010-1734-IWD-E on April 29, 2011 assessing \$7,950 in administrative penalties with \$1,590 deferred.

Information concerning any aspect of this order may be obtained by contacting Martha Hott, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SandRidge CO2, LLC, Docket No. 2010-1743-AIR-E on April 29, 2011 assessing \$66,128 in administrative penalties with \$13,225 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of White Settlement, Docket No. 2010-1747-WQ-E on April 29, 2011 assessing \$8,250 in administrative penalties.

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 Happy Lucky Corporation dba Discount Gas Tobacco & Beverages, Docket No. 2010-1750-PST-E on April 29, 2011 assessing \$2,358 in administrative penalties with \$471 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 KEWINE LLC, Docket No. 2010-1760-EAQ-E on April 29, 2011 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., 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 Orange County Water Control and Improvement District No. 1, Docket No. 2010-1777-MWD-E on April 29, 2011 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Evette Alvarado, Enforcement Coordinator at (512) 239-2573, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daheri & Talpur Inc dba Super Travel Center, Docket No. 2010-1785-PST-E on April 29, 2011 assessing \$1,999 in administrative penalties with \$399 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ken R. Swan, Docket No. 2010-1787-WR-E on April 29, 2011 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, 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 West Harris County Municipal Utility District No. 17, Docket No. 2010-1789-MWD-E on April 29, 2011 assessing \$1,600 in administrative penalties with \$320 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 ConocoPhillips Company, Docket No. 2010-1795-AIR-E on April 29, 2011 assessing \$9,725 in administrative penalties with \$1,945 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema Inc., Docket No. 2010-1810-AIR-E on April 29, 2011 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Benoit, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding William Donald Smith dba Sunset Mobile Home Park 1, dba Sunset Mobile Home Park 2, dba Kingmont Mobile Home Park, and dba Tallows Mobile Home Park, Docket No. 2010-1815-UTL-E on April 29, 2011 assessing \$1,278 in administrative penalties with \$254 deferred.

Information concerning any aspect of this order may be obtained by contacting Kelly Wisian, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J&S Water Company, L.L.C., Docket No. 2010-1848-UTL-E on April 29, 2011 assessing \$873 in administrative penalties with \$174 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Sherlock, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L & L Pallet Supply, Inc., Docket No. 2010-1854-AIR-E on April 29, 2011 assessing \$2,710 in administrative penalties with \$542 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FTI Industries, Inc., Docket No. 2010-1855-WQ-E on April 29, 2011 assessing \$800 in administrative penalties with \$160 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., 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 SandRidge Energy, Inc., Docket No. 2010-1873-AIR-E on April 29, 2011 assessing \$950 in administrative penalties with \$190 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randy Earl Wyly dba Randy Wyly Dairy, Docket No. 2010-1938-AGR-E on April 29, 2011 assessing \$2,520 in administrative penalties with \$504 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hill Country Harbor, L.P., Docket No. 2010-1941-MWD-E on April 29, 2011 assessing \$2,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, 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 Slaton, Docket No. 2010-1993-PWS-E on April 29, 2011 assessing \$818 in administrative penalties with \$163 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 order was entered regarding Diane Hill, James W. Carter, Joe Carter, Getrell A. Carter, Gerald E. Carter, Lee Otis Carter, Grady Goodley, Coline Knox, Nokomis Hill, Donald A. Hill, Deborah Hill-Thompson, Lawrence A. Hill, Candis A. Hill McKelvy, Kermit A. Hill, Dorris Jean Hill, Aurelia Harris, Delmaris Roby, Lawada Hill, Kevin Hill, Cora Turner Houston, Joe I. Roland, Merilee Crawford, and Gaynell Carter-Jenkins, Docket No. 2006-1140-MSW-E on April 29, 2011 assessing \$23,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492 Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Overton, Docket No. 2009-1689-MWD-E on April 29, 2011 assessing \$52,065 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.

TRD-201101719

LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: May 11, 2011



### Notice of Receipt of Application and Intent to Obtain a New Municipal Solid Waste Permit (Proposed) Permit No. 2375

APPLICATION. BFI Waste Services of Texas, LP, 2575 IH 35 South, Suite 103, San Marcos, Hays County, Texas 78666, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Permit No. 2375, to operate a MSW Type V Transfer Station processing facility. The applicant is requesting authorization for the construction and operation of a municipal solid waste transfer station. The facility will be located at FM 2556 and the Mile 8 intersection, La Feria, Cameron County, Texas 78559. The TCEQ received the application on April 25, 2011. The permit application is available for viewing and copying at the Bailey H. Dunlap Memorial Library, 450 S. Main Street, La Feria, Cameron County, Texas 78559-5038.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location

and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.** All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at [www.tceq.state.tx.us/about/comments.html](http://www.tceq.state.tx.us/about/comments.html). If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Further information may also be obtained from BFI Waste Services of Texas, LP at the address stated above or by calling Mr. Michael Stewart, Area Environmental Manager, BFI Waste Services of Texas, LP at (512) 392-9105.

TRD-201101718

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2011



### Notice of Water Quality Applications

The following notice was issued on April 29, 2011 through May 6, 2011.

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

#### INFORMATION SECTION

**POSSUM KINGDOM WATER SUPPLY CORPORATION** which operates George N. Bailey, Jr. Water Treatment Plant (WTP), a potable water treatment plant, has applied for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004325000 to authorize an increase in flow at Outfall 001 for a proposed plant expansion. The request will add an interim phase with a daily average flow of 480,000 gallons per day and a daily

maximum flow of 960,000 gallons per day; and a final phase with a daily average flow of 600,000 gallons per day and a daily maximum of 1,200,000 gallons per day. The current permit authorizes the discharge of backwash water, process sampling water, and reverse osmosis concentrate at a daily average flow not to exceed 220,000 gallons per day and a daily maximum flow of 340,000 gallons per day via Outfall 001. The facility is located at 300 Lago Vista Road, approximately 0.5 mile south of intersection of Farm-to-Market Road 2951 and Harris Drive, and approximately 16 miles west of the town of Graford, Palo Pinto County, Texas 76449.

**WILLIAM DONALD SMITH** has applied for a renewal of TPDES Permit No. WQ0013770001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located at 10706 Cora Street, approximately 0.75 mile west of the intersection of State Highway 289 and Veteran Memorial Parkway in Harris County, Texas 77088.

**THE UNIVERSITY OF TEXAS AT AUSTIN** which operates the University of Texas at Austin Municipal Separate Storm Sewer System (MS4) has applied for a Renewal of TPDES Permit No. WQ0004704000 to authorize storm water point source discharges to surface water in the state from the University of Texas at Austin's MS4. The MS4 is located within the corporate boundary of the City of Austin, in Travis County, Texas 78712, 78703 and 78758.

**CITY OF RUSK** has applied for a renewal of TPDES Permit No. WQ0010447001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The facility is located approximately 0.35 mile west of Farm-to-Market Road 752 and approximately 1.5 miles south of Midtown Road in Cherokee County, Texas 75785

**SOUTHWEST HARRIS COUNTY MUNICIPAL DISTRICT NO 1** has applied for a renewal of TPDES Permit No. WQ0012641001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located adjacent to Willow Waterhole Bayou, approximately 2,000 feet west of the intersection of Fondren Road and U.S. Alternate Highway 90 in Harris County, Texas 77071.

**HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO 167** has applied for a major amendment to TPDES Permit No. WQ0012834001 to authorize an increase in the discharge of treated domestic wastewater from Outfalls 001 and 002 at a daily average flow not to exceed 980,000 gallons per day to a daily average flow not to exceed 1,500,000 gallons per day. The facility is located at 4950 Old Greenhouse Road, 1.25 miles north of the intersection of Barker-Cypress Road and Clay Road and approximately one mile southwest of the intersection of Gummert Road and Barker-Cypress Road in Harris County, Texas 77449.

**CALLISBURG INDEPENDENT SCHOOL DISTRICT** has applied for a renewal of TPDES Permit No. WQ0013393001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located at 648 Farm-to-Market Road 3164, approximately 0.7 mile east-southeast of the intersection of Farm-to-Market Roads 678 and 3164 in Gainesville in Cooke County, Texas 76240.

**LA JOYA INDEPENDENT SCHOOL DISTRICT** has applied for a new permit, Proposed TCEQ Permit No. WQ0013523015, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 12,570 gallons per day via low-pressure dosing drainfields with a minimum area of 130,680 square feet. The facility was previously permitted under Permit No. 13523-008 which expired September 1, 2010. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located at 1801 Diamond Avenue, on the west side of Farm-to-Mar-



ket Road 1427, approximately 1,425 feet north of the intersection of Farm-to-Market Road 1427 and U.S. Highway 83, in Penitas in Hidalgo County, Texas 78576.

CREEK PARK CORPORATION has applied to the TCEQ for a renewal of TPDES Permit No. WQ0013868001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The facility is located approximately 1 mile east of County Road 600 and approximately 1.5 miles south of the intersection of County Road 600 and Farm-to-Market Road 917 in Johnson County, Texas 76009.

ACTON MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. WQ0014211001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 600,000 gallons per day to a daily average flow not to exceed 930,000 gallons per day. The facility is located at 4300 Cimmaron Trail, on the west bank of McCarty Branch, approximately 2.6 miles south of the intersection of U.S. Highway 377 and Farm-to-Market Road 167 in Hood County, Texas 76049.

JAMES LEWIS ALLEN has applied for a renewal of TPDES Permit No. WQ0014746001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 19,000 gallons per day. The facility is located approximately 2.5 miles south of the intersection of Interstate Highway 20 and U.S. Highway 59, on the west side of U.S. Highway 59 in Harrison County, Texas 75672.

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 website at [www.TCEQ.state.tx.us](http://www.TCEQ.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-201101717

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2011

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**Texas Facilities Commission**

**Request for Proposal #303-1-20277**

The Texas Facilities Commission (TFC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-1-20277. TFC seeks a 5 year lease of approximately 10,970 square feet of office space in Galveston or Brazoria County, Texas.

The deadline for questions is June 17, 2011 and the deadline for proposals is July 8, 2011 at 3:00 p.m. The award date is July 29, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=94476](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=94476).

TRD-201101702

Kay Molina  
General Counsel  
Texas Facilities Commission  
Filed: May 9, 2011

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**Request for Proposal #303-1-20278**

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice (TDCJ), announces the issuance of Request for Proposals (RFP) #303-1-20278. TFC seeks a five (5) or ten (10) year lease of approximately 7,334 square feet of office space in McLennan County, Texas.

The deadline for questions is June 3, 2011 and the deadline for proposals is June 24, 2011 at 3:00 p.m. The award date is July 22, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Lease Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=94455](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=94455).

TRD-201101698

Kay Molina

General Counsel

Texas Facilities Commission

Filed: May 9, 2011

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**Request for Proposal #303-1-20279**

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC) and the Department of Aging and Disability Services (DADS), announces the issuance of Request for Proposals (RFP) #303-1-20279. TFC seeks a five (5) or ten (10) year lease of approximately 14,514 square feet of office space in Fort Worth, Tarrant County, Texas.

The deadline for questions is May 31, 2011 and the deadline for proposals is June 7, 2011 at 3:00 p.m. The award date is July 20, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Lease Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at [http://esbd.cpa.state.tx.us/bid\\_show.cfm?bidid=94453](http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=94453).

TRD-201101701

Kay Molina

General Counsel

Texas Facilities Commission

Filed: May 9, 2011

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**Department of State Health Services**

## Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

### NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Superior Well Services, Ltd.	L06375	Midland	00	04/25/11
Throughout TX	Synergy Inspection and Testing, Inc.	L06401	Arlington	00	04/19/11

### AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Addison	Flower Mound Hospital Partners, L.L.C. dba Texas Health Presbyterian Hospital Flower Mound	L06310	Addison	01	04/22/11
Austin	Ranger Excavating, L.P.	L06314	Austin	01	04/13/11
Austin	Seton Healthcare dba Seton Medical Center Austin	L02896	Austin	117	04/20/11
Austin	Seton Healthcare dba Seton Medical Center Williamson	L06128	Austin	15	04/22/11
Austin	St. David's Healthcare Partnership L.P., L.L.P. dba St. David's Medical Center	L00740	Austin	109	04/27/11
Austin	Seton Healthcare dba University Medical Center at Brackenridge	L00268	Austin	116	04/27/11
Beaumont	Exxonmobil Oil Corporation	L00603	Beaumont	95	04/25/11
Bedford	Columbia North Hills Outpatient dba Bedford Imaging Center	L03455	Bedford	58	04/27/11
Bedford	Texas Oncology, P.A. dba Edwards Cancer Center	L05550	Bedford	25	04/27/11
Benbrook	Weatherford International, Inc.	L04286	Benbrook	87	04/18/11
Big Spring	Big Spring Hospital Corporation	L00763	Big Spring	57	04/20/11
Borger	Chevron Phillips Chemical Company, L.P.	L05181	Borger	19	04/13/11
College Station	Texas A&M University	L05683	College Station	15	04/13/11
Corpus Christi	True Medical Imaging	L06191	Corpus Christi	05	04/26/11
Dallas	Southern Methodist University	L02887	Dallas	22	04/15/11
Dallas	Rosa of North Dallas, L.L.C.	L06186	Dallas	05	04/19/11
Dallas	The University of Texas	L00384	Dallas	109	04/18/11
Dallas	Baylor University Medical Center	L01290	Dallas	102	04/29/11
Dallas	Medical City Dallas Hospital dba Medical City	L01976	Dallas	186	04/29/11
Decatur	Wise Regional Health System	L02382	Decatur	37	04/22/11
Denison	Texoma Heart Group	L05208	Denison	14	04/14/11
El Paso	Texas Oncology, P.A. dba El Paso Cancer Treatment Center	L05771	El Paso	09	04/22/11
El Paso	The University of Texas at El Paso	L00159	El Paso	66	04/27/11
Fort Worth	Physician Reliance, L.P. dba Texas Oncology at Klabziba	L05545	Fort Worth	40	04/14/11
Fort Worth	Physician Reliance, L.P. dba Texas Oncology at Klabziba	L05545	Fort Worth	41	04/27/11
Houston	Weldsonix, Inc.	L05718	Houston	42	04/12/11
Houston	RCOA Imaging Services	L06091	Houston	04	04/13/11
Houston	ROCA Imaging Services	L06091	Houston	05	04/20/11
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	162	04/18/11
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	127	04/19/11

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Houston	NIS Holdings, Inc. dba Nuclear Imaging Services	L05775	Houston	69	04/20/11
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	163	04/19/11
Houston	Valco Instruments Company, Inc.	L01572	Houston	26	04/26/11
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	84	04/22/11
Kerrville	Kerrville Cardiovascular Center, Ltd.	L05334	Kerrville	06	04/25/11
Laredo	Laredo Texas Hospital Company, L.P. dba Laredo Medical Center	L01306	Laredo	71	04/20/11
Longview	Westlake Longview Corporation	L06294	Longview	04	04/20/11
Lubbock	Covenant Medical Center	L00483	Lubbock	146	04/21/11
Midland	Texas Nuclear Pharmacy Partners	L04573	Midland	21	04/22/11
Midland	E&P Wireline Services, L.L.C.	L05738	Midland	22	04/26/11
Plano	Texas Heart Hospital of the Southwest, L.L.P. dba The Heart Hospital Baylor Plano	L06004	Plano	15	04/15/11
Plano	Texas Health Presbyterian Hospital Plano	L04467	Plano	60	04/18/11
Plano	Plano Heart Center, P.A.	L05673	Plano	04	04/27/11
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	42	04/25/11
Richardson	H.H. Holmes Testing Laboratories, Inc.	L06313	Richardson	03	04/19/11
Round Rock	Texas Oncology, P.A.	L06349	Round Rock	04	04/18/11
San Antonio	ACA SA, Ltd.	L05567	San Antonio	18	04/18/11
San Antonio	South Texas Radiology	L00325	San Antonio	194	04/26/11
Seguin	Guadalupe Regional Medical Center	L02292	Seguin	38	04/13/11
Sugar Land	Texas Oncology, P.A. dba Texas Oncology Cancer Center Sugar Land	L05816	Sugar Land	11	04/22/11
Temple	Scott and White Memorial Hospital dba Scott and White Memorial Hospital	L00331	Temple	88	04/19/11
Texarkana	Texarkana PET Imaging Institute, L.P.	L05495	Texarkana	10	04/15/11
Texas City	BP Products North America, Inc.	L00254	Texas City	66	04/19/11
Throughout TX	Texas Department of Transportation	L00197	Austin	155	04/19/11
Throughout TX	Applied Standards Inspection, Inc.	L03072	Beaumont	116	04/20/11
Throughout TX	DMS Health Technologies	L05594	Cameron	14	04/27/11
Throughout TX	CTL Thompson Texas, L.L.C.	L04900	Dallas	16	04/20/11
Throughout TX	Lockheed Martin Corporation dba Lockheed Martin Areonautics Company	L05633	Fort Worth	12	04/20/11
Throughout TX	Wood Group Logging Services, Inc.	L05262	Houston	41	04/28/11
Throughout TX	Tracerco	L03096	Pasadena	77	
Throughout TX	Texas Gamma Ray, L.L.C.	L05561	Pasadena	67	04/25/11
Throughout TX	Coastal Wireline Services, Inc. dba Gulf Coast Well Analysis	L04239	Pearland	14	04/25/11
Throughout TX	Hirschfeld Steel Company	L04361	San Angelo	19	04/20/11
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	164	04/13/11
Tyler	Physician Reliance Network, Inc. dba Tyler Cancer Center	L04788	Tyler	16	04/12/11
Tyler	Mother Frances Hospital Regional Health Care Center	L01670	Tyler	167	04/18/11
Tyler	Apex Geoscience, Inc.	L04929	Tyler	33	04/27/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Andrews	Norman Houston, Inc.	L04362	Andrews	12	04/25/11
Austin	Department of State Health Services	L01594	Austin	33	04/11/11
Channelview	Lyondell Chemical Company	L04439	Channelview	27	04/25/11
Rosenberg	United Surveys, Inc.	L01570	Rosenberg	25	04/26/11
Throughout TX	Patterson Tubular Services, Inc.	L03148	Channelview	28	04/25/11
Throughout TX	Radiation Consultants, Inc.	L02179	Deer Park	40	04/19/11
Throughout TX	CMJ Engineering and Testing, Inc.	L05564	Fort Worth	08	04/25/11
Throughout TX	Lone Star Testing Services, L.P. dba Lone Star Testing Laboratories	L04013	Humble	16	04/18/11
Throughout TX	Century Inspection, Inc.	L00062	Ponder	109	04/14/11

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
El Paso	Center for Integrative Cancer Medicine, P.A. dba PET CT Imaging of El Paso	L05880	El Paso	10	04/15/11
Irving	Las Colinas Surgery Center, Ltd. dba Las Colinas Surgery Center	L05651	Irving	03	04/22/11

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289, regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201101665  
 Lisa Hernandez  
 General Counsel  
 Department of State Health Services  
 Filed: May 4, 2011

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**Texas Department of Insurance**

Company Licensing

Application to change the name of DEERBROOK INSURANCE COMPANY to ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Northbrook, Illinois.

Application for admission to the State of Texas by NATIONAL TRUST INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Carmel, Indiana.

Application to change the name of OM FINANCIAL LIFE INSURANCE COMPANY to FIDELITY & GUARANTY LIFE

INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Baltimore, Maryland.

Application to do business in the State of Texas by PATRIOT ALLIANCE DENTAL PLAN, INC., a domestic health maintenance organization. The home office is in Cedar Park, Texas.

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

TRD-201101720  
 Gene C. Jarmon  
 General Counsel and Chief Clerk  
 Texas Department of Insurance  
 Filed: May 11, 2011

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**Public Utility Commission of Texas**

## Notice of a Petition for Commission Determination on Construction of Facilities

Notice is given to the public of a petition for Commission determination filed with the Public Utility Commission of Texas on May 4, 2011.

Docket Style and Number: Application of Entergy Texas, Inc. for Order to Obtain Determination of Necessity to Construct Facilities to Interconnect with Transmission Facilities of the City of College Station Pursuant to PURA §38.073. Docket Number 39382.

The Application: Entergy Texas, Inc. (ETI) filed an application for a Public Utility Commission of Texas (commission) determination of necessity to construct facilities to interconnect with facilities of the City of College Station Utility (CSU). ETI requests commission approval to construct an emergency normal open interconnection located between ETI's College Station Junction and CSU's Switch Station to accommodate a load transfer from the ETI system to the Electric Reliability Council of Texas (ERCOT) system during times of emergencies and could also support load transfer from the ERCOT system to ETI. ETI's facilities will include a new 138-kV breaker, 138-kV bi-directional metering equipment, construction of a new 138-kV line (approximately 450 feet in length), construction of a new 138-kV bypass switch, relay upgrades, and relay communication upgrades.

ETI stated it is willing to construct its facilities under this project in order to provide emergency interconnection in this region if its costs incurred for such facilities can be recovered in subsequent proceedings.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All correspondence should refer to Docket Number 39382.

TRD-201101685  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 6, 2011



## Notice of a Petition for Commission Determination on Emergency Interconnection Point

Notice is given to the public of a petition for Commission determination filed with the Public Utility Commission of Texas on May 4, 2011.

Docket Style and Number: Application of the City of College Station for an Order Establishing an Emergency Interconnection Point with Entergy Texas's System. Docket Number 39383.

The Application: The City of College Station (College Station) filed an application for a Public Utility Commission of Texas (commission) order establishing an emergency interconnection point with Entergy Texas, Inc.'s (ETI) system. To permit such emergency service assistance in the College Station area, ETI approached College Station to install facilities that, while normally would be open, could be closed to permit ETI load in the College Station area to be connected with the Electric Reliability Council of Texas (ERCOT) under declared emergencies such as those resulting from hurricanes. College Station stated it is willing to provide emergency interconnection facilities if its costs can be recovered as part of its transmission cost of service. College Station estimated that costs for this work would be approximately \$300,000.

College Station is a member of the ERCOT power grid region, however, ETI lies within the Southeastern Reliability Council (SERC) power region. Emergency interconnection between reliability regions require federal approvals and authority rests with the Department of Energy (DOE). College Station affirmed that any request for approval made by College Station to the DOE will be conditioned upon expressed recognition by the DOE or other applicable federal authority that the existence of the interconnection and the actual operation of the emergency interconnection will not cause the federal jurisdictional status of ERCOT, College Station, or any other entity within ERCOT to change.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All correspondence should refer to Docket Number 39383.

TRD-201101686  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 6, 2011



## Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 4, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Medina County, Texas.

Docket Style and Number: Application of Electric Transmission Texas, LLC to Amend its Certificate of Convenience and Necessity to Construct the AEP TCC Lytle to CPS Energy Lytle 138-kV Transmission Line in Medina County. Docket Number 39325.

The Application: The application of Electric Transmission Texas, LLC (ETT) for a proposed 138-kV transmission line in Medina County, Texas is designated as the AEP Texas Central Company (AEP TCC) Lytle to CPS Energy Lytle 138-kV Transmission Line Project (Project). The proposed transmission line is a joint project of ETT and CPS Energy. The project involves the construction of a new 138-kv single-circuit transmission line between the existing AEP TCC Lytle Substation and the existing CPS Energy Lytle Substation. The proposed project is presented with four (4) alternate routes. ETT has designated Route 7 as the preferred route. Any route presented in the application could, however, be approved by the Commission. Depending on the route chosen, ETT's portion of the proposed line will be 1.6 to 2.8 miles in length. The proposed project will be constructed on single-pole single-circuit steel structures. The total estimated cost for the project is \$2,074,000.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is June 20, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39325.

TRD-201101684

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 6, 2011



### Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 6, 2011, for an amendment to certificated service area boundaries within Bowie County, Texas.

Docket Style and Number: Application of Southwestern Electric Power Company (SWEPCO) to amend a Certificate of Convenience and Necessity for Service Area Boundaries within Bowie County. Docket Number 39388.

The Application: SWEPCO is seeking to amend its service area to include the Lone Star Army Ammunition Plant (LSAAP), a military facility of approximately 15,000 acres in Bowie County, Texas. LSAAP has requested that SWEPCO assume the responsibility for distribution services. LSAAP lies within an uncertificated area adjacent to SWEPCO's certificated territory.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than May 31, 2011 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 39388.

TRD-201101712  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 11, 2011



### Notice of SWEPCO's Application to Remove Rider NMS and Rider RR from Tariff

Notice is given to the public of an application filed on April 13, 2011, with the Public Utility Commission of Texas to remove Rider NMS and Rider RR from tariff.

Tariff Style and Control Number: Application of Southwestern Electric Power Company (SWEPCO) to Remove Net Merger Savings and Rate Reduction Riders from Unbundled Tariff. Tariff Control Number 39324.

The Application: SWEPCO filed an application to remove Rider NMS-Net Merger Savings and Rider RR-Rate Reduction from its unbundled tariff consistent with the final Order issued on April 16, 2010 in Docket No. 37364, *Application of Southwestern Electric Power Company for Authority to Change Rates*. SWEPCO noted that, to date, there have been no subscribers to the unbundled tariff.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by Friday, May 20, 2011, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-

800-735-2989. All comments should reference Tariff Control Number 39324.

TRD-201101683  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: May 6, 2011



### Public Notice of Workshop on Rulemaking Concerning Recovery of Purchased Power Capacity Costs, and Request for Comments

The Public Utility Commission of Texas (commission) will hold a workshop regarding the rulemaking project for the recovery of purchased power capacity costs on Thursday, June 23, 2011, at 9:00 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 39246, *Rulemaking Proceeding Concerning Recovery of Purchased Power Capacity Costs, Including Amendment of Subst. R. §25.238*, has been established for this proceeding. The purpose of this rulemaking project is to address the recovery of purchased power capacity costs considering generation embedded in base rates, load growth, and the impact of purchased power capacity recovery on the financial standing of the utility.

Prior to the workshop, the commission requests that interested persons file informal comments to the following questions. The deadline to file comments is Monday, June 13, 2011 (10 days prior to the workshop date).

The primary purpose of the purchased capacity cost recovery rule is to ensure that utilities have an opportunity to recover just and reasonable purchased power capacity costs incurred in the course of providing reliable electric service to ratepayers. The commission has statutory authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction pursuant to the Public Utility Regulatory Act (PURA) §14.002. In addition, the commission has authority to implement such a rule providing for this recovery pursuant to PURA §§36.204 - 36.206.

1. To allow for the timely recovery of just and reasonable purchased capacity costs, should the Commission amend P.U.C. SUBST. R. §25.238, repeal it and adopt a new rule, or repeal it and amend SUBST. R. §25.236?
2. Should the rule provide that all non-ERCOT utilities are eligible for a timely cost recovery mechanism for purchased capacity costs or should it limit the use of such a mechanism only to those that rely on a certain percentage of purchased capacity in their resource mix? If the latter, what is the appropriate threshold for eligibility? Should the utility have the discretion to utilize a timely cost recovery mechanism?
3. Should the rule provide for a utility's guaranteed dollar-for-dollar recovery of purchased capacity costs or only for an opportunity by the utility to recover such costs plus a reasonable return as stated in PURA §36.051? If the former, what is the appropriate mechanism for truing-up the cost recovery and how should the commission reflect in the utility's authorized return on equity and/or authorized cost of capital the resulting reduction in the utility's financial risk?
4. If the rule provides for dollar-for-dollar recovery of purchased capacity contract costs, what provisions, if any, should it include to maintain a utility's incentive to procure economically efficient power production to ensure just and reasonable rates?

5. Should the rule consider the effect of changes in production-related base-rate revenues attributable to load growth? If so, how?
6. Should the rule consider purchased power capacity costs currently recovered through base rates? If so, by what process?
7. How should the rule account for the costs of owned generation embedded in a utility's current base rates?
8. What is the appropriate treatment of the re-sale of electricity purchased through a purchased capacity contract?
9. Should the rule allow for cost recovery of capacity purchased from affiliates? If so, should such affiliate payments satisfy the requirements of PURA §36.058?
10. Should a rule authorizing a cost recovery mechanism for purchased capacity costs also establish the procedure for approval of the corresponding cost-recovery factors? If so, should the factors reflect contracts approved by procedures specified in the rule or should they be based on estimated expenses that are later trued-up in a reconciliation proceeding to actual expenses incurred and revenues collected?
11. Has this commission, or another state commission, previously implemented mechanisms for the timely recovery of capacity costs in retail rates that could provide guidance for the PUCT in considering the design of such a mechanism for non-ERCOT utilities? If so, please provide a detailed description and references.
12. Are there additional issues the purchased capacity recovery factor rule should address?

TRD-201101709

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 10, 2011



## Texas Department of Transportation

### Aviation Division - Request for Proposal for Professional Engineering Services

The City of Liberty, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below.

**Airport Sponsor:** City of Liberty, Liberty Municipal Airport. **TxDOT CSJ No.** 11ALLBRTY. **Scope:** Prepare an airport development plan which includes, but is not limited to information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to development, anticipated capital needs, financial considerations, marketing approves, management structure and options, as well as CAD files for the proposed development that will be added to an airport layout plan updated by agent. The airport development plan should be tailored to the individual needs of the airport.

The HUB goal is set at 0%. TxDOT Project Manager is Josephine Jarrell.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at <http://www.txdot.gov/business/projects/aviation.htm>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

**ATTENTION:** To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

**Please note:**

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than June 14, 2011, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Sheri Quinlan.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating consultants for airport planning projects can be found at <http://www.txdot.gov/business/projects/aviation.htm>. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Josephine Jarrell, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201101667

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: May 5, 2011



## How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: <http://www.sos.state.tx.us>. The *Register* is available in an .html version as well as a .pdf (portable document

format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

### TITLE 1. ADMINISTRATION

#### Part 4. Office of the Secretary of State

#### Chapter 91. Texas Register

40 TAC §3.704.....950 (P)