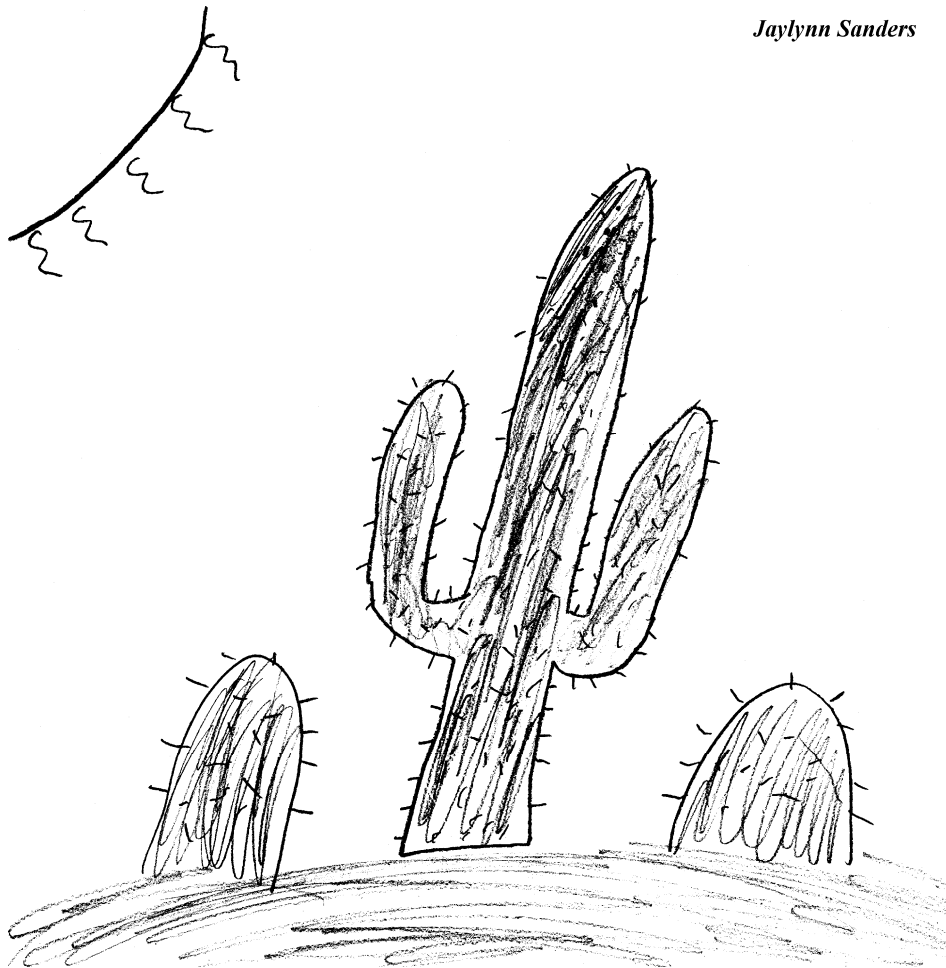

TEXAS REGISTER

Volume 36 Number 33

August 19, 2011

Pages 5141 – 5246

Jaylynn Sanders



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

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

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

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

TEXAS REGISTER

a section of the
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Open Meetings

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

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

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

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

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

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

<http://www.oag.state.tx.us/open/index.shtml>

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

Additional information about state government may be found here:

<http://www.texas.gov>

...

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

THE ATTORNEY GENERAL

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-0987-GA

Requestor:

The Honorable Eddie Lucio, Jr.

Chair, Committee on International Relations and Trade

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of the board of trustees of a junior college district to order a special election to fill a vacancy in a single-member district (RQ-0987-GA)

Briefs requested by September 1, 2011

RQ-0988-GA

Requestor:

The Honorable Susan Combs

Texas Comptroller of Public Accounts

Post Office Box 13528

Austin, Texas 78711-3528

Re: Whether section 74.501 of the Property Code prohibits the Comptroller from making direct payments of unclaimed property proceeds to certain persons (RQ-0988-GA)

Briefs requested by September 5, 2011

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

TRD-201103050

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: August 9, 2011

Opinions

Opinion No. GA-0870

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Authority of a county judge to order a municipal recall election (RQ-0945-GA)

S U M M A R Y

Texas law does not authorize a county judge to order a municipal recall election. We believe that a city charter provision imposing a duty upon a county judge to perform an act that the county judge has no authority under Texas law to perform is inherently inconsistent with Texas law and unenforceable.

We advise you that appellate courts have determined that similar municipal charter provisions impose upon a city council the ministerial duty, subject to compulsion by mandamus, to order the recall election.

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

TRD-201103049

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Filed: August 9, 2011

EMERGENCY RULES

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

TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 187. PROCEDURAL RULES

SUBCHAPTER I. PROCEEDINGS FOR CEASE AND DESIST ORDERS

22 TAC §187.83

The Texas Medical Board is renewing the effectiveness of the emergency adoption of the amendment to §187.83, for a 60-day period. The text of the amended section was originally published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2639).

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102921

Mari Robinson, J.D.

Executive Director

Texas Medical Board

Original effective date: April 18, 2011

Expiration date: October 14, 2011

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



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.17

The Texas Real Estate Commission (TREC) adopts, on an emergency basis, amendments to §535.17, concerning Appraisals. The amendments are adopted, on an emergency basis, to implement the relevant provisions of Senate Bill 747 (SB 747), 82nd Session, Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendments, on an emergency basis, is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101.002 to delete appraisals from the laundry list of activities that are considered real estate brokerage. In addition SB 747 added a new item to the list regarding broker price opinions.

The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103

to conduct real estate appraisals. Further the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101 of the Texas Occupations Code, the opinion must provide a written disclosure as provided in the rule.

The amendments are adopted, on an emergency basis, under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by the emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§535.17. Broker Price Opinion or Comparative Market Analysis [Appraisals].

(a) A real estate licensee may not perform an appraisal of real property unless the licensee is licensed or certified under Texas Occupations Code, Chapter 1103.

(b) ~~[(a)]~~ [Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed.] If a real estate licensee~~;~~ for a separate fee,] provides a broker price ~~[an]~~ opinion ~~[of value]~~ or comparative market analysis under §1101.002(1)(A)(xi) of the Act, ~~[which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation,]~~ the licensee shall also provide the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS A BROKER PRICE ~~[AN]~~ OPINION ~~[OF VALUE]~~ OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."

(c) ~~[(b)]~~ The statement required by subsection (b) ~~[(a)]~~ of this section must be made part of any written opinion or analysis report and must be reproduced verbatim.

~~[(c)]~~ The exception allowed by subsection (a) of this section does not apply to a transaction in which the Resolution Trust Corporation or a federal financial institutions regulatory agency has required compliance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.]

(d) A salesperson may prepare, sign, and present a broker price opinion or comparative market analysis ~~[real estate appraisals]~~ for the salesperson's sponsoring broker, but the salesperson must submit the broker price opinion or comparative market analysis ~~[appraisals]~~ in the broker's name and the broker is responsible for it ~~[the appraisals]~~.

~~{(e) The Act does not apply to appraisals performed by the employees of a financial institution or investment firm in connection with a contemplated loan or investment by their employers.}~~

This agency hereby certifies that the emergency adoption 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 August 5, 2011.

TRD-201102991

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: September 1, 2011

Expiration date: December 29, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

22 TAC §535.31

The Texas Real Estate Commission (TREC) adopts, on an emergency basis, amendments to §535.31, concerning Attorneys at Law. The amendments are adopted, on an emergency basis, to implement the relevant provisions of Senate Bill 747 (SB 747), 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendments, on an emergency basis, is necessary to comply with the effective date of the bill. In part, SB 747 amends Texas Occupations Code, §1101.005 regarding an exemption for attorneys. The amendments now exempt attorneys licensed in the State of Texas; it previously applied to attorneys licensed in any state.

The amendments to §535.31 clarify that the exemption only applies to attorneys licensed in the State of Texas.

The amendments are adopted, on an emergency basis, under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by the emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§535.31. Attorneys at Law.

An [A licensed] attorney licensed in this state is exempt from the requirements of the Act but cannot sponsor real estate salespersons or serve as the designated officer or manager of a licensed corporation or limited liability company, or designated partner of a partnership unless the attorney is also licensed as a real estate broker. This provision is not a waiver of the standards of eligibility and qualification elsewhere established in the Act.

This agency hereby certifies that the emergency adoption 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 August 5, 2011.

TRD-201102992

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: September 1, 2011

Expiration date: December 29, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §§535.50, 535.51, 535.53

The Texas Real Estate Commission (TREC) adopts, on an emergency basis, amendments to §535.50, concerning Definitions; §535.51, concerning General Requirements for a License; and §535.53, concerning Corporations and Limited Liability Companies. The amendments are adopted, on an emergency basis, to implement the relevant provisions of Senate Bill 747 (SB 747), 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendments, on an emergency basis, is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for business entities were changed in Texas Occupations Code, §1101.355 and §1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 of the Texas Occupations Code to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in §1.002 of the Business Organizations Code. Emergency action is necessary to amend §§535.50, 535.51, and 535.53 to be consistent with SB 747.

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity and to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership. The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination. The amendments to §535.53 change the title of the section to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.

The amendments are adopted, on an emergency basis, under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§535.50. *Definitions.*

The following words and terms, when used in Subchapter E, F or G of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(4) Designated broker--An individual holding an active Texas real estate broker license designated by a business entity licensed by the commission to act on its behalf. The designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership.

(5) [(4)] Distance learning course--A correspondence course, alternative delivery method course or course offered through video presentation.

(6) [(5)] Elective credits--The hours of mandatory continuing education required to renew a license for which a specific course is not required.

(7) [(6)] Hour--Fifty minutes of actual session time.

(8) [(7)] Instructor--A person approved by the Texas Real Estate Commission to teach core or mandatory continuing education courses.

(9) [(8)] MCE--Mandatory Continuing Education.

(10) [(9)] Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the commission.

(11) [(10)] Provider--Any person offering a course for which credit may be granted by the Commission to a licensee or applicant, regardless of whether the Commission must approve or certify the person to offer the course.

(12) [(11)] Related course--A course determined to be acceptable by the commission to count towards related credit. The commission will periodically publish lists of acceptable real estate related courses.

(13) [(12)] Required legal course or legal credits--The required legal update or legal ethics courses or credits earned for attending such courses.

(14) [(13)] Required legal ethics course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(15) [(14)] Required legal update course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(16) [(15)] School--A person accredited by the Texas Real Estate Commission to offer courses for which core credit is given.

(17) [(16)] Student--An individual taking a core or MCE course for TREC credit.

§535.51. *General Requirements for a License.*

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

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy a current education, ~~experience or [requirement or an]~~ examination requirement within one year ~~[six months]~~ from the date the application is filed;

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

(e) An applicant must complete relevant education and experience requirements before the applicant is eligible to take a qualifying examination for a license.

§535.53. *Business Entities [Corporations and Limited Liability Companies].*

(a) For the purposes of qualifying for, maintaining, or renewing a license, a business entity ~~[corporation or limited liability company]~~ must designate a broker ~~[one individual holding an active Texas real estate broker license]~~ to act for it. ~~[The designated broker must be an officer of the corporation or a manager of a limited liability company.]~~ The business entity ~~[corporation or limited liability company]~~ may not act as a broker during any period in which it does ~~[has]~~ not have a designated broker ~~[a person]~~ to act for it who meets the requirements of the Act. Upon any change in the business entity's ~~[corporation or limited liability company's]~~ designated broker ~~[individual]~~, the entity ~~[corporation or limited liability company]~~ must provide proof to the commission of the designated broker's ~~[individual's]~~ current status as an officer, ~~[or]~~ manager or general partner for that entity and proof that the business entity maintains appropriate errors and omissions insurance if the designated broker owns less than 10 percent of the entity. A broker may not act as a designated broker ~~[person]~~ at any time while the broker's license is inactive, expired, suspended or revoked.

(b) Section 1101.355 of the Act applies only to business entities ~~[corporations or limited liability companies]~~ which are created under the laws of this state, provided, however, that a business entity ~~[corporation or limited liability company]~~ formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of this section if it is qualified to do business in Texas; its officers, ~~[or]~~ managers, or general partner, its principal place of business and all of its assets are located in Texas; and all of its officers, ~~[and]~~ directors, or managers, ~~[and]~~ members and partners are Texas residents.

(c) (No change.)

This agency hereby certifies that the emergency adoption 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 August 5, 2011.

TRD-201102993

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: September 1, 2011

Expiration date: December 29, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER I. LICENSES

22 TAC §535.93

The Texas Real Estate Commission (TREC) adopts, on an emergency basis, amendments to §535.93, regarding Late Renewal Applications. The amendments are adopted, on an emergency basis, to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the

effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101.451 to change the maximum period of time in which a licensee can file a late renewal from one year to six months. The amendments to §535.93 change to six months any references to the one year period for filing a late renewal.

The amendments are adopted, on an emergency basis, under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by the emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§535.93. Late Renewal Applications.

(a) A licensee who files a late application to renew a previous license less than ~~six months~~ ~~[one year]~~ after the expiration of the license must do so on a form approved by the commission for that purpose and is subject to the requirements of this section and Tex. Occ. Code §1101.451(e). The commission shall renew the license in an active status except as provided by this section. A license issued under this section is effective the day following the expiration of the previous license.

(b) - (c) (No change.)

(d) If a licensee who has not completed all MCE before the expiration of the previous license files a late application to renew the license in an active status more than 60 days but less than six months ~~[one year]~~ from the expiration of the license, the licensee must:

(1) - (4) (No change.)

(e) - (g) (No change.)

This agency hereby certifies that the emergency adoption 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 August 5, 2011.

TRD-201102994

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: September 1, 2011

Expiration date: December 29, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC) adopts, on an emergency basis, amendments to §535.101, regarding Fees. The amendments are adopted, on an emergency basis, to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amended Texas Occupations Code, §1101.451 to change the maximum period of time in which a licensee can file a late renewal from one year to six months. The

amendments to §535.101 change to six months the reference to the one year period for filing a late renewal in subsection (b)(11).

The amendments are adopted, on an emergency basis, under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by the emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§535.101. Fees.

(a) (No change.)

(b) The commission shall charge and collect the following fees:

(1) - (11) (No change.)

(12) a fee of \$25 for the filing of ~~[an application for]~~ a moral character determination;

(13) - (14) (No change.)

(15) a fee of \$68 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months ~~[one year]~~;

(16) - (18) (No change.)

(c) (No change.)

This agency hereby certifies that the emergency adoption 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 August 5, 2011.

TRD-201102995

Loretta R. DeHay

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Texas Real Estate Commission

Effective date: September 1, 2011

Expiration date: December 29, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER M. NONRESIDENTS

22 TAC §535.132

The Texas Real Estate Commission (TREC) adopts, on an emergency basis, amendments to §535.132, regarding Eligibility for Licensure. The amendments are adopted, on an emergency basis, to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in §1.002 of the Business Organizations Code. Emergency action is necessary to amend §535.132 to be consistent with SB 747.

The amendment to §535.132 makes emergency conforming changes to be consistent with the statutory text amended by SB 747.

The amendments are adopted, on an emergency basis, under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by the emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§535.132. Eligibility for Licensure.

(a) (No change.)

(b) A business entity [~~limited liability company~~] created or chartered under the laws of another state [~~or a corporation chartered in a state other than Texas~~] may apply for a Texas real estate broker license if the entity meets one of the following requirements.

(1) (No change.)

(2) The entity is licensed as a broker in a state in which it is permitted to engage in real estate brokerage business as a foreign business entity [~~limited liability company or corporation~~].

(3) The entity was created or chartered in a state that does not license business entities [~~limited liability companies or corporations~~], as the case may be, and the entity is lawfully engaged in the practice of real estate brokerage in another state and meets all other requirements for applications for a license in Texas.

(c) (No change.)

(d) To be eligible to receive a license and maintain an active license, a business entity [~~limited liability company or corporation~~] created or chartered in another state must designate a person to act for it who meets the requirements of §1101.453 of the Act, although the designated broker [~~person~~] is not required to be a resident of Texas. Foreign business entities [~~corporations and limited liability companies~~] also must be permitted to engage in business in this state to receive a Texas real estate broker license.

This agency hereby certifies that the emergency adoption 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 August 5, 2011.

TRD-201102996

Loretta R. DeHay

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Texas Real Estate Commission

Effective date: September 1, 2011

Expiration date: December 29, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.141

The Texas Real Estate Commission (TREC) adopts, on an emergency basis, amendments to §535.141, regarding Initiation of

Investigation. The amendments are adopted, on an emergency basis, to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The effective date of the relevant provisions of SB 747 is September 1, 2011. The adoption of the amendment is necessary to comply with the effective date of the bill. In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in §1.002 of the Business Organizations Code. Emergency action is necessary to amend §535.141 to be consistent with SB 747.

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101, and to make conforming changes to the rule to be consistent with other rules that have been adopted on an emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747.

The amendments are adopted, on an emergency basis, under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by the emergency amendments is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the emergency amendments.

§535.141. Initiation of Investigation.

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

(d) The designated broker [~~designated by a licensed business entity to act as its officer, manager or partner~~] is responsible for all real estate brokerage activities performed by, on behalf of, or through a [the] business entity. A complaint which names a business entity licensed as a broker as the subject of the complaint but which does not specifically name the designated broker [~~designated as the officer, manager or partner of the business entity,~~] is a complaint against the designated broker [~~acting as the designated officer, manager or partner~~] at the time of any alleged violation for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities. A complaint which names a salesperson sponsored by a licensed business entity but which does not specifically name the designated broker of the business entity is a complaint against the designated broker at the time of any alleged violation by the salesperson for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the salesperson as an agent of the business entity.

(e) - (h) (No change.)

(i) A person whose license is subject to an order suspending the license must prior to the suspension taking effect:

(1) (No change.)

(2) if the person is a broker, notify in writing any salespersons he or she sponsors, or any business entity [~~corporation, limited liability company or partnership~~] for which the person is designated broker [~~as an officer, manager or partner~~] that:

(A) (No change.)

(B) once the suspension is effective any salesperson he or she sponsors or who is sponsored by the business entity [~~corporation, limited liability company or partnership~~] will not be authorized to engage in real estate brokerage unless the salespersons associate with another broker and file a change of sponsorship with the commission or the business entity designates a new broker and files a change of designated broker [~~officer, manager or partner~~] with the commission;

(3) - (7) (No change.)

(j) - (k) (No change.)

This agency hereby certifies that the emergency adoption 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 August 5, 2011.

TRD-201102997

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: September 1, 2011

Expiration date: December 29, 2011

For further information, please call: (512) 936-3092



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 75. AUTOMOBILE CLUB

The Office of the Secretary of State proposes to repeal §§75.1, 75.2, 75.10 - 75.13, 75.21, 75.31 - 75.34, 75.41, and 75.42; and simultaneously proposes new §§75.1 - 75.4, 75.10 - 75.12, and 75.20, concerning automobile clubs. Existing Chapter 75 will be repealed in its entirety and replaced with new sections that reorganize the chapter; remove redundant and repetitious provisions contained in statute or forms; clarify certain procedures; and reference the Secretary of State's website.

SECTION-BY-SECTION SUMMARY

Proposed new §75.1, relating to registration and renewal of automobile clubs, replaces current §75.1, relating to the same subject matter. Proposed new §75.1 sets forth the registration and renewal requirements to conform to §722.004 of the Transportation Code; specifies additional documentation required to complete the application for a certificate of authority; establishes a time for renewal; and sets forth requirements for applicants other than corporations.

Proposed new §75.2 replaces current §75.2 and sets forth the requirements for proof of security.

Proposed new §75.3 replaces current §§75.31, 75.32, 75.34, 75.41(d), and 75.42 relating to the denial, suspension, and revocation of certificate of authority.

Proposed new §75.4 replaces current §75.33 relating to notice of all hearings and final actions.

Proposed new §75.10 sets forth the procedures for the registration and renewal requirements of an automobile club agent, in order to provide to the Secretary of State satisfactory proof that the agent is of good moral character.

Proposed new §75.11 replaces current §75.12 relating to notice of termination of any agent's employment by an automobile club.

Proposed new §75.12 replaces current §75.10 and clarifies exemption from agent registration requirements.

Proposed new §75.20 provides the internet location of Secretary of State forms developed for all required filings.

FISCAL NOTE

Michael J. Powell, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the repeals and new sections are in effect there will be no fiscal implications to state

or local governments as a result of enforcing or administering the proposal.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Mr. Powell has determined that, for each year of the first five years the repeals and new sections are in effect, the public benefit is to provide an accurate, more detailed and clearer understanding of the policies and procedures for filing automobile club and automobile club agent registrations and renewals with the Office of the Secretary of State. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposal.

COMMENTS

Comments on the proposed repeals and new sections may be submitted in writing to: Michael J. Powell, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, September 19, 2011.

SUBCHAPTER A. APPLICATION FOR CERTIFICATE OF AUTHORITY

1 TAC §75.1, §75.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory authority: The repeals are proposed under the authority of Transportation Code, §722.004.

Cross reference to statute: Transportation Code, Chapter 722, is affected by the proposed repeals.

§75.1. *Application.*

§75.2. *Annual Renewal Required.*

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 August 8, 2011.

TRD-201103011

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER B. REGISTRATION OF AGENTS

1 TAC §§75.10 - 75.13

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory authority: The repeals are proposed under the authority of Transportation Code, §722.004.

Cross reference to statute: Transportation Code, Chapter 722, is affected by the proposed repeals.

§75.10. *Exemption from Registration.*

§75.11. *Notification of Appointment and Application To Act as an Automobile Club Agent.*

§75.12. *Termination of Employment.*

§75.13. *Fee and Renewal.*

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 August 8, 2011.

TRD-201103012

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER C. AUTOMOBILE CLUB SERVICES

1 TAC §75.21

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

Statutory authority: The repeal is proposed under the authority of Transportation Code, §722.004.

Cross reference to statute: Transportation Code, Chapter 722, is affected by the proposed repeal.

§75.21. *Services an Automobile Club May Provide.*

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 August 8, 2011.

TRD-201103013

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER D. REVOCATION AND SUSPENSION OF CERTIFICATE

1 TAC §§75.31 - 75.34

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory authority: The repeals are proposed under the authority of Transportation Code, §722.004.

Cross reference to statute: Transportation Code, Chapter 722, is affected by the proposed repeals.

§75.31. *Revocation of Certificate of Authority.*

§75.32. *Good Cause.*

§75.33. *Notice.*

§75.34. *Hearing.*

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

Filed with the Office of the Secretary of State on August 8, 2011.

TRD-201103014

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER E. TIME PERIODS

1 TAC §75.41, §75.42

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory authority: The repeals are proposed under the authority of Transportation Code, §722.004.

Cross reference to statute: Transportation Code, Chapter 722, is affected by the proposed repeals.

§75.41. *Processing Permits for Automobile Clubs.*

§75.42. *Time Period for Conducting Contested Case Hearings.*

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

Filed with the Office of the Secretary of State on August 8, 2011.

TRD-201103015

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER A. AUTHORITY TO ACT AS AN AUTOMOBILE CLUB

1 TAC §§75.1 - 75.4

Statutory authority: The new sections are proposed under the authority of Transportation Code, §722.004.

Cross reference to statute: Transportation Code, Chapter 722, is affected by the proposed new sections.

§75.1. Certificate of Authority and Renewal.

(a) Section 722.003 of the Texas Transportation Code provides that a person must obtain a certificate of authority from the Secretary of State prior to engaging in business as an automobile club.

(b) The application for certificate of authority must include the following information:

- (1) the name of the automobile club;
- (2) the name, telephone number and fax number of the person at the automobile club that will serve as the contact;
- (3) the principal business address and office address, if different, of the automobile club;
- (4) a statement of whether or not the automobile club is organized as a corporation, limited liability company, or limited partnership; and
- (5) a statement of whether or not the automobile club provides participation in a group accidental injury or death policy.

(c) Attached to the application for certificate of authority must be the following.

(1) Corporations must provide a certificate of status from the Secretary of State showing the entity is "in existence."

(2) Applicants, other than corporations, must attach to the application:

(A) a list containing the name and address of each person holding an ownership interest in the applicant and each officer of the applicant automobile club; and

(B) a copy of any operating or management agreement affecting the club, including a list of each party to the agreement.

(3) All applicants must provide the Secretary of State with proof of a \$25,000 security in compliance with §75.2 of this chapter (relating to Security Requirements) and §722.005 of the Texas Transportation Code.

(4) All applicants must provide a certified copy of any service contract plan that is offered to its members; however, upon renewal, only new service contract plans or changes to previously submitted contract plans must be provided.

(5) Any applicant offering participation in a group accidental injury or death policy must provide a copy of the certificate of participation.

(d) As a condition of filing the application for certificate of authority, automobile clubs organized as a corporation, limited liability company or limited partnership must be "in existence" with the Secretary of State at the time the application is submitted.

(e) The application for certificate of authority expires annually on August 31, unless sooner revoked or suspended. Renewals may be submitted 90 days prior to expiration using the same form and in the same manner as if submitting an original application for certificate of

authority. If a renewal is not filed by the Secretary of State on or before August 31, the certificate of authority will expire and a new application must be filed.

(f) Each application or renewal shall be signed and sworn to before a notary public or other person authorized to administer oaths by or on behalf of the club president or other principal club officer.

§75.2. Security Requirements.

The Secretary of State will accept as proof of the required security only:

(1) a certified check or money order made payable to the Secretary of State;

(2) a bond payable to the state that complies with §722.005(a)(3) of the Texas Transportation Code; or

(3) a certificate of deposit. If the applicant provides a certificate of deposit, a copy of the document, issued by the financial institution evidencing the existence of the certificate of deposit must be filed along with an executed assignment on the form prescribed by the Secretary of State.

§75.3. Denial, Suspension, and Revocation of Certificate of Authority.

(a) The Secretary of State may deny an application for certificate of authority that does not comply with §75.1 of this chapter (relating to Certificate of Authority and Renewal) and §722.004 of the Texas Transportation Code.

(b) The Secretary of State may, at any time, proceed to revoke or suspend an automobile club's certificate of authority for good cause, as defined by §722.008 of the Texas Transportation Code.

(c) Denial, suspension and revocation will be held pursuant to the right of notice, hearing, and adjudication as set out in this chapter, the rules of practice and procedure before the Office of the Secretary of State, the rules of the State Office of Administrative Hearings and the Administrative Procedure Act, Government Code, §§2001.001 - 2001.902. Any party to a contested case has the right to be represented by legal counsel. Such action will be subject to the right of appeal to a district court of Travis County.

§75.4. Notice.

Notice of all hearings and final actions regarding the revocation or suspension of an automobile club's certificate of authority will be posted on the Secretary of State website and in the *Texas Register*, In Addition section.

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

Filed with the Office of the Secretary of State on August 8, 2011.

TRD-201103016

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER B. AGENT REGISTRATION AND RENEWAL

1 TAC §§75.10 - 75.12

Statutory authority: The new sections are proposed under the authority of Transportation Code, §722.004.

Cross reference to statute: Transportation Code, Chapter 722, is affected by the proposed new sections.

§75.10. Registration to Act as an Automobile Club Agent and Renewal.

(a) Within 30 days of the date of employment of an agent by an automobile club to sell memberships in the automobile club, the automobile club shall submit to the Secretary of State a notice of appointment of each agent.

(b) The registration for appointment of an automobile agent ("agent registration") shall include the following information:

(1) the name of the automobile club; and

(2) the full legal name, address, date of birth, social security number and gender of the agent.

(c) Attached to the agent registration, the automobile club shall provide to the Secretary of State satisfactory proof that the agent is of good moral character.

(1) The Secretary of State shall accept as satisfactory proof only:

(A) a statement of whether or not the agent has ever been convicted of a felony or misdemeanor; and

(B) an affidavit executed by an authorized representative of the automobile club that a criminal history report has been run on the agent and all convictions have been disclosed to the Secretary of State on the agent registration.

(2) If the applicant does have a conviction, information about each conviction, including the nature of the offense, the final disposition, and the circumstances surrounding the offense must be provided.

(3) The Secretary of State will consider the mitigating factors set forth in Texas Occupations Code §53.022, §53.023 in determining whether the agent is of good moral character. The applicant has the burden of submitting any supporting documentation with the agent registration.

(4) The Secretary of State reserves the right to conduct its own background check or request additional information necessary to reach a satisfactory determination regarding the moral character of the agent.

(d) The agent registration shall be executed by an authorized representative of the automobile club.

(e) The Secretary of State shall reject any agent registration that does not meet the requirements of §722.011 of the Texas Transportation Code and this section.

(f) The agent registration is valid for one year. Renewals may be submitted 90 days before expiration using the same form and in the same manner as if submitting an initial agent registration, provided that the agent registration renewal does not precede the renewal of the automobile club's certificate of authority. If a renewal is not filed by the Secretary of State on or before the expiration date, the agent registration will expire and a new registration must be filed.

(g) The Secretary of State shall make a determination regarding the moral character of an automobile agent on a renewal according to the same standards as set forth above for initial agent registration. The Secretary of State is not bound by prior determinations.

§75.11. Termination of Employment as an Automobile Agent.

An automobile club must file an agent termination notice with the Secretary of State within 30 days of the termination of any agent's employment.

§75.12. Exemption from Registration.

(a) The agent registration requirements in §75.10 of this chapter (relating to Registration to Act as an Automobile Club Agent and Renewal) apply only to individuals selling automobile club memberships as employees of the automobile club or as independent contractors authorized by the automobile club to sell memberships in the club to the public.

(b) Notwithstanding subsection (a) of this section, Chapter 722 of the Texas Transportation Code does not require agent registration by individuals employed by persons not engaged in business as an automobile club, even though the person may solicit or aid in the solicitation of a service contract or membership issued by an automobile club as an ancillary 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 August 8, 2011.

TRD-201103017

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER C. FORMS

1 TAC §75.20

Statutory authority: The new section is proposed under the authority of Transportation Code, §722.004.

Cross reference to statute: Transportation Code, Chapter 722, is affected by the proposed new section.

§75.20. Forms.

The Secretary of State provides forms that may be used for all required filings with this office under Chapter 722 of the Texas Transportation Code. The forms may be obtained on the Secretary of State web site at <http://www.sos.state.tx.us/statdoc/statforms.shtml> or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550.

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 August 8, 2011.

TRD-201103018

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



CHAPTER 78. ATHLETE AGENTS

The Office of the Secretary of State proposes to repeal §§78.1, 78.13, 78.21, 78.31 - 78.33, 78.50, 78.51, 78.53, and 78.60; and proposes new §§78.1 - 78.10, 78.51 - 78.53, 78.101 - 78.103, 78.151 - 78.154, 78.201, and 78.202, concerning athlete agents. The repeal and replacement of Chapter 78 will reorganize the sections to conform to statutory revisions to the Occupations Code, Chapter 2051, enacted by the 82nd Legislature, Regular Session, in House Bill 1123, effective September 1, 2011 (hereinafter referred to as "HB 1123").

SECTION-BY-SECTION SUMMARY

Proposed new §78.1, relating to registration and renewal of athlete agents, replaces current §78.1, relating to the same subject matter. New §78.1 modifies the registration and renewal requirements to conform to HB 1123, requires additional documentation for disclosures under Occupations Code, §2051.102(b)(3), establishes a time for renewal, clarifies the meaning of "date of issuance" of a registration to conform with practice, and adds a definition of "crime of moral turpitude." Use of an application from another state, addressed in current §78.1, was removed from proposed new §78.1 and added as proposed new §78.2.

Proposed new §78.2 replaces current §78.1(d) and adds requirements relating to HB 1123.

Proposed new §78.3 clarifies how an athlete agent registration may be surrendered. The proposed section also clarifies that the Secretary of State may cancel a registration if the Secretary of State obtains information that the agent has become incapacitated or is deceased.

Proposed new §78.4 clarifies how an athlete agent registration may be amended. The proposed section also provides for conversion from a professional registration to a limited registration and vice versa.

Proposed new §78.5 addresses the effect of decertification by a national professional sports association on a professional athlete agent registration. The proposed section provides the agent an opportunity to convert the professional registration to a limited registration in order to avoid revocation by the Secretary of State and addresses the circumstances under which an agent who has been decertified may submit a new application.

Proposed new §78.6 alerts agents that failure to comply with the continuing notification requirement of Occupations Code, §2051.109, HB 1123, may be grounds for disciplinary action.

Proposed new §78.7 defines "another professional" as that term is used in Occupations Code, §2051.005.

Proposed new §78.8 puts applicants for athlete agent registration on notice that the Secretary of State performs criminal background checks.

Proposed new §78.9 provides the internet location of Secretary of State forms developed for applicants, agents, and institutions of higher education.

Proposed new §78.10, relating to filing fees, replaces current §78.21. The proposed new section adjusts the registration and renewal fees to obtain a revenue-neutral outcome based on the removal of the entity registration in HB 1123. The adjustment to the registration and renewal fees also lowers the fee to reduce the economic impact of the removal of entity registration on Texas athlete agents. Proposed new §78.10 also provides a fee for amending a registration and no fee for surrendering or notifying the Secretary of State of a conviction or decertification

as required by Occupations Code, §2051.109, HB 1123. Finally, the proposed new section addresses refunds.

Proposed new §78.51 addresses the surety bond requirements of Occupations Code, §2051.151(a) and (a-1), HB 1123.

Proposed new §78.52 replaces current §78.31, relating to submission of an affidavit in lieu of obtaining a financial services bond.

Proposed new §78.53 clarifies the bond maintenance requirements of HB 1123 and provides the procedure for notifying the Secretary of State of bond depletion, cancellation, or revocation, and replacement.

Proposed new §78.101 replaces current §78.50, relating to contract filing, and notifies agents that failure to timely file contracts may result in administrative penalties or other disciplinary action.

Proposed new §78.102 replaces current §78.53(a) and addresses when a contract is considered filed.

Proposed new §78.103 replaces current §78.51, relating to contract form. The proposed new section considers HB 1123 and notifies agents that a contract's failure to conform to statutory and administrative requirements may result in administrative penalties or other disciplinary action.

Proposed new §78.151 replaces current §78.60, relating to administrative penalties. The proposed new section sets forth factors considered by the Secretary of State in calculating the amount of an administrative penalty and reflects statutory caps on penalties.

Proposed new §78.152 notifies agents of certain prohibited acts and examples of administrative penalties for first violations.

Proposed new §78.153 refers to Government Code, Chapter 573, Subchapter B, for guidance in determination of whether a relationship is within the second degree by affinity or consanguinity.

Proposed new §78.154 expressly notifies agents of the right to notice, hearing, and adjudication for contested cases as set out in the Administrative Procedure Act.

Proposed new §78.201 provides for the required contents of a designation of compliance coordinator submitted to the Secretary of State by an institution of higher education.

Proposed new §78.202 notifies institutions of higher education of an optional cover sheet for submission of implementation standards developed by the Secretary of State.

FISCAL NOTE

Michael J. Powell, Attorney in the Business and Public Filings Division of the Office of the Secretary of State, has determined that for each year of the first five years that the repeals and new sections are in effect there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposal.

PUBLIC BENEFIT AND SMALL BUSINESS COST NOTE

Mr. Powell has determined that for each year of the first five years the repeals and new sections are in effect the public benefit anticipated as a result of enforcing or administering the proposal will be clarification and guidance for athlete agents and institutions of higher education.

The proposed new sections decrease the registration fee from \$1,000 to \$500 in order to minimize the economic impact. There-

fore, it is anticipated that any effect on small or micro businesses would be a positive one. Similarly, the economic cost to persons seeking to register as athlete agents under the proposed new sections is lower than the cost under the current chapter. The proposed new sections impose no anticipated cost to institutions of higher education.

COMMENTS

Comments on the proposed repeals and new sections may be submitted in writing to: Michael J. Powell, Office of the Secretary of State, Corporations Section, P.O. Box 13697, Austin, Texas 78711-3697. Comments must be received not later than 12:00 noon, September 19, 2011.

SUBCHAPTER A. REGISTRATION

1 TAC §§78.1, 78.13, 78.21

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory authority: The repeals are proposed under the authority of Occupations Code, §§2051.051, 2051.102, and 2051.108.

Cross reference to statute: Occupations Code, Chapter 2051, is affected by the proposed repeals.

§78.1. *Registration and Renewal of Athlete Agents.*

§78.13. *Updates.*

§78.21. *Filing Fees.*

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 August 8, 2011.

TRD-201103023

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER B. SURETY BONDS AND AFFIDAVITS

1 TAC §§78.31 - 78.33

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory authority: The repeals are proposed under the authority of Occupations Code, §§2051.051, 2051.102, and 2051.108.

Cross reference to statute: Occupations Code, Chapter 2051, is affected by the proposed repeals.

§78.31. *Affidavit of Athlete Agent.*

§78.32. *Surety Bond for Financial Services Contract.*

§78.33. *Failure to Provide Bond or Affidavit.*

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 August 8, 2011.

TRD-201103024

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER C. CONTRACTS

1 TAC §78.50, §78.51

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory authority: The repeals are proposed under the authority of Occupations Code, §§2051.051, 2051.102, and 2051.108.

Cross reference to statute: Occupations Code, Chapter 2051, is affected by the proposed repeals.

§78.50. *Initial Filing Date.*

§78.51. *Contract Form.*

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 August 8, 2011.

TRD-201103025

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER D. ADMINISTRATIVE PENALTIES

1 TAC §78.53, §78.60

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Secretary of State, Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory authority: The repeals are proposed under the authority of Occupations Code, §§2051.051, 2051.102, and 2051.108.

Cross reference to statute: Occupations Code, Chapter 2051, is affected by the proposed repeals.

§78.53. *Late Contract Filings.*

§78.60. *Administrative Penalties.*

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 August 8, 2011.

TRD-201103026

Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: September 18, 2011
For further information, please call: (512) 463-5562



SUBCHAPTER A. REGISTRATION, FORMS, AND FEES

1 TAC §§78.1 - 78.10

Statutory authority: The new sections are proposed under the authority of §2051.051 of the Occupations Code, which provides that the Secretary of State may adopt rules necessary to administer the chapter and set reasonable and necessary fees for the administration of the chapter; §2051.102, which provides that a registration application must provide information required by the Secretary of State; and §2051.108(b)(3) (renumbered by HB 1123 as §2051.108(b)(4)), which provides that a renewal must contain any other information prescribed by the Secretary of State.

Cross reference to statute: Chapter 2051 of the Occupations Code is affected by the proposed new sections.

§78.1. Registration and Renewal of Athlete Agents.

(a) A complete application for registration or renewal is comprised of:

- (1) a completed application (See Forms 2501, 2505);
- (2) \$50,000 surety bond required by Occupations Code, §2051.151(a), and §78.51(a) of this chapter (relating to Required Surety Bonds) (See Form 2504);
- (3) \$100,000 financial services bond or affidavit, as required by Occupations Code, §2051.151(a-1), and §78.51 and §78.52 of this chapter (relating to Affidavit in Lieu of Financial Service Bond) (See Forms 2502, 2503);
- (4) supplement for each financially interested party (See Form 2506);
- (5) payment of the filing fee stated in §78.10 of this chapter (relating to Filing Fees); and
- (6) an applicant contact sheet (See Form 2507).

(b) Except as provided in §78.2 of this chapter (relating to Submission of Application from Other State), an application for registration shall be made on Form 2501. The application for registration must comply with Occupations Code, §2051.102, and also provide:

- (1) any trade names or entities under which the applicant will provide athlete agent services;
- (2) a list of all states in which the applicant is currently registered as an athlete agent; and
- (3) copies of documentation related to any disclosures under Occupations Code, §2051.102(b)(3), including a settlement agreement or final judgment or order.

(c) A current registration may be renewed not earlier than 60 days prior to expiration. Except as provided in §78.2 of this chapter, a renewal shall be made on Form 2505. The renewal must contain:

- (1) the applicant's:
 - (A) name;

(B) principal business address; and

(C) any trade names or entities under which the applicant will provide athlete agent services;

(2) the name, address and telephone number of each athlete for whom the athlete agent is performing professional services for compensation on the date of the renewal application;

(3) the name, address and telephone number of each athlete for whom the athlete agent has performed professional services for compensation during the three years immediately preceding the date of the renewal application but for whom the athlete agent is not performing professional services on the date of the renewal application;

(4) whether the applicant or a person described by paragraph (6) of this subsection has been subject to any of the following, if not previously disclosed to the Secretary of State on a prior application or renewal submitted by the applicant and filed by the Secretary of State, and copies of documentation related to any disclosures under this subsection, including a settlement agreement or final judgment or order:

(A) a conviction of a crime that in this state is a Class A or B misdemeanor, a felony or a crime of moral turpitude;

(B) an administrative or a judicial determination finding the applicant or other person made a false, misleading, deceptive, or fraudulent representation;

(C) a sanction or suspension related to occupational or professional conduct;

(D) a denial of an application for a certificate of registration or license as an athlete agent, in any jurisdiction other than Texas; or

(E) a denial, revocation, or suspension of a certificate of registration or license as an athlete agent, in any jurisdiction other than Texas;

(5) whether the applicant or a person described by paragraph (6) of this subsection has engaged in conduct resulting in the imposition on an athlete or educational institution of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event, if not previously disclosed to the Secretary of State on a prior application or renewal submitted by the applicant and filed by the Secretary of State;

(6) except as provided by paragraph (7) of this subsection, the name and address of each person, except a bona fide employee on salary, who is financially interested as a partner, associate, or profit sharer in the applicant's business;

(7) if an applicant is a member of the State Bar of Texas, the application information required under paragraph (6) of this subsection must include the name and address of each person who is involved in the activities of the athlete agent. This subsection does not require an applicant to state the name and address of a member of a law firm or professional corporation who is not involved in the business of the athlete agent;

(8) the name and address of each national professional sports association by which the athlete agent is currently certified; and

(9) a list of all states in which the applicant is currently registered as an athlete agent.

(d) Unless surrendered, cancelled, or revoked, a certificate of registration or renewal under Occupations Code, Chapter 2051, is valid for one year from the date of issuance. Date of issuance means the date

the Secretary of State finds the application for registration or renewal qualified for registration.

(e) When the application for registration or renewal is submitted but determined by the Secretary of State to be incomplete or not accompanied by any necessary supplemental application, affidavit or surety bond, the Secretary of State may issue a provisional registration or renewal certificate valid for not more than 90 days. The Secretary of State will not issue a provisional certificate if the filing fee for the application for registration or renewal has not been paid. If the deficiencies in the registration are cured within the time specified by the Secretary of State, the Secretary of State will issue a certificate of registration that relates back to the first date of receipt of the application for registration.

(f) A sanction or suspension related to occupational or professional conduct that is required to be disclosed in an application or renewal includes a sanction or suspension from a professional sports association.

(g) A crime involving moral turpitude means the commission of a crime involving dishonesty, fraud, deceit, misrepresentation, deliberate violence, or that reflects adversely on the applicant's honesty, trustworthiness, or fitness as an athlete agent. A Class C misdemeanor is not a crime involving moral turpitude.

§78.2. Submission of Application from Other State.

(a) An individual who holds a certificate of registration or license as an athlete agent in another state may submit a copy of the other state application and certificate or license instead of submitting the application or renewal required by this section if the application to the other state:

(1) was submitted to the other state not earlier than the 180th day before the date the application or renewal is submitted in this state and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than the information required by Occupations Code, Chapter 2051, and this chapter; and

(3) was signed by the applicant under penalty of perjury.

(b) Unless the other state application contains the information required by Occupations Code, Chapter 2051, and this chapter for a professional athlete agent registration, the other state application will be sufficient only for a limited athlete agent registration.

§78.3. Surrender or Cancellation of Registration.

(a) A current athlete agent registration may be surrendered at any time by written notice to the Secretary of State signed by the surrendering athlete agent.

(b) The Secretary of State may cancel an athlete agent registration if the Secretary of State obtains information that the agent has become incapacitated or is deceased.

§78.4. Amendment to Registration.

(a) An athlete agent registration may be amended to update information contained in the original registration.

(b) An agent registered as a limited athlete agent who becomes certified as an agent by a national professional sports association may amend the application to reflect the national professional sports association certification and convert the limited registration to a registration as a professional athlete agent. If such an amendment is filed, the professional registration would expire on the expiration date for the limited registration.

(c) A professional registration may be converted to a limited registration as stated in §78.5(a) of this chapter (relating to Effect of Decertification by National Professional Sports Association on a Professional Athlete Agent Registration).

§78.5. Effect of Decertification by National Professional Sports Association on a Professional Athlete Agent Registration.

(a) A professional athlete agent who is no longer certified by any professional sports association may amend the application to reflect the lack of national professional sports association certification(s) and convert the professional registration to a limited athlete agent registration. If such an amendment is filed, the limited registration would expire on the expiration date for the professional registration.

(b) If the registration of a professional athlete agent who is no longer certified by any professional sports association is not amended to be a limited athlete agent registration, the Secretary of State shall revoke the professional registration. The registration may be amended to be a limited athlete agent registration before or after notice of an opportunity for a hearing on the revocation.

(c) An agent whose professional athlete agent registration has been revoked under subsection (b) of this section may submit a new application for a professional athlete agent registration if the agent is recertified by the national professional sports association or if the agent obtains a certification from another national professional sports association.

§78.6. Continuing Notification Requirement.

(a) Occupations Code, §2051.109, requires a registered athlete agent to notify the Secretary of State in writing not later than 30 days after the date of the athlete agent's:

(1) conviction of a crime, regardless of where the conviction occurred, if in this state the crime would be an offense other than a Class C misdemeanor; or

(2) decertification as an agent by a national professional sports association that has become final by the conclusion of the appeal process provided by the association. See Form 2510.

(b) Failure to notify the Secretary of State as required by Occupations Code, §2051.109, may be grounds for disciplinary action.

§78.7. Exemptions from Registration for Certain Professional Services.

(a) In certain circumstances, Occupations Code, §2051.005, exempts from registration a person licensed or registered by the state as:

(1) a dealer, agent, investment adviser, or investment adviser representative;

(2) a real estate broker or salesperson;

(3) an insurance agent; or

(4) another professional.

(b) For purposes of this section, "another professional" means a person holding a license or registration issued by this state that authorizes the person to perform the type of financial services that the person is performing for the athlete.

§78.8. Background Checks.

The Secretary of State performs criminal background checks on each applicant for registration as an athlete agent and as otherwise deemed necessary. Processing of applications or renewals may be delayed as the result of evaluating any criminal activity revealed by the criminal background check.

§78.9. Forms.

Registration and other forms designed for the purposes of complying with Occupations Code, Chapter 2051, and this chapter are available on the Secretary of State web site at www.sos.state.tx.us/statdoc/stat-forms.shtml or may be obtained by writing the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. See Forms 2501 - 2509.

§78.10. Filing Fees.

(a) The filing fee for filing an application for registration as a professional or limited athlete agent is \$500.

(b) The filing fee for filing an application for renewal of registration as a professional or limited athlete agent is \$500.

(c) The filing fee for an amendment to a registration or renewal is \$25.

(d) There is no fee for notifying the Secretary of State of a conviction or decertification as required by Occupations Code, §2051.109.

(e) There is no fee for surrendering a current athlete agent registration.

(f) Filing fees are nonrefundable; no refund is available after a registration has been surrendered, cancelled, or revoked. Fees deposited for an application or renewal that has been finally denied will be refunded.

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 August 8, 2011.

TRD-201103027

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER B. SURETY BONDS AND AFFIDAVITS

1 TAC §§78.51 - 78.53

Statutory authority: The new sections are proposed under the authority of §2051.051 of the Occupations Code, which provides that the Secretary of State may adopt rules necessary to administer the chapter and set reasonable and necessary fees for the administration of the chapter; §2051.102, which provides that a registration application must provide information required by the Secretary of State; and §2051.108(b)(3) (renumbered by HB 1123 as §2051.108(b)(4)), which provides that a renewal must contain any other information prescribed by the Secretary of State.

Cross reference to statute: Chapter 2051 of the Occupations Code is affected by the proposed new sections.

§78.51. Required Surety Bonds.

(a) As a condition of registration, an athlete agent must deposit a surety bond with the Secretary of State in the amount of \$50,000 as required by Occupations Code, §2051.151(a). See Form 2504.

(b) As a condition of registration, an athlete agent providing financial services must deposit a surety bond with the Secretary of

State in the amount of \$100,000 as required by Occupations Code, §2051.151(a-1). See Form 2503.

(c) A surety bond deposited with the Secretary of State to satisfy subsection (a) or (b) of this section must conform to the Insurance Code and be issued by a surety company authorized to do business as a surety in this state.

§78.52. Affidavit in Lieu of Financial Service Bond.

(a) As a condition of registration, an athlete agent who does not intend to enter into financial services contracts with athletes and chooses not to obtain the financial services bond required by Occupations Code, §2051.151(a-1), and §78.51(b) of this chapter (relating to Required Surety Bonds) must submit to the Secretary of State an affidavit affirming that the agent has not entered into a financial services contract and has not provided financial services to an athlete, nor does the agent intend to. See Form 2502.

(b) If circumstances change, and the agent chooses to enter a financial services contract with an athlete, the agent must first deposit with the Secretary of State the bond required by Occupations Code, §2051.151(a-1), and §78.51(b) of this chapter.

§78.53. Maintenance of Bond.

(a) A bond filed under Occupations Code, Chapter 2051, and this chapter must be maintained for the duration of the registration term plus not less than two years after the later of:

(1) the date that the athlete agent ceases to provide financial services to an athlete; or

(2) the date that the athlete agent's certificate of registration terminates through expiration, surrender, cancellation or revocation.

(b) Within thirty days of a bond being depleted, cancelled, or revoked, the agent must notify the Secretary of State in writing of the depletion, cancellation, or revocation and provide evidence that a replacement bond has been obtained or shall be subject to suspension pursuant to Occupations Code, §2051.152.

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 August 8, 2011.

TRD-201103028

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER C. CONTRACTS

1 TAC §§78.101 - 78.103

Statutory authority: The new sections are proposed under the authority of §2051.051 of the Occupations Code, which provides that the Secretary of State may adopt rules necessary to administer the chapter and set reasonable and necessary fees for the administration of the chapter; §2051.102, which provides that a registration application must provide information required by the Secretary of State; and §2051.108(b)(3) (renumbered by HB 1123 as §2051.108(b)(4)), which provides that a renewal must contain any other information prescribed by the Secretary of State.

Cross reference to statute: Chapter 2051 of the Occupations Code is affected by the proposed new sections.

§78.101. Filing Required.

Each registered athlete agent shall file with the Secretary of State a copy of each agent contract and/or financial services contract entered into with an athlete by the athlete agent no later than the tenth day after the date the contract is signed by the athlete. Failure to timely file a contract is a violation of Occupations Code, Chapter 2051, and may subject the agent to administrative penalties or other disciplinary actions as permitted under Occupations Code, Chapter 2051, and this chapter.

§78.102. Time of Filing Contract.

An athlete agent or financial services contract is deemed filed when it is properly addressed and placed in the United States Post Office or in the hands of a common or contract carrier or successfully transmitted by fax or by e-mail. The post office cancellation mark, the receipt mark of a common or contract carrier, a fax transmission report, or confirmation of receipt of e-mail is prima facie evidence of the date the contract was deposited with the post office or carrier or transmitted by fax or e-mail.

§78.103. Contract Form.

(a) The Secretary of State approves a contract form that meets the requirements of Occupations Code, Chapter 2051, including §2051.203 and §2051.204. To the extent practicable, the form for an agent contract or financial services contract must conform to the contract form approved by the national professional sports association for the sport in which the athlete will be represented. The Secretary of State will accept agent contracts on forms required by or approved by national professional sports associations provided that the contract meets the requirements of Occupations Code, Chapter 2051, including, as part of the body of the contract or in an addendum to the contract, the information related to fees and services required by §2051.203 and the disclosure statements required by §2051.204. The disclosure language required by §2051.204 must be reproduced in the contract without change.

(b) If a contract fails to contain the information stated in Occupations Code, §2051.203 or §2051.204, or this section, an athlete agent may be subject to administrative penalties and other disciplinary actions permitted by Occupations Code, Chapter 2051.

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 August 8, 2011.

TRD-201103029

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER D. ADMINISTRATIVE PENALTIES

1 TAC §§78.151 - 78.154

Statutory authority: The new sections are proposed under the authority of §2051.051 of the Occupations Code, which provides that the Secretary of State may adopt rules necessary to administer the chapter and set reasonable and necessary fees for the administration of the chapter; §2051.102, which provides that

a registration application must provide information required by the Secretary of State; and §2051.108(b)(3) (renumbered by HB 1123 as §2051.108(b)(4)), which provides that a renewal must contain any other information prescribed by the Secretary of State.

Cross reference to statute: Chapter 2051 of the Occupations Code is affected by the proposed new sections.

§78.151. Administrative Penalties.

(a) If the Secretary of State determines that a violation of Occupations Code, Chapter 2051, or this chapter has occurred and an administrative penalty is to be assessed, the following factors shall be considered by the Secretary of State in calculating the amount of the penalty:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act;
 - (2) the economic harm to the public's interest or confidence caused by the violation;
 - (3) the history of previous violations;
 - (4) the amount necessary to deter future violations;
 - (5) efforts to correct the violation;
 - (6) whether the violation was intentional or unintentional;
- and
- (7) any other matter that justice may require.

(b) For each violation, the Secretary of State may assess a penalty of not more than:

- (1) \$50,000 for a violation of Occupations Code, §2051.351(a)(7) or (14); or
- (2) \$25,000 for any other violation.

§78.152. Prohibited Acts.

The following acts are prohibited under Occupations Code, Chapter 2051, and this chapter. The associated penalties shown are examples only for first violations of possible penalties per violation that may be increased or decreased based on the factors listed in §78.151(a) of this chapter (relating to Administrative Penalties). This list of prohibited acts is not exclusive:

- (1) Acting or representing oneself as an athlete agent without being registered in violation of §2051.101, including negotiating a contract or participating in an interview program: \$2,500;
- (2) Acting as a professional athlete agent while holding a registration as a limited athlete agent: \$2,500;
- (3) Directly contacting an athlete or entering into an agent agreement with an athlete before completion of the athlete's last intercollegiate sports contest in violation of §2051.351(a)(8): \$2,500;
- (4) Offering a thing of value to an athlete or individual related to an athlete within the second degree by affinity or consanguinity to induce the athlete to enter into an agent contract before the athlete completes his or her last intercollegiate sports contest in violation of §2051.351(a)(6): \$2,500;
- (5) Furnishing a thing of value to an athlete or individual related to an athlete within the second degree by affinity or consanguinity before the athlete completes his or her last intercollegiate sports contest in violation of §2051.351(a)(7): \$5,000;
- (6) Furnishing a thing of value to one other than an athlete or other registered athlete agent to induce an athlete to enter an agent contract in violation of §2051.351(a)(9): \$2,500;

(7) Pre- or post-dating an agent contract in violation of §2051.351(a)(12): \$2,500 per contract;

(8) Failing to notify an athlete before the athlete signs an agent contract that may make the athlete ineligible to participate in intercollegiate sports in violation of §2051.351(a)(13): \$2,500;

(9) Entering into a referral contract with an employee of an institution of higher education in violation of §2051.351(a)(5): \$2,000;

(10) Publishing or causing to be published false, fraudulent, or misleading information or a false, fraudulent, or misleading representation, notice, or advertisement in violation of §2051.351(a)(1): \$1,500;

(11) Providing false information in violation of §2051.351(a)(2): \$1,500 per violation;

(12) Making a false promise or representation relating to employment in violation of §2051.351(a)(3): \$1,500;

(13) Initiating unauthorized contact in violation of §2051.351(a)(10), §2051.004: \$1,500;

(14) Dividing fees with or receiving compensation from a person exempt from registration, a professional sports league or franchise (including a representative or employee), or an institution of higher education (including a representative or employee of the athletics department) in violation of §2051.351(a)(4): \$1,500;

(15) Failing to retain records or permit inspection of records in violation of §2051.351(11), §2051.352: \$2,500;

(16) Committing or causing a person to commit on the agent's behalf an act that causes an athlete to violate a rule of the national association for the promotion and regulation of intercollegiate athletics of which the athlete's institution of higher education is a member in violation of §2051.351(a)(14): \$5,000;

(17) Failure to file bond before entering financial services contract in violation of §2051.151(a-1): \$1,500 (per registration year during which the agent engages in activity requiring a financial services bond);

(18) Failure to file contract in violation of §2051.205(a): \$500;

(19) Failure to disclose information required in registration in violation of §2051.102 or §78.1 of this chapter (relating to Registration and Renewal of Athlete Agents): \$1,000;

(20) Failure to disclose information required in renewal in violation of §2051.108 or §78.1 of this chapter: \$1,000;

(21) Failure to disclose name and address in advertising in violation of §2051.353: \$500;

(22) Executing a contract with an athlete that fails to comply with Chapter 2051 or this chapter: \$500;

(23) Failure to provide a copy of a contract to an institution of higher education in violation of §2051.205(a)(2): \$500;

(24) Failure to notify athletic director of contact initiated by an athlete or athlete's guardian in violation of §2051.351(c): \$500;

(25) Failure to notify the Secretary of State in writing not later than 30 days after the agent's conviction of a crime that is in this state an offense other than a Class C misdemeanor in violation of §2051.109: \$1,000; and

(26) Failure to notify the Secretary of State in writing of bond cancellation within 30 days in violation of §78.53(b) of this chapter (relating to Maintenance of Bond): \$500 per month.

§78.153. Definition: Within the Second Degree by Affinity or Consanguinity.

Whether a relationship is within the second degree by affinity or consanguinity is determined by the definitions found in Government Code, Chapter 573, Subchapter B.

§78.154. Right to Hearing.

Contested cases will be held pursuant to the right of notice, hearing, and adjudication as set out in the Administrative Procedure Act, Government Code, Chapter 2001, the rules of practice and procedure before the Office of the Secretary of State, 1 Texas Administrative Code Chapter 101, and the rules of the State Office of Administrative Hearings, 1 Texas Administrative Code Chapter 155. Any party to a contested case has the right to be represented by legal counsel. Such action will be subject to the right of appeal to a district court of Travis County.

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 August 8, 2011.

TRD-201103030

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



SUBCHAPTER E. INSTITUTIONS OF HIGHER EDUCATION

1 TAC §78.201, §78.202

Statutory authority: The new sections are proposed under the authority of §2051.051 of the Occupations Code, which provides that the Secretary of State may adopt rules necessary to administer the chapter and set reasonable and necessary fees for the administration of the chapter; §2051.102, which provides that a registration application must provide information required by the Secretary of State; and §2051.108(b)(3) (renumbered by HB 1123 as §2051.108(b)(4)), which provides that a renewal must contain any other information prescribed by the Secretary of State.

Cross reference to statute: Chapter 2051 of the Occupations Code is affected by the proposed new sections.

§78.201. Designation of Compliance Coordinator.

A designation of compliance coordinator submitted to the Secretary of State by an institution of higher education must include:

- (1) the name of the institution of higher education;
- (2) the name, address, and telephone number of the individual designated as compliance coordinator;
- (3) the signature, printed name, and title of an authorized representative for the institution of higher education; and
- (4) the date of execution. See Form 2508.

§78.202. Cover Sheet for Implementation Standards.

The Secretary of State has developed a form that may be used as a cover sheet for the submission of implementation standards required by Occupations Code, §2051.251 and §2051.252. See Form 2509.

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 August 8, 2011.

TRD-201103031

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-5562



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 13. CHEMICAL DEPENDENCY TREATMENT FACILITY SERVICES

1 TAC §355.8241

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8241, concerning the Medicaid reimbursement methodology for chemical dependency treatment facilities.

Background and Justification

The proposed amendment is the result of an HHSC initiative to update existing rules and remove outdated references. The amendment deletes references to the Texas Commission on Alcohol and Drug Abuse (TCADA) because on September 1, 2004, TCADA became a part of the Texas Department of State Health Services. In addition, the amendment replaces an obsolete reimbursement methodology with a revised reimbursement methodology that reflects current rate determination practices.

Section-by-Section Summary

The rule title is changed from "Reimbursement" to "Reimbursement Methodology for Chemical Dependency Treatment Facilities."

Subsection (a) is amended by replacing the reference to "department or its designee" with "Health and Human Services Commission (HHSC)." The amendment proposes to replace "treatment facility" with "chemical dependency treatment facility (CDTF)."

Subsection (b) is deleted and replaced with new subsection (b), which specifies that CDTFs must be enrolled in Medicaid and bill for services provided by the facility. Services provided by other Medicaid providers will be reimbursed directly to those providers.

Subsection (c) is added to indicate that HHSC will conduct periodic rate reviews and update fee schedules as needed. The subsection also describes the methodology that will be used to review and adjust rates.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed rule amendment is in effect there will be no fiscal im-

pact to state government. The amendment will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro-businesses as a result of enforcing or administering the proposed rule amendment. Providers will not be required to alter their business practices as a result of the amendment. There are no significant costs to persons who are required to comply with the amendment. There is no anticipated negative impact on local employment.

Public Benefit

Ms. Pratt has also determined that, for each year of the first five years the proposed rule amendment is in effect, the public will benefit from the adoption of the amendment because it provides transparency about the reimbursement methodology to CDTF providers and is consistent with other Medicaid reimbursement rules.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Megan Blood, Lead Analyst, Acute Care Section, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to megan.blood@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

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

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

§355.8241. Reimbursement Methodology for Chemical Dependency Treatment Facilities.

(a) Subject to the specifications, conditions, limitations, and requirements established by the Health and Human Services Commission (HHSC) [department or its designee], payment for covered chemical dependency treatment facility services provided by a participating chemical dependency treatment facility (CDTF) is limited to the lesser of the provider's customary [actual] charge or the maximum allowable fee [rates] established by HHSC [the department or its designee].

(b) A CDTF must bill for the covered services that it provides. Services provided by an attending physician or laboratory will be reimbursed separately. The CDTF must be enrolled and approved for participation in the Medicaid program at the time the services are provided. [The department adopts the maximum rates established for treatment used by the Texas Commission on Alcohol and Drug Abuse (TCADA). The department will modify its maximum allowable rates upon changes in TCADA's maximum rates for treatment.]

(c) HHSC will conduct periodic rate reviews and will update the Medicaid CDTF fee schedule as needed. HHSC may adjust rates based on an analysis of:

- (1) the Centers for Medicare and Medicaid Services fees for similar services;
- (2) Medicaid fees paid by other states;
- (3) a survey of costs reported by CDTFs;
- (4) data provided by the United States Department of Labor;
- (5) previous Medicaid payments for Medicaid-reimbursable CDTF services; or
- (6) a combination of sources described in paragraphs (1) - (5) of this subsection.

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

Filed with the Office of the Secretary of State on August 3, 2011.
TRD-201102955
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 18, 2011
For further information, please call: (512) 424-6576



DIVISION 31. AMBULANCE SERVICES

1 TAC §355.8600

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8600, concerning Medicaid Reimbursement for Ambulance Services.

Background and Justification

The Centers for Medicare and Medicaid Services (CMS) recently approved an amendment to the Texas Medicaid State Plan allowing governmental ambulance providers to submit an annual cost report and receive payment of the federal share up to their costs. This change was made as a result of concerns expressed by ground and air ambulance providers regarding the rates paid for ambulance services. The amendment will change the methodology used to set ambulance services rates for governmental am-

bulance providers to allow for cost reconciliation and cost settlement based on total allowable Medicaid costs.

The amendment describes the reimbursement methodology for both private and governmental ambulance providers, allowing for enrolled and approved governmental providers to submit an annual cost report for allowable Medicaid costs. The amendment also describes the cost reporting requirement, cost report due date, and reconciliation process for governmental ambulance providers. There are no changes to the reimbursement methodology currently in place for private ambulance providers.

Section-by-Section Summary

The amendment to §355.8600 deletes all current language and replaces it with:

an explanation of the purpose of this rule;

definitions of terms used within the rule;

a description of the reimbursement methodologies for all ambulance providers and cost reporting requirements for governmental ambulance providers that seek to receive supplemental payments; and

references to other sections of the Texas Administrative Code that govern cost reporting.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment is in effect there will be a fiscal impact to state government. There will be estimated revenue increases of \$752,962 federal funds for state fiscal year (FY) 2012; \$798,808 federal funds for FY 2013; \$830,626 federal funds for FY 2014; \$864,765 for FY 2015; \$900,307 federal funds for FY 2016; and \$937,309 for FY 2017. This fiscal impact reflects an increase in federal matching funds for eligible governmental ambulance providers resulting from settlement and the corresponding supplemental payment. The state share will be provided by the governmental ambulance provider through the certification of public expenditures. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Carolyn Pratt, Director of the Rate Analysis Department, has determined that there will be no effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. Providers will not be required to alter their business practices as a result of the rule. There are no significant costs to persons who are required to comply with the amendment. There is no anticipated negative impact on local employment.

Public Benefit

Ms. Pratt also has determined that for each year of the first five years the proposed rule is in effect, the public will benefit from the adoption of this rule because it allows governmental ambulance providers to more fully recoup their costs for providing ambulance services to Medicaid clients.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may

adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Yvonne Moorad, Lead Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to yvonne.moorad@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

Statutory Authority

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

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

§355.8600. *Reimbursement for Ambulance Services.*

(a) Introduction. This section establishes the reimbursement methodology for private and governmental providers of ground and air ambulance services. [Ground and air ambulance services are reimbursed based on the lesser of the provider's billed charges or fees established by the Texas Health and Human Services Commission (HHSC). Fees established by HHSC are based on a review of the Medicare fee schedule and/or an analysis of other data available to HHSC, with any adjustments made within available funding.]

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

(1) Allowable costs--Expenses that are reasonable and necessary for the normal conduct of operations relating to the provision of ground and air ambulance services.

(2) Governmental ambulance provider--An ambulance provider that uses paid government employees to provide ambulance services. The ambulance services must be directly funded by a local government, hospital authority, hospital district, city, county, or state. A private ambulance provider under contract with a governmental entity to provide ambulance services is not considered a governmental ambulance provider for the purposes of this section.

(3) Private ambulance provider--An ambulance provider that uses paid employees associated and financed through a private entity to provide ambulance services and may be under contract with a local, state, or federal government.

(4) Unit of service--A unit of service is based on one or more allowable ambulance services provided to a Medicaid fee-for-service client by all modes of approved transportation.

(c) Reimbursement methodologies.

(1) Fee-for-service ambulance fee. Fee-for-service reimbursement is based on the lesser of a provider's billed charges or the maximum fee established by the Texas Health and Human Services Commission (HHSC). HHSC establishes fees by reviewing the Medicare fee schedule and analyzing any other available ambulance-related data. Fee-for-service rates apply to both private and governmental ambulance providers.

(2) Supplemental payment for governmental ambulance providers. Governmental ambulance providers may receive a supplemental payment if the governmental ambulance provider's allowable costs exceed the fee-for-service revenues received during the same period. A governmental ambulance provider may receive a supplemental payment in addition to the fee-for-service payment described in paragraph (1) of this subsection.

(A) Eligibility for supplemental payments. A governmental ambulance provider must submit a written request for a supplemental payment by regular mail or special mail delivery to the HHSC Rate Analysis Department. The request, if acceptable, will be effective the first day of the month after the request is approved. HHSC considers only requests from governmental ambulance providers as defined in subsection (b) of this section. HHSC will respond to all written requests for consideration, indicating the requestor's eligibility to receive supplemental payments. An acceptable request must include:

- (i) an overview of the governmental agency;
- (ii) a complete organizational chart of the governmental agency;
- (iii) a complete organizational chart of the ambulance department within the governmental agency providing ambulance services;
- (iv) an identification of the specific geographic service area covered by the ambulance department, by ZIP code;
- (v) copies of all job descriptions for staff types or job categories of staff who work for the ambulance department and an estimated percentage of time spent working for the ambulance department and for other departments of the governmental agency; and
- (vi) a primary contact person for the governmental agency who can respond to questions about the ambulance department.

(B) Cost reports. Governmental ambulance providers that are eligible for supplemental payments must submit an annual cost report for ground and air ambulance services delivered to Medicaid clients on a cost report form specified by HHSC. Providers certify through the cost report process their total actual federal and non-federal costs and expenditures for the fiscal year. Cost reports must be completed for a full year based on the provider's fiscal year. HHSC may require newly eligible providers to submit a partial-year cost report for their first year of eligibility through the end of their fiscal year.

(i) Due date. Cost reports are due by March 31 of the year following the cost reporting year. If March 31 falls on a federal or state holiday or weekend, the due date is the first working day after March 31. A provider may request in writing, by regular mail or special mail delivery, an extension of up to 30 days after the due date to submit a cost report. HHSC will respond to all written requests for extensions, indicating whether the extension is granted. HHSC must receive a request for extension before the cost report due date. A re-

quest for extension received after the due date is considered denied. A provider whose cost report is not received by the due date or the extended due date is ineligible for supplemental payments for the fiscal year.

(ii) Purpose. A cost report documents the provider's actual allowable Medicaid costs for delivering ambulance services to fee-for-service Medicaid clients. Because the cost report is used to determine supplemental payments, a provider must submit a complete and acceptable cost report to be eligible for a supplemental payment.

(iii) Allocating allowable costs. A provider's reported costs are allocated to the Medicaid program for fee-for-service ambulance services based on a percentage of Medicaid fee-for-service units of service to total units of service.

(iv) Cost reconciliation. The actual allowable Medicaid fee-for-service costs reported for services delivered during a governmental ambulance provider's fiscal year are compared to the fee-for-service Medicaid payments. If a provider's actual allowable Medicaid fee-for-service costs exceed the fee-for-service Medicaid payments, the difference is adjusted by the federal Medicaid assistance percentage (FMAP) to arrive at the supplemental payment owed to the provider. If a provider's fee-for-service Medicaid payments exceed the provider's actual allowable Medicaid fee-for-service costs, the provider is not eligible for supplemental payments.

(d) General information. In addition to the requirements of this section, cost reporting guidelines are governed by: §355.101 of this chapter (relating to Introduction); §355.102 of this chapter (relating to General Principles of Allowable and Unallowable Costs); §355.103 of this chapter (relating to Specifications for Allowable and Unallowable Costs); §355.104 of this chapter (relating to Revenues); §355.105 of this chapter (relating to General Reporting and Documentation Requirements, Methods, and Procedures); §355.106 of this chapter (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports); §355.107 of this chapter (relating to Notification of Exclusions and Adjustments); §355.108 of this chapter (relating to Determination of Inflation Indices); §355.109 of this chapter (relating to Adjusting Reimbursement When New Legislation, Regulations, or Economic Factors Affect Costs); and §355.110 of this chapter (relating to Informal Reviews and Formal Appeals). If conflicts arise between this section and other sections governing cost reporting, the provisions of this section prevail.

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 August 3, 2011.

TRD-201102957

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: September 18, 2011

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



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) proposes amendments to Chapter 20, Cotton Pest Control, Subchapter A, §20.1, concerning definitions, and Subchapter D, §20.31, concerning hostable volunteer and other noncommercial cotton in locations other than commercial cotton fields. The amendments to §20.1 are proposed to clarify the definition of "commercial cotton field" and the amendments in §20.31 are proposed to correct a typographical error and clarify wording.

The amendments to §20.1 revise the definition of a commercial cotton field. The current definition of a commercial cotton field classifies a field where commercial cotton has been planted, or is being grown, as a commercial cotton field until the planting of a new non-cotton crop in the same field. For commercial cotton fields located in a pest management zone, the proposed definition will classify the field as a commercial cotton field only until the end date for destruction requirements as provided in §20.22. For fields not located in a pest management zone, the proposed definition classifies the field as a commercial cotton field only until emergence of a new commercial cotton crop in the area.

The proposed changes in §20.1 will benefit producers by helping advance boll weevil eradication. The proposed changes will allow the department to charge a hostable noncommercial cotton fee in cases where hostable noncommercial cotton is found during the growing season in a field that has not been planted to any crop since it was planted to commercial cotton in a previous year. Without the proposed changes, a field that was planted to commercial cotton in a previous year but is not planted to a new crop (cotton or non-cotton crop) can be considered a commercial cotton field. In this situation, hostable cotton growing in the field could serve as a source of infestation for boll weevil and the owner/operator of the field would not be assessed a hostable noncommercial cotton fee. The proposed changes will only affect fields subject to a hostable noncommercial cotton fee, as provided in §20.31(b).

The amendments to §20.31(c) remove an unintended reference to §20.31(a) and clarify wording. The proposed changes in §20.31 will benefit producers by clarifying the intent of the rule.

Dr. Crocker has determined that for each year of the first five years the amended section is in effect, there will be no anticipated fiscal impact for state and local governments as a result of administering or enforcing the rules, as proposed.

Dr. Crocker also has determined that for each year of the first five years the proposed amendments are in effect, the amendments will benefit the public by reinforcing efforts to eradicate boll weevils, thereby protecting the investment that cotton producers and the State of Texas have made to eradicate the pest. Once the boll weevil is reduced to low levels or eradicated from cotton producing areas of the state, fewer insecticide applications should be necessary to produce high quality cotton. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendments.

Comments on the proposal may be submitted to Dr. Robert Crocker, Coordinator for Pest Management, Citrus and Biotechnology Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1

The amendments are proposed under the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

Texas Agriculture Code, Chapter 74, is affected by the proposal.

§20.1. Definitions.

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

(1) - (4) (No change.)

(5) Commercial cotton field--A field in which commercial cotton has been planted, or is being grown, until either: [~~the planting of a new non-cotton crop in the same field.~~]

(A) the end date for destruction requirements, as provided in §20.22 of this chapter (relating to Stalk Destruction Requirements), for fields in a pest management zone; or

(B) the emergence of a new cotton crop in the area, for fields not located in a pest management zone.

(6) - (37) (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 August 4, 2011.

TRD-201102980

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-4075



SUBCHAPTER D. REGULATION OF VOLUNTEER AND OTHER NONCOMMERCIAL COTTON; HOSTABLE COTTON FEE

4 TAC §20.31

The amendments are proposed under the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; and the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests, and the Code, §74.0032, which provides the department with the authority to adopt rules to administer the hostable cotton fee program.

Texas Agriculture Code, Chapter 74, is affected by the proposal.

§20.31. Hostable Volunteer and Other Noncommercial Cotton in Locations Other Than Commercial Cotton Fields.

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

(c) Upon discovery of hostable volunteer or other hostable noncommercial cotton [~~described by subsection (a) of this section~~],

the department will give notice to the grower or landowner, or both the grower and the landowner, to destroy the hostable volunteer or other hostable noncommercial cotton within 14 days after the date notice is given. If weather conditions prevent destruction of the cotton within the 14-day grace period, the grower or landowner may, before the end of the 14-day grace period submit a request for an extension of the grace period.

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

(d) - (e) (No change.)

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

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

TRD-201102981

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-4075



CHAPTER 28. TEXAS AGRICULTURAL FINANCE AUTHORITY

SUBCHAPTER C. AGRICULTURAL LOAN GUARANTEE PROGRAM

4 TAC §28.24

The Texas Department of Agriculture (department), on behalf of the Texas Agricultural Finance Authority (Authority), proposes to amend §28.24, concerning requirements for participation in the Authority's Agricultural Loan Guarantee (ALG) Program. The purpose of the amendment is to allow business entities and agricultural cooperatives to qualify for assistance under the ALG program.

Rick Rhodes, assistant commissioner for rural economic development, has determined that for the first five years the proposed new section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposal.

Mr. Rhodes has also determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of creating the proposed new section will be to expand the ALG program by allowing business entities and agricultural cooperatives to participate in the program. There will be no additional costs to individuals, micro-businesses and small businesses as a result of the proposed new section set forth in this proposal.

Comments on the proposal may be submitted to Rick Rhodes, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under §58.023(a) of the Agriculture Code, which requires the Authority by rule to adopt rules to establish criteria for determining which eligible agricultural businesses may participate in programs that may be established by the board.

The code affected by the proposal is the Texas Agriculture Code, Chapter 58.

§28.24. *Applicant Requirements.*

A lender may submit an application on behalf of an applicant if the applicant meets the following requirements:

(1) if an individual, the applicant is a United States citizen and a resident of the State of Texas, or, an entity in good standing and legally authorized to conduct business in the State of Texas;

(2) - (3) (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 August 4, 2011.

TRD-201102982

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-4075



TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.13

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.13, relating to Process to Apply for License or Permit.

House Bill 1953 (HB 1953), 82nd Regular Session, Texas Legislature amended Alcoholic Beverage Code §11.391(a) and §61.381(a). These sections require an applicant for an on-premises permit or license to prominently post an outdoor sign giving notice of the application. Before the amendment, the notice was required to be posted at least 60 days before the application was filed. After the amendment, the notice is required to be posted at least 60 days before the permit or license is issued. Because §33.13 as currently written complies with the prior version of the Alcoholic Beverage Code, it must be amended to conform to the requirements of HB 1953.

The proposed amendment changes the 60-day notification requirement in subsection (e) to conform to HB 1953. The amendment also adds language to subsection (f) to clarify when the notification requirement is triggered.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

Ms. Harrison has also determined that for each year of the first five years the proposed amendment will be in effect, the public will benefit because the procedures applicants must follow will

be clarified and the discrepancy between the rule and the Code, as amended, will be eliminated.

The proposed amendment 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.

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) 206-3480. They may also be submitted electronically through the commission's public website at 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 September 7, 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.

The proposed amendment is authorized by Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendment affects Alcoholic Beverage Code §§5.31, 11.391, and 61.381.

§33.13. *Process to Apply for License or Permit.*

(a) This section relates to any license or permit. The purpose of this section is to clarify the pre-qualification process in subsection (b) of this section and distinguish it from the application process described in subsections (c) and (d) of this section.

(b) Before an application for a license or permit that is required to be certified under §11.37 or §61.37 of the Alcoholic Beverage Code may be filed with the commission, a pre-qualification packet must be completed. A pre-qualification packet is deemed incomplete if it does not contain all required certifications applicable to the type of license or permit sought and for the location requested, and a response to each item requested by the commission in the packet. For purposes of this section, a completed pre-qualification packet is one that contains:

(1) all required certifications signed by the city secretary, where appropriate, and the county clerk that the location for which the license or permit is sought is in a "wet" area for such license or permit and is not prohibited by charter, by ordinance, or by valid order in reference to the sale of any alcoholic beverage allowed by the license or permit;

(2) all other applicable certifications signed by the city secretary, where appropriate, and the county clerk that are in the pre-qualification packet prescribed by the commission;

(3) the required certification by the Comptroller of Public Accounts that the person submitting the packet holds, or has applied for and satisfies all legal requirements for, the issuance of a sales tax permit;

(4) proof of publication of notice of the application, if required by §11.39 of the Alcoholic Beverage Code; and

(5) a response to each item requested by the commission in the packet.

(c) A person or entity may file an application with the commission by submitting all forms, documents and information prescribed by the commission in accordance with the practices, policies, and standards relating to the processing of applications for licenses and permits. If a pre-qualification [~~prequalification~~] packet is required by subsection (b) of this section, the packet must be completed before an application is filed. The commission shall process the application to determine whether the application is in compliance with all provisions of the Alcoholic Beverage Code and rules of the commission or whether there is legal reason to deny the application.

(d) On completion of its processing pursuant to subsection (c) of this section, the commission shall inform the applicant that the application:

(1) may be filed with the county judge as mandated by §61.31 of the Alcoholic Beverage Code;

(2) has been referred to the State Office of Administrative Hearings;

(3) is granted; or

(4) is refused.

(e) For purposes of §11.391 and §61.381 of the Alcoholic Beverage Code, a notice sign must be posted for 60 days before the date the permit or license is issued. [~~prior to filing an application pursuant to subsection (c) of this section. For purposes of this subsection, an application is filed on the date a completed application packet is received by the commission.~~]

(f) A notice sign is required for purposes of §11.391 and §61.381 of the Alcoholic Beverage Code unless a license or permit authorizing the on-premises consumption of alcoholic beverages has been active at the requested location any time during the 24 months immediately preceding the filing of the application. For purposes of this subsection, an application is filed on the date a completed application packet is received by the commission.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102918

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 18, 2011

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



16 TAC §33.15

The Texas Alcoholic Beverage Commission (commission) proposes an amendment to §33.15, relating to Use of Winery Festival Permit.

Senate Bill 438 (SB 438), 82nd Regular Session, Texas Legislature amended Alcoholic Beverage Code §17.01(b) to change the constraints on how often the holder of a winery festival permit may offer wine for sale under the permit. Before the amendment, the permit could not be used for more than three consecutive days at the same location. The amendment changed the consecutive day limit from three to four. Because §33.15 as currently written complies with the prior version of the Alcoholic Beverage Code, it must be amended to conform to the requirements of SB 438.

The proposed amendment changes the consecutive day limitation on use of the permit in subsection (c) from three days to four days to conform to SB 438.

Amy Harrison, Director of the Licensing Division, has determined that for each year of the first five years that the proposed amendment will be in effect, there will be no impact on state or local government.

Ms. Harrison has also determined that for each year of the first five years the proposed amendment will be in effect, the public will benefit because the discrepancy between the rule and the Code, as amended, will be eliminated.

The proposed amendment 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.

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) 206-3480. They may also be submitted electronically through the commission's public website at 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 September 7, 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.

The proposed amendment is authorized by Texas Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

The proposed amendment affects Alcoholic Beverage Code §5.31 and §17.01.

§33.15. Use of Winery Festival Permit.

(a) This section relates to Chapter 17 of the Alcoholic Beverage Code. In the absence of specific statutory authority to the contrary, this section regulates the activities of holders of Winery Permits who also hold Winery Festival Permits.

(b) Applications for Winery Festival Permits under Chapter 17 of the Alcoholic Beverage Code, and the expiration, denial, cancellation and suspension of such applications and permits shall be in accordance with the statutes, rules and commission policies governing applications, expirations, denials, cancellations and suspensions of permits generally.

(c) No person may sell wine, or possess wine with the intent to sell it, at a farmer's market, at a civic or wine festival, or at a similar civic or wine celebration or event, without first having obtained from the commission a Winery Festival Permit Certificate authorizing sales at the event. For purposes of this section, a "celebration" is a special cultural or charitable event of a limited and specified duration that is organized for, and open to, the public. Each market, festival, celebration or other event requires a separate certificate, but a certificate may be valid for up to four [~~three~~] consecutive days at a single location. A Winery Festival Permit Certificate may only be issued to the holder of a Winery Festival Permit.

(d) The holder of a Winery Festival Permit, or his designated representative, must apply for a Wine Festival Permit Certificate on a form provided by the commission. The application must be submitted prior to the event for which the certificate is sought. The application should be submitted at least three business days prior to the event to allow the commission time to process it. The application must be submitted to the commission's district office having jurisdiction over the location of the event for which the certificate is sought. The application must include the following information:

- (1) the applicant's Winery Permit number;
- (2) the trade name of the Winery Permit holder associated with the Winery Festival Permit;
- (3) the location of the event where the Winery Festival Permit Certificate will be used;
- (4) the date and time of the event where the Winery Festival Permit Certificate will be used; and
- (5) a brief description of the event where the Winery Festival Permit Certificate will be used.

(e) The commission shall issue a certificate if the application is accepted. The certificate and a copy of the application must be displayed in a conspicuous place at the location of the event at all times during the event.

(f) The administrator or his designated representative may refuse to accept an application for a Winery Festival Permit Certificate if:

- (1) the application is incomplete or inaccurate;
- (2) the applicant does not qualify under subsection (c) of this section;
- (3) the event does not qualify under subsection (c) of this section; or
- (4) there are reasonable grounds to believe that issuance of the certificate will:
 - (A) result in a violation of the Alcoholic Beverage Code or the rules of the commission; or
 - (B) is otherwise detrimental to the public.

(g) The grounds for refusing to accept an application for a Winery Festival Permit Certificate shall be communicated in writing to the applicant as soon as is reasonably practical.

(h) All wine sold or possessed with the intention to sell at an event held in an area where the sale of wine has not been authorized by a local option election must comply with the terms of §16.011 of the Alcoholic Beverage Code.

(i) If a Winery Festival Permit Certificate is issued in error, the commission may rescind the certificate.

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 August 1, 2011.

TRD-201102919

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: September 18, 2011

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



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 60. PROCEDURAL RULES OF THE COMMISSION AND THE DEPARTMENT SUBCHAPTER C. LICENSE APPLICATIONS

16 TAC §60.32

The Texas Department of Licensing and Regulation ("Department") proposes a new rule at 16 Texas Administrative Code Chapter 60, §60.32, regarding the procedural rules of the Texas Commission of Licensing and Regulation ("Commission") and the Department.

The proposed new rule is necessary to implement Senate Bill (SB) 1733, 82nd Legislature, Regular Session (2011), relating to the licensing of certain military spouses. SB 1733 amended Texas Occupations Code, Chapter 55, to require state agencies that issue occupational licenses to adopt rules to provide for the issuance of a license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States. The applicant must either hold a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the Texas license or within the five years preceding the application date held a license in Texas that expired while the applicant lived in another state for at least six months. The state agency rules must include provisions to allow alternative demonstrations of competency to meet the requirements for obtaining a license. The bill also allows a state agency to issue a license by endorsement. The proposed rule is necessary to implement these new statutory requirements under Chapter 55.

Proposed new §60.32 establishes who qualifies to apply for a license under this section; states the requirements for applying for a license under this section; provides an explanation of what qualifies as the standard method of demonstrating competency to obtain a license; and lists the alternative methods for demonstrating competency to obtain a license issued by the Department under this section.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed rule is in effect there

will be no foreseeable implications relating to costs or revenues of the state or local government as a result of enforcing or administering the proposed new rule. The applicants who apply for a license using the procedures under the proposed new rule will pay the same applicable fee(s) as other applicants who apply for the same license, so revenues will not be affected. The number of applications filed under the proposed rule is expected to be small, and these applications are expected to take a similar amount of time and resources for the Department to process as would a standard application for a particular license. The Department does not anticipate additional costs in processing these applications.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed new rule is in effect, the public benefit will be that spouses of military members on active duty will be able to obtain an occupational license in Texas and will be able to financially support their families. The statute and the proposed new rule implementing the statute will give military families additional options when deciding where the family will live and work when relocating to another state.

It is anticipated that there will be no adverse economic effect on small or micro-businesses or to persons who are required to comply with the proposed new rule. The legislation and the rule implementing the new provisions under Chapter 55 ease the process for spouses of active military personnel to obtain an occupational license in Texas. While the military spouse applicant would need to meet any alternative method(s) of demonstrating competency as determined by the Department, in most cases these methods, such as taking continuing education, would cost less than if the applicant had to meet the standard method(s) of demonstrating competency for a particular license, such as taking an examination. These applicants will pay the same applicable fee(s) as other applicants who apply for the same license. Overall, it is anticipated that there may be a slight savings for the military spouse applicants.

Since the agency has determined that the proposed new rule will have no adverse economic effect on small businesses preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant 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. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rule is proposed under Texas Occupations Code, Chapter 51, which authorizes 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. In addition, the new rule is proposed under Texas Occupations Code, Chapter 55, which, as amended, requires state agencies to adopt rules to implement the new military spouse licensing requirements under this chapter.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51, the Commission's and Department's enabling statute, and Chapter 55, the statute that addresses licensing while on military duty and for military spouses. In addition, the following statutes establishing specific programs regulated by the Department are affected: Texas Agriculture Code, Chapters 301 and 302 (Weather Modification

and Control); Texas Business and Commerce Code, Chapter 92 (Rental Purchase Agreements-Loss Damage Waivers); Texas Government Code, Chapters 57 (Licensed Court Interpreters) and 469 (Architectural Barriers); Texas Health and Safety Code, Chapters 754 (Elevators and Escalators) and 755 (Boilers); Texas Labor Code, Chapters 91 (Staff Leasing Services) and 92 (Temporary Common Worker Employers); and Texas Occupations Code, Chapters 802 (Dog or Cat Breeders); 953 (For Profit Legal Service Contract Companies), 1151 (Property Tax Professionals), 1152 (Property Tax Consultants), 1202 (Industrialized Housing and Buildings), 1302 (Air Conditioning and Refrigeration Contractors and Technicians), 1304 (Service Contract Providers and Administrators), 1305 (Electricians), 1306 (Identity Recovery Service Contract Providers and Administrators), 1601 (Barbers), 1602 (Cosmetology), 1603 (Barbers and Cosmetology), 1703 (Polygraph Examiners), 1802 (Auctioneers), 1901 (Water Well Drillers), 1902 (Water Well Pump Installers), 2052 (Combative Sports), 2303 (Vehicle Storage Facilities), 2306 (Vehicle Protection Product Warrantors), 2308 (Vehicle Towing and Booting), and 2309 (Used Automotive Parts Recyclers). No other statutes, articles, or codes are affected by the adoption.

§60.32. Licensing for Military Spouses.

(a) This section applies to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

(b) The department may issue a license to an applicant described under subsection (a) who:

(1) holds a current license issued by another state that has licensing requirements that are substantially equivalent to the requirements for the license; or

(2) within the five years preceding the application date held the license in this state that expired while the applicant lived in another state for at least six months.

(c) The department may allow an applicant described under subsection (b) to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the department. For purposes of this section, the standard method of demonstrating competency is the specific exam, education, and/or experience required to obtain a particular license.

(d) In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the department:

- (1) education;
- (2) continuing education;
- (3) examinations (written and/or practical);
- (4) letters of good standing;
- (5) letters of recommendation;
- (6) work experience; or
- (7) other methods required by the executive director.

(e) The executive director may issue a license by endorsement in the same manner as the commission under Texas Occupations Code, §51.404 to an applicant described under subsection (b).

(f) The applicant described under subsection (b) shall submit an application and proof of the requirements under this section and for

that particular license on a form and in a manner prescribed by the department.

(g) The applicant described under subsection (b) shall submit the applicable fee(s) required for that particular license.

(h) The applicant described under subsection (b) shall undergo a criminal history background check.

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 August 8, 2011.

TRD-201103004

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: September 18, 2011

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



TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §7.3

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §7.3, concerning Degree Granting Colleges and Universities Other Than Texas Public Institutions, by amending the definition of "Agent" and adding a definition of "Physical Presence." The intent of the amendment is to outline and define the meaning of physical presence as it relates to out-of-state postsecondary institutions wanting to operate in Texas. The new definition will provide a clearer understanding for out-of-state institutions to which Chapter 7 rules apply.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing the amendments as proposed.

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the section will be to streamline the process by allowing certain exempt out-of-state institutions to receive permission to offer distance education to Texas students without staff review and will improve staff efficiencies. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box

12788, Austin, Texas 78711 or via email at macgregor.stephenson@theceb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 61, Subchapters G and H, which provides the Coordinating Board with the authority to administer the laws regulating private and out-of-state public postsecondary institutions operating in Texas.

The amendments affect the Texas Education Code, Chapter 61, Subchapters G and H.

§7.3. Definitions.

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

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

(4) Agent--A person employed by or representing a postsecondary educational institution within or without Texas who:

(A) solicits any Texas student for enrollment in the institution (excluding the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope in the state of Texas);

(B) solicits or accepts payment from any Texas student for any service offered by the institution; or

(C) while having a physical presence in Texas, solicits students or accepts payment from students who do not reside in Texas.

(5) - (28) (No change.)

(29) Physical Presence--

(A) while in Texas a representative of the school or a person being paid by the school who conducts an activity related to postsecondary education, including for the purposes of recruiting students (excluding the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope in the state of Texas), teaching or proctoring courses including internships, clinicals, externships, practicums, and other similarly constructed educational activities (excluding those individuals that are involved in teaching courses in which there is no physical contact with Texas students), or grants certificates or degrees; and/or

(B) the institution has any location within the state of Texas which would include any address, physical site, telephone number, or facsimile number within or originating from within the boundaries of the state of Texas. Advertising to Texas students, whether through print, billboard, internet, radio, television, or other medium alone does not constitute a physical presence.

(30) [(29)] Postsecondary Educational Institution--An educational institution which:

(A) is not a public community college, public technical college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code §61.003;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted

are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.

(31) ~~[(30)]~~ Private Postsecondary Educational Institution--An institution which:

(A) is not an institution of higher education as defined by Texas Education Code §61.003;

(B) is incorporated under the laws of this state, maintains a place of business in this state, has a representative presence in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applied to a degree.

(32) ~~[(31)]~~ Program or Program of Study--Any course or grouping of courses which are represented as entitling a student to a degree or to credits applicable to a degree.

(33) ~~[(32)]~~ Protected Term--The terms "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," or "law center," its abbreviation, foreign cognate or equivalents.

(34) ~~[(33)]~~ Recognized Accrediting Agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of this chapter.

(35) ~~[(34)]~~ Representative--A person who acts on behalf of an institution regulated under this subchapter. The term includes, without limitation, recruiters, agents, tutors, counselors, business agents, instructors, and any other instructional or support personnel.

(36) ~~[(35)]~~ Required State or National Licensure--The requirement for graduates of certain professional programs to obtain a license from state or national entities for entry-level practice.

(37) ~~[(36)]~~ Substantive Change--Any change in principal location, ownership, or governance.

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 August 5, 2011.

TRD-201102985

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2011

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



19 TAC §7.14

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §7.14, concerning Distance Education Approval Processes for Degree Granting Colleges and Universities Other Than Texas Public Institutions. The intent of the new section is to clarify the process by which out-of-state institutions will receive approval for offering distance education in Texas. This summary sets out Texas' state approval requirements for distance education in response to the new federal program integrity regulations which go into effect July 1, 2011. See 34 C.F.R. §600.9(c) (2011).

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years the new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing the new section as proposed.

Dr. Stephenson has also determined that for the first five years the new section is in effect, the public benefits anticipated as a result of administering the new section will be to streamline the process by allowing certain exempt out-of-state institutions to receive permission to offer distance education to Texas students without staff review and will improve staff efficiencies. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the new section as proposed. There is no impact on local employment.

Comments on the proposed new section may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at macgregor.stephenson@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under the Texas Education Code, Chapter 61, Subchapters G and H, which provides the Coordinating Board with the authority to administer the laws regulating private and out-of-state public postsecondary institutions operating in Texas.

The new section affects the Texas Education Code, Chapter 61, Subchapters G and H.

§7.14. Distance Education Approval Processes for Degree Granting Colleges and Universities Other Than Texas Public Institutions.

An institution which does not meet the definition of institution of higher education contained in Texas Education Code §61.003 and wishes to offer distance education to students in Texas must follow the requirements in paragraphs (1) and (2) of this section. For the purposes of this section distance education shall mean education or training delivered off campus via educational technologies where the student(s) and the instructor(s) are separated by physical distance and/or time.

(1) Exempt Institutions

(A) An institution is exempt and does not need to receive permission from the Coordinating Board to offer distance education programs and courses to Texas students if it fulfills the following:

(i) Accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board or approved by a Texas state agency which authorizes the school's graduates to take a professional or career and technical state licensing examination administered by that agency; and

(ii) No physical presence in the state as defined by §7.3 of this title (relating to Definitions).

(B) An institution's exemption applies only to the degree level for which the programs or institution is accredited.

(C) An institution's exemption continues as long as it is in compliance with subparagraphs (A) and (B) of this paragraph. If an institution is no longer accredited by an accreditor recognized by Texas and/or maintains a physical presence in Texas, the institution is no longer eligible for an exemption and must receive Coordinating Board authority to offer distance education to Texas students.

(2) Nonexempt Institutions

(A) An institution is not exempt and must receive Coordinating Board permission to offer distance education programs and courses to Texas students if it fulfills any of the following:

(i) Is accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board or approved by a Texas state agency which authorizes the school's graduates to take a professional or career technical state licensing examination administered by that agency and maintains a physical presence in Texas as defined by §7.3 of this title; or

(ii) Is not accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board nor approved by a Texas state agency which authorizes the school's graduates to take a professional or career technical state licensing examination administered by that agency.

(B) An institution that is accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board or approved by a Texas state agency which authorizes the school's graduates to take a professional or career technical state licensing examination by that agency and maintains a physical presence in Texas as defined by §7.3 of this title must follow the guidelines established in §7.7 of this title (relating to Institutions Accredited by Board Recognized Accreditors).

(C) An institution that is not accredited to offer degrees at a specific level by an accrediting agency recognized by the Coordinating Board nor approved by a Texas state agency which authorizes the school's graduates to take a professional or career technical state licensing examination administered by that agency, whether or not it maintains a physical presence in Texas as defined by §7.3 of this title must follow the guidelines established in §7.8 of this title (relating to Institutions Not Accredited by a Board Recognized Accreditor).

(D) An institution that would like to offer a degree program or courses leading to a degree in a religious discipline via distance education is exempt from seeking Coordinating Board approval. A religious institution that would like to offer a degree program or courses leading to a degree in a non-religious discipline via distance education must follow the requirements outlined in subparagraph (B) or (C) of this paragraph.

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

Filed with the Office of the Secretary of State on August 5, 2011.

TRD-201102986

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2011

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



CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER E. TUITION REBATES FOR CERTAIN UNDERGRADUATES

19 TAC §13.82

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §13.82, concerning Tuition Rebates for Certain Undergraduates. These amendments were

adopted on an emergency basis and now are being filed to allow for a 30-day comment period. The intent of the amendment to this section is to incorporate into existing rules a provision enacted by Senate Bill 176 of the 82nd Texas Legislature that excludes course credit earned prior to high school graduation (other than credit earned exclusively by examination) from the limitation on attempted semester credit hours considered in determining a student's eligibility to receive the rebate. Further changes include adding a provision to exclude from consideration course credit that is earned to satisfy requirements for a Reserve Officers' Training Corps (ROTC) program but that is not required to complete the degree program (required by House Bill 86 of the 80th Texas Legislature), and deleting a reference to for-credit developmental courses.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending this section.

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to increase the potential number of students eligible for the tuition rebate. There is no effect on small businesses. There is an anticipated economic cost to general academic teaching institutions that are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at macgregor.stephenson@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 54, Subchapter A, §54.0065(i), which provides the Coordinating Board with the authority to adopt rules to administer the section.

The amendments affect the Texas Education Code, Chapter 54, Subchapter A, §54.0065.

§13.82. *Eligible Students.*

To be eligible for a rebate under this program, a student must:

(1) - (4) (No change.)

(5) have attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree under the catalog under which the student graduated.

(A) Hours attempted shall include:

(i) transfer credits;

(ii) course credit earned exclusively by examination (except that, for the purposes of this program, only the number of semester credit hours earned exclusively by examination in excess of nine semester credit hours is treated as hours attempted);

(iii) courses dropped after the official census date;

(iv) optional internship and cooperative education courses; and

(v) repeated courses.

(B) Hours attempted shall not include:

(i) course credit that is earned to satisfy requirements for a Reserve Officers' Training Corps (ROTC) program but that is not required to complete the degree program;

(ii) course credit, other than course credit earned exclusively by examination, that is earned before graduating from high school; and

(iii) courses dropped for reasons that are determined by the institution to be totally beyond the control of the student.

(C) For students concurrently earning a baccalaureate degree and a Texas teaching certificate, required teacher education courses shall not be counted to the extent that they are over and above the free electives allowed in the baccalaureate degree program.

[(5) have attempted no more than three hours in excess of the minimum number of semester credit hours required to complete the degree under the catalog under which the student graduated. Hours attempted include transfer credits, course credit earned exclusively by examination (except that, for the purposes of this program, only the number of semester credit hours earned exclusively by examination in excess of nine semester credit hours is treated as hours attempted), courses dropped after the official census date, for-credit developmental courses, optional internship and cooperative education courses, and repeated courses. Courses dropped for reasons that are determined by the institution to be totally beyond the control of the student shall not be counted. For students concurrently earning a baccalaureate degree and a Texas teaching certificate, required teacher education courses shall not be counted to the extent that they are over and above the free electives allowed in the baccalaureate degree program.]

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

Filed with the Office of the Secretary of State on August 5, 2011.

TRD-201102987

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2011

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



CHAPTER 15. NATIONAL RESEARCH UNIVERSITIES

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §15.10

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §15.10, concerning rules applying to provisions related to the Texas Research Incentive Program, with new text. Specifically, the proposed amended rule would establish a procedure regarding the return of donations to donors and the corresponding return of funds to the Texas Research Incentive Program. Additionally, the definition of a gift is clarified.

Ms. Susan Brown, Assistant Commissioner, Planning and Accountability, has determined that for each year of the first five years the amended section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Brown has determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of administering the section will be more efficient Board operations relating to distribution of funds allocated to this program by the legislature. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the amended section may be submitted to Gary W. Johnstone, Deputy Assistant Commissioner, Planning and Accountability, 1200 East Anderson Lane, Austin, Texas 78752, gary.johnstone@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §62.124, which provides the Coordinating Board with authority to adopt rules for the administration of Texas Education Code, Chapter 62, Subchapter F.

The amendments affect Texas Education Code, Chapter 62, Subchapter F.

§15.10. *Texas Research Incentive Program (TRIP).*

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

(c) Definitions

(1) - (4) (No change.)

(5) Gift--A contribution received by an institution for use in the furtherance of the institution for which the institution has made no commitment of resources or services other than committing to use the gift as the donor specifies. Gifts include [including] cash, cash equivalents, marketable securities, closely held securities, money market holdings, partnership interests, personal property, real property, minerals, and life insurance proceeds.

(6) - (9) (No change.)

(d) - (g) (No change.)

(h) If for any reason any portion of a donation matched by this program is returned to the donor or for any other reason is no longer eligible for matching, the institution must take the following actions within 30 days of the change:

(1) The institution must notify the Board as to the amount and date of the change; and

(2) The institution must repay the match to the Board. In the event that only a portion of the donation is no longer eligible for matching, the institution may only retain the portion of the match that corresponds to the portion of the donation that remains eligible for matching.

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 August 5, 2011.

TRD-201102989

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2011

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



CHAPTER 21. STUDENT SERVICES
SUBCHAPTER T. THE VACCINATION
AGAINST BACTERIAL MENINGITIS FOR
ENTERING STUDENTS AT PUBLIC OR
PRIVATE OR INDEPENDENT INSTITUTIONS
OF HIGHER EDUCATION

19 TAC §§21.610 - 21.614

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§21.610 - 21.614, concerning the vaccination against bacterial meningitis for entering students at public or private or independent institutions of higher education. These amendments were adopted on an emergency basis and now are being filed to allow for a 30-day comment period. The intent of the amendment is to incorporate into existing rules a provision that requires entering students at public or private or independent institutions of higher education to have an initial bacterial meningitis vaccination or booster dose during the five-year period preceding or at least 10 days prior to the first day of the first semester in which the student initially enrolls at an institution. Language has been added to define "entering student." Language has also been added that requires an institution of higher education or private or independent institution of higher education to provide written notice, with the registration materials that the institution provides to a student before the student's initial enrollment, of the right of the student or parent or guardian to claim an exemption from the vaccination requirement. A provision was also made to allow a public institution of higher education or private or independent institution of higher education to extend the compliance date for an individual student to a date that is no later than the 10th day after the first day of the semester in which the student enrolls. The existing list of exemptions was expanded to include students 30 years of age or older and students enrolled only in online or other distance education courses. Language referring to the vaccine requirement for first-time students residing in on-campus dormitories or other on-campus housing facilities has been deleted.

Dr. MacGregor M. Stephenson, Assistant Commissioner for Academic Affairs and Research, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Stephenson has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be protection of entering students from contracting bacterial meningitis. There would be a minimal economic cost to institutions of higher education required to comply with the rules. Up to one full-time equivalent staff member is needed to monitor student compliance with the rules, depending on the size of the institution and number of entering students. The probable economic cost to entering students would be minimal to moderate (\$30-\$150 per immunization). There is no effect on small businesses. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to MacGregor M. Stephenson, Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at macgregor.stephenson@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, Chapter 51, §51.9192(e), which provides the Coordinating Board with the authority to adopt rules to administer the section.

The amendments affect the Texas Education Code, Chapter 54, Subchapter A, §54.0065.

§21.610. Purpose.

Pursuant to the Jamie Schanbaum and Nicolis Williams Act, this subchapter creates the procedure by which an entering [a first-time] student of an institution of higher education or private or independent institution of higher education [~~including a transfer student, residing in on-campus housing,~~] will show evidence of being immunized against bacterial meningitis.

§21.611. Authority.

Texas Education Code, §51.9192, Subchapter Z, establishes the requirement for bacterial meningitis vaccination for certain students and identifies exceptions to that requirement. This subchapter applies only to entering [first-time] students [~~or transfer students~~] enrolling in public, [~~or~~] private or independent institutions of higher education on or after January 1, 2012 [~~2010, who plan to live in on-campus dormitories or other on-campus housing facilities~~].

§21.612. Definitions.

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

(1) Entering student includes:

(A) New student--A first-time student of an institution of higher education or private or independent institution of higher education, including a student who transfers to the institution from another institution; or

(B) A student who previously attended an institution of higher education or private or independent institution of higher education before January 1, 2012, and who is enrolling in the same or another institution of higher education or private or independent institution of higher education following a break in enrollment of at least one fall or spring semester.

(2) Evidence of Vaccination--Acceptable evidence of vaccination or receiving a booster dose includes:

(A) the signature or stamp of a physician or his/her designee, or public health personnel on a form which shows the month, day, and year the vaccination dose or booster was administered;

(B) an official immunization record generated from a state or local health authority; or

(C) an official record received from school officials, including a record from another state.

~~{(1) Evidence of Vaccination--Acceptable evidence of vaccination includes:}~~

~~{(A) the month, day, and year the vaccination was administered;}~~

~~{(B) the signature or stamp of the physician or his/her designee, or public health personnel;}~~

~~{(C) an official immunization record generated from a state or local health authority; or}~~

~~{(D) an official record received from school officials, including a record from another state.}~~

~~[(2) First-time student--A student who has not previously enrolled at a public, private, or independent institution of higher education, or a dual enrollment or a transfer student who was previously enrolled at a public, private, or independent institution of higher education.]~~

(3) Health practitioner--Any person authorized by law to administer a vaccination.

(4) Institution of Higher Education--Any public technical institute, public junior college, public senior college or university, medical or dental unit or other agency of higher education as defined in Texas Education Code, §61.003(8).

~~[(5) On-campus housing--Student housing facilities located on the campus of an institution of higher education, such as dormitories, sorority and fraternity houses, privately owned residence halls, and apartments.]~~

(5) ~~[(6)]~~ Private or independent institution of higher education--Includes only a private or independent college or university as defined in Texas Education Code §61.003(15).

§21.613. *Immunization Requirement.*

(a) An entering [A first-time] student who has been admitted to [attending] an institution of higher education or private or independent institution of higher education, [including a transfer student, who plans to reside in, or has applied for on-campus housing and has been approved to reside in an on-campus dormitory or other on-campus student housing facility] must show evidence of receipt of an initial bacterial meningitis vaccination dose or booster during the five-year period preceding and at least 10 days prior to the first day of the first semester in which the student initially enrolls at an institution, or following a break in enrollment of at least one fall or spring semester at the same or another institution [vaccination against bacterial meningitis].

(b) Each institution of higher education or private or independent institution of higher education [that has on-campus housing for students] must designate a department or unit [an office and administrative official] to receive from the student evidence of receipt of an initial bacterial meningitis vaccination dose or booster during the five-year period preceding and at least 10 days prior to the first day of the first semester in which the student initially enrolls at an institution, or following a break in enrollment of at least one fall or spring semester at the same or another institution [having been vaccinated against bacterial meningitis].

(c) Evidence of the student having received the vaccination from an appropriate health practitioner must be received by the designated department or unit [administrative official] at the institution of higher education or private or independent institution of higher education. [The student must have received the vaccination at least 10 days prior to the student taking up residence in on-campus housing.] This information shall be maintained in accordance with Family Education Rights and Privacy Act Regulations, and with Health Insurance Portability and Accountability Act.

(d) Each institution of higher education or private or independent institution of higher education must provide to a student, with the registration materials that the institution provides to a student before the student's initial enrollment in the institution, the following:

(1) written or electronic notice of the right of the student or of a parent or guardian of a student, to claim an exemption from the vaccination requirement, as specified in §21.614 of this title (relating to Exceptions); and

(2) written or electronic notice of the importance of consulting a physician about the need for the immunization against bacterial meningitis to prevent the disease.

(e) Under justifiable circumstances, an administrative official of the designated department or unit of an institution of higher education, or private or independent institution of higher education, may grant extensions to individual students to extend the compliance date to no more than 10 days after the first day of the semester or other term in which the student initially enrolls.

§21.614. *Exceptions.*

(a) A student is not required to submit evidence of receiving the vaccination against bacterial meningitis or evidence of receiving a booster dose if the student is 30 years of age or older or if the student is enrolled only in online or other distance education courses.

(b) [(a)] A student, or a parent or guardian of a student, is not required to submit evidence of receiving the vaccination against bacterial meningitis if the student, or a parent or guardian of a student, submits to the institution:

(1) an affidavit or a certificate signed by a physician who is duly registered and licensed to practice medicine in the United States, in which it is stated that, in the physician's opinion, the vaccination required would be injurious to the health and well-being of the student; or

(2) an affidavit signed by the student stating that the student declines the vaccination for bacterial meningitis for reasons of conscience, including a religious belief. A conscientious exemption form from the Texas Department of State Health Services must be used.

(c) [(b)] The exception noted in subsection (b)(2) [(a)(2)] of this section does not apply during a disaster or public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency declared by an appropriate official or authority from the Texas Department of State Health Services and is in effect for the location of the institution the student attends.

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 August 5, 2011.

TRD-201102988

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: October 27, 2011

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



TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 223. FEES

22 TAC §223.1

Introduction. The Texas Board of Nursing (Board) proposes an amendment to §223.1 (relating to Fees). This amendment is proposed under the authority of the Occupations Code §301.151 and §301.155 and is necessary to implement the requirements of House Bill (HB) 1, enacted by the 82nd Legislature, Regu-

lar Session, effective September 1, 2011, which establishes the Board's budget for the 2012-2013 biennium.

In its budget request for the 2012-2013 biennium, the Board requested eleven new full-time employees, \$300,000 litigation costs, and the restoration of the 5% budget reduction that was required by the Legislature for all state agencies during the 2010-2011 biennium. The Legislature approved the appropriation of these monies subject to a contingency rider which requires the Board to assess or increase fees in an amount sufficient to generate an additional \$2,419,030 during the 2012-2013 biennium. In order to meet this demand, the Board has determined that it is necessary to increase its renewal fees. However, the Board has decided that it will only increase the renewal fees for professional nurses at this time. The renewal fees for vocational nurses will not be affected by this proposal. This decision was based upon a review of the annual base salaries of professional and vocational nurses. Based upon its review, the Board determined that the annual base salary of a vocational nurse is 2/3 that of the annual base salary of a professional nurse. The decision to increase the renewal fees of professional nurses is intended to maintain parity between professional and vocational nurses based upon the respective earning capacity of each level of licensure. The Board's current renewal fee for a professional nursing license is \$65 each biennium. The proposed amendment will increase the renewal fee for a professional nursing license by \$8, resulting in a new renewal fee of \$73. This \$8 increase moves the Board closer to achieving complete parity between the renewal fees for vocational nursing licenses, which is currently set at \$55, and the proposed \$73 renewal fee for professional nursing licenses. Further, the Board anticipates that this \$8 fee increase in the renewal fee for a professional nursing license, coupled with the Board's normal revenue growth, will be sufficient to meet the requirements of HB 1. The proposed amendment is necessary to effectuate this fee increase.

Section-by-Section Overview. Proposed amended §223.1(a)(3)(A) provides that the Board has established reasonable and necessary fees for the administration of its functions and that the fee for the renewal of a professional nursing license is \$73 each biennium.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendment will be in effect, there may be an approximate \$8,277,254 - \$9,073,917 total yearly increase in revenue to state government as a result of the enforcement or administration of the proposal due to increased renewal fees for professional nurses. This estimate is based on the following factors. First, the proposed amendment imposes a new \$73 renewal fee on licensees that timely renew their professional nursing licenses each biennium. Currently, 234,518 individuals hold professional nursing licenses in this state. In fiscal year 2010, 103,199 licensees timely renewed their professional nursing licenses. Based upon an estimated 4.75% rate of growth, the Board estimates that 108,049 licensees will renew their professional nursing licenses in fiscal year 2011. Based upon an estimated 4.75% rate of growth, the Board estimates that 113,128 licensees will renew their professional nursing licenses in fiscal year 2012 and 118,445 licensees will renew their professional nursing licenses in fiscal year 2013, resulting in an approximate \$7,887,577 - \$8,646,485 annual increase in revenue to state government. This amount is based upon the timely renewal of a professional nursing license.

The proposed amendment may also have a peripheral effect on an individual's reactivation of a delinquent or inactive license. Currently, the Board's rules require each individual who reactivates a professional nursing license that has been delinquent for less than 90 days to incur a fee of \$60, in addition to the current renewal fee. The proposal will not affect the amount of the late fee, but the proposal will increase the amount of the current renewal fee by \$8. Thus, under the proposal, an individual who reactivates a professional nursing license that has been delinquent for less than 90 days will generate a total \$133 annual increase in revenue to state government. Further, the Board's rules also require each individual who reactivates a professional nursing license that has been delinquent for 90 or more days to incur a fee of \$120, in addition to the current renewal fee. The proposal will not affect the amount of the late fee, but the proposal will increase the amount of the current renewal fee by \$8. Thus, under the proposal, an individual who reactivates a professional nursing license that has been delinquent for 90 or more days will generate a total \$193 annual increase in revenue to state government. The Board's rules also require each individual who reactivates an inactive professional nursing license that has been in inactive status for less than four years to incur a fee of \$10, in addition to the current renewal fee. The proposal will not affect the amount of the reactivation fee, but the proposal will increase the amount of the current renewal fee by \$8. Thus, under the proposal, an individual who reactivates an inactive professional nursing license that has been inactive for less than four years will generate a total \$83 annual increase in revenue to state government. Finally, the Board's rules require each individual who reactivates an inactive professional nursing license that has been in inactive status for four or more years to incur a fee of \$20, in addition to the current renewal fee. The proposal will not affect the amount of the reactivation fee, but the proposal will increase the amount of the current renewal fee by \$8. Thus, under the proposal, an individual who reactivates an inactive professional nursing license that has been inactive for four or more years will generate a total \$93 annual increase in revenue to state government.

In fiscal year 2010, 725 licensees reactivated delinquent professional nursing licenses that had been in delinquent status for less than 90 days; 1,134 licensees reactivated delinquent professional nursing licenses that had been in delinquent status for 90 or more days; 371 licensees reactivated inactive professional nursing licenses that had been in inactive status for less than four years; and 282 licensees reactivated professional nursing licenses that had been in inactive status for four or more years. In fiscal year 2011, based upon a 4.75% estimated rate of growth, the Board anticipates that 759 licensees will reactivate delinquent professional nursing licenses that have been in delinquent status for less than 90 days. Further, in fiscal year 2011, based upon a 4.75% estimated rate of growth, the Board anticipates that 1,187 licensees will reactivate delinquent professional nursing licenses that have been in delinquent status for 90 or more days. In fiscal year 2011, based upon a 4.75% estimated rate of growth, the Board further anticipates that 388 licensees will reactivate inactive professional nursing licenses that have been in inactive status for less than four years. Finally, in fiscal year 2011, based upon a 4.75% estimated rate of growth, the Board anticipates that 295 licensees will reactivate professional nursing licenses that have been in inactive status for four or more years. Based upon a 4.75% estimated rate of growth, the Board further forecasts that 795 licensees will reactivate delinquent professional nursing licenses that have been in delinquent status for less than 90 days in fiscal year 2012 and

832 licensees will reactivate delinquent professional nursing licenses that have been in delinquent status for less than 90 days in fiscal year 2013. Further, based upon a 4.75% estimated rate of growth, the Board anticipates that 1,243 licensees will reactivate delinquent professional nursing licenses that have been in delinquent status for 90 or more days in fiscal year 2012 and 1,302 licensees will reactivate delinquent professional nursing licenses that have been in delinquent status for 90 or more days in fiscal year 2013. Based upon a 4.75% estimated rate of growth, the Board anticipates 407 licensees will reactivate inactive professional nursing licenses that have been in inactive status for less than four years in fiscal year 2012 and 426 licensees will reactivate inactive professional nursing licenses that have been in inactive status for less than four years in fiscal year 2013. Finally, still based upon a 4.75% estimated rate of growth, the Board anticipates that 309 licensees will reactivate professional nursing licenses that have been in inactive status for four or more years in fiscal year 2012 and 324 licensees will reactivate professional nursing licenses that have been in inactive status for four or more years in fiscal year 2013. Based upon the Board's estimations, there may be a \$389,677 - \$427,432 annual increase in revenue to state government as a result of the reactivation of a delinquent or inactive professional nursing license. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the availability of additional resources that will better enable the Board to meet its responsibilities under the Nursing Practice Act. The Board is charged with protecting the health and safety of the public by ensuring that every nurse that holds a license in Texas is safe to practice. The additional funds that will be generated as a result of the proposal will better enable the Board to fulfill this mission by increasing its overall operational efficiency.

Potential Costs for Persons Required to Comply with the Proposal

The Board estimates that the total probable costs of compliance with the proposed amendment will be a minimum of \$73 for each individual who renews his/her professional nursing license each biennium. The Board's current renewal fee for a professional nursing license is \$65. The proposal increases this amount by \$8. Thus, under the proposal, individuals who timely renew their professional nursing licenses will be required to pay \$73 every biennium. The Board's current rules also require a fee for individuals who reactivate a delinquent or inactive professional nursing license. Although the proposal does not affect the late fee or the reactivation fee, the proposal will affect the amount of the current renewal fee. For instance, under the Board's current rules, an individual who reactivates a professional nursing license that has been delinquent for less than 90 days is required to pay a fee of \$60, in addition to the current renewal fee. The proposal does not alter the \$60 fee. However, the proposal will increase the current renewal fee by \$8, requiring these individuals to pay a total reactivation fee of \$133. Further, under the Board's current rules, an individual who reactivates a professional nursing license that has been delinquent for 90 or more days is required to pay a fee of \$120, in addition to the current renewal fee. The proposal does not alter the \$120 fee. However, the proposal will increase the current renewal fee by \$8, requiring these individuals to pay a total reactivation fee of \$193. Likewise, under the Board's current rules, an individual who reactivates a professional nursing license that has been in inactive status for less

than four years is required to pay a fee of \$10, in addition to the current renewal fee. The proposal does not alter the \$10 fee. However, the proposal will increase the current renewal fee by \$8, requiring these individuals to pay a total reactivation fee of \$83. Finally, under the Board's current rules, an individual who reactivates a professional nursing license that has been in inactive status for four or more years is required to pay a fee of \$20, in addition to the current renewal fee. The proposal does not alter the \$10 fee. However, the proposal will increase the current renewal fee by \$8, requiring these individuals to pay a total reactivation fee of \$93. However, the renewal fees under the proposal are only required every two years, and an individual may avoid additional late/reactivation fees by timely renewing his/her professional nursing license. Further, the proposal only affects the renewal of professional nursing licenses. Thus, there are no costs of compliance for an individual renewing a vocational nursing license. Any other costs to comply with the proposed amendment result from the legislative enactment of Chapter 301 and are not a result of the adoption, enforcement, or administration of the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. The Government Code §2006.002(c) and (f) require, that if a proposed rule may have an economic impact on small businesses or micro businesses, state agencies must prepare, as part of the rulemaking process, an economic impact statement that assesses the potential impact of the proposed rule on these businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule.

The Government Code §2006.001(1) defines a micro business as a legal entity, including a corporation, partnership, or sole proprietorship that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has not more than 20 employees. The Government Code §2006.001(2) defines a small business as a legal entity, including a corporation, partnership, or sole proprietorship, that: (i) is formed for the purpose of making a profit; (ii) is independently owned and operated; and (iii) has fewer than 100 employees or less than \$6 million in annual gross receipts. Each of the elements in §2006.001(1) and (2) must be met in order for an entity to qualify as a micro business or small business.

As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendment will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendment because no individual, Board regulated entity, or other entity required to comply with the proposed amendment meets the definition of a small or micro business under the Government Code §2006.001(1) or (2). The only entities subject to the proposed amendment are individual nurses. Because individual nurses are not independently owned and operated legal entities that are formed for the purpose of making a profit, no individual nurse qualifies as a micro business or small business under the Government Code §2006.001(1) or (2). Therefore, in accordance with the Government Code §2006.002(c) and (f), the Board is not required to prepare a regulatory flexibility analysis.

Takings Impact Assessment. The Board has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or re-

quire a takings impact assessment under the Government Code §2007.043.

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on September 19, 2011 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.state.tx.us, or faxed to (512) 305-8101. An additional copy of the comments on the proposal or any request for a public hearing must be simultaneously submitted to Mark Majek, Director of Operations, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to mark.majek@bon.state.tx.us, or faxed to (512) 305-8101. If a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the Occupations Code §301.151 and §301.155.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.155(a) provides that the Board by rule shall establish fees in amounts reasonable and necessary to cover the costs of administering the Occupations Code Chapter 301. Further, §301.155(a) provides that the Board may not set a fee that existed on September 1, 1993, in an amount less than the amount of that fee on that date.

Section 302.155(b) provides that the Board may adopt a fee in an amount necessary for a periodic newsletter to produce and disseminate to license holders the information required under the Occupations Code §301.158.

Section 301.155(c) states that the Board shall assess a surcharge of not less than \$3 or more than \$5 for a registered nurse and a surcharge of not less than \$2 or more than \$3 for a vocational nurse to the fee established by the Board under §301.155(a) for a license holder to renew a license under Chapter 301. The Board may use nine cents of the registered nurse surcharge and six cents of the vocational nurse surcharge to cover the administrative costs of collecting and depositing the surcharge. The Board quarterly shall transmit the remainder of each surcharge to the Department of State Health Services to be used only to implement the nursing resource section under the Health and Safety Code §105.002. The Board is not required to collect the surcharge if the Board determines the funds collected are not appropriated for the purpose of funding the nursing resource section.

Cross Reference To Statute. The following statutes are affected by this proposal: Rule: §223.1 - Statutes: §301.151 and §301.155.

§223.1. Fees.

(a) The Texas Board of Nursing has established reasonable and necessary fees for the administration of its functions.

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

(3) Licensure renewal (each biennium):

(A) Registered Nurse (RN): \$73 [~~\$65~~]; and

(B) (No change.)

(4) - (26) (No change.)

(b) (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 August 8, 2011.

TRD-201103005

Jena Abel

Assistant General Counsel

Texas Board of Nursing

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 305-6822



PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER B. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

22 TAC §535.17

The Texas Real Estate Commission proposes amendments to §535.17, concerning Appraisals. The amendments are proposed to implement the relevant provisions of Senate Bill 747 (SB 747), 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, §1101.002 to delete appraisals from the laundry list of activities that are considered real estate brokerage which require licensure as a real estate broker or salesperson. In addition SB 747 adds a new item regarding broker price opinions. Because the effective date of the relevant provisions of SB 747 is September 1, 2011, the commission is simultaneously taking emergency action to amend §535.17 to be consistent with SB 747.

The amendments to §535.17 clarify that a real estate licensee must be licensed under Texas Occupations Code, Chapter 1103 to conduct real estate appraisals. Further, the rule is amended to provide that if a broker or salesperson provides a broker price opinion under Chapter 1101, the opinion must provide a written disclosure as provided in the rule.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Ms. DeHay also has 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 the section will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.17. Broker Price Opinion or Comparative Market Analysis [Appraisals].

(a) A real estate licensee may not perform an appraisal of real property unless the licensee is licensed or certified under Texas Occupations Code, Chapter 1103.

(b) ~~[(a)] [Except as provided by this section, appraisals of real property performed in this state by Texas real estate licensees must be conducted in accordance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation in effect at the time the appraisal is performed.] If a real estate licensee, [for a separate fee,] provides a broker price [an] opinion [of value] or comparative market analysis under §1101.002(1)(A)(xi) of the Act [which does not conform with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation], the licensee shall also provide the person for whom the opinion or analysis is prepared with a written statement containing the following language: "THIS IS A BROKER PRICE [AN] OPINION [OF VALUE] OR COMPARATIVE MARKET ANALYSIS AND SHOULD NOT BE CONSIDERED AN APPRAISAL. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation."~~

(c) ~~[(b)]~~ The statement required by subsection (b) ~~[(a)]~~ of this section must be made part of any written opinion or analysis report and must be reproduced verbatim.

~~[(e)]~~ The exception allowed by subsection (a) of this section does not apply to a transaction in which the Resolution Trust Corporation or a federal financial institutions regulatory agency has required compliance with the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.]

(d) A salesperson may prepare, sign, and present a broker price opinion or comparative market analysis ~~[real estate appraisals]~~ for the salesperson's sponsoring broker, but the salesperson must submit the broker price opinion or comparative market analysis ~~[appraisals]~~ in the broker's name and the broker is responsible for it ~~[the appraisals]~~.

~~[(e)]~~ The Act does not apply to appraisals performed by the employees of a financial institution or investment firm in connection with a contemplated loan or investment by their employers.]

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 August 4, 2011.
TRD-201102965

Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: September 18, 2011
For further information, please call: (512) 936-3092

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SUBCHAPTER C. EXEMPTIONS TO REQUIREMENTS OF LICENSURE

22 TAC §535.31

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.31, concerning Attorneys at Law. The amendments are proposed to implement the requirements of Senate Bill 747 (SB 747), 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amended Texas Occupations Code, §1101.005 regarding an exemption for attorneys. The amendment now exempts attorneys licensed in the State of Texas; it previously applied to attorneys licensed in any state. Because the effective date of the relevant provisions of SB 747 is September 1, 2011, the commission is simultaneously taking emergency action to amend §535.31 to be consistent with SB 747.

The amendments to §535.31 clarify that the exemption only applies to attorneys licensed in the State of Texas.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the section. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Ms. DeHay also has 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 the section will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.31. Attorneys at Law.

An [A licensed] attorney licensed in this state is exempt from the requirements of the Act but cannot sponsor real estate salespersons or serve as the designated officer or manager of a licensed corporation or limited liability company, or designated partner of a partnership unless the attorney is also licensed as a real estate broker. This provision is not a waiver of the standards of eligibility and qualification elsewhere established in the Act.

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

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

TRD-201102966

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §§535.50, 535.51, 535.53, 535.55, 535.56

The Texas Real Estate Commission (TREC) proposes amendments to §535.50, concerning Definitions; §535.51, concerning General Requirements for a License; §535.53, concerning Corporations and Limited Liability Companies; §535.55, concerning Education Requirements for a Salesperson License; and §535.56, concerning Education and Experience Requirements for a Broker License. The amendments are proposed to implement the relevant provisions of Senate Bill 747 (SB 747), 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.401 to expand from six months to one year the period of time in which an applicant may satisfy an examination requirement from the date the application is filed. In addition, the application and renewal requirements for business entities were changed in Texas Occupations Code, §1101.355 and §1101.453 to require that business entities applying for and renewing a broker license must provide proof that the entity maintains errors and omissions insurance with a minimum annual limit of \$1 million if the designated broker owns less than 10 percent of the entity. Finally SB 747 amends Chapter 1101 of the Texas Occupations Code to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in §1.002 of the Business Organizations Code. Emergency action is simultaneously being taken to amend §§535.50, 535.51, and 535.53 to be consistent with SB 747 because the effective date of those provisions is September 1, 2011.

The amendments to §535.50 amend the list of definitions to define a designated broker of a business entity, to clarify that the designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership, and to incorporate the relevant provisions regarding the new broker responsibility continuing education course required under amendments to §1101.458 of the Act. The amendments to §535.51 clarify that an applicant must meet education and experience requirements before the applicant may take a qualifying examination. The amendments to §535.53 change the title of the section to apply to all business entities, not just corporations and limited liability companies, to add partnerships to the types of business entities that must be licensed, and to address the requirement that business entities must maintain errors and omissions insurance if the designated broker owns less than 10 percent of the entity.

Regarding the amendments to §535.55 and §535.56, the commission has the authority under §1101.362 of the Act to waive some or all of the education and experience requirements for someone who has been licensed within the six years preceding the date the application is filed. Under current §535.55, the commission has waived the education required for a salesperson license for an applicant who was licensed in the preceding six years and otherwise meets the requirements of the section. The proposed amendment to §535.55 would change the period from six years to two years so that an applicant who was licensed as a salesperson or broker in the preceding two years and otherwise meets the requirements of the section regarding MCE could apply for a salesperson license. Similarly, under current §535.56(a), the commission has waived the education and experience required for a broker license for a broker who was licensed in the preceding four years and otherwise meets the requirements of the subsection. The proposed rule would change the period from four years to two years and delete the reference to a salesperson so that a broker who had an active license in two of the preceding four years and otherwise meets the requirements of the section regarding MCE could apply for a broker license without meeting the new experience requirements.

In addition, amendments to §535.56 would add the rules required by amendments to §1101.356(b-1) of the Act to establish active experience requirements to apply for a broker license under §1101.356 and §1101.357 of the Act. An applicant would be required to establish that the applicant has obtained 3600 points of active experience with documentary evidence and a statement from the applicant's sponsoring broker at the time the experience was earned. Certain types of transactions would be worth a certain number of points and the applicant would be required to use the forms adopted by reference in the rule to summarize the transactions. An applicant would be able to continue to gain experience after an application has been submitted until such time that the applicant meets the total number required but before the applicant may take the qualifying examination. Experience earned after the application is submitted would be reported on a different form adopted by reference in the rule. If an applicant is unable to obtain sufficient documentation and/or the signature of the sponsoring broker, the applicant would be required to use an affidavit adopted by reference in the rule to describe the applicant's efforts to obtain the documentation and/or signatures. In addition, the applicant would be required to provide two additional affidavits each signed by a different individual familiar with the applicant's circumstances and attesting to the applicant's efforts to obtain the appropriate documentation. Finally, the rule would give the commission the discretion to request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by §1101.356 of the Act and §535.56.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections, other than the costs of obtaining copies of the forms which would be available at no charge through the TREC web site and application filing fee.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.50. Definitions.

The following words and terms, when used in Subchapter E, F or G of this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

(3) Broker Responsibility Course--The course required by §1101.458 of the Act.

(4) ~~[(3)]~~ Certified MCE instructor--An instructor approved by the Texas Real Estate Commission and certified to teach the required legal update course, ~~the~~ the required ethics course, or the broker responsibility course.

(5) Designated broker--An individual holding an active Texas real estate broker license designated by a business entity licensed by the commission to act on its behalf. The designated broker must be an officer of a corporation, a manager of a limited liability company or a general partner of a partnership.

(6) ~~[(4)]~~ Distance learning course--A correspondence course, alternative delivery method course or course offered through video presentation.

(7) ~~[(5)]~~ Elective credits--The hours of mandatory continuing education required to renew a license for which a specific course is not required.

(8) ~~[(6)]~~ Hour--Fifty minutes of actual session time.

(9) ~~[(7)]~~ Instructor--A person approved by the Texas Real Estate Commission to teach core or mandatory continuing education courses.

(10) ~~[(8)]~~ MCE--Mandatory Continuing Education.

(11) Non-elective Courses--The legal and ethics courses required by §1101.455 of the Act and the broker responsibility course required by §1101.458 of the Act.

(12) ~~[(9)]~~ Proctor--A person who monitors a final examination for a course offered by a provider under the guidelines contained in this section. A proctor may be a course instructor, the provider, an employee of a college or university testing center, a librarian, or other person approved by the commission.

(13) ~~[(10)]~~ Provider--Any person offering a course for which credit may be granted by the Commission to a licensee or

applicant, regardless of whether the Commission must approve or certify the person to offer the course.

(14) ~~[(11)]~~ Related course--A course determined to be acceptable by the commission to count towards related credit. The commission will periodically publish lists of acceptable real estate related courses.

(15) ~~[(12)]~~ Required legal course or legal credits--The required legal update or legal ethics courses or credits earned for attending such courses.

(16) ~~[(13)]~~ Required legal ethics course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(17) ~~[(14)]~~ Required legal update course--A required course created for and approved by the Texas Real Estate Commission to satisfy three of the six legal hours of mandatory continuing education required by §1101.455 of the Act.

(18) ~~[(15)]~~ School--A person accredited by the Texas Real Estate Commission to offer courses for which core credit is given.

(19) ~~[(16)]~~ Student--An individual taking a core or MCE course for TREC credit.

§535.51. General Requirements for a License.

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

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

(1) the applicant fails to satisfy a current education, experience or requirement of an examination requirement within one year ~~[six months]~~ from the date the application is filed;

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

(e) An applicant must complete relevant education and experience requirements before the applicant is eligible to take a qualifying examination for a license.

§535.53. Business Entities ~~[Corporations and Limited Liability Companies].~~

(a) For the purposes of qualifying for, maintaining, or renewing a license, a business entity ~~[corporation or limited liability company]~~ must designate a broker ~~[one individual holding an active Texas real estate broker license]~~ to act for it. ~~[The designated broker must be an officer of the corporation or a manager of a limited liability company.]~~ The business entity ~~[corporation or limited liability company]~~ may not act as a broker during any period in which it does ~~[has]~~ not have a designated broker ~~[a person]~~ to act for it who meets the requirements of the Act. Upon any change in the business entity's ~~[corporation or limited liability company's]~~ designated broker ~~[individual]~~, the entity ~~[corporation or limited liability company]~~ must provide proof to the commission of the designated broker's ~~[individual's]~~ current status as an officer, ~~[or]~~ manager or general partner for that entity and proof that the business entity maintains appropriate errors and omissions insurance if the designated broker owns less than 10 percent of the entity. A broker may not act as a designated broker ~~[person]~~ at any time while the broker's license is inactive, expired, suspended or revoked.

(b) Section 1101.355 of the Act applies only to business entities ~~[corporations or limited liability companies]~~ which are created under the laws of this state, provided, however, that a business entity ~~[corporation or limited liability company]~~ formed under the laws of a state other than Texas will be considered to be a Texas resident for purposes of this section if it is qualified to do business in Texas; its officers,

[~~or~~] managers, or general partner, its principal place of business and all of its assets are located in Texas; and all of its officers, [~~and~~] directors, or managers, [~~and~~] members and partners are Texas residents.

(c) (No change.)

§535.55. Education Requirements for a Salesperson License.

Notwithstanding §1101.451(f) of the Act, the commission may waive the education required for a real estate salesperson license if the applicant:

(1) was licensed either as a Texas real estate broker or as a Texas real estate salesperson within two [~~six~~] years prior to the filing of the application; and

(2) (No change.)

§535.56. Education and Experience Requirements for a Broker License.

(a) An applicant for a broker license must have four [~~two~~] years of experience actively practicing as a broker or salesperson in Texas during the 60 [~~36~~] months prior to filing the application, as follows:

(1) (No change.)

(2) Under §1101.357 of the Act, a person who is the designated broker of a business entity [~~officer of a corporation or limited liability company~~] that is licensed as a real estate broker in another state is deemed to be a licensed real estate broker in another state. A person licensed in another state may derive the required four [~~two~~] years' experience from periods in which the person was licensed in one or more states.

(b) An applicant for a broker license must possess four years of active experience as a licensed real estate broker or salesperson during the 60 months preceding the date the application is filed.

(c) An applicant for a broker license must demonstrate not less than 3600 points of qualifying practical experience obtained during the period required by subsection (b) of this section, using TREC No. BL-A, Supplement A-Qualifying Experience Report for a Broker License. An applicant must use TREC No. BL-B, Supplement B-Qualifying Experience Report for a Broker License After an Application Has Been Filed, to report qualifying experience after an application for a broker license is filed. An applicant must demonstrate experience for four out of five years.

(1) An applicant will receive credit for such experience according to the point system set forth in subsection (d) of this section.

(2) Upon request by the commission, either prior to or after licensure, an applicant shall provide documentation to substantiate any or all of the experience claimed by the applicant.

(3) Failure to promptly provide the requested documentation or proof shall be grounds to deny the application. Any false claim of experience shall be grounds to deny the application, or shall be grounds to suspend or revoke the applicant's current license.

(d) Experience points shall be credited to an applicant in accordance with the following schedule for active licensed salesperson or broker activity only:

(1) Residential transactions including single family, condo, co-op unit, multi-family (1 to 4-unit):

(A) Closed purchase or sale--300 points per transaction.

(B) An executed lease, renewal or extension for a landlord or tenant--50 points per transaction.

(C) Residential rental property management rent collection--25 points per property per year.

(2) Commercial transactions, including apartments (5 units or more), office, retail, industrial, mixed use, hotel/motel, parking facility/garage, and specialty:

(A) Closed purchase or sale--450 points.

(B) An executed lease, renewal or extension for a landlord or tenant--100 points per transaction.

(C) Commercial rental property management rent collection--100 points per property per year.

(3) Farm and Ranch transactions:

(A) Closed purchase or sale on a farm and ranch contract--300 points.

(B) Closed purchase or sale on an unimproved contract--25 points.

(4) Brokerage branch office or team management--20 points per month with a maximum of 1200 points credit toward the 3,600 points total requirement.

(5) Listing or buyer representation agreements--10 points each.

(e) An applicant shall have the burden of establishing to the satisfaction of the commission that the applicant actually performed the work associated with the real estate transaction claimed for experience credit.

(f) If an applicant is unable to obtain documentation and/or the signature of a sponsoring broker to support their claim for experience, the applicant must use TREC No. AFF-A, Affidavit in Lieu of Documentation and/or Signature, to explain that the applicant made a good faith effort to obtain the documentation and/or signature, describing the effort to obtain the documentation and reasons why it is not available. In addition, the applicant must submit two TREC No. AFF-B, Affidavit in Support of Applicant's Claim of Experience, each signed by a different individual who knows the applicant or is familiar with the transaction(s) at issue attesting to the applicant's efforts to obtain the documentation and/or signature, and attesting to the fact that the applicant performed the work for which the applicant is requesting points.

(g) The commission may request additional documentation, rely on the documentation provided under this subsection, or utilize any other information provided by the applicant to determine whether the applicant has sufficient experience as required by §1101.356 of the Act and this section.

(h) [~~(b)~~] Notwithstanding §1101.451(f) of the Act and subsections (a) - (f) of this section, the commission may waive education and experience required for a real estate broker license if the applicant satisfies each of the following conditions.

(1) The applicant was licensed as a Texas real estate broker [~~or salesperson~~] within two [~~four~~] years prior to the filing of the application.

(2) The [~~if the applicant was previously licensed as a Texas real estate broker, the~~] applicant has completed at least 15 hours of mandatory continuing education (MCE) courses within the two-year period prior to the filing of an application for an active license. If the applicant was previously licensed as a Texas real estate salesperson, the applicant satisfies all current education requirements for an original broker license.

(3) The applicant has at least two years of active experience as a licensed real estate broker or salesperson during the four-year [~~six-year~~] period prior to the filing of the application.

(i) Forms and affidavits required to be used to report experience under this section are adopted by reference, published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

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 August 4, 2011.

TRD-201102967

Loretta R. DeHay
General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER F. PRE-LICENSE EDUCATION AND EXAMINATION

22 TAC §535.63

The Texas Real Estate Commission (TREC) proposes amendments to §535.63, relating to Accreditation of Core Education Schools. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.301 to require the commission to adopt rules setting an examination passage rate benchmark for each category of license issued under Chapter 1101 and Chapter 1102, Texas Occupations Code.

The amendment to §535.63 establishes the method in which the benchmark passage rate would be calculated for each license category and makes other conforming changes to be consistent with the amendments made by SB 747.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics

for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.63. *Accreditation of Core Education Schools.*

(a) (No change.)

(b) Renewal of accreditation. No more than six months prior to the expiration of its current accreditation, a school may apply for accreditation for another four year period. Approval or disapproval of an application shall be subject to the standards for initial applications for accreditation, as well as the requirement of §1101.301 of the Act.

(1) For purposes of calculating the exam passage rate of a commission-accredited school for a license category, each type of licensing examination that a student takes for the first time will have a school affiliation, unless the last core course taken for the purpose of meeting the education requirements for the type of license was taken at a school that is not accredited by the commission or the course was taken more than two years before the date the student submitted the course to the commission.

(2) (No change.)

(3) A school's passage rate for each license category will be calculated and published quarterly by dividing the number of students affiliated with that school, as defined in paragraph (2) of this subsection, who passed the examination on their first attempt in the four-year period ending on the last day of the previous quarter by the total number of the school's graduates who took the exam for the first time in the same period. If a school offers courses toward multiple license types, the exam results for that school will be calculated and posted by license category [type and aggregated into the school's overall passage rate for that period]. The passage rate for each license category that will be used to determine whether the accreditation standard has been met for the license category is the most current [aggregate] rate published by the commission as of the date the commission receives the timely application for reaccreditation or, if the accreditation expired before being renewed, the most recent rate published by the commission as of the expiration date of the school's accreditation.

(4) In determining whether a school qualifies for reaccreditation for the license category based on its examination passage rate, the commission may consider a variety of factors, including the overall [separate] passage rate [rates] for sales, broker, and inspector applicants and trends within the school's passage rate over the four-year accreditation period.

(5) The commission shall calculate and publish the average pass rate for each license type each quarter by dividing the total number of applicants who passed the qualifying examination the first time in the four-year period ending on the last day of the previous quarter by the total number of applicants who took the examination for the first time in the same period.

(c) (No change.)

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

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

TRD-201102968

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Earliest possible date of adoption: September 18, 2011
For further information, please call: (512) 936-3092



SUBCHAPTER G. MANDATORY CONTINUING EDUCATION

22 TAC §535.71, §535.72

The Texas Real Estate Commission (TREC) proposes amendments to §535.71, relating to Approval of Providers, Courses, and Instructors, and §535.72, relating to Presentation of Courses, Advertising and Records. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, §1101.458 to require a broker who sponsors a salesperson and a licensee who supervise another licensee to take a six-hour broker responsibility course to renew a license.

The amendments to §535.71 and §535.72 provide the method by which the commission will create and approve the broker responsibility course, which will be the same way it handles the three-hour legal update and three-hour ethics courses required under §1101.455, and provides conforming changes for consistency.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.71. *Approval of Providers, Courses, and Instructors.*

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

(k) Non-elective [Required legal update and ethics] courses. The commission shall approve bi-annually a legal update course and a legal ethics course required by §1101.455(e) of the Act, and a broker responsibility course required by §1101.458(a) of the Act which shall

be conducted through providers by instructors certified by the commission under this subchapter. The subject matter and course materials for the courses shall be created for and approved by the commission. The courses expire on December 31 of each odd-numbered year and shall be replaced with new courses approved by the commission. A provider may not offer a new course until an instructor of the course obtains recertification by attending a new instructor training program. Providers must acquire the commission-developed course materials and utilize such materials to conduct the non-elective [required legal] courses. The non-elective [required legal] courses must be conducted as prescribed by the rules in this subchapter and the course materials developed for the commission.

(l) Modification of the non-elective [required legal] courses. Providers and instructors may modify a non-elective [required legal] course only to provide additional information on the same or similar topics covered in the course or to create distance learning courses that are substantially similar to the live courses developed for the commission. To the extent that a non-elective [required legal] course is modified or integrated into a longer course for which additional elective credit is requested, the commission shall grant elective and non-elective [legal] credit for the combined course.

(m) Instructor certification. Only instructors certified by the commission may teach the non-elective [required legal] courses or develop distance learning courses for the presentation of non-elective [required legal] courses. An instructor must obtain prior commission approval under subsection (n) of this section prior to attending an instructor training program. The commission shall issue a written certification to an instructor to teach the applicable non-elective [required legal] course(s) upon the instructor's satisfactory completion of a training program to teach the non-elective [required legal] course(s) that is acceptable to the commission. An instructor may obtain certification to teach either one or all non-elective [both required legal] courses. A certified [legal] course instructor may teach the non-elective [required legal] courses for any approved provider after the instructor has attended an instructor training program. A certified [legal] course instructor may not independently conduct a non-elective [required legal] course unless the instructor has also obtained approval as a provider. An instructor must obtain written certification from the commission prior to teaching the non-elective [required legal] courses and prior to representing to any provider or other party that he or she is certified or may be a certified [as a legal] course instructor. An instructor's certification to teach a non-elective [required legal] course expires on December 31 of every odd-numbered year. An instructor may obtain recertification by attending a new instructor training program.

(n) Standards for approval of instructors of non-elective [required legal] courses. Prior to attending an instructor training course, a person must obtain commission approval to be an instructor using Instructor Application - Core, Legal Update, and Ethics, approved by the commission. To be approved as an instructor of a non-elective [required legal update or ethics] course, a person must possess the following qualifications:

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

(o) Certification [Approval] of instructor. If the commission determines that the applicant meets the standards for instructor certification [approval], the commission shall certify [approve] the application and provide a written notice of the certification [approval] to the applicant. Unless surrendered or revoked for cause, the certification [approval] will be valid for a period of two years.

(p) - (q) (No change.)

(r) Legal update, [and] legal ethics course and broker responsibility course application. A provider must submit a MCE Course Ap-

plication Supplement and receive written acknowledgment from the commission prior to offering a non-elective [~~required legal update or required legal ethics~~] course.

(s) (No change.)

(t) Acceptable combined courses. An elective credit course offered by a provider to satisfy all or part of the ~~nine~~ hours of other than legal topics required by §1101.455 of the Act may be offered with a non-elective [~~the required legal update course or required legal ethics~~] course.

(u) Non-elective [~~Required legal~~] courses for real estate related courses. Non-elective [~~MCE legal update and legal ethics~~] courses may be accepted by the commission as real estate related courses for satisfying the education requirements of §1101.356 and §1101.358, of the Act.

(v) Correspondence courses for elective credit. An MCE provider may register an MCE elective course by correspondence with the commission if the course is subject to the following conditions:

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

(3) the course does not include a request for non-elective [~~required legal~~] course credit.

(w) Alternative delivery method courses for elective credit. An MCE provider may register an MCE elective course by alternative delivery method with the commission if the course is subject to the following conditions:

(1) (No change.)

(2) the course does not include a request for non-elective [~~required legal~~] course credit; and

(3) (No change.)

(x) Correspondence courses for required non-elective [~~legal~~] credit. The commission may approve a provider to offer a non-elective [~~an MCE required legal ethics~~] course by correspondence subject to the following conditions:

(1) (No change.)

(2) the content of the course must satisfy the requirements of §1101.455 or §1101.458 of the Act and this section and must be substantially similar to the non-elective [~~legal~~] courses disseminated and updated by the Commission;

(3) - (4) (No change.)

(y) Each non-elective [~~required legal~~] course offered by correspondence must contain the following:

(1) - (8) (No change.)

(z) Alternative delivery method courses for non-elective [~~required legal~~] credit. The commission may accept non-elective [~~required legal~~] courses offered by alternative delivery method subject to the following conditions.

(1) - (4) (No change.)

(aa) (No change.)

(bb) Supervised Video Instruction for non-elective [~~required legal~~] course credit. A provider may register a course under subsection (r) of this section to be taught by supervised video instruction if the provider:

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

(cc) An applicant must submit an MCE Course Application Supplement to seek approval to offer an MCE distance learning non-elective [~~required legal~~] course and receive written acknowledgment from the commission prior to offering the course.

(dd) - (ff) (No change.)

§535.72. *Presentation of Courses, Advertising and Records.*

(a) (No change.)

(b) Partial credit.

(1) (No change.)

(2) Partial credit may not be granted for any course that contains as part of its curriculum all or part of the non-elective [~~six legal~~] hours of mandatory continuing education required by §1101.455 and §1101.458 of the Act.

(c) - (f) (No change.)

(g) Course materials. Providers must furnish students with copies, for students' permanent use, of any material which is the basis for a significant portion of the course. Providers offering any of the non-elective [~~required legal~~] courses must provide the students with the materials identified as student course materials for the non-elective [~~required legal~~] courses. The course materials provided to the students may be in printed form or electronic media such as a CD-ROM or diskette that the student may access through commonly available software such as common word-processing programs and slide presentation programs. Ample space must be provided on handouts for note taking or completion of any written exercises. If a provider charges fees for supplies, materials, or books needed in course work, the fees must be itemized in a written statement provided to each student by the provider before the student registers for the course.

(h) - (k) (No change.)

(l) Course administration. Providers of MCE courses are responsible to the commission for the conduct and administration of each course presentation, the punctuality of classroom sessions, verification of student attendance, and instructor performance. Providers shall ensure that the non-elective [~~required legal~~] courses are administered by instructors in substantially the same manner as disseminated and updated by the commission. During the presentation of a course, providers may not promote the sale of goods or services.

(m) Updates. If the commission determines that it is in the public interest to update the non-elective [~~required legal~~] courses about changes in the law, the commission may require the provider to furnish each student with a copy of the information. The commission also may require the provider to ensure that the provider's instructors include the material in the presentation of the course. The commission shall furnish the provider with a copy of the information and notify the provider that the commission requires compliance with this subsection in a non-elective [~~required legal~~] course or any elective course combined with a non-elective [~~legal~~] course offered after the provider's receipt of the notice.

(n) - (p) (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 August 4, 2011.

TRD-201102969

Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: September 18, 2011
For further information, please call: (512) 936-3092

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SUBCHAPTER I. LICENSES

22 TAC §§535.91, 535.93, 535.96

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.91, relating to Renewal Notices, §535.93, relating to Late Renewal Applications, and §535.96, relating to Mailing Address and Other Contact Information. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, §1101.451 to change the maximum period of time in which a licensee can file a late renewal from one year to six months, amends §1101.458 to require that certain licensees take a six hour broker responsibility course to renew a license, and amends the requirements in §1101.552 for license holders to provide and maintain certain contact information with the commission, including an email address if available. Because the effective date of certain provisions of SB 747 is September 1, 2011, the commission is simultaneously taking emergency action to amend §535.93 to be consistent with SB 747.

The amendments to §535.91 clarify that a broker who sponsors salespersons, a designated broker of a business entity, and a license holder who is a delegated supervisor of one or more licensees under §535.2 for six months or more during the course of the current license must take the six hour broker responsibility course to renew a license. The amendments to §535.93 change to six months any references to the one year period for filing a late renewal. The amendments to §535.96 clarify that licensees must provide and maintain contact information with the commission, including an email address if available.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.91. *Renewal Notices.*

(a) (No change.)

(b) Except as authorized by §535.92 of this subchapter, for the renewal of a license on active status that is not subject to the annual education requirements of §1101.454 of the Act, the license holder must attend during the term of the current license, at least two Commission developed legal courses consisting of a three-hour legal update course and a three-hour legal ethics course to comply with the six legal hours of mandatory continuing education required by §1101.455 of the Act. [The remaining nine hours required by §1101.455 of the Act may consist of elective credit courses registered with the commission under Subchapter G of this chapter (relating to Mandatory Continuing Education).]

(c) A broker who sponsors a salesperson, a designated broker of a business entity, or a license holder who is a delegated supervisor of one or more license holders pursuant to §535.2 of this chapter for six months or more during the course of the current license must attend the six hour broker responsibility course required by §1101.458 of the Act.

(d) [(e)] The commission shall mail a license renewal notice three months before the expiration of the current license. Failure to receive a license renewal notice does not relieve a licensee of the obligation to renew a license.

(e) [(d)] A licensee shall provide information requested by the commission in connection with an application to renew a license within 30 days after the commission requests the information. Failure to provide information requested by the commission in connection with a renewal application within the required time is grounds for disciplinary action under §1101.656 of the Act.

(f) [(e)] If a licensee is unable to renew a license on the commission's Internet website, the licensee may renew an unexpired license by obtaining a renewal application form from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 and complying with the commission's requirements.

§535.93. *Late Renewal Applications.*

(a) A licensee who files a late application to renew a previous license less than six months [~~one year~~] after the expiration of the license must do so on a form approved by the commission for that purpose and is subject to the requirements of this section and Tex. Occ. Code §1101.451(e). The commission shall renew the license in an active status except as provided by this section. A license issued under this section is effective the day following the expiration of the previous license.

(b) - (c) (No change.)

(d) If a licensee who has not completed all MCE before the expiration of the previous license files a late application to renew the license in an active status more than 60 days but less than six months [~~one year~~] from the expiration of the license, the licensee must:

(1) - (4) (No change.)

(e) - (g) (No change.)

§535.96. *Mailing Address and Other Contact Information.*

(a) Each licensee shall furnish a mailing address, phone number, and email address, if available, to the commission and shall report all subsequent changes within 10 days after a change of any of the listed

contact information. If a licensee fails to update the mailing address, the last known mailing address provided to the commission will be deemed to be the licensee's mailing address.

(b) (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 August 4, 2011.

TRD-201102970

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Texas Real Estate Commission

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER J. FEES

22 TAC §535.101

The Texas Real Estate Commission (TREC or the commission) proposes amendments to §535.101, relating to Fees. The amendments would increase the salesperson and broker application fees from \$105 to \$119, the annual renewal fees for brokers and salespersons from \$34 to \$39; the late renewal fee from \$51 to \$58.50 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less; and late renewal fee from \$68 to \$78 for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months. The amendments also change the maximum late renewal period from six months to one year and remove a reference to an application in the fee for moral character determination.

The justification for the fee increases is to generate sufficient revenue to fund operations of the agency and to comply with requirements of Senate Bill 1000, 82nd Texas Legislature, Regular Session (2011).

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process, and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit \$750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the State Auditor of \$10,000 per fiscal year, a nonrefundable retainer to the Attorney General of \$75,000 per fiscal year, and a nonrefundable retainer to the State Office of Administrative Hearings of \$75,000 per fiscal year. TREC will be required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than \$550,000 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than \$425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016.

Karen Alexander, Staff Services Director, has determined that for the first five-year period new §535.101(1), (2), (3), (4), (14), and (15) are in effect there will be fiscal implications for the state, but not to units of local government as a result of enforcing or administering the subsection. Approximately 9,600 applicants, 58,500 renewal applicants, and 6,040 late renewal applicants would be required to pay the increased fees in the remaining months of FY 2012 with estimated revenue of \$637,958. For FY 2013, the total estimated revenue would be \$765,550. For each of the three years after (2014-2016), the estimated revenue would be \$765,550 per year.

Ms. Alexander has determined that there is no anticipated impact on local or state employment as a result of implementing the amendments. However, there is an anticipated impact on small businesses and micro-businesses. The Commission has approximately 150,000 real estate brokers and salespersons licensed in Texas. It is estimated that nearly all of these licensees are small businesses and many of them are micro-businesses. The projected economic impact of this rule amendment on these small businesses will be negative due to the increased application, renewal and late renewal fees. Under §2006.002, Texas Government Code, an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety and environmental and economic welfare of the state. TREC has developed this proposed rule in accordance with a legislative mandate to cover all costs of operation under Senate Bill 1000, 82nd Legislature, Regular Session (2011). Consequently, any variance from the legislative mandate would not be consistent with the health, safety, and environmental and economic welfare of the state, and no alternative regulatory methods have been considered.

Ms. Alexander also has determined that for each year of the first five years the increased fees under §535.101 are in effect the public benefit anticipated as a result of enforcing the amendments is that the agency will raise sufficient revenue to fund costs of agency operations and required payments to the General Revenue Fund and other state agencies under Senate Bill 1000, 82nd Legislature, Regular Session (2011).

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposal.

§535.101. Fees.

(a) (No change.)

(b) The commission shall charge and collect the following fees:

(1) a fee of \$119 [~~\$105~~] for the filing of an original application for a real estate broker license, which includes a fee for transcript evaluation;

(2) a fee of \$39 [~~\$34~~] for annual renewal of a real estate broker license;

(3) a fee of \$119 [~~\$105~~] for the filing of an original application for a real estate salesperson license, which includes a fee for transcript evaluation;

(4) a fee of \$39 [~~\$34~~] for annual renewal of a real estate salesperson license;

(5) - (11) (No change.)

(12) a fee of \$25 for the filing of ~~[an application for]~~ a moral character determination;

(13) (No change.)

(14) a fee of \$58.50 [~~\$54~~] for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired 90 days or less;

(15) a fee of \$78 [~~\$68~~] for the annual late renewal of a real estate salesperson or broker license for a person whose license has been expired more than 90 days but less than six months [~~one year~~];

(16) - (18) (No change.)

(c) (No change.)

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

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

TRD-201102971

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Texas Real Estate Commission

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER L. TERMINATION OF SALESPERSON'S ASSOCIATION WITH SPONSORING BROKER

22 TAC §535.121, §535.122

The Texas Real Estate Commission (TREC) proposes amendments to §535.121, regarding Inactive License, and §535.122, regarding Reactivation of License. The amendments are proposed to make conforming changes to other rules that are being proposed to implement the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In part, SB 747 amends Texas Occupations Code, Chapter 1101 regarding the treatment of business entities who engage in real estate brokerage activity.

The amendments to §535.121 make conforming changes to be consistent with other rules that are being simultaneously proposed to implement the requirements of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). The amendments to §535.122 clarify that a salesperson on inactive status may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission as long as the salesperson otherwise meets MCE requirements.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.121. Inactive License.

(a) The license of a salesperson immediately becomes inactive upon each of the following circumstances:

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

(4) if the sponsoring broker is a corporation, limited liability company or partnership, the expiration, suspension, revocation or inactivation of the license of the ~~[person]~~ designated ~~[as]~~ broker~~;~~ ~~manager, or partner on the license certificate]~~ of the entity, which also places the license of the entity on inactive status; or

(5) (No change.)

(b) - (c) (No change.)

§535.122. Reactivation of License.

(a) (No change.)

(b) When a salesperson whose license status is inactive enters the sponsorship of a broker and the salesperson is subject to MCE requirements, the salesperson is not returned to active status until MCE requirements are satisfied and the commission has received documentation of course completion in a form satisfactory to the commission. If the salesperson has satisfied all MCE requirements, the salesperson may act as the broker's salesperson from the date the notice and fee are mailed or delivered to the commission. A salesperson whose original application or renewal application was subject to educational requirements imposed by the Act, §1101.358 and §1101.454, is not subject to MCE requirements as a condition of returning to active status during the term of the license issued from the original application or renewal application.

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 August 4, 2011.

TRD-201102972

Loretta R. DeHay

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Texas Real Estate Commission

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER M. NONRESIDENTS

22 TAC §535.132

The Texas Real Estate Commission (TREC) proposes amendments to §535.132, regarding Eligibility for Licensure. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends the Texas Occupations Code Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in §1.002 of the Business Organizations Code.

The amendments to §535.132 make conforming changes to be consistent with proposed changes to §535.55 and §535.56 regarding waiver of education or experience requirements for a salesperson or broker license, and change the references from individual business entity types to "business entity" to make conforming changes to be consistent with the statutory text amended by SB 747.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.132. Eligibility for Licensure.

(a) A person residing in another state may apply for a license under ~~[the provisions of Subchapter H of the Act and]~~ this section if the person:

- (1) (No change.)
- (2) was licensed as a Texas real estate salesperson or broker no more than two ~~six~~ years prior to the filing of the application.
- (3) The commission may waive ~~[examination]~~ education and experience requirements if the applicant satisfies the conditions established by §535.56(h) of this title ~~(relating to Education and Experience Requirements for a Broker License) [§535.61 of this title (relating to Waiver of Examinations) and by either §535.62 of this title (relating to Brokers: Education and Experience)] or §535.55 of this title (relat-~~

~~ing to Education Requirements for a Salesperson License) [§535.63 of this title (relating to Salespersons: Education)].~~

(b) A business entity ~~[limited liability company]~~ created or chartered under the laws of another state ~~[or a corporation chartered in a state other than Texas]~~ may apply for a Texas real estate broker license if the entity meets one of the following requirements.

(1) (No change.)

(2) The entity is licensed as a broker in a state in which it is permitted to engage in real estate brokerage business as a foreign ~~business entity [limited liability company or corporation]~~.

(3) The entity was created or chartered in a state that does not license ~~business entities [limited liability companies or corporations]~~, as the case may be, and the entity is lawfully engaged in the practice of real estate brokerage in another state and meets all other requirements for applications for a license in Texas.

(c) (No change.)

(d) To be eligible to receive a license and maintain an active license, a ~~business entity [limited liability company or corporation]~~ created or chartered in another state must designate a person to act for it who meets the requirements of §1101.453 of the Act, although the designated ~~broker [person]~~ is not required to be a resident of Texas. Foreign ~~business entities [corporations and limited liability companies]~~ also must be permitted to engage in business in this state to receive a Texas real estate broker license.

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

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

TRD-201102973

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER N. SUSPENSION AND REVOCATION OF LICENSURE

22 TAC §535.141

The Texas Real Estate Commission (TREC) proposes amendments to §535.141, regarding Initiation of Investigation. The amendments are proposed to implement the relevant provisions of Senate Bill 747, 82nd Texas Legislature, Regular Session (2011). In relevant part, SB 747 amends Texas Occupations Code, Chapter 1101 to delete the exemption from licensing for partnerships in which a general partner is a broker and requires licensure as a broker for any business entity as defined in §1.002 of the Business Organizations Code. Because the effective date of the relevant provision in SB 747 is September 1, 2011, the commission is simultaneously taking emergency action to amend §535.141 to be consistent with SB 747 on that date.

The amendments to §535.141 clarify that the rule applies to all business entities that are required to have a broker license under Chapter 1101 and to make conforming changes to the rule to be consistent with other rules that have been adopted on an

emergency basis due to the September 1, 2011 effective date of the relevant provisions of SB 747.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Ms. DeHay also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be in consistency between the Texas Occupations Code, Chapter 1101 and 22 TAC Chapter 535.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.141. *Initiation of Investigation.*

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

(d) The designated broker [~~designated by a licensed business entity to act as its officer, manager or partner~~] is responsible for all real estate brokerage activities performed by, on behalf of, or through a [the] business entity. A complaint which names a business entity licensed as a broker as the subject of the complaint but which does not specifically name the designated broker [~~designated as the officer, manager or partner of the business entity;~~] is a complaint against the designated broker [~~acting as the designated officer, manager or partner~~] at the time of any alleged violation for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities. A complaint which names a salesperson sponsored by a licensed business entity but which does not specifically name the designated broker of the business entity is a complaint against the designated broker at the time of any alleged violation by the salesperson for the limited purposes of determining the designated broker's involvement in any alleged violation and whether the designated broker fulfilled his or her professional responsibilities provided the complaint concerns the conduct of the salesperson as an agent of the business entity.

(e) - (h) (No change.)

(i) A person whose license is subject to an order suspending the license must prior to the suspension taking effect:

(1) (No change.)

(2) if the person is a broker, notify in writing any salespersons he or she sponsors, or any business entity [~~corporation, limited liability company or partnership~~] for which the person is designated broker [~~as an officer, manager or partner~~] that:

(A) (No change.)

(B) once the suspension is effective any salesperson he or she sponsors or who is sponsored by the business entity [~~corporation, limited liability company or partnership~~] will not be authorized to engage in real estate brokerage unless the salespersons associate with another broker and file a change of sponsorship with the commission or the business entity designates a new broker and files a change of designated broker [~~officer, manager or partner~~] with the commission;

(3) - (7) (No change.)

(j) - (k) (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 August 4, 2011.

TRD-201102974

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 936-3092



SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.210

The Texas Real Estate Commission (TREC) proposes amendments to §535.210, regarding Inspector Fees. The amendments would increase the professional inspector application fee from \$90 to \$104, the real estate inspector application fee from \$75 to \$89, and the apprentice inspector application fee from \$35 to \$84, the annual renewal fees for professional and real estate inspectors from \$27 to \$32, and the annual renewal fee for an apprentice inspector from \$22 to \$27.

The justification for the fee increases is to generate sufficient revenue to fund operations of the agency and to comply with requirements of Senate Bill 1000, 82nd Texas Legislature, Regular Session (2011).

Senate Bill 1000 makes the Texas Real Estate Commission self-directed and semi-independent. The bill removes the agency from the legislative budgeting process and requires the commission to adopt and approve an annual budget. The bill requires that the commission collect sufficient fees to fund operations to carry out its function and to fund the budget. In relevant part, the bill also requires the agency to remit \$750,000 to the general revenue fund not later than August 31 of each fiscal year, to remit a nonrefundable retainer to the State Auditor of \$10,000 per fiscal year, a nonrefundable retainer to the Attorney General of \$75,000 per fiscal year, and a nonrefundable retainer to the State Office of Administrative Hearings of \$75,000 per fiscal year. TREC will be required to reimburse each agency for all costs incurred in excess of the retainers for providing services to the commission. In addition, the bill requires the agency to pay rent in a reasonable amount to be determined by the Texas Facilities Commission with aggregate rent payments to be not less than \$550,000 per fiscal year for state fiscal years ending August 31, 2012 and August 31, 2013; and not less than \$425,000 per fiscal year for each year ending August 31, 2014, August 31, 2015, and August 31, 2016.

Karen Alexander, Staff Services Director, has determined that for the first five-year period §535.210(a)(1) - (6) are in effect there will be fiscal implications for the state, but not to units of local government as a result of enforcing or administering the subsection. Approximately 400 applicants and 1,500 renewal applicants would be required to pay the increased fees in the remaining months of FY 2012 for a total estimated revenue of \$17,167. For FY 2013, the total estimated revenue would be \$20,600. For each of the three years after (2014 - 2016), the estimated revenue would be \$20,600 per year.

Ms. Alexander has determined that there is no anticipated impact on local or state employment as a result of implementing the amendments. However, there is an anticipated impact on small businesses and micro-businesses. The Commission has approximately 3,000 home inspectors licensed in Texas. It is estimated that nearly all of the licensees are small businesses and many of them are micro-businesses. The projected economic impact of this rule amendment on these small businesses will be negative due to the increased application and renewal fees. Under §2006.002, Texas Government Code, an agency is required to consider alternative regulatory methods only if the alternative methods would be consistent with the health, safety and environmental and economic welfare of the state. TREC has developed this proposed rule in accordance with a legislative mandate to cover all costs of operation under Senate Bill 1000, 82nd Legislature, Regular Session (2011). Consequently, any variance from the legislative mandate would not be consistent with the health, safety, and environmental and economic welfare of the state, and no alternative regulatory methods have been considered.

Ms. Alexander also has determined that for each year of the first five years the increased fees under §535.210 are in effect the public benefit anticipated as a result of enforcing the amendments is that the agency will raise sufficient revenue to fund costs of agency operations and required payments to the General Revenue Fund and other state agencies under Senate Bill 1000, 82nd Legislature, Regular Session (2011).

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.210. *Fees.*

(a) The commission shall charge and collect the following fees:

(1) a fee of \$84 [~~\$35~~] for filing an original application for a license as an apprentice inspector;

(2) a fee of \$89 [~~\$75~~] for filing an original application for a license as a real estate inspector, which includes a fee for transcript evaluation;

(3) a fee of \$104 [~~\$90~~] for filing an original application for a license as a professional inspector, which includes a fee for transcript evaluation;

(4) a fee of \$27 [~~\$22~~] for the annual renewal of the license of an apprentice inspector;

(5) a fee of \$32 [~~\$27~~] for the annual renewal of the license of a real estate inspector;

(6) a fee of \$32 [~~\$27~~] for the annual renewal of the license of a professional inspector;

(7) - (11) (No change.)

(b) (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 August 4, 2011.

TRD-201102975

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 936-3092



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 414. RIGHTS AND PROTECTIONS OF PERSONS RECEIVING MENTAL HEALTH SERVICES

SUBCHAPTER A. PROTECTED HEALTH INFORMATION

25 TAC §§414.1 - 414.8

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

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (Department), proposes the repeal of §§414.1 - 414.8, concerning protected health information for persons receiving mental health services.

BACKGROUND AND PURPOSE

At the time of adoption by the Texas Department of Mental Health and Mental Retardation (TDMHMR), these rules served to inform the public and department contractors about newly adopted regulations that implemented the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which protects the privacy of a client's individually identifiable health information.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that

agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 414.1 - 414.8 have been reviewed and the department has determined that the reasons for adopting the rules no longer exist. Therefore, the rules on this subject are being repealed to eliminate duplication and the potential for conflict with federal and state statutes, rules, and regulations if they are revised. The department is revising its rules in 25 TAC Chapter 1, Subchapter W, concerning its privacy policy that will also apply to state facilities.

SECTION-BY-SECTION SUMMARY

Section 414.1 explains the purpose of the subchapter.

Section 414.2 explains the application of the subchapter.

Section 414.3 lists the definitions of terms used in the subchapter.

Section 414.4 includes the requirement that facilities, local authorities, and community centers comply with all applicable federal and state statutes, rules, and regulations pertaining to privacy of protected health information. The section requires facilities to use "Interpretive Guidance on Laws Pertaining to Privacy of Mental Health and Mental Retardations Records for the TDMHMR Services Delivery System." The section sets forth the information to be included in the entities' notice of privacy practices that must be provided to each individual or legally authorized representative who receives services. The section also requires that each entity named in the subchapter's application require their contractors to comply with applicable federal and state statutes, rules, and regulations pertaining to privacy of protected health information.

Section 414.5 provides a list of the applicable federal and state statutes, rules, and regulations that pertain to privacy of protected health information, which were in existence when the subchapter was adopted.

Section 414.6 lists the exhibit that is referenced in the subchapter.

Section 414.7 lists the references to federal and state statutes, rules, and regulations that pertain to the privacy of protected health information that are mentioned in the subchapter.

Section 414.8 provides a distribution list for the rules.

FISCAL NOTE

Mike Maples, Assistant Commissioner, Mental Health and Substance Abuse Division, has determined that for each year of the first five years that the repeals will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the repeals as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples also has determined that there will be no adverse impact on small businesses or micro-businesses as a result of repealing the rules as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the proposed repeals.

ECONOMIC COST TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the proposed repeals. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Maples has determined that the public will benefit from repeal of the sections during each year of the first five years that the repeals are in effect. The public benefit anticipated as a result of repealing the sections is a concise set of rules that do not duplicate requirements established in federal and state statutes, rules, and regulations.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Janet Fletcher, Mental Health Program Services Section, Mental Health and Substance Abuse Division, Department of State Health Services, Mail Code 2018, P.O. Box 149347, Austin, Texas 78714-9347, (512) 206-5982 or by email to mhsarules@dshs.state.tx.us, with "414-A Comments" in the subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed repeals have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

The repeals affect Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§414.1. *Purpose.*

§414.2. *Application.*

§414.3. *Definitions.*

§414.4. *Requirements.*

§414.5. *Regulations and Statutes Governing Confidentiality of Protected Health Information.*

§414.6. *Exhibit.*

§414.7. *References.*

§414.8. *Distribution.*

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 August 5, 2011.

TRD-201102990

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 776-6972



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER K. SICK LEAVE POOL

28 TAC §1.1201

The Texas Department of Insurance (Department) proposes new Subchapter K, §1.1201, relating to the Department's sick leave pool. The new section is proposed pursuant to the Government Code §661.002(c), which requires the governing body of a state agency to adopt rules relating to the administration of the agency sick leave pool.

FISCAL NOTE. Jacque Canady, Chief Financial Officer, Administrative Operations, has determined that, for each year of the first five years the proposed new section will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposed section. There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Ms. Canady also has determined that, for each year of the first five years the new section is in effect, the anticipated public benefit will be that the public will benefit from the flexibility afforded to agency employees or their family members suffering from a catastrophic illness or injury.

Further, she has determined that there will be no economic cost to persons required to comply with the section, and therefore there is no need to consider less costly alternatives to the new rule. Finally, Ms. Canady has determined that the new rule will have no adverse effect on small businesses or micro-businesses or local employment.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. In accordance with the Government Code §2006.002(c), the Department has determined that this proposal will not have an adverse economic effect on small or micro businesses because small or micro businesses are not subject to the proposal. Therefore, in accordance with the Government Code §2006.002(c), the Department is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. The Department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking or require a takings impact assessment under the Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 19, 2011 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Patricia David, Mail Code 112-HR, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the comment period. If a hearing is held, written and oral comments presented at the hearing will be considered.

STATUTORY AUTHORITY. The new section is proposed under the Government Code §661.002(c) and the Insurance Code §36.001. Section 661.002(c) of the Government Code provides that a governing body of a state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool. Section 36.001 of the Insurance Code provides that the Commissioner of Insurance may 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.

CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal: Government Code §661.002.

§1.1201. Sick Leave Pool.

A sick leave pool is established to alleviate hardship caused to an employee and the employee's immediate family if a catastrophic injury or illness forces the employee to exhaust all eligible leave time earned by that employee and to lose compensation time from the state.

(1) The Texas Department of Insurance's Human Resources Director is designated as the pool administrator.

(2) The pool administrator will recommend a policy, operating procedures, and forms for the administration of this section for approval by the commissioner of insurance or designee.

(3) Operation of the pool shall be consistent with the Government Code, Chapter 661.

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 August 3, 2011.

TRD-201102953

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 18, 2011

For further information, please call: (512) 463-6327



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 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER G. AUTHORIZED COSTS AND FEES IN IV-D CASES

1 TAC §55.155

The Office of the Attorney General, Child Support Division adopts new §55.155, concerning collecting annual service and payment processing fees. The section is adopted without changes to the proposed text as published in the July 1, 2011, issue of the *Texas Register* (36 TexReg 4005) and will not be republished. The section outlines the service and payment processing fees that may be assessed in full service monitoring and enforcement cases and cases that receive only payment processing and record keeping services.

The purpose of the new section is to provide information to the public regarding the collection of annual service and payment processing fees.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Family Code §231.103(g), which authorizes the Office of the Attorney General to adopt rules for the imposition of fees and recovery of costs of child support services.

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

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

TRD-201102976

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Effective date: August 24, 2011

Proposal publication date: July 1, 2011

For information regarding this publication, contact Zindia Thomas,
Agency Liaison, at (512) 936-9901.



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 13. GRAIN WAREHOUSE

4 TAC §13.7

The Texas Department of Agriculture (the department) adopts amendments to §13.7, regarding fees for registration and inspection pertaining to a state licensed public grain warehouse, with-out changes to the proposal published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3773). The rule text will not be republished.

The department administers a grain warehouse program to license and inspect businesses that store grain for producers and other grain depositors. Annual inspections are conducted at each licensed facility to ensure the warehouse is maintaining the proper quantity and quality of stored grain for depositors, as well as to ensure adequate recordkeeping and compliance with regulations adopted under Chapter 14 of the Texas Agriculture Code. These amendments are necessary to comply with changes made to the grain warehouse program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be entirely offset by revenue generated for the program and has authorized the agency to collect fees accordingly. The amendments to §13.7 will increase grain warehouse, single warehouse and combination warehouse license fees and inspection fees by an average of 48% so that the program may continue, under the cost recovery requirement imposed by the 82nd Legislature.

The department received three comments on the proposal. Comments were submitted by the Texas Corn Producers Board, the Texas Farm Bureau, and Texas Grain & Feed Association. Two comments received were in support of the proposed rule. One commenter indicated that while producers may ultimately bear the cost of the increase in fees, the security of having inspections is necessary to producers who warehouse grain in these facilities. Another commenter stated that he understands the requirement for the increase in current fees being considered. This commenter requested that the fee increases be relative to the funding of each specific program, should not exceed the cost of providing the services, and the funds remain with the collecting agency and not part of the state general fund.

One comment was received in opposition to the proposal. The commenter indicated that when the state grain warehouse program is no longer competitive with the federal program, larger elevators will continue to leave, adding further financial pressure on the state as well as remaining license holders. The department appreciates the submission of the comment; however, the department disagrees with this comment. If a fee of appropriate level to satisfy new legislatively mandated cost recovery require-

ments causes warehouses of certain sizes to seek federal licensure instead of state, then the program will have a proportional reduction in costs and will make other appropriate adjustments to ensure cost recovery is met while maintaining the effectiveness of the program.

The amendments are adopted under the Texas Agriculture Code (the Code), §14.015, which provides the department with the authority to adopt rules necessary for the administration of requirements and procedures for the operation of a grain warehouse; the Code, §14.023, which provides the department with the authority to provide by rule for an annual license fee for a grain warehouse license; and the Code, §14.059, which authorizes the department to set and collect grain warehouse inspection fees.

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 August 8, 2011.

TRD-201103006

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: September 1, 2011

Proposal publication date: June 24, 2011

For further information, please call: (512) 463-4075



CHAPTER 14. PERISHABLE COMMODITIES HANDLING AND MARKETING PROGRAM SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §14.3

The Texas Department of Agriculture (the department) adopts amendments to §14.3, concerning the Handling and Marketing of Perishable Commodities Program (HMPC), without changes to the proposal published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3774). The rule text will not be republished.

The department administers the HMPC program to license and inspect businesses that buy Texas perishable commodities on credit. These licensees, in addition to paying an annual license fee, also pay an annual fee to the Produce Recovery Fund. This trust fund, administered by TDA, provides for the payment of claims to producers and other dealers who sell perishable commodities on credit a way of recovery in situations where the licensee or a person required to be licensed refuses or is unable to pay. TDA processes claims and the Produce Recovery Fund Board holds hearings to determine whether or not the claims merit payment from the Produce Recovery Fund. These amendments are necessary to comply with changes made to the HMPC program by the 82nd Texas Legislature. The Legislature has required that all of the costs of administering this program be fully recovered and has authorized the agency to collect fees accordingly. The amendments to §14.3 increase fees for an HMPC license, for buying and transporting agent cards, and the filing fee for administration of an HMPC complaint by an average of 34% so that the program may continue, under the cost recovery requirement imposed by the 82nd Legislature. The cost of the program was reduced by focusing inspections on complaints re-

ceived from producers as well as using the Produce Recovery Fund as provided under Texas Agriculture Code, §103.002.

No comments were received on the proposed changes.

The amendments are adopted under the Texas Agriculture Code (the Code) §101.006, which provides that the department shall charge a license fee, as provided by department rule, for persons licensed under Chapter 101; the Code, §103.010, which provides the department with the authority to charge a fee for a transporting agent or buying agent identification card; the Code, §103.005, which provides the department with the authority to charge a fee for the filing of a claim seeking payment from the Produce Recovery Fund.

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 August 8, 2011.

TRD-201103007

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: September 1, 2011

Proposal publication date: June 24, 2011

For further information, please call: (512) 463-4075



CHAPTER 20. COTTON PEST CONTROL SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22

The Texas Department of Agriculture (department) adopts amendments to §20.22, concerning stalk destruction requirements. Section 20.22 is adopted without changes to the proposal published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3776) and will not be republished.

The amendments to §20.22 are adopted to protect the state's and Texas cotton producers' investment in boll weevil eradication, to accelerate eradication of the boll weevil in Texas and to provide new deadlines for requests for extension of cotton stalk destruction, as provided by Senate Bill (SB) 378, 82nd Legislature, 2011, which authorizes the department to specify the due date for destruction deadline extension requests by department rule.

One comment was received in support of the proposal. The commenter noted that adoption of the changes would allow producers and Cotton Producer Advisory Committees to be able to more accurately determine the need for extension requests. The commenter also stated appreciation for the inclusion of email as an accepted form for submission of extension requests.

The amendments are adopted under the Texas Agriculture Code (the Code), §74.006 which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74; the Code, §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests; the Code, §74.0032, as amended by SB 378, which provides that an extension request must be made within the period specified

by department rule; and Texas Government Code, §2001.006, which provides the department with the authority to adopt rules in preparation for the implementation of legislation that has become law, but has not taken effect.

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 August 8, 2011.

TRD-201103008

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Effective date: September 1, 2011

Proposal publication date: June 24, 2011

For further information, please call: (512) 463-4075



TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §§121.1 - 121.12, 121.14, 121.15

The Texas Film Commission adopts amendments to Title 13, Part 8, Chapter 121, §§121.1 - 121.4, 121.7 - 121.12, and 121.14; and new §121.15, without changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register* (36 TexReg 4224). The Texas Film Commission also adopts amendments to §121.5 and §121.6, with changes to the proposed text as published in the July 8, 2011, issue of the *Texas Register*.

The adopted amendment to §121.1 removes stand-alone Visual Effects Projects from program eligibility due to low utilization, increases the cash grant percentage available to Digital Interactive Media Productions in light of their favorable economic impact, introduces the necessity for Applicants receiving \$300,000 or more in cash grants to provide a CPA Audit Opinion upon submission of their Expended Budgets and clarifies the funds appropriated in the 2012-2013 fiscal biennium.

The adopted amendment to §121.2 removes defined terms which were not referenced elsewhere in the chapter or which were referenced only once, adds defined terms which were referenced but undefined in the chapter and which merited a full definition for ease of reference in other locations in the chapter, and supplements and/or clarifies existing defined terms.

The adopted amendment to §121.3 removes stand-alone Visual Effects Projects from program eligibility due to low utilization, and in light of the introduction of new defined terms in §121.2, which now feature much of the removed content of §121.3, collapses and shortens §121.3 and makes it clearer to the reader as a consequence.

The adopted amendment to §121.4 further clarifies the unavailability of cash grants to public service announcements which advance a public policy or political position, allows award shows which are broadcast on national network television to a national audience to participate in the program and makes clarifying language refinements.

The adopted amendment to §121.5, in light of the introduction of new defined terms in §121.2, which now feature some of the removed content of §121.5, collapses and shortens portions of §121.5 and makes it clearer to the reader as a consequence; utilizes terms which are now defined in §121.2; clarifies eligibility for shipments originating in Texas, airline travel and rental cars; clarifies restrictions on capital expenditures and location fees; defines terms which had previously only been utilized in a defined fashion once in §121.5; and clarifies the eligibility of certain internal billed items for commercial producers, among other useful, clarifying changes. The word "not," which had been erroneously deleted, was restored to §121.5(b)(2) as a clerical and ministerial fix upon adoption to conform with the overall intent of §121.5(b).

The adopted amendment to §121.6 increases the cash grant percentage available to Digital Interactive Media Productions in light of their favorable economic impact. The figure "\$250,000" was replaced by the figure "\$100,000" in §121.6(b)(1) upon adoption as a clarifying and ministerial confirming fix to reflect the stated eligibility threshold for Digital Interactive Media Productions in §121.3(f)(1).

The adopted amendment to §121.7 utilizes defined terms now that they are established in §121.2 and provides greater detail concerning the calculation of additional percentages for multiple locations for days spent shooting in Underutilized or Economically Distressed Areas.

The adopted amendment to §121.8 removes stand-alone Visual Effects Projects from program eligibility due to low utilization, clarifies the Content Document requirement for a Digital Interactive Media Production, utilizes defined terms now that they are established in §121.2, clarifies disqualifications in certain circumstances and adds a provision describing the applicability of the Texas Public Information Act.

The adopted amendment to §121.9 utilizes defined terms now that they are established in §121.2, clarifies that preliminary award determinations may only be made if appropriated funds are available, clarifies the requirements concerning return of grant agreements, clarifies the ability to adjust encumbered grant award amounts, clarifies the requirement that a parent or guardian sign a Declaration of Texas Residency in the event of a minor cast or crew member and adds a provision concerning use of the Texas Film Commission logo.

The adopted amendment to §121.10 utilizes defined terms now that they are established in §121.2, cross-references certain other definitions by rule and adds disqualification provisions relating to notification of production commencement and voluntary disqualification by an Applicant.

The adopted amendment to §121.11 utilizes defined terms now that they are established in §121.2, clarifies that the Applicant shall assemble its own submission, references the CPA Audit Opinion required by this chapter, requires additional information in the cast and crew list and removes stand-alone Visual Effects Projects from program eligibility due to low utilization, plus other useful, clarifying revisions.

The adopted amendment to §121.12 utilizes defined terms now that they are established in §121.2, clarifies that debts may not be owed to the State of Texas and specifies that the Compliance and Oversight Division shall conduct the final compliance audit.

The adopted amendment to §121.14 utilizes defined terms now that they are established in §121.2.

The adopted new §121.15 adds a requirement that if the estimated grant amount reflected in the grant agreement referenced in §121.9(d)(1) equals or exceeds \$300,000, an Applicant must submit to the Texas Film Commission a CPA Audit Opinion, paid for by the Applicant and conducted by an independent Certified Public Accountant licensed to practice in the State of Texas with no relationship to the Applicant.

No comments were received regarding the proposed amendments and new section.

The amendments and new section are adopted pursuant to the Texas Government Code, §485.022, which directs the Texas Film Commission to develop a procedure for the submission of grant applications and the awarding of grants, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

No other codes, statutes, or articles are affected by the amendments and new section.

§121.5. Eligible and Ineligible In-State Spending.

(a) The following are eligible expenditures:

(1) Wages paid to Texas Residents for work performed in Texas, including additional compensation paid as part of a contractual or collective bargaining agreement.

(2) Additional compensation or reimbursements paid to Texas Residents including, but not limited to:

- (A) mileage or car allowance;
- (B) housing allowance; and
- (C) box or kit rentals for use of personal equipment.

(3) Workers compensation insurance premiums for Texas Residents, but only if the premiums are paid to a Texas-based insurance company or broker.

(4) Payroll company service fees for Texas Residents, but only if paid to a Texas-based payroll company that processes payroll within Texas.

(5) Payments made to Texas domiciled entities, sole proprietorships or individuals for goods and services used in Texas that are directly attributable to the Physical Production of the moving image project. In the case of Digital Interactive Media Productions and animated projects, the amount attributable to pre-production and research and development costs will be limited to an amount not to exceed 30% of the project's overall in-state spending.

(6) Payments for shipping on shipments originating in Texas (in the case of Federal Express, DHL or UPS shipments, the use of an Account Number of a Texas domiciled entity or sole proprietorship (where the address associated with the account number is printed) shall be conclusive proof of Texas origination for this purpose).

(7) Air travel to and from Texas on a Texas-based airline, including American Airlines and Southwest Airlines, or on a Texas-based air charter service, provided that an itemized receipt showing an itinerary and passenger name from the airline is provided confirming payment.

(8) Rentals of vehicles registered and licensed in the State of Texas or rented from a Texas domiciled entity or sole proprietorship, including, but not limited to, national rental car companies with a physical outlet in Texas.

(9) Fees paid to Texas Residents to compose, orchestrate and perform music that is specifically created for the project.

(10) Legal fees paid to Texas-based lawyers or law firms that are directly attributable to the Physical Production of the moving image project.

(11) Internet purchases, but only if purchased from a Texas domiciled entity or sole proprietorship or a retailer with a physical store or outlet in Texas. Items purchased must be shipped directly to Texas.

(12) Capital expenditures for an individual item from a Texas domiciled entity or sole proprietorship under \$1,000; spending on an individual capital item purchased for over \$1,000 which item is not exhausted during the course of Production is acceptable Eligible Spending, so long as such item is sold at the end of the production and evidence of such sale is furnished to the Texas Film Commission; such documentation must show that only the difference between the purchase price and the sale price is submitted as Eligible Spending and a copy of the check or receipt for the sale should be included as back up with the original purchase documentation.

(13) Location Fees, if an executed Location Agreement by and between the Applicant and the location owner or owner's representative is provided to the Texas Film Commission with the Applicant's Expended Budget.

(b) The following are ineligible expenditures:

(1) Payments made to non-Texas domiciled entities, or if a sole proprietorship or individual, to non-Texas Residents.

(2) Payments made for goods and services not used in Texas.

(3) Payments made for goods and services that are not directly attributable to the Physical Production of the moving image project.

(4) Payments made by Digital Interactive Media Production and animated projects for Pre-Production costs that exceed 30% of the project's overall in-state spending.

(5) Expenses related to distribution, publicity, marketing, or promotion of the project, including, but not limited to, promotional stills.

(6) Payments (other than properly allowable Location Fees) for facilities and automobiles that are part of a permanent/continuous business operation including, but not limited to, rental, lease or mortgage payments, utilities and insurance.

(7) Wages paid to non-Texas Residents, including additional compensation paid as part of a contractual or collective bargaining agreement.

(8) Payments made to a company, entity, association or person that acts as an agent or broker for companies, entities, associations or persons outside of Texas to provide goods, services or labor for the purpose of taking advantage of the Texas Moving Image Industry Incentive Program (also known as "pass-through" entities).

(9) Fees for story rights, music rights or clearance rights.

(10) Additional compensation or reimbursements paid to non-Texas Residents including, but not limited to:

- (A) mileage or car allowance;
- (B) housing allowance; and
- (C) box or kit rentals for use of personal equipment.

(11) Workers compensation insurance payments for non-Texas Residents.

(12) Payroll company service fees for non-Texas Residents or those paid to a non-Texas-based payroll company.

(13) Payments for shipments originating outside of Texas (unless, in the case of Federal Express, DHL or UPS shipments, an Account Number of a Texas domiciled entity or sole proprietorship has been used for such shipments and such Account Number is printed on the invoices with the Texas address associated with the Account Number).

(14) Payments for mobile and landline telephone service if the service or billing address is not in Texas.

(15) Payments for alcoholic beverages, cigarettes and tobacco products.

(16) Payments to adult oriented businesses.

(17) Payments for entertainment including, but not limited to, parties, event tickets, movies, hotel mini-bar items, meals unrelated to the Physical Production of the project and personal gifts.

(18) Payments for tips and gratuities.

(19) Capital expenditures for an individual item over \$1,000 which item is not exhausted during the course of production, unless such purchase is from a Texas domiciled entity or sole proprietorship, the item is sold at the end of the production and evidence of such sale is furnished to the Texas Film Commission (such documentation must show that only the difference between the purchase price and the sale price is submitted as Eligible Spending and a copy of the check or receipt for the sale should be included as back up with the original purchase documentation).

(20) Payments to any business that sells alcohol or tobacco products reflected on receipts which are not itemized, even if the submitted item itself is otherwise eligible.

(21) On commercial productions where the Applicant is a production company rather than the client or ad agency, "talent handling fees," "overage fees" and "production fees," other than the Applicant's insurance fees from the actual column of the actual AICP budget (if it does not exceed the original, awarded bid and if a Texas-based insurance company or broker is used), editorial or post production fees from the actual column of the AICP budget (if such fees do not exceed the post production fees on the original, awarded bid), and any bona fide internal billing items which do not exceed the usual and customary cost of the goods or services, such as when production company employees work directly on the production using equipment and/or studio space owned by the Applicant that is "rented" to the production in lieu of using an outside vendor; to be included, however, these items must have been budgeted on the original, awarded bid.

(22) Any payments made other than by the Applicant, including, but not limited to, payments made on behalf of the Applicant by a third party.

(c) The Texas Film Commission reserves the right to determine which expenses are eligible or ineligible.

§121.6. Grant Awards.

(a) Feature Films and Television Programs must select the Texas Spend Option or the Texas Wage Option for their projects when submitting an application to the program. The selected option may be changed after the application is submitted, but not after the formal grant agreement has been signed. Grant awards will be calculated as follows:

(1) Texas Spend Option--projects with total eligible in-state spending of:

(A) At least \$250,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(B) At least \$1 million but less than \$5 million will be eligible to receive a grant equal to 10% of eligible in-state spending.

(C) At least \$5 million will be eligible to receive a grant equal to 15% of eligible in-state spending.

(2) Texas Wage Option--projects with total eligible in-state spending of:

(A) At least \$250,000 but less than \$1 million will be eligible to receive a grant equal to 8% of eligible Wages paid to Texas Residents.

(B) At least \$1 million but less than \$5 million will be eligible to receive a grant equal to 17% of eligible Wages paid to Texas Residents.

(C) At least \$5 million will be eligible to receive a grant equal to 25% of eligible Wages paid to Texas Residents.

(b) Digital Interactive Media Productions with total eligible in-state spending of:

(1) At least \$100,000 but less than \$1 million will be eligible to receive a grant equal to 5% of eligible in-state spending.

(2) At least \$1 million but less than \$5 million will be eligible to receive a grant equal to 10% of eligible in-state spending.

(3) At least \$5 million will be eligible to receive a grant equal to 15% of eligible in-state spending.

(c) Reality Television Projects, Commercials and Educational or Instructional Videos are eligible to receive a grant equal to 5% of total eligible in-state spending.

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 August 8, 2011.

TRD-201103003

David Zimmerman

Assistant General Counsel

Texas Film Commission

Effective date: August 28, 2011

Proposal publication date: July 8, 2011

For further information, please call: (512) 463-9200



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

16 TAC §26.202

The Public Utility Commission of Texas (commission) adopts the repeal of §26.202, relating to Adjustment for House Bill 11, Acts of the 72nd Legislature, First Called Special Session 1991 without changes to the proposed text as published in the April 22, 2011, issue of the *Texas Register* (36 TexReg 2589). This rule was enacted pursuant to Public Utility Regulatory Act (PURA) §53.202, relating to Adjustment for Change in Tax Liability, which the 72nd Legislature in 1991 adopted for the purpose of adjusting utilities' billings to reflect increases or decreases in their state franchise tax amounts owed pursuant to changes to the franchise tax law passed during that session. In 2007, House Bill 3 of the 80th Legislature replaced the state franchise tax with a new margins tax, thus rendering PURA §53.202 obsolete. In 2009, the 81st Legislature enacted Senate Bill 2565 to repeal PURA §53.202. As a result, the commission proposed the repeal of §26.202. Project Number 38040 is assigned to this proceeding.

Texas Statewide Telephone Cooperative, Inc. (TSTCI) filed comments on May 24, 2011 in support of the proposed repeal. No other comments were filed.

The repeal is adopted under PURA, Texas Utilities Code §14.002, which provides the commission the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and Senate Bill 2565, which repealed PURA §53.202.

Cross Reference to Statutes: PURA §14.002 and Act of May 27, 2009, SB 2565, 81st Leg., R.S.

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 August 4, 2011.

TRD-201102978

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: August 24, 2011

Proposal publication date: April 22, 2011

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



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 32. GRANT ADMINISTRATION

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of Chapter 32, §§32.1 - 32.43, relating to Grant Administration. The repeal is adopted without changes to the proposal as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3689) and will not be republished.

The commission finds that Chapter 32 does not accurately reflect current practice and the reasons which led to its original adoption no longer exist.

The commission received no comments about the proposed repeal.

SUBCHAPTER A. GENERAL GRANT PROGRAM PROVISIONS

16 TAC §§32.1 - 32.9

The repeal is adopted under the authority of 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 adopted repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102907

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: June 17, 2011

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



SUBCHAPTER B. GRANT BUDGET REQUIREMENTS

16 TAC §§32.10 - 32.20

The repeal is adopted under the authority of 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 adopted repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102908

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: June 17, 2011

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



SUBCHAPTER C. CONDITIONS OF GRANT FUNDING

16 TAC §§32.21 - 32.28

The repeal is adopted under the authority of 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 adopted repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102909

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: June 17, 2011

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



SUBCHAPTER D. ADMINISTERING GRANTS

16 TAC §§32.29 - 32.41

The repeal is adopted under the authority of 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 adopted repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102910

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: June 17, 2011

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



SUBCHAPTER E. PROGRAM MONITORING AND AUDITS

16 TAC §§32.42, §32.43

The repeal is adopted under the authority of 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 adopted repeal is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102911

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: June 17, 2011

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



CHAPTER 33. LICENSING SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.1

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.1, relating to Deferred Adjudication, without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3691) and will not be republished.

The amendment clarifies the factors that will be considered by the commission in determining if an applicant for a permit or license is qualified and suitable under Alcoholic Beverage Code §109.352(b)(1).

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Alcoholic Beverage Code §109.532(b)(1), which allows the commission to consider a deferred adjudication in determining whether an applicant is qualified and suitable.

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 August 1, 2011.

TRD-201102912

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: June 17, 2011

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



SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

16 TAC §33.23

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.23, relating to Alcoholic Beverage Permit, License and Certificate Surcharges. The amendment is adopted without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3692) and will not be republished.

Alcoholic Beverage Code §5.50 authorizes the commission to have a rule assessing surcharges on all applicants for original or renewal certificates, permits or licenses, in addition to the application fees prescribed in the Code. The amendment to §33.23 changes the assessment from an annual to a biennial basis. It also implements Rider 12 of Article V of H.B. 1, 82nd Legislature, Regular Session, which authorizes the commission to increase surcharges by an amount sufficient to raise \$7,000,000 during the 2012-2013 biennium.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and Alcoholic Beverage Code §5.50, which authorizes the commission to have a rule assessing surcharges.

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 August 1, 2011.

TRD-201102913

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: September 1, 2011

Proposal publication date: June 17, 2011

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



16 TAC §33.25

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §33.25, relating to Temporary and Secondary Permits and Licenses. The amendment is adopted without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3694) and will not be republished.

Alcoholic Beverage Code §11.09 and §61.03 authorize the commission to transition the term for which permits and licenses are issued from one year to two years. The amendment to §33.25 deletes those portions of the rule that implemented that transition, which has been completed. The amendment also reorganizes and makes editorial changes to the remaining portions of the rule.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102914

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: June 17, 2011

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



CHAPTER 35. ENFORCEMENT

16 TAC §35.32

The Texas Alcoholic Beverage Commission (commission), adopts new §35.32, relating to Reporting a Breach of the Peace, with changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3695). The section establishes criteria for reportable incidents and procedures for reporting them.

Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31) require permittees and licensees to promptly report to the commission a breach of the peace occurring on the licensed premises. The commission seeks to minimize doubts that good actors may have about when reports are required, thereby reducing their exposure to risk of noncompliance. The commission also seeks to encourage more reporting from bad actors who may currently hide behind the uncertainty in the Code provisions. It appears that failure to report breaches of the peace can be an indicator that an establishment may have other serious problems.

After the commissioners voted to authorize publication of the proposed rule, staff met with industry representatives ("representatives") to discuss their concerns with the proposal. The representatives attending the meeting were: Dewey Brackin, representing Texas Retailer's Association; Lou Bright, representing H.E.B.; Doug DuBois, Texas Petroleum Marketers and Convenience Store Association; and Glen Garey, Texas Restaurant Association.

As published, subsection (b) called for reports to be made within three business days of the incident, unless the incident was a shooting, stabbing or murder (in which case the report was due within 24 hours). The representatives asked for the general reporting requirement to be extended from three to five business days. They argued that the agency is not a first responder, and that their clients have internal processing and quality assurance demands that may require a longer period.

Matt Martin submitted a comment asking to change the 24-hour reporting requirement to "the later of 24 hours or noon on the next business day". He stated that many of his larger corporate clients look to him as an attorney for guidance and assistance with completing breach of peace filings. He is concerned that if an incident requiring notification in 24 hours was to happen over a weekend, his clients might not be able to reach him prior to having to file the report.

The commission seeks to balance these concerns with the agency's need to be able to begin investigations promptly, while there is a greater chance that witnesses will still be available and that memories will still be fresh. The commission recognizes that modern technological capabilities make it possible to communicate quite rapidly. A business can choose how it structures its affairs to meet its statutory obligation to report breaches of the peace that occur on licensed premises.

The commission notes that the report of a breach under the Code and under this rule is not an admission of guilt to a breach of the peace violation. The purpose of adopting this rule is to clarify which incidents must be reported. Just because an incident is reportable does not necessarily mean that it constitutes a breach of the peace violation. The purpose of the report is to allow the commission to conduct an investigation to make that determination. By drawing this distinction between what constitutes a breach for reporting purposes and what constitutes a breach for purposes of finding a violation, the commission seeks to minimize self-censorship by permittees and licensees in regards to filing reports.

The commission changes the general reporting requirement in subsection (b) from three business days to five calendar days, and includes incidents involving serious bodily injury in the 24-hour reporting category. The commission believes this strikes the appropriate balance between accommodating business logistics and protecting public safety.

In subsection (e), the representatives were concerned that the words "at a minimum" in the proposal implied that some other, unstated information might be required. To clarify this, the commission amends proposed subsection (e) to affirm that the stated requirements are all that must be met, but that reporters can include additional information if they wish to do so.

In regards to subsection (f), the representatives asserted that there was unnecessary duplication in the listing of reportable incidents. They also contended that some of the proposed language was too vague and invited uncertain application of the rule. The commission concurs that some change is appropriate and modifies the subsection to cover explicit actions that require fewer judgment calls by the permittee or licensee. In that vein, the commission also imposes a requirement to report when law enforcement or emergency medical services personnel respond to the licensed premises.

The representatives voiced a concern that the proposed rule might impose an obligation to report in instances where the permittee or licensee was unaware and could not reasonably be expected to know that the incident occurred. In response, the commission modifies subsections (f) and (g) to clarify that certain of the incidents described in subsection (f) are reportable only in circumstances described in subsection (g), where the permittee or licensee has reason to know that they occurred.

In addition, the commission adds new subsection (h), which affords a permittee or licensee the opportunity to avoid liability by demonstrating that the permittee or licensee neither knew nor reasonably should have known that an otherwise reportable incident occurred on the licensed premises.

The adopted new section is authorized by Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

§35.32. Reporting a Breach of the Peace.

(a) This section relates to Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).

(b) Except as provided in this subsection, a permittee or licensee shall report to the commission a breach of the peace on a licensed premises as soon as possible, but not later than five calendar days after the incident. If a shooting, stabbing or murder, or an incident involving serious bodily injury, occurs on the licensed premises, the permittee or licensee shall report the breach of the peace not later than 24 hours from the time of the incident.

(c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:

- (1) in person at any commission office;
- (2) by facsimile transmission to the appropriate commission office;
- (3) through the commission's website; or
- (4) by e-mail to "breachofpeace@tabc.state.tx.us".

(d) The administrator or administrator's designee may require, in writing, that a permittee or licensee make any reports required by this section in a specific manner as instructed, if the permittee or licensee has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(31).

(e) At a minimum, the report required by this section shall include the information required in paragraphs (1) - (9) of this subsection, but may include other information the person making the report wishes to include:

- (1) the date and time of the report;
- (2) the date and time of the incident being reported;
- (3) the trade name of the licensed premises where the incident occurred;
- (4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;
- (5) the name of the person filing the report, that person's relationship to the holder of the permit or license, and contact information for that person;
- (6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the permit or license to answer questions from the commission about the incident, that person's relationship to the permit or license holder, and contact information for that person;
- (7) a brief description of the incident;
- (8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and
- (9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b) of this section and subject to the provisions of subsection (g) of this section, a reportable "breach of the peace" occurs when law enforcement or emergency medical services personnel respond to the licensed premises, or when a disturbance is created on the licensed premises by a person:

- (1) shooting, stabbing or murdering a person;
- (2) causing bodily injury to another person;
- (3) threatening another person with a weapon;
- (4) discharging a firearm on the licensed premises; or
- (5) destroying the permittee's or licensee's property, if the incident is reported by the permittee or licensee to a law enforcement agency.

(g) For purposes of this section:

- (1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder, or an incident involving serious

bodily injury) creates a "disturbance", and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the permittee or licensee, or any person allowed by the permittee or licensee, is on the licensed premises; and

(B) interferes with, interrupts, or intrudes upon the operation or management of the licensed premises;

(2) a shooting, stabbing or murder, or an incident involving serious bodily injury, on the licensed premises is always a "disturbance", and therefore is always a reportable breach of the peace;

(3) a "licensed premises" is as defined in Alcoholic Beverage Code §11.49;

(4) a "permittee" is as defined in Alcoholic Beverage Code §1.04(11); and

(5) a "licensee" is as defined in Alcoholic Beverage Code §1.04(16).

(h) A permittee or licensee may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the permittee or licensee can demonstrate that he had no knowledge, nor in the exercise of reasonable care should have had knowledge, of the alleged breach of peace on the licensed premises.

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 August 1, 2011.

TRD-201102915

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: June 17, 2011

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



CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (commission) adopts 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 adopts new Chapter 45, Subchapter A, §§45.1 - 45.19, relating to Registration and Advertising of Distilled Spirits. The repeal and new subchapter are adopted without changes to the proposal as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3154) and will not be republished.

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.

The commission received no comments about the proposed repeal or new sections.

SUBCHAPTER A. STANDARDS OF IDENTITY FOR DISTILLED SPIRITS

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

The repeal is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §101.671, which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration of distilled spirits.

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 August 1, 2011.

TRD-201102895

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



SUBCHAPTER A. REGISTRATION AND ADVERTISING OF DISTILLED SPIRITS

16 TAC §§45.1 - 45.19

The new sections are adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §101.671, which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration of distilled spirits.

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 August 1, 2011.

TRD-201102896

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission (commission) adopts 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 adopts new Chapter 45, Subchapter B, §§45.41 - 45.51, relating to Registration and Advertising of Wine. The repeal and the new subchapter are adopted without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3158) and will not be republished.

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.

The commission received no comments about the proposed repeal or the proposed new subchapter.

SUBCHAPTER B. STANDARDS OF IDENTITY FOR WINE

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

The repeal is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §101.671, which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration of wine.

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 August 1, 2011.

TRD-201102897

Alan Steen
Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



SUBCHAPTER B. REGISTRATION AND ADVERTISING OF WINE

16 TAC §§45.41 - 45.51

The new subchapter is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §101.671, which requires the commission to adopt rules establishing procedures for accepting federal certificates of label approval for the required state registration of wine.

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 August 1, 2011.

TRD-201102898

Alan Steen
Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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) adopts the amendment to §45.71, relating to Definitions, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3161) and will not be republished.

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.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §101.67, which requires the commission to adopt rules establishing procedures for accepting independent laboratory analysis in lieu of performing its own analysis.

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 August 1, 2011.

TRD-201102899

Alan Steen
Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



16 TAC §45.72

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.72, relating to Authority and Scope, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3162) and will not be republished.

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 Chapter 45, Subchapter C,

related to Standards of Identity for Malt Beverages. The amendment changes the name of the section, adds the statutory authority for the subchapter, and makes editorial changes to the text.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §101.67, which requires the commission to adopt rules establishing procedures for accepting independent laboratory analysis in lieu of performing its own analysis.

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 August 1, 2011.

TRD-201102900

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



16 TAC §45.85

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.85, relating to Approval of Labels, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3163) and will not be republished.

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. The amendment to §45.85 clarifies procedures for approval of labels and samples for malt liquors and beer.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §101.67, which requires the commission to adopt rules establishing procedures for accepting independent laboratory analysis in lieu of performing its own analysis.

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 August 1, 2011.

TRD-201102901

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



16 TAC §45.86

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.86, relating to Exhibiting Certificates to Representatives of the Commission, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3164) and will not be republished.

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. The amendment to §45.86 updates a reference to the authority issuing certificates of label approval at the federal level.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102902

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



16 TAC §45.88

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.88, relating to Advertisement: Mandatory Statement, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3165) and will not be republished.

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 amendment changes the title of the section to indicate the topic covered and makes an editorial change.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102903

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



16 TAC §45.89

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.89, relating to Advertisement: Legibility of Requirements, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3166) and will not be republished.

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 amendment changes the title of the section to indicate the topic covered and makes editorial changes.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102904

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



16 TAC §45.90

The Texas Alcoholic Beverage Commission (commission) adopts the amendment to §45.90, relating to Advertisement:

Prohibited Statements, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3166) and will not be republished.

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 amendment changes the title of the section to clarify that the section refers to advertisements.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code.

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

Filed with the Office of the Secretary of State on August 1, 2011.

TRD-201102905

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: August 21, 2011

Proposal publication date: May 20, 2011

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



SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.102

The Texas Alcoholic Beverage Commission (commission) adopts the repeal of §45.102, relating to Retailer Transmitting Order to Another Retailer, without changes to the proposal published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3167) and will not be republished.

The commission finds that the original meaning and intent of the rule have been obscured and the reasons which led to its original adoption no longer exist.

The commission received no comments about the proposed repeal.

The repeal is adopted under the authority of 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.

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 August 1, 2011.

TRD-201102906

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: August 21, 2011
Proposal publication date: May 20, 2011
For further information, please call: (512) 206-3443



16 TAC §45.117

The Texas Alcoholic Beverage Commission (commission) adopts an amendment to §45.117, relating to Gifts and Advertising Specialties. The amendment is adopted without changes to the proposed text as published in the June 17, 2011, issue of the *Texas Register* (36 TexReg 3696) and will not be republished.

Alcoholic Beverage Code ("Code") §102.07 prohibits certain upper- and middle-tier permittees from furnishing any service of value to a retailer and from furnishing to a retail dealer any equipment, fixtures or supplies to be used in dispensing alcoholic beverages. Code §108.042, added by S.B. 890 (82nd Leg., Regular Session), requires the commission to adopt rules relaxing the restrictions of §102.07 in order to allow certain permittees to clean and maintain coil connections used in dispensing wine. This amendment to §45.117 implements new Code §108.042.

The commission received no comments about the proposed amendment.

The amendment is adopted under the authority of Alcoholic Beverage Code §5.31, which grants authority to prescribe rules necessary to carry out the provisions of the Code, and §108.042, which requires the commission to adopt rules addressing maintenance of coil connections for the dispensing of wine.

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 August 1, 2011.

TRD-201102916
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: August 21, 2011
Proposal publication date: June 17, 2011
For further information, please call: (512) 206-3443



TITLE 22. EXAMINING BOARDS

PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS

SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission adopts amendments to §535.191, concerning Schedule of Administrative Penalties, without changes to the proposed text as published in the May

27, 2011, issue of the *Texas Register* (36 TexReg 3257) and will not be republished.

Section 535.191 is amended to add additional provisions that apply to the schedule and to move an existing provision that should more appropriately fit under a different range.

The reasoned justification for the amendments is consistent, fair and efficient administration of contested cases based upon objective standards.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101, 1102, and 1303; and Texas Property Code, Chapter 221. No other statute, code or article is affected by this adoption.

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 August 4, 2011.

TRD-201102962
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: September 1, 2011
Proposal publication date: May 27, 2011
For further information, please call: (512) 936-3092



SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §535.219

The Texas Real Estate Commission (the Commission) adopts new §535.219, concerning Schedule of Administrative Penalties, without changes to the proposed text as published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3258) and will not be republished.

The new rule establishes a penalty matrix for the assessment of administrative penalties for different violations of the statute and rules governing real estate inspectors. The matrix was drafted in accordance with §1102.403 of the Texas Occupations Code (relating to administrative penalties imposed against inspectors) and Chapter 1101, Subchapter O (relating to administrative penalties assessed by the Commission). As such, the highest category of administrative penalties provides for a maximum penalty of \$5,000 per violation, and each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty. The rule was developed by the Texas Real Estate Inspector Committee's enforcement subcommittee and endorsed by the Committee.

The reasoned justification for the rule as adopted is fairness and objectivity in imposing administrative penalties in enforcement cases.

The Commission received twelve comments during the notice and comment period regarding the rule as proposed, including from the Texas Professional Real Estate Inspector Association and the Texas Association of Real Estate Inspectors.

Seven commenters, including a statewide inspector trade association, stated that the penalties outlined in the matrix are too high and/or unfair to inspectors, including two commenters who believed that assessing certain penalties on a "per violation" or "per day" basis is excessive. Three commenters objected to the matrix as establishing administrative penalties that are disproportionate to the inspector's fee and/or repair costs resulting from violations. Six commenters further objected to the matrix because they believe it does not give the agency the discretion to impose no administrative penalty when appropriate. Several commenters expressed more than one basis for concern. The Commission respectfully disagrees with these commenters, as §1101.702 of the Texas Occupations Code provides for administrative penalties of up to \$5,000 for any violation of Chapter 1102 or the agency rules relating to inspectors. Section 1101.702 further provides for the assessment of administrative penalties on a "per violation"/"per day" basis. Additionally, the "may be assessed" language makes clear that administrative penalties are not mandatory but rather are discretionary.

Three commenters suggested that the penalty matrix will increase inspection costs for consumers. The Commission respectfully disagrees with this concern, as the matrix limits administrative penalties to no more than - and in most cases less than - those currently allowed by law. Only inspectors who do not comply with the law need to be concerned about the impact of administrative penalties on their businesses, and any such inspectors have likely already taken the \$5,000 maximum penalty into account in setting their fees.

Five commenters, including another statewide trade association, objected to the matrix on the basis that it does not take into account the totality of the circumstances and what the inspector has done correctly. In fact, the Commission has long taken into account the totality of the circumstances, including the extent and seriousness of the violation(s), as required by §1101.702(b).

Last, one commenter opposed the matrix because of a belief that disciplinary action is sufficient to deter violations. The Commission respectfully disagrees, as both methods have deterrent effects and are authorized by Chapter 1102.

The new rule is adopted under Texas Occupations Code, §1101.151, which authorizes the Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of Chapter 1102 to ensure compliance with the provisions of the chapter.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code, or article is affected by this adoption.

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 August 4, 2011.
TRD-201102963

Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: September 1, 2011
Proposal publication date: May 27, 2011
For further information, please call: (512) 936-3092

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CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37

The Texas Real Estate Commission (TREC) adopts amendments to §537.20, concerning Standard Contract Form TREC No. 9-9, Unimproved Property Contract; §537.28, concerning Standard Contract Form TREC No. 20-10, One to Four Family Residential Contract (Resale); §537.30, concerning Standard Contract Form TREC No. 23-11, New Home Contract (Incomplete Construction); §537.31, concerning Standard Contract Form TREC No. 24-11, New Home Contract (Completed Construction); §537.32, concerning Standard Contract Form TREC No. 25-8, Farm and Ranch Contract; and §537.37, concerning Standard Contract Form TREC No. 30-9, Residential Condominium Contract (Resale), with changes to the proposed text as published in the May 27, 2011, issue of the *Texas Register* (36 TexReg 3259) and also with changes to the contract forms adopted by reference. The difference between the proposal and the adoption is that the Commission's telephone number and website address were changed in the rule text and on the forms.

The amendments adopt the elimination from the contracts of subparagraph 15B which requires a party to the contract to file suit for specific performance within 45 days of the closing date of the contract. This change was adopted on an emergency basis at the February meeting of the Texas Real Estate Commission effective March 1, 2011. The subparagraph may conflict with §16.070 of the Civil Practice and Remedies Code which precludes parties to a contract from agreeing to shorten the time period in which to file suit to less than two years. This change was adopted on an emergency basis to prevent confusion and possible litigation regarding a potential conflict between a contract provision and an existing statutory provision. The amendments also correct typographical errors in paragraph 7 in both TREC No. 9-9, Unimproved Contract and TREC No. 24-11, New Home Contract (Completed Construction).

The reasoned justification for the amendments is the availability of current standardized contract forms which are consistent with the law.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to ensure compliance with the provisions of the Act.

The statutes affected by this adoption are Texas Occupations Code, Chapters 1101, 1102, and 1303; and Texas Property Code, Chapter 221. No other statute, code or article is affected by this adoption.

§537.20. *Standard Contract Form TREC No. 9-9.*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-9 approved by the Texas Real Estate Commission in 2011 for use in the sale of unimproved property where intended use is for one to four family residences. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.28. *Standard Contract Form TREC No. 20-10.*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-10 approved by the Texas Real Estate Commission in 2011 for use in the resale of residential real estate. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.30. *Standard Contract Form TREC No. 23-11.*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-11 approved by the Texas Real Estate Commission in 2011 for use in the sale of a new home where construction is incomplete. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.31. *Standard Contract Form TREC No. 24-11.*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-11 approved by the Texas Real Estate Commission in 2011 for use in the sale of a new home where construction is completed. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.32. *Standard Contract Form TREC No. 25-8.*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-8 approved by the Texas Real Estate Commission in 2011 for use in the sale of a farm or ranch. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

§537.37. *Standard Contract Form TREC No. 30-9.*

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-9 approved by the Texas Real Estate Commission in 2011 for use in the resale of a residential condominium unit. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.texas.gov.

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 August 4, 2011.

TRD-201102964

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Effective date: August 24, 2011

Proposal publication date: May 27, 2011

For further information, please call: (512) 936-3092



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 421. HEALTH CARE INFORMATION SUBCHAPTER D. COLLECTION AND RELEASE OF OUTPATIENT SURGICAL AND RADIOLOGICAL PROCEDURES AT HOSPITALS AND AMBULATORY SURGICAL CENTERS

25 TAC §§421.61, 421.62, 421.66 - 421.68

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§421.61, 421.62, and 421.66 - 421.68 concerning the collection and release of data relating to outpatient surgical and radiological procedures at hospitals and ambulatory surgical centers, without changes to the proposed text as published in the April 22, 2011, issue of the *Texas Register* (36 TexReg 2592) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Health and Safety Code, Chapter 108, requires the Executive Commissioner to adopt rules to implement the collection and release of data from health care facilities. The amendments clarify the scope of the data to be reported to the department regarding collection and release of outpatient surgical and radiological procedures from hospitals and ambulatory surgical centers. The amendments also provide clarification of the department's concern for protecting the privacy and confidentiality of the patients and physicians. The amendments help to reduce the burden of collecting and processing data on the department (including department vendors) and providers. The department began collecting data on outpatient services at hospitals and ambulatory surgery centers in October 2009. The rules were originally developed and adopted by the Texas Health Care Information Council (council) and were transferred to the department on September 1, 2004, as a result of the consolidation of health and human services agencies under House Bill 2292, 78th Texas Legislature, 2003, and then were amended to comply with Sections 2 and 3 of Senate Bill 1731, 80th Texas Legislature, 2007, which amended the Health and Safety Code, Chapter 108.

Health and Safety Code, §108.009, requires providers to submit data as required by these sections. The Health Insurance Portability and Accountability Act (HIPAA) privacy regulations at 45 Code of Federal Regulations, §164.512(a), allow health care providers to disclose protected health information without a patient's consent or authorization when disclosure is required by law. Since state law requires disclosure to the department, the HIPAA regulations allow the submission of the data.

The new data elements cannot be required to be submitted to the department before the 90th day after the date the rules are adopted and must take effect not later than the first anniversary after the date the rules are adopted. The corresponding list of procedure codes relating to the Clinical Claims Software procedures and services listed in the rules will be posted on the department's program website by September 1, 2011, in order to comply with the collection date of January 1, 2012.

Government Code, §2001.039, requires that each state agency review and consider for readopting each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 421.61 - 421.68 have

been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. However, §§421.63 - 421.65 are not being changed at this time.

SECTION-BY-SECTION SUMMARY

The phrase "or surgical and radiological categories" is inserted after "revenue codes" and the reference is updated to include "or §421.67(g)" in the following proposed sections: §§421.61(10) and (38); 421.62(a) and (b); and 421.66(c)(3).

Section 421.61 is amended by adding definitions for "Radiological procedures" and "Surgical procedure" for the purposes of this subchapter. The terms are added to clarify which procedures performed on patients within the facility are required to have the required data elements submitted to the department.

Sections 421.61(b), 421.62(g), 421.66(g) and 421.68(j) contain the implementation date of July 1, 2009, which is no longer appropriate, and are being deleted.

Section 421.67(d) is amended by adding paragraph (33), "Service Line Date (effective 90 calendar days after being published in the *Texas Register*)" to the required minimum data set and renumbers the list of required data elements for facilities that provide one or more of the services that are included under the revenue codes specified in subsection (f) of this section for patients which are uninsured, considered as self pay, or are covered by a third-party payer which requires the facility to submit a claim in an ANSI 837 Institutional Guide format or CMS-1450 format. Subsection (f) is amended by adding revenue code "0320 Radiology--Diagnostic General Classification (effective 90 calendar days after being published in the *Texas Register*)" in paragraph (1), which was previously omitted inadvertently, and the other revenue codes are renumbered. Language is added to provide an option for identifying the required outpatient's data which should be submitted to the department. New subsection (g) establishes a listing of the Service and Procedure Categories and adds language which requires the department to publish on the department website a list of the Healthcare Common Procedural Code Set (HCPCS) codes relating to the categories by September 1 of the year before the data is to be submitted. The HCPCS codes are a list of procedure codes which cover many surgical and radiological procedures of outpatients that are high cost or high in volume whose data shall be submitted to the department in compliance with this subchapter. Subsection (g) is renumbered as subsection (h) of this section and contains a new implementation date of September 1, 2011.

Section 421.68(a) provides additional privacy and confidentiality protection for patients and physicians and states that event claims in any format submitted to the department are not available to the public and are exempt from disclosure and shall not be released.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §§108.006, 108.009, 108.010, 108.011 and 108.013, which require the Executive Commissioner to adopt rules necessary to carry out Chapter 108 including rules on data collection requirements, to prescribe the process of data submission, to implement a methodology to collect and disseminate data reflecting provider quality, to specify data elements to be required for submission to the department and which data elements are to be released in a outpatient event public use data file; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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 August 2, 2011.

TRD-201102928

Lisa Hernandez

General Counsel

Department of State Health Services

Effective date: October 31, 2011

Proposal publication date: April 22, 2011

For further information, please call: (512) 776-6990



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 95. BEHAVIOR MANAGEMENT AND YOUTH DISCIPLINE

SUBCHAPTER A. BEHAVIOR MANAGEMENT

37 TAC §95.5

The Texas Youth Commission (TYC) adopts the repeal of §95.5, concerning Referral to Criminal Court, without changes to the proposal as published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3899).

The justification for the repeal is the provision of agency rules that are current and consistent with state laws. This rule described the former process used within TYC facilities to initiate criminal proceedings against youth who commit crimes while in the agency's custody. This rule is no longer needed due to reforms enacted by Senate Bill 103 (80th Texas Legislature). Senate Bill 103 created statutory responsibilities for the TYC Office of Inspector General to investigate crimes committed at TYC facilities and for the Special Prosecution Unit to prosecute those crimes.

TYC did not receive any public comments regarding the proposed repeal.

The repeal is adopted under Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions.

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 August 3, 2011.

TRD-201102946

Cheryl K. Townsend

Executive Director

Texas Youth Commission

Effective date: September 1, 2011

Proposal publication date: June 24, 2011

For further information, please call: (512) 424-6014



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 437. FEES

37 TAC §§437.3, 437.5, 437.7, 437.13

The Texas Commission on Fire Protection (Commission) adopts amendments to Chapter 437, Fees, §437.3, Certification Fees; §437.5, Renewal Fees; §437.7, Standards Manual and Certification Curriculum Manual Fees; and §437.13, Processing Fees for Test Application. The amendment to §437.3 is adopted with changes to the proposed text as published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3912). The amendments to §§437.5, 437.7, and 437.13 are adopted without changes to the proposed text and will not be republished.

The amendments are adopted to raise fees in the following respect: from up to \$65 to \$85 for initial certification; from up to \$65 to \$85 renewal fee; from up to \$32.50 to \$42.50 for thirty day late renewal fee; from up to \$65 to \$85 for more than 30 day late renewal fee; and from up to \$65 to \$85 test application fee. The fee increase is a result of the legislature allowing the Texas Commission on Fire Protection to become essentially self-funded. Also, the adoption will let the public know where a current version of the Commission's Standards Manual and Certification Curriculum Manual can be found and identification as to where a free printed copy of the Commission's Standards Manual and Certification Curriculum Manual can be obtained.

The adopted amendments will ensure the existence of the Commission to enforce the rules for the safety of the fire fighters and citizens through inspections, testing, and renewing certifications of the fire fighters of the State of Texas.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments, §419.008, General Powers and Duties; §419.025, Manual; §419.026, Fees for Certificates; §419.029, Training Curriculum; §419.033, Certificate Expiration; §419.034, Certificate Renewal; and §419.0341, Individual Certificate Holder; Certificate Renewal.

§437.3. Certification Fees.

(a) A non-refundable application fee of \$85 is required for each certificate issued by the Commission. If a certificate is issued within the time provided in §401.125 of this title (relating to Processing Periods), the fee will be applied to the certification. If the certificate

is denied, the applicant must pay a new certification application fee to file a new application.

(b) The regulated employing entity shall be responsible for all certification fees required as a condition of appointment.

(c) Nothing in this section shall prohibit an individual from paying a certification fee for any certificate which he or she is qualified to hold, providing the certificate is not required as a condition of appointment (see subsection (b) of this section concerning certification fees).

(d) Any person who holds a certificate, and is no longer employed by an entity that is regulated by the Commission may submit in writing, a request, together with the required fee to receive a one-time certificate stating the level of certification in each discipline held by the person on the date that person left employment pursuant to the Texas Government Code, §419.033(b). Multiple certifications may be listed on the one-time certificate. The one-time fee for the one-time certificate shall be limited to the maximum amount allowed by §419.033(b) of the Texas Government Code.

(e) A facility that provides basic level training for any discipline for which the Commission has established a Basic Curriculum must be certified by the Commission. The training facility will be charged a separate certification fee for each discipline.

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 August 2, 2011.

TRD-201102937

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: August 22, 2011

Proposal publication date: June 24, 2011

For further information, please call: (512) 936-3813



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

SUBCHAPTER D. COUNCILS AND COMMITTEES

40 TAC §§101.601, 101.603, 101.605

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopt amendments to Title 40, Part 2, Chapter 101, Administrative Rules and Procedures, Subchapter D, Council and Committees, §§101.601, 101.603 and 101.605, without changes to the proposed text as published in the June 10, 2011, issue of the *Texas Register* (36 TexReg 3585) and will not be republished.

DARS adopts amendments to §101.601, Rehabilitation Council of Texas, §101.603, State Independent Living Council, and §101.605, Early Childhood Intervention Advisory Committee, to extend the duration of the council and committees to August 31, 2015.

No comments were received regarding adoption of the rules.

The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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 August 3, 2011.

TRD-201102961

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: August 31, 2011

Proposal publication date: June 10, 2011

For further information, please call: (512) 424-4050



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 Department of Banking

Title 7, Part 2

On behalf of the Finance Commission of Texas, the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, Part 2, in its entirety:

Chapter 15 (Corporate Activities), comprised of Subchapter A (§§15.1 - 15.7 and §§15.9 - 15.12); Subchapter B (§15.23 and §15.24); Subchapter C (§§15.41 - 15.44); Subchapter E (§15.81); Subchapter F (§§15.101 - 15.111 and §§15.113 - 15.117); and Subchapter G (§15.121 and §15.122).

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Kaylene Ray, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705 or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201102983

A. Kaylene Ray

General Counsel

Texas Department of Banking

Filed: August 5, 2011



On behalf of the Finance Commission of Texas, the Texas Department of Banking files this notice of intention to review and consider for readoption, revision, or repeal, the following chapter of Texas Administrative Code, Title 7, Part 2, in its entirety:

Chapter 21 (Trust Company Corporate Activities), comprised of Subchapter A (§§21.1 - 21.7 and §§21.9 - 21.12); Subchapter B (§21.23 and §21.24); Subchapter C (§21.31 and §21.32); Subchapter D (§21.41 and §21.42); Subchapter E (§21.51); Subchapter F (§§21.61 - 21.64, §§21.67 - 21.70 and §§21.72 - 21.76); and Subchapter G (§21.91 and §21.92).

The review is conducted pursuant to Government Code §2001.039. Comments regarding the review of this chapter, and whether the reasons for initially adopting the sections under review continue to exist, will be accepted for 30 days following the publication of this notice in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review should be directed to Kaylene Ray, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705 or e-mailed to legal@dob.texas.gov.

Any proposed changes to these sections as a result of the rule review will be published as proposed rules in the *Texas Register*. Proposed rules are subject to public comment for a reasonable period prior to final adoption by the commission.

TRD-201102984

A. Kaylene Ray

General Counsel

Texas Department of Banking

Filed: August 5, 2011



Adopted Rule Reviews

Department of Information Resources

Title 1, Part 10

The Texas Department of Information Resources (department) has completed its review of 1 Texas Administrative Code (TAC) Chapter 204, concerning Interagency Contracts for Information Resources Technologies, pursuant to §2001.039, Texas Government Code, which requires agency rules to be reviewed at least every four years. The department determined the reasons for initially adopting 1 TAC Chapter 204 continue to exist. The department, therefore, is readopting Chapter 204, concerning Interagency Contracts for Information Resources Technologies.

Notice of the rule review was published in the November 12, 2010, issue of the *Texas Register* (35 TexReg 10061). No comments were received as a result of that notice.

The department's review of 1 TAC Chapter 204 is concluded.

TRD-201103067

Martin Zelinsky

General Counsel

Department of Information Resources

Filed: August 10, 2011



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ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Request for Qualifications

The Texas State Affordable Housing Corporation (the "Corporation") is issuing a Request for Qualifications (RFQ) in order to select an Environmental Assessment and Review Service provider for the Affordable Communities of Texas Land Banking ("ACT Land Banking") program. The Corporation is seeking a professional service provider ("Service Provider") to complete all necessary reviews and assist us in obtaining environmental clearances from the Texas Department of Housing and Community Affairs, the agency responsible for granting clearance under our contract.

The Corporation wishes to contract with a qualified Service Provider by August 15, 2011. The Corporation will accept submissions from qualified environmental review Service Providers immediately. The Corporation also reserves the right to extend its selection process if, in the sole determination of the Corporation, the submissions accepted by August 15, 2011 do not fulfill the requirements of this RFQ, or if the final award contract is not completed within a reasonable timeframe.

For questions or comments, please contact David Danenfelzer at (512) 477-3562 or by email at ddanenfelzer@tsahc.org.

TRD-201103052

David Long

President

Texas State Affordable Housing Corporation

Filed: August 9, 2011

Texas Department of Agriculture

Request for Applications: Young Farmer Grant Program

Statement of Purpose. Pursuant to the Texas Agriculture Code, §58.011, the Texas Department of Agriculture (TDA) is requesting applications for the Young Farmer Grant Program (YFGP). The YFGP is administered by TDA under the direction of the Texas Agricultural Finance Authority (TAFA). The purpose of this program is to provide financial assistance in the form of dollar-for-dollar matching grant funds to those persons 18 years or older but younger than 46 years of age that are engaged or will be engaged in creating or expanding an agricultural business in Texas.

Submission Dates/Locations. Forms required for submitting an application are available by accessing TDA's website at: www.TexasAgriculture.gov or by emailing TAFA at finance@TexasAgriculture.gov. One hard copy of the application must arrive no later than 5:00 p.m. on **September 2, 2011** to one of the following:

Physical Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, 1700 N. Congress Ave., 11th Floor, Austin, Texas 78701, Phone (512) 936-0273 or (512) 463-9932, Fax (888) 216-9867.

Mailing Address: Texas Department of Agriculture, Texas Agricultural Finance Authority, Attn: Allen Regehr, P.O. Box 12847, Austin, Texas 78711.

Proposals must set forth accurate and complete information as required by this Request for Applications (RFA). Oral modifications will not be considered. Electronic applications will not be accepted or considered.

Eligibility. Grant applications will be accepted from any person 18 years or older but younger than 46 years of age that is engaged or will be engaged in creating or expanding agriculture in Texas. The applicant must be able to make dollar-for-dollar matching expenditures to sustain, create or expand the proposed project.

Application Requirements.

Funding Parameters:

The TAFA Board of Directors (board) anticipates funding in an amount of \$150,000 for grants not less than \$5,000 and not to exceed \$10,000 per grant application. Recipients will have up to two years to expend grant funds.

The TAFA board reserves the right to fully or partially fund any particular grant application.

Form Requirements:

Applications must be submitted on form RED-300 for consideration. Required forms and instructions are available by accessing TDA's website at www.TexasAgriculture.gov or by e-mailing TAFA at finance@TexasAgriculture.gov.

Budget Information:

YFGP projects are paid on a cost reimbursement basis.

1. **Eligible Expenses.** Generally, eligible expenses include those costs that are necessary and reasonable for proper and efficient performance and administration of a project. Expenses must be properly documented with sufficient detail, including copies of invoices. Examples of eligible expenditures are:

Personnel costs - both salary and benefits of those that perform work for the grant recipient;

Materials and direct operating expenses - equipment that costs less than \$5,000 per unit, animals, seed, fertilizer, irrigation, etc.;

Equipment - nonexpendable, tangible personal property having a useful life of less than one year and an acquisition cost of less than \$5,000; and

Other expenses - any expenses that do not fall into the above categories;

Indirect expenses - the YFGP limits reimbursable indirect expenses to 10% of the grant award.

2. **Ineligible Expenses.** Expenses that are prohibited by state or federal law are ineligible. Examples of these expenditures are:

Alcoholic beverages;

Entertainment;

Contributions for charitable, political, or lobbying purposes;

Expenses falling outside of the contract period;

Expenses for expenditures not listed in the project budget;

Expenses that are not adequately documented;

Value of applicant's own services;

Land; and

Personal property or other capital items with a useful life of more than one year and a cost of more than \$5,000.

3. Description of the Budget. Applicant must present an overall project budget and include the following items in the budget description:

A. Wages: Grant funds may be used for directly supporting salaries and wages of employees, but not for the value of your own services.

B. Materials and Direct Operating Expenses: The grant may be used for expenses that are directly related to the day-to-day operation of the project, if those expenses are not included in any other budget category, and if those expenses have an acquisition cost of less than \$5,000 per unit. An applicant must allocate costs on a prorated basis for shared usage.

C. Equipment: Eligible equipment is defined as tangible personal property having a useful life of less than one year and an acquisition cost of \$5,000 or less per unit. Applicants must submit a list of all proposed equipment purchases for approval. Recipients are not authorized to purchase any equipment until they have received written approval to do so from the Commissioner or his designee through the original grant award or a subsequent grant adjustment notice. The YFGP may refuse any request for equipment. Decisions regarding equipment purchases are made based on whether or not the grant recipient has demonstrated that the requested equipment will be purchased at a reasonable cost and is essential to the successful operation of the project.

D. Professional/Contractual: Any contract or agreement between a grant recipient and a third party must be in writing and consistent with Texas law. Recipients must maintain adequate documentation supporting budget items for a contractor's time, services, and rates of compensation.

E. Indirect Expenses: Grant funds may be used for indirect costs up to 10% of the amount of the grant award.

F. Additional Budget Information: Applicant should provide additional information that will be helpful to the TAFE board in evaluating a grant application, including justification for equipment purchases, a list of subcontractors and amounts, a list of key personnel and salaries to be paid with the grant, and a description of other large expenditures.

G. Documentation of Employment Status: Applicant should be prepared to furnish documentation of lawful employment status for each employee included in personnel costs for the project.

Evaluation of Applications.

The TAFE board will review and evaluate all applications. Prior to consideration by the board, TDA staff will score and rank the applications based on the criteria identified by the TAFE board. The board is not required to make awards based solely on staff's scoring or ranking of the applications. The board may consider other factors in making grant awards under the program, including, without limitation, the quality of the application, applicant's need for financial assistance, the project's ability to create, enhance, or sustain applicant's agricultural operation, the project's ability to improve overall agricultural productivity in Texas, and the project's ability to increase the number of agricultural enterprises in Texas that are owned and operated by young farmers.

Award Information and Notification.

The TAFE board will approve projects for funding. The TAFE board reserves the right to accept or reject any or all applications. TDA and TAFE are under no legal or other obligation to award a grant on the basis of a submitted application. Neither TDA nor TAFE will pay for any cost or expense incurred by applicant or any other entity in responding to this RFA, including, without limitation, compensation for the value of applicant's time or services incurred in responding to this RFA.

Public announcements and written notifications of funding rounds will be made. Selected applicants will be notified of the amount of award, duration of the grant, and any special conditions associated with the project.

General Compliance Information.

1. Prior to accepting the Young Farmer grant and signing the grant agreement, the recipient will be provided a copy of TDA reporting requirements, for review and execution. The Grant Agreement outlines billing procedures, annual reporting requirements, procedures for requesting a change in the scope or budget for a project, and other miscellaneous items.

2. Late or incomplete applications will not be accepted.

3. Any delegation by a grant recipient to a subcontractor regarding any duties and responsibilities imposed by the grant award must be approved in advance by TDA but shall not relieve the recipient of responsibility for performance.

4. All grant awards are subject to the availability of appropriations and authorizations by the Texas Legislature, TDA and TAFE.

5. Any information or documentation submitted to TDA in connection with a grant application is subject to disclosure under the Texas Public Information Act.

6. While TDA and TAFE attempt to observe the strictest confidence in handling applications, they cannot guarantee complete confidentiality on any matter. The confidentiality of applicant's "proprietary data", if so designated, shall be strictly observed to the extent permitted by Texas law, including the Texas Public Information Act.

7. The ownership and disposition of all patentable products and intellectual property inventories shall be subject to the agreement of the grant recipient and TDA.

8. Funded projects must remain in full compliance with state and federal law and regulations. Noncompliance may result in termination.

9. Grant recipients must keep a separate bookkeeping account with a complete record of all expenditures relating to the project. Records shall be maintained for three years after the completion of the project or as otherwise agreed with TDA. TDA and the Texas State Auditor's Office reserve the right to examine all books, documents, records, and accounts relating to the project at any time throughout the duration of the grant agreement and for three years immediately following completion of the project. If there has been any litigation, claim, negotiation, audit or other action started prior to the expiration of the three-year period involving the project's records, then the records must be retained until the completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later. TDA and the Texas State Auditor's Office reserve the right to inspect project locations and to obtain full information regarding all project activities.

10. If a grant recipient has a financial audit performed in any year during which the recipient receives grant funds, the recipient shall, upon TDA's request, provide a complete copy of such audit and all information related thereto to TDA and/or TAFE, including the audit transmit-

tal letter, management letter, and any schedules in which grant funds are analyzed, discussed, included, or reported.

11. Grant awards shall comply in all respects with the Uniform Grant Management Standards (UGMS). A copy may be downloaded from the following website: <http://www.governor.state.tx.us/files/state-grants/UGMS062004.doc>.

For any questions: Please contact Mr. Allen Regehr at (512) 463-9932 or by e-mail at: finance@TexasAgriculture.gov.

TRD-201103060
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: August 9, 2011

Cancer Prevention and Research Institute of Texas

Request for Applications R-12-MIRA1 Multi-Investigator Research Awards

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas for integrated programs of collaborative and cross-disciplinary research among multiple investigators for projects in critical areas of cancer research that cannot be effectively addressed by an individual researcher or a group of researchers within the same discipline. Creative, collaborative projects that address critical questions should leverage cancer research taking place in Texas into a leadership position from both national and international perspectives. Federal programs should not be duplicated; rather, when possible, their impact in the State of Texas should be enhanced. The equivalent of program projects, centers, NCI SPOREs, shared instrumentation, core laboratories, clinical trials, or other types of collaborative interaction is appropriate. The maximum performance period is 5 years, with no set maximum award amount.

Investigators submitting a new application are required to submit a pre-application. A letter of intent is required of those investigators preparing a resubmission of a previously unfunded application. Only applicants with pre-applications approved by the CPRIT Scientific Review Office or those preparing resubmissions are eligible to submit an application.

A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. Pre-applications will be accepted beginning at 7:00 a.m. Central Time on August 4, 2011 through 3:00 p.m. Central Time on September 7, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Letters of Intent will be accepted beginning August 4, 2011. Letters of intent must be submitted via e-mail to the CPRIT Research Help Desk (Research-Help@CPRITGrants.org). Letters of intent must be submitted no later than 3:00 p.m. Central Time on September 7, 2011. Applications will be accepted beginning at 7:00 a.m. Central Time on September 29, 2011 through 3:00 p.m. Central Time on November 22, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept pre-applications or applications that are not submitted via the portal.

TRD-201103047
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: August 9, 2011

Request for Applications R-12SIA-1 Shared Instrumentation Awards

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks grant applications from qualified organizations located in the State of Texas to purchase equipment and instruments that will directly support cancer research programs to significantly advance knowledge of the causes, prevention, and/or treatment of cancer. CPRIT expects outcomes of supported activities to directly and indirectly benefit subsequent cancer research efforts, cancer public health policy, or the continuum of cancer care - from prevention to treatment and cure. A wide variety of instrumentation may be wholly or partially supported including, but not limited to, biomedical imaging systems, microscopes, cyclotrons, mass spectrometers, protein and DNA sequencers, flow cytometers, and cell sorters. Funding may be requested for instrumentation to develop state of the art facilities that will directly support and impact cancer research programs at the recipient institution and in the region. The maximum duration of the award is 5 years. The maximum amount that may be requested is \$3 million (total costs) for the first year (minimum amount \$100,000) and up to \$300,000 (total costs) for each subsequent year.

A request for applications is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on August 4, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). Only applications submitted at this portal will be considered eligible for evaluation. Applications are due on or before 3:00 p.m. Central Time on November 22, 2011. Only one application may be submitted per institution. CPRIT will not accept late applications or applications that are not submitted via the portal.

TRD-201103048
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: August 9, 2011

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 26, 2011, through August 3, 2011. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Coastal Coordination Council website. The notice was published on the website on August 5, 2011. The public comment period for this project will close at 5:00 p.m. on September 5, 2011.

FEDERAL AGENCY ACTIONS:

Applicant: Johnnie Glenn Jennings, Jr.; Location: The project site is located in Cedar Bayou, north of Tri-City Beach Road and west of

FM 1405, in Baytown, Chambers County, Texas. The site can be located on the U.S.G.S. quadrangle map titled: Morgan Point, Texas. Approximate UTM Coordinates in NAD 83 (meters): Zone 15; Easting: 313629; Northing: 3284754. Project Description: The applicant proposes to retain an existing marina. The applicant additionally proposes to hydraulically dredge approximately 3.47 acres (25,000 cubic yards) within the existing marina basin and slips adjacent to the basin to a depth of -10 feet Mean Low Tide with a 2-foot overdredge. The applicant proposes to pump the dredged material through a sealed pipe to Dredge Material Placement Area (DMPA) 6, an upland DMPA located approximately 1.85 miles north of the project site. CMP Project No.: 11-0418-F1. Type of Application: U.S.A.C.E. permit application #SWG-2011-00070 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201103040
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: August 9, 2011

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Comptroller of Public Accounts

Notice of Contract Award

The Texas Treasury Safekeeping Trust Company (Trust Company), by and through the Texas Comptroller of Public Accounts, announces this notice of contract award for certified public accountant services to conduct audits of the Trust Company and certain Trust Company managed funds to Padgett Stratemann & Co., LLP, 811 Barton Springs Road, Suite 550, Austin, TX 78704. The total amount of the contract is not to exceed \$152,825.00. The term of the contract is August 3, 2011 through August 31, 2012. The Trust Company shall have the right to renew the contract for up to two (2) additional one (1) year terms, one (1) year at a time.

The notice of request for proposals (RFP #201j) was published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 3028).

TRD-201103002
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: August 5, 2011

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/15/11 - 08/21/11 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/15/11 - 08/21/11 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-201103053
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 9, 2011

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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 September 19, 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 September 19, 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: Abdul Ali Tejani dba FM Express Mart; DOCKET NUMBER: 2011-0572-PST-E; IDENTIFIER: RN102367117; LOCATION: Lakeside, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(7)(A) and THSC §382.085(b), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §115.242(3)(A) and §115.242(9) and THSC §382.085(b), by failing to maintain the

Stage II vapor recovery system in proper operating condition; 30 TAC §334.50(b)(1)(A) and §334.50(d)(1)(B)(ii) and TWC §26.3475(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), and by failing to conduct reconciliation of detailed inventory control records at least once a month; and 30 TAC §334.49(c)(4)(C) and TWC §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection at a frequency of at least once every three years; PENALTY: \$8,172; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ballard Exploration Company, Incorporated; DOCKET NUMBER: 2011-0547-AIR-E; IDENTIFIER: RN106063001; LOCATION: Raywood, Liberty County; TYPE OF FACILITY: oil and gas production; RULE VIOLATED: 30 TAC §115.112(d)(1) and (4) and THSC §382.085(b), by failing to meet the control requirements for the storage of volatile organic compounds; 30 TAC §116.110(a) and THSC §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a source of air emissions; and 30 TAC §122.121 and §122.130(b) and THSC §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: \$35,000; ENFORCEMENT COORDINATOR: Todd Huddleson, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Bilma Public Utility District; DOCKET NUMBER: 2011-0683-MWD-E; IDENTIFIER: RN101917433; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0012025002, Effluent Limitations and Monitoring Requirements Number 1; and 30 TAC §305.125(1) and TWC §26.121(a), by failing to comply with permitted effluent limits; PENALTY: \$1,140; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Black Canyon Construction Company; DOCKET NUMBER: 2011-1268-WOC-E; IDENTIFIER: RN106163736; LOCATION: Boerne, Kendall County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (storm water); PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(5) COMPANY: City of Byers; DOCKET NUMBER: 2011-0743-MWD-E; IDENTIFIER: RN101720415; LOCATION: Byers, Clay County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010890001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; TWC §305.125(1) and §319.5(b), and TPDES Permit Number WQ0010890001, Monitoring and Reporting Requirements Number 1, by failing to analyze samples for *Escherichia coli* for the quarterly monitoring period ending November 30, 2010; and TWC §305.125(1) and (17) and TPDES Permit Number WQ0010890001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010; PENALTY: \$7,285; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: City of Chandler; DOCKET NUMBER: 2011-0887-MWD-E; IDENTIFIER: RN102178928; LOCATION: Henderson County; TYPE OF FACILITY: wastewater treatment facility; RULE

VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0011012001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$1,550; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: ConocoPhillips Pipe Line Company; DOCKET NUMBER: 2011-0523-AIR-E; IDENTIFIER: RN100212778, RN100213313; LOCATION: Gaines and Ector County; TYPE OF FACILITY: crude oil pump station; RULE VIOLATED: 30 TAC §122.121 and THSC §382.054 and §382.085(b), by failing to maintain federal operating permit authorization while continuing to operate the Gaines station; and 30 TAC §122.121 and THSC §382.054 and §382.085(b), by failing to maintain federal operating permit authorization while continuing to operate the Odessa Station; PENALTY: \$48,400; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 422-8938; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(8) COMPANY: Enbridge Pipelines (East Texas) L.P.; DOCKET NUMBER: 2011-0548-AIR-E; IDENTIFIER: RN100225127; LOCATION: Freestone County; TYPE OF FACILITY: natural gas treating plant; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC §382.085(b), by failing to report an emissions event within 24 hours of discovery; and 30 TAC §116.115(b)(2)(F) and §122.143(4), THSC §382.085(b), Federal Operating Permit Number O2984, Special Terms and Conditions Number 7, and New Source Review Permit Number 5269A, General Condition Number 8, by failing to prevent unauthorized emissions; PENALTY: \$3,110; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(9) COMPANY: Fluid Disposal Specialties, Incorporated; DOCKET NUMBER: 2011-1267-WR-E; IDENTIFIER: RN106145279; LOCATION: Chireno, San Augustine County; TYPE OF FACILITY: petroleum service company; RULE VIOLATED: TWC §11.081 and §11.121, by failing impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Kashmir Singh dba Express EZ Mart; DOCKET NUMBER: 2011-0612-PST-E; IDENTIFIER: RN102347879; LOCATION: Sherman, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed underground storage tank (UST) registration and self-certification form at least 30 days before the expiration date; 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 USTs; 30 TAC §334.49(a)(2) and TWC §26.3475(d), by failing to ensure that a corrosion protection system is designed, installed, operated, and maintained in a manner that corrosion protection is continuously provided to all underground metal components of the UST system; and 30 TAC §334.10(b), by failing to maintain the required UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: \$7,000; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Moore Water Supply Corporation; DOCKET NUMBER: 2011-0643-MWD-E; IDENTIFIER: RN103014924; LOCATION: Moore, Frio County; TYPE OF FACILITY: domestic waste-

water treatment system; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d) and TPDES Permit Number WQ0014239001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the monthly discharge monitoring reports for the monitoring periods ending February 28, 2010 - August 31, 2010; 30 TAC §305.125(17), and TPDES Permit Number WQ0014239001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010 by the September 1, 2010 due date; and TWC §26.121(a), 30 TAC §305.125(1), and TPDES Permit Number WQ0014239001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: \$1,790; ENFORCEMENT COORDINATOR: Jeremy Escobar, (361) 825-3422; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: National Oilwell Varco, L.P.; DOCKET NUMBER: 2011-0742-IWD-E; IDENTIFIER: RN100213024; LOCATION: Houston, Harris County; TYPE OF FACILITY: coating plant with an associated wastewater treatment facility; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0002104000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits for total copper; PENALTY: \$1,380; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Nizar Yousef dba Sunshine; DOCKET NUMBER: 2011-0745-PST-E; IDENTIFIER: RN101894889; LOCATION: San Angelo, Tom Green 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: \$2,750; ENFORCEMENT COORDINATOR: Brianna Carlson, (956) 430-6021; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(14) COMPANY: NuStar Terminals Partners TX L.P.; DOCKET NUMBER: 2011-0689-AIR-E; IDENTIFIER: RN100218767; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: petroleum and chemical storage; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Federal Operating Permit Number O983, General Terms and Conditions, and THSC §382.085(b), by failing to submit the annual Permit Compliance Certification within 30 days after the end of the compliance period; PENALTY: \$4,300; Supplemental Environmental Project offset amount of \$1,720 applied to Houston-Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Sai Shiva Incorporated dba Barton Springs Food Mart; DOCKET NUMBER: 2011-0828-PST-E; IDENTIFIER: RN102362126; LOCATION: Austin, Travis 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 every month (not to exceed 35 days between each monitoring); PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(16) COMPANY: The Dow Chemical Company; DOCKET NUMBER: 2011-0581-AIR-E; IDENTIFIER: RN100225945; LOCATION: Freeport, Brazoria County; TYPE OF FACILITY: petrochemical processing plant; RULE VIOLATED: 30 TAC §116.715(a), THSC §382.085(b), and Flexible Permit Numbers 20432 and

PSD-TX-994M1, Special Conditions Number III-1, by failing to prevent unauthorized emissions during an event that occurred on December 26, 2010 (Incident Number 148789); PENALTY: \$10,000; Supplemental Environmental Project offset amount of \$4,000 applied to Houston-Galveston Area Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: Waste Management of Texas, Incorporated; DOCKET NUMBER: 2011-0658-AIR-E; IDENTIFIER: RN100218676; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: waste collection and disposal landfill; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit Number O-2373, General Operating Permit Number 517, Site-wide Requirements Number (b)(2), and THSC §382.085(b), by failing to submit a permit compliance certification within 30 days after the end of the August 3, 2009 - August 2, 2010, certification period; PENALTY: \$1,875; ENFORCEMENT COORDINATOR: Raymond Marlow, P.G., (409) 899-8785; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: WHITE OAK UTILITIES, INCORPORATED; DOCKET NUMBER: 2011-0723-MWD-E; IDENTIFIER: RN102335825; LOCATION: Montgomery County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0014133001 Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$11,340; ENFORCEMENT COORDINATOR: Marty Hott, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: XTO Energy, Incorporated; DOCKET NUMBER: 2011-1269-WOC-E; IDENTIFIER: RN106149339; LOCATION: Center, Shelby County; TYPE OF FACILITY: construction; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit (storm water); PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201103043
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 9, 2011

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. 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 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 **September 19, 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 19, 2011**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: 5510 ACORN, L.L.C.; DOCKET NUMBER: 2010-1471-PWS-E; TCEQ ID NUMBER: RN101268258; LOCATION: 5510 Mount Houston Road, Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.110(e)(4), by failing to prepare and submit Disinfectant Level Quarterly Operating Reports to the commission each quarter by the tenth day of the month following the end of each quarter; Texas Health and Safety Code (THSC), §341.033(a) and 30 TAC §290.46(e)(3)(A), by failing to operate the facility under the direct supervision of a water works operator who holds a Class "D" or higher license; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the following months: February 2009 - March 2010, May 2010, and January 2011, and by failing to provide public notification of the failure to sample for the following months: February 2009 - March 2010, May 2010, and January 2011, and by failing to provide public notification of the failure to sample for the following months: February 2009 - March 2010, May 2010, and January 2011; THSC, §341.031(a) and 30 TAC §290.109(f)(3) and §290.122(b)(2)(A), by failing to comply with the Maximum Containment Level exceedance for the month of November 2010; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine distribution coliform samples the month following a coliform-positive sample result; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and by failing to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: \$23,268; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: A L Nizamani Inc. dba A L Food Store; DOCKET NUMBER: 2011-0071-PST-E; TCEQ ID NUMBER: RN104259312; LOCATION: 13603 Veterans Memorial Drive, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST system for releases at a frequency of at

least once every month (not to exceed 35 days between each monitoring); PENALTY: \$2,650; STAFF ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: Anmol Investment, Inc. dba McCarty Food Store; DOCKET NUMBER: 2011-0059-PST-E; TCEQ ID NUMBER: RN101838100; LOCATION: 8899 North Loop East, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor USTs for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: \$2,550; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: City of Bartlett; DOCKET NUMBER: 2010-1257-MWD-E; TCEQ ID NUMBER: RN100835487; LOCATION: approximately 0.5 mile northeast of the intersection of State Highway 95 and Farm-to-Market (FM) 487, Bartlett, Bell County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a)(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010880001, Effluent Limitations and Monitoring Requirements Numbers 1 and 3, and AO Docket Number 2007-0115-MWD-E, Ordering Provision Number 3, by failing to comply with permitted effluent limits; and 30 TAC §305.125(1) and (17) and §319.1 and TPDES Permit Number WQ0010880001, Monitoring and Reporting Requirements Number 1, by failing to timely submit monitoring results at the intervals specified in the permit for monitoring periods ending February 28, 2010 and March 31, 2010, by the 20th day of the following month; and 30 TAC §305.125(1) and (17) and §319.1 and TPDES Permit Number WQ0010880001, Monitoring and Reporting Requirements Number 1, by failing to submit monitoring results at the intervals specified in the permit for the monitoring periods ending December 31, 2008 and January 31, 2009, by the 20th day of the following month; PENALTY: \$35,772; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: City of Scottsville; DOCKET NUMBER: 2010-1254-PWS-E; TCEQ ID NUMBER: RN101227619; LOCATION: FM Road 2199 off Highway 80, east of Marshall, Harrison County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to sample for the following months: February, April, May, July - October 2008 and February 2010; 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and THSC, §341.031(a), by failing to comply with the Maximum Contaminant Level (MCL) for total coliform and by failing to provide public notification of the MCL exceedance for the month of March 2010; 30 TAC §290.109(c)(3)(A)(i) and §290.122(c)(2)(A), by failing to collect, within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample, three repeat distribution coliform samples for each routine distribution coliform-positive sample and by failing to provide public notification of the failure to collect repeat distribution samples during the month of March 2010; and 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(A), by failing to collect at least five routing distribution coliform samples the month following a coliform-positive sample result and by failing to provide public notification of the failure to sample for the month of April 2010; PENALTY: \$4,372; STAFF

ATTORNEY: Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: Dallas MSA, Inc. dba Fina; DOCKET NUMBER: 2010-0823-PST-E; TCEQ ID NUMBER: RN101559649; LOCATION: 1731 East Division Street, Arlington, Tarrant County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: THSC, §382.085(b) and 30 TAC §115.242(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.245(2), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification whichever occurs first; THSC, §382.085(b) and 30 TAC §115.246(7)(A), by failing to maintain Stage II records at the station and make them immediately available for review upon request by agency personnel; 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; and TWC, §26.3475(a) and (c)(1) and 30 TAC §334.48(c) and §334.50(b)(2), (A)(i)(III), (d)(1)(B)(ii) and (iii)(I), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances used as motor fuel, by failing to provide release detection for the pressurized piping associated with the USTs, by failing to test the line leak detector at least once per year for performance and operational reliability, by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: \$12,012; STAFF ATTORNEY: Stephanie Frazee, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Juan Castro; DOCKET NUMBER: 2011-0054-MSW-E; TCEQ ID NUMBER: RN106035553; LOCATION: 29289 Orange Grove Road, approximately 1.2 miles south of Business 83 on Orange Grove Road, La Feria, Cameron County; TYPE OF FACILITY: unauthorized used oil collection and storage facility; RULES VIOLATED: THSC, §371.041, 40 Code of Federal Regulations (CFR) §279.22(d), and 30 TAC §324.4(1), by failing to prevent the storage of used oil in a manner that does not endanger the public health or environment and by failing to perform response action upon detection of a release of used oil; and 40 CFR §279.11(c)(1) and 30 TAC §324.1, by failing to mark or clearly label used oil storage containers with the words "Used Oil"; PENALTY: \$5,250; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Leading Edge Aviation Services, Inc.; DOCKET NUMBER: 2010-1408-AIR-E; TCEQ ID NUMBER: RN100611201; LOCATION: 10801 Baker Street, Amarillo, Potter County; TYPE OF FACILITY: aircraft painting facility; RULES VIOLATED: AO Docket Number 2008-1459-AIR-E, Ordering Provision Number 2.f.i., New Source Review Permit Number 28896, Special Condition Number

6.E., 30 TAC §116.115(c), and THSC, §382.085(b), by failing to comply with the ordering provision of an AO and with permit conditions requiring exhaust stacks H-5A and H-5B to be 79 feet in height; and AO Docket Number 2008-1459-AIR-E, Ordering Provision Number 2.f.ii., 30 TAC §116.116(b)(1), and THSC, §382.085(b), by failing to comply with the ordering provision of an AO and with the permit representations for exhaust stacks H-606A, H-606B, H-608A, and H-608B to be tapered and have exhaust exit velocities of 715 feet per second; PENALTY: \$45,500; STAFF ATTORNEY: Jeff Huhn, Litigation Division, R-13, (210) 403-4023; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(9) COMPANY: PX Feeders LLC; DOCKET NUMBER: 2010-1534-AGR-E; TCEQ ID NUMBER: RN101354298; LOCATION: south side of County Road (CR) 523 about one-half mile west of the intersection of CR 523 and CR 528, approximately 2.5 miles north of the intersection of CR 528 and United States Highway 84, Hamilton County; TYPE OF FACILITY: concentrated animal feeding operation; RULES VIOLATED: 30 TAC §321.36(c) and §321.38(e)(7)(A)(ii), and TPDES General Permit Number TXG920139, Part III A.6.(d)(1)(ii), by failing to have retention control structures (RCS) designed and constructed to meet or exceed the capacity required to contain the runoff and direct precipitation from the 25-year, 24-hour rainfall event; PENALTY: \$1,050; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Quang Dang Pham dba Sunmart 302; DOCKET NUMBER: 2010-1948-PST-E; TCEQ ID NUMBER: RN102054434; LOCATION: 2002 Dowling Street, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(2) and (A)(i)(III), by failing to provide release detection for the pressurized piping associated with the UST; PENALTY: \$2,871; STAFF ATTORNEY: Phillip Goodwin, Litigation Division, MC 175, (512) 239-0675; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(11) COMPANY: Tadeo B. Pina Jr.; DOCKET NUMBER: 2010-0770-MLM-E; TCEQ ID NUMBER: RN101823474; LOCATION: 131 East Avenue A, Robstown, Nueces County; TYPE OF FACILITY: UST system and a garage; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; 30 TAC §334.47(a)(2) and §334.54(b)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements, and by failing to maintain all piping, pump, manways, tank access points, and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access tampering or vandalism by unauthorized persons; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0011214U for Fiscal Years 1995 - 2007; 30 TAC §324.1 and 40 CFR §279.22(b) and (d), by failing to store used oil in containers that do not leak and are in good condition, and by failing to, upon detection of a release of used oil to the environment, stop the release, contain the release, properly clean up and manage the release, and if necessary repair/replace any leaking used oil containers; and 30 TAC §324.1 and 40 CFR §279.22(c)(1), by failing to clearly label containers storing used oil; PENALTY: \$8,340; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Cor-

pus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(12) COMPANY: Thomas Petroleum, LLC; DOCKET NUMBER: 2010-0751-PST-E; TCEQ ID NUMBER: RN101617165 and RN104005186; LOCATION: 107 North Twin City Highway, Nederland, Jefferson County (RN101617165) and 13701 Interstate 35, Pflugerville, Travis County (RN104005186); TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to notify the agency of any change or additional information regarding the UST system within 30 days of the change or addition; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours after an inconclusive statistical inventory reconciliation (SIR) analysis report (RN101617165); 30 TAC §334.74, by failing to immediately investigate a suspected release of regulated substances within 30 days after the receipt of an inconclusive SIR analysis report (RN101617165); 30 TAC §334.42(i), by failing to inspect all sumps, manways, overspill containers or catchment basins associated with the UST system at least once every 60 days to assure their sides, bottoms, and any penetration points are maintained liquid-tight and free of debris and liquid (RN101617165); 30 TAC §115.242(3) and THSC, §382.085, by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system (RN101617165); 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 (RN101617165); 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 system training regarding the purpose and correct operation of the Stage II equipment (RN101617165); 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours after an inconclusive SIR analysis report (RN104005186); 30 TAC §334.74, by failing to immediately investigate a suspected release of regulated substances within 30 days after the receipt of an inconclusive SIR analysis report (RN104005186); and 30 TAC §115.222(3) and (6) and THSC, §382.085(b), by failing to ensure that no gasoline leaks exist anywhere in the liquid transfer or vapor balance system, and by failing to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch (RN104005186); PENALTY: \$84,004, Supplemental Environmental Project offset amount of \$42,002 applied to Jefferson County, Cheek Community First Time Sewer Service for Low-Income Home Owners; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838 (RN101617165) and Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929 (RN101617165).

(13) COMPANY: Tom Green County; DOCKET NUMBER: 2010-1516-PST-E; TCEQ ID NUMBER: RN100551282; LOCATION: 400 East Avenue A, San Angelo, Tom Green County; TYPE OF FACILITY: UST system and a non-commercial gasoline service station; RULES VIOLATED: 30 TAC §334.50(d)(1)(B)(ii) and (iii)(I) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurement for the regulated substance inputs, withdrawals, and the amount still

remaining in the tank each operating day; and 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 or debris; PENALTY: \$3,000; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

TRD-201103055

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: August 9, 2011



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 19, 2011**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 19, 2011**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Avondale Ranch, Ltd. dba Avondale Developers; DOCKET NUMBER: 2011-0430-IHW-E; TCEQ ID NUMBER: RN102841301; LOCATION: 9012 Cedar Bluffs Drive, North Richland Hills, Tarrant County; TYPE OF FACILITY: residential housing development; RULES VIOLATED: TWC, §26.121(a)(3) and 30 TAC §335.4, by failing to prevent the collection, storage, handling and disposal of industrial solid waste in a manner which threatened the discharge of industrial solid waste into or adjacent to water in the

state; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay outstanding fees for TCEQ Financial Account Number 20008613; PENALTY: \$5,000; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Cecil D. Hutcheson dba Elm Grove Mobile Home Park; DOCKET NUMBER: 2011-0309-PWS-E; TCEQ ID NUMBER: RN101438380; LOCATION: 2201 Research Boulevard, Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(j), by failing to use a disinfectant that conforms to American National Standards Institute/National Sanitation Foundation Standard 60; 30 TAC §290.45(b)(1)(E)(ii), by failing to provide a pressure tank capacity of 50 gallons per connection with a maximum of 2,500 gallons required; and 30 TAC §290.121(a) and (b), by failing to maintain an up-to-date chemical and microbiological monitoring plan; PENALTY: \$324; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7613.

(3) COMPANY: Humberto Montalvo and Ninfa Montalvo; DOCKET NUMBER: 2011-0301-PST-E; TCEQ ID NUMBER: RN101896447; LOCATION: 5019 Fulton Street, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a former gasoline service station; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, a UST system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; PENALTY: \$5,500; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: J. B. Services Construction, Inc.; DOCKET NUMBER: 2010-1267-WQ-E; TCEQ ID NUMBER: RN105964035; LOCATION: approximately 2.5 miles south southwest of the intersection of State Highway 35 and Farm-to-Market Road 2403, Alvin, Brazoria County; TYPE OF FACILITY: sand mining pit; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination Services Multi-Sector General Permit Number TXR050000; PENALTY: \$3,000; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(5) COMPANY: Karen Robinson; DOCKET NUMBER: 2011-0183-OSS-E; TCEQ ID NUMBER: RN106027287; LOCATION: 23 Westpoint, Missouri City, Fort Bend County; TYPE OF FACILITY: rental property with an on-site sewage facility; RULES VIOLATED: Texas Health and Safety Code (THSC), §366.0515(g) and 30 TAC §285.7(a), by failing to ensure that an OSSF is properly operated and maintained as required; and 30 TAC §285.1(a), by failing to prevent a discharge of effluent into or adjacent to water in the state; PENALTY: \$525; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Katherine M. Celis; DOCKET NUMBER: 2011-0381-LII-E; TCEQ ID NUMBER: RN105210389; LOCATION: 1359 Edmonton Drive, Lewisville, Denton County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.72(c), by failing to uphold a warranty after the installation of

an irrigation system that required repairs; PENALTY: \$431; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Phuong Cong Huynh dba P & H Food 2, Tam Mai dba P & H Food 2, and Le Hein dba P & H Food 2; DOCKET NUMBER: 2010-0773-PST-E; TCEQ ID NUMBER: RN101434199; LOCATION: 5902 Fulton Street, Houston, Harris County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: 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; PENALTY: \$4,069; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Robert E. Hunt, III dba Trey Hunt Cutting Horses; DOCKET NUMBER: 2010-1655-AGR-E; TCEQ ID NUMBER: RN105897540; LOCATION: 110 Hereford Lane, Millsap, Parker County; TYPE OF FACILITY: animal feeding operation; RULES VIOLATED: TWC, §26.121(a)(1) and 30 TAC §321.47(b)(3), by failing to prevent the discharge of agricultural waste into or adjacent to water in the state; PENALTY: \$2,625; STAFF ATTORNEY: Jim Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Star G Construction, LLC; DOCKET NUMBER: 2011-0285-WQ-E; TCEQ ID NUMBER: RN106022742; LOCATION: 1701 Azle Highway, Weatherford, Parker County; TYPE OF FACILITY: single family residential construction; RULES VIOLATED: 40 CFR §122.26(c) and 30 TAC §281.25(a)(4), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$1,050; STAFF ATTORNEY: Marshall Coover, Litigation Division, MC 175, (512) 239-0620; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Stephen Hall dba Hall's Landscape; DOCKET NUMBER: 2011-0346-LII-E; TCEQ ID NUMBER: RN106019797; LOCATION: 5905 Saddle Club Trail, McKinney, Collin County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: TWC, §37.003 and 30 TAC §30.5(b), by failing to refrain from advertising or representing himself to the public as a holder of a license or registration unless he possesses a current license or registration or unless he employs an individual who holds a current license; PENALTY: \$262; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: The Woodlands Lawn and Pool Services, LLC; DOCKET NUMBER: 2011-0184-LII-E; TCEQ ID NUMBER: RN105993190; LOCATION: 18 Quick Stream Place, The Woodlands, Montgomery County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §30.5(b) and TWC, §37.003, by failing to refrain from advertising or representing itself to the public as a holder of a license or registration unless it possesses a current license or registration, or unless it employs an individual who holds a current license; PENALTY: \$787; STAFF ATTORNEY: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 230-3503; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201103056



Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 19, 2011**. The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 19, 2011**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Haider A., Inc. dba Stop In Food Mart; DOCKET NUMBER: 2010-2006-PST-E; TCEQ ID NUMBER: RN102867678; LOCATION: 8500 Old Galveston Road, Houston, Harris County; TYPE OF FACILITY: UST system and former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.7(d)(3), by failing to notify

the agency of any change or additional information regarding USTs within 30 days from the date of occurrence of the change or addition; and TWC, §26.3475(a), (c)(1) and (d), §334.49(c)(2)(C) and (4)(C), §334.50(a)(1)(A) and (b)(2)(A)(i)(III), and §334.54(b)(2) and (c)(1), and TCEQ Agreed Order (AO) Docket Number 2006-1928-PST-E, Ordering Provision Numbers 2.a.i and 2.a.ii, by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances, failing to test the line leak detectors at least once per year for performance and operational reliability, by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly, by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years, by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, and by failing to provide an out-of-service UST with corrosion protection; PENALTY: \$39,780; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 239-0736; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: S & S Conveniences Inc. dba C D Kwik Stop II; DOCKET NUMBER: 2010-2052-PST-E; TCEQ ID NUMBER: RN102781150; LOCATION: 2401 West Seminary Drive, Fort Worth, Tarrant County; TYPE OF FACILITY: UST system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the UST system for releases at a frequency of at least once every month (not to exceed 335 days between each monitoring); PENALTY: \$2,600; STAFF ATTORNEY: Mike Fishburn, Litigation Division, MC 175, (512) 239-0635; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201103054
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 9, 2011



Notice of Water Quality Applications

The following notices were issued on July 29, 2011 through August 5, 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

AQUA DEVELOPMENT, INC. has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014234001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility will be located 1,600 feet northeast of the intersection of Farm-to-Market Road 1385 and Crutchfield Road in Denton County, Texas 76227.

THE CITY OF AUSTIN has applied to the TCEQ for a renewal of TPDES Permit No. WQ0014459001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The facility is located at 8250 Citation Avenue in the City of Austin, approximately 2,400 feet east of Farm-to-Market Road 973 and approximately 2,800 feet south of Farm-to-Market Road 812 in Travis County, Texas 78719.

R & L INVESTMENT PROPERTY, LLC has applied to the TCEQ for a renewal of TPDES Permit No. WQ0014859001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located 2,600 feet south of the intersection of Farm-to-Market Road 751 and County Road 3622 in Hunt County, Texas 75474.

CITY OF DIBOLL has applied for a renewal of TPDES Permit No. WQ0010288001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located adjacent to White Oak Creek; approximately 1,500 feet west of the crossing of White Oak Creek by U.S. Highway 59 on the south side of the City of Diboll in Angelina County, Texas 75941.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. WQ0010495148 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 488,000 gallons per day. The facility is located at 10545 Tidwell Road on the west bank of Greens Bayou, north of and adjacent to Tidwell Road in Harris County, Texas 77078.

CITY OF MABANK has applied for a renewal of TPDES Permit No. WQ0010579001, 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 301 South Veterans Way, approximately 6000 feet west of the intersection of U.S. Highway 175 and Farm-to-Market Road 90 in Kaufman County, Texas 75147.

BROOKELAND FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010998001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per day. The facility is located 4 miles west of Highway 96 and Recreational Road 255 on Recreational Road West, south side of Recreational Road 255 in Jasper County, Texas 75951.

MEMORIAL HILLS UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011044001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 1603 Briarcreek Boulevard, immediately south of Cypress Creek, approximately 600 feet north and 600 feet east of the intersection of Farm-to-Market Road 1960 and Hardy Road in Harris County, Texas 77073.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 5 has applied for a renewal of TPDES Permit No. WQ0011238002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located at 11538 Trickey Road near the intersection of Trickey Road and Harris County Flood Control Ditch No. P147-00-00 and approximately 1,600 feet north of Gears Road, and 1.5 miles west of Interstate Highway 45, north of the City of Houston in Harris County, Texas 77067.

CITY OF COLMESNEIL has applied for a renewal of TPDES Permit No. WQ0011295001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 809 Ogden Drive, approximately 0.4 mile north of the intersection of Farm-to-Market Road 256 and Ogden Drive in Tyler County, Texas 75938.

RANKIN ROAD WEST MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0012934001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located at 12739 Laurel Vale Way, approximately 5,300 feet northeast of the intersection of Spears Road and Walter Road in Harris County, Texas 77014.

COWTOWN RV PARK, LTD. has applied for a renewal of TPDES Permit No. WQ0014003001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 21,600 gallons per day. The facility is located at 7000 East Interstate Highway 20, at the Cowtown Recreational Vehicle Park, approximately 1,800 feet south of the centerline of Interstate Highway 20 and approximately 4,650 feet west of Farm-to-Market Road 1187 north of Aledo in Parker County, Texas 76008.

AQUA DEVELOPMENT, INC. has applied for a renewal of TPDES Permit No. WQ0014263001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility will be located approximately 2,500 feet southwest of the intersection of State Highway 114 and John Day Road (which is about nine miles west of the City of Roanoke) on the south side of State Highway 114 in Denton County, Texas 76262.

AGUA SPECIAL UTILITY DISTRICT, has applied for a renewal of TPDES Permit No. WQ0014415001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,400,000 gallons per day. The facility is located at 805 Guadalupe Flores Street, approximately one mile south of U.S. Expressway 83 on Guadalupe Flores Road and approximately 1,000 feet east of Guadalupe Flores Road in Hidalgo County, Texas 78595. Chemtrade Refinery Services, Inc., which operates an organic chemicals plant, has applied for a renewal of TPDES Permit No. WQ0000647000, which authorizes the discharge of storm water, fire fighting equipment test water, eyewash and safety shower water, and other allowable non-storm water discharges on an intermittent and variable basis. The facility is located at 1400 Olin Road, approximately 2,000 feet east of State Highway 380 and approximately 2.7 miles south of the intersection of State Highway 380 and State Highway 90, on the south side of the City of Beaumont, Jefferson County, Texas 77042.

MARTIN OPERATING PARTNERSHIP L.P., which operates the Neches Terminal, a manufacturing and commercial operation including a storage and shipping terminal, a nitrogen based fertilizer manufacturing plant, a sulfur prilling and sulfur prill loading and unloading facility, and a packaged product warehousing facility, has applied for a major amendment with renewal to TPDES Permit No. WQ0001202000 to authorize the discharge of additional cooling tower blowdown flow and boiler blowdown from three new boilers via Outfall 003; rerouting of cooling tower blowdown from Outfall 004 to Outfall 003; the discharge of priller process wastewater from the Devco and Prillmax processes, wash down water for dust control of the sulfur prills, and equipment wash down via Outfall 008; and removal of once through cooling water via Outfall 008. The current permit authorizes the discharge of storm water and contact storm water on an intermittent and flow variable basis via Outfalls 002, 005, 006, and 007; storm water, condensate, boiler blowdown, filter wash water, cooling tower blowdown, and raw water clarifier blowdown on an intermittent and flow variable basis via Outfall 003; utility wastewater (raw water clarifier blowdown, filter wash water, cooling tower blowdown, and boiler blowdown), condensate, and storm water at a daily average dry weather flow not to exceed 220,000 gallons per day via Outfall 004; and once-through cooling water, storm water, and storm water seepage at a daily average dry weather flow not to exceed 115,000 gallons per day via Outfall 008. The facility is located

on the west bank of the Neches River, approximately three miles east of the intersection of U.S. Highway 90 and State Highway 380, and southeast of the City of Beaumont, Jefferson County, Texas 77704.

SOUTH COAST TERMINALS, LP, which operates Wallisville Road WWTP, a bulk storage, blending and packaging facility for lubricating oils and additives, has applied for a renewal of TPDES Permit No. WQ0003150000, which authorizes the discharge of hydrostatic test water, clean water rinsate and treated storm water on an intermittent and flow variable via Outfall 001 and clean water rinsate and storm water on an intermittent and flow variable basis via Outfall 002. The facility is located at 7401 Wallisville Road, two blocks west of the intersection of Wallisville Road and North Wayside in the City of Houston, Harris County, Texas 77020.

50'S GROUP PROPERTIES, LTD., which operates a meat packing plant, has applied for a renewal of TCEQ Permit No. WQ0003574000, which authorizes the disposal of slaughter house process wastewater, wash water from cattle processing, cooling tower blowdown, boiler blowdown, storm water, and reverse osmosis reject water at a daily average flow of 435,000 gallons per day via irrigation of 268 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located at 2150 East 37th Street, approximately 2,000 feet northeast of the intersection of 37th Street and Pruitt Drive, in the extra territorial jurisdiction of the City of San Angelo in Tom Green County, Texas 76903.

LUMINANT MINING COMPANY LLC, which operates the Three Oaks Lignite Mine, has applied for a renewal of TPDES Permit No. WQ0004348000, which authorizes the discharge of mine seepage, groundwater seepage, water from dewatering activities, storm water, and previously monitored treated domestic wastewater from retention ponds in the active mining area via Outfall 001 on an intermittent and flow variable basis; mine seepage, groundwater seepage, water from dewatering activities, and storm water from retention ponds in the active mining area via Outfalls 002 and 003 on an intermittent and flow variable basis; groundwater seepage, water from dewatering activities, storm water, and previously monitored treated domestic wastewater from retention ponds in the post mining area via Outfall 101 on an intermittent and flow variable basis; and groundwater seepage, water from dewatering activities, and storm water from retention ponds in the post mining area via Outfalls 102 and 103 on an intermittent and flow variable basis. The facility is located approximately one mile northwest of the intersection of Farm-to-Market Road 619 and Farm-to-Market Road 696, Lee County and Bastrop County, Texas 78621.

CITY OF LUFKIN has applied for a renewal of TPDES Permit No. WQ0010214001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 11,300,000 gallons per day. The facility is located at 3,510 Southwood Drive, approximately 1,600 feet northwest of the point where Hurricane Creek intersects Farm-to-Market Road 324 and south of the City of Lufkin in Angelina County, Texas 75904.

K-3 RESOURCES, L.P. has applied for a major amendment to TCEQ Permit No. WQ0004518000. The proposed amendment requests to increase acreage from 268 acres to 270.5 acres and to increase the domestic septage land application rate from 4,288 gallons per acre per year to 20,307.7 gallons per acre per year. The current permit authorizes the land application of sewage sludge and domestic septage for beneficial use on 270.5 acres. This permit will not authorize a discharge of pollutants into waters in the State. The sewage sludge land application site is located at the intersection of State Highway 529 and State Highway 362, in Waller County, Texas 77423.

EAST FORK PARTNERS LLC has applied for a new permit, proposed TPDES Permit No. WQ0014998001 to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,500,000 gallons per day. The facility will be located approximately 1.4 miles west and 0.8 mile north of the intersection of County Road 170 and Farm-to-Market Road 543, approximately 2.25 miles south-southeast of the City of Weston in Collin County, Texas 75009.

CITY OF ROCHESTER has applied for a new permit, Proposed TCEQ Permit No. WQ0014997001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 3,000 feet north of the intersection of Farm-to-Market Road 617 and State Highway 6 in Haskell County, Texas 79544. This facility was previously authorized under Permit No. WQ0011636001 which expired May 1, 2009.

CITY OF ANGUS has applied for a renewal of TPDES Permit No. WQ0011864001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located adjacent to Interstate Highway 45 approximately 2,000 feet north of its intersection with Farm-to-Market Road 739 in the north central portion of the City of Angus in Navarro County, Texas 75110.

AQUA UTILITIES, INC. has applied for a renewal of TPDES Permit No. WQ0011974001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 400 feet south of Rockwall Lake Dam and approximately 400 feet northwest of the point where Farm-to-Market Road 3097 crosses Buffalo Creek in Rockwall County, Texas 75087.

CITY OF MURCHISON has applied for a renewal of TPDES Permit No. WQ0013972001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located at 10121 County Road 3807, approximately 2,800 feet northeast of the intersection of Farm-to-Market Road 773 and County Road 1616, adjacent to County Road 1616 at the northeast edge of the City of Murchison in Henderson County, Texas 75778.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN 30 DAYS OF THE ISSUED DATE OF THE NOTICE.

CITY OF LEFORS has applied for a minor amendment to the TPDES Permit No. WQ0010411001 to authorize use of an accredited laboratory that has obtained a variance from the maximum holding time for bacteria from EPA Region 6 pursuant to 40 CFR §136.3(e). The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1,300 feet south of State Highway 273, 2.5 miles west of the intersection of Farm-to-Market Road 291 and State Highway 273 south of the City of Lefors in Gray County, Texas 79054.

MOUNT HOUSTON ROAD MUNICIPAL UTILITY DISTRICT has applied for a minor amendment to the TPDES Permit No. WQ0011154001 to include authorization to accept and process sewage sludge from permitted domestic wastewater treatment facilities. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 1.3 miles northwest of the intersection of State Highway 249 (formerly Farm-to-Market Road 149, West Mount Houston Road) and Veterans Memorial Drive (formerly

Stuebner Airline Drive) on the east bank of Halls Bayou in Harris County, Texas 77080.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, toll-free, at (800) 687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us. Si desea información en español, puede llamar al (800) 687-4040.

TRD-201103071
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: August 10, 2011



Request for Nominations for the Texas Commission on Environmental Quality's Tax Relief for Pollution Control Property Advisory Committee

In 1993, Texans voted in favor of a ballot initiative listed as Proposition 2, amending the Texas Constitution to authorize the Texas Legislature to exempt from *ad valorem* taxation "all or part of real and personal property used, constructed, acquired, or installed wholly or partly to meet or exceed rules or regulations adopted by an environmental protection agency of the United States, this state, or a political subdivision of this state for the prevention, monitoring, control, or reduction of air, water, or land pollution." The Legislature implemented Proposition 2 by enacting the Texas Tax Code (TTC), §11.31. The Texas Commission on Environmental Quality (TCEQ) adopted 30 TAC Chapter 17, establishing the procedures for obtaining a "positive use determination" under the program. The goal of the program is to provide tax relief to individuals, companies, and political subdivisions that make capital investments to meet or exceed federal, state, or local environmental rules or regulations.

House Bills 3206 and 3544, 81st Legislature, amended TTC, §11.31 to require the TCEQ to form a permanent advisory committee that will make recommendations to the TCEQ commissioners on matters relating to property tax exemptions for pollution control property. Tax Relief for Pollution Control Property Advisory Committee members were appointed by the TCEQ commissioners to four-year staggered terms. Once the members were selected by the commission, a random drawing was used to assign term lengths. Thirteen advisory committee members were appointed by the commission on January 27, 2010. The terms of six advisory committee members expire on January 1, 2012.

House Bill 2280, 82nd Legislature, amended TTC, §11.31(n) by adding a requirement that at least one of the advisory committee members be a representative of a school district or junior college district containing property which has or had a TTC, §11.31 tax exemption.

The TCEQ is currently accepting applications for potential Tax Relief for Pollution Control Property Advisory Committee members from the following affiliations: three industry representatives; one taxing unit representative; one school or junior college district representative; and one environmental group representative. Current members whose terms are expiring may apply again for full terms.

Applications for the advisory committee positions can be found on the TCEQ website at: http://www.tceq.texas.gov/airquality/taxrelief/advisory_group.html.

To apply, complete the nomination form and submit it to the TCEQ by 5:00 p.m. central standard time on September 16, 2011. Applications postmarked after that date will only be considered if there are insufficient qualified individuals in specific groups. You can nominate your-

self or someone else to the advisory committee, but the TCEQ asks that only interested persons be nominated.

Questions regarding the advisory committee application process can be directed by phone to Ron Hatlett of the Tax Relief Program at (512) 239-6348 or by e-mail to txrelief@tceq.texas.gov.

TRD-201103042
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 9, 2011



Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2011.

These rate actions are being taken to comply with the 2012-2013 General Appropriations Act (House Bill 1, 82nd Legislature, Regular Session, 2011), Article II, Special Provisions Relating to All Health and Human Services (HHS) Agencies, §16 Provider Rates and §17 Additional Cost Containment Initiatives, (c)(1). The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan and will result in reduction of Medicaid fees as detailed below:

Birthing Centers: 5 percent

Case Management for Children and Pregnant Women: 5 percent

Durable Medical Equipment Prosthetics, Orthotics, and Supplies (DMEPOS): various percentages averaging 10.5 percent

Early and Periodic Screening, Diagnosis and Treatment: select services 5 percent

Family Planning: 5 percent

Hearing and Audiometric Evaluations: various percentages averaging 10.5 percent

Home Health Services (DMEPOS) various percentages averaging 10.5 percent

Tuberculosis Clinics: 5 percent

Vendor Drug Dispensing Fee, fixed component of the fee: Reduced to \$6.50

The proposed amendments are estimated to result in a fiscal impact of \$(3,833,996) for federal fiscal year (FFY) 2011, with approximately \$(2,560,204) in federal funds and \$(1,273,792) in State General Revenue (GR). For FFY 2012, the estimated fiscal impact is \$(164,707,848), with approximately \$(96,953,078) in federal funds and \$(67,754,770) in GR.

This notice serves as a replacement for the notice published in the June 24, 2011, issue of the *Texas Register* (36 TexReg 3991).

Interested parties may obtain copies of the proposed amendments by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@hhsc.state.tx.us. Individuals may make comments to the proposed amendments or view other comments made by contacting Mr. Huggins as well. Copies of the propos-

als will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201103069

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: August 10, 2011



Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective September 1, 2011.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes. These rate actions are being taken to comply with the 2012-2013 General Appropriations Act (House Bill 1, 82nd Legislature, Regular Session, 2011), Article II, Health and Human Services and Special Provisions Relating to All Health and Human Services (HHS) Agencies. The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan and will result in reduction of Medicaid fees as detailed below:

Clinical Laboratory Services (non-state entities) - Implements a 10.5% rate reduction

Freestanding Psychiatric Facilities (non-state entities) - Implements an 8% rate reduction

Ambulatory Surgical Centers/Hospital Based Ambulatory Surgical Centers (ASC/HASC) - Implements an 5% rate reduction

Hospital Outpatient Medicaid Services - Implements an 8% rate reduction, reduces payments for non-emergency services provided in an emergency room, and institutes a fee schedule for imaging services

Renal Dialysis Facilities - Implements a 5% rate reduction

Inpatient Hospital Services - Implements an 8% rate reduction, modifies the calculation of the standard dollar amount (SDA), and reduces the percent used in the computation of outlier payments as well as the change that hospitals in counties with 50,000 or fewer persons and certain other hospitals interim reimbursement will be based on cost-reimbursement methodology described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

The proposed amendments are estimated to result in an additional annual aggregate savings of \$24,210,610 for the remainder of federal fiscal year (FFY) 2011, with approximately \$14,661,945 in federal funds and \$9,548,665 in State General Revenue (GR). For FFY 2012, the estimated additional aggregate savings is \$290,786,917, with approximately \$169,296,143 in federal funds and \$121,490,774 in GR.

Interested parties may obtain copies of the proposed amendments by contacting Kevin Nolting, Director of Rate Analysis for Hospital Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1348; by facsimile at (512) 491-1998; or by e-mail at kevin.nolting@hhsc.state.tx.us. Individuals may make comments to the proposed amendments or view other comments made by contacting Mr. Nolting as well. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201103070

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: August 10, 2011



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
Houston	Platinum Energy Solutions, Inc.	L06410	Houston	00	07/25/11
New Braunfels	Sundance Center for Cancer Care	L06305	New Braunfels	00	07/20/11
New Braunfels	Cemex Construction Materials South, L.L.C.	L06412	New Braunfels	00	07/26/11
Throughout TX	Fox NDE, L.L.C.	L06411	Abilene	00	07/25/11
Throughout TX	Hunter Well Science, Inc.	L06413	Arlington	00	07/27/11

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Texas Department of State Health Services	L01594	Austin	34	07/21/11
Beaumont	Diagnostic Health Centers of Texas, L.P.	L03888	Beaumont	39	07/20/11
Cleveland	Nadim M. Zacca, M.D., P.A.	L05570	Cleveland	05	07/26/11
Corpus Christi	Radiology Associates, L.L.P.	L04169	Corpus Christi	54	07/20/11
Deer Park	IRISNDT, Inc.	L04769	Deer Park	95	07/19/11
Deer Park	IRISNDT, Inc.	L04769	Deer Park	96	07/25/11
El Paso	Cancer Radiation Specialty Clinics of El Paso	L06095	El Paso	07	07/22/11
Fort Worth	Baylor All Saints Medical Center	L02212	Fort Worth	85	07/20/11
Gatesville	Coryell County Memorial Hospital Authority dba Coryell Memorial Hospital	L02391	Gatesville	33	07/26/11
Granbury	Northeastern Pavers, Inc.	L05665	Granbury	03	07/25/11
Houston	Diagnostic Cardiology of Houston	L04888	Houston	13	07/18/11
Houston	The University of Texas M.D. Anderson Cancer Center	L00466	Houston	132	07/22/11
Houston	Memorial Cardiology Associates, P.A.	L05349	Houston	12	07/22/11
Houston	The University of Texas M.D. Anderson Cancer Center	L06227	Houston	19	07/25/11
Houston	Baylor College of Medicine	L00680	Houston	105	07/25/11
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	87	07/25/11
Kingsville	Christus Spohn Health System dba Christus Spohn Hospital-Kleberg	L02917	Kingsville	50	07/20/11
Longview	Good Shepherd Medical Center	L02411	Longview	88	07/19/11
Lubbock	Covenant Medical Group dba Cardiology Associates Covenant Medical Group	L04468	Lubbock	25	07/20/11
San Antonio	VHS San Antonio Partners, L.L.C.	L00455	San Antonio	209	07/19/11
San Antonio	VHS San Antonio Partners, L.L.C.	L00455	San Antonio	210	07/26/11
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	130	07/25/11
Throughout TX	MLA Labs, Inc.	L01820	Austin	35	07/25/11
Throughout TX	Southwestern Testing Laboratories, L.L.C. dba STL Engineers	L06100	Dallas	04	07/15/11
Throughout TX	Weaver Boos Consultants, L.L.C.	L06395	Fort Worth	02	07/18/11
Throughout TX	Metco	L03018	Houston	210	07/21/11
Throughout TX	Oceaneering International, Inc.	L04463	Ingleside	78	07/19/11
Throughout TX	RNLS, L.L.C. dba Renegade Services	L06307	Levelland	07	07/21/11
Throughout TX	Glenn Fuqua, Inc.	L04736	Navasota	07	07/25/11
Throughout TX	Petrochem Inspection Services, Inc.	L04460	Pasadena	108	07/19/11
Throughout TX	Mistras Group, Inc.	L06369	Pasadena	02	07/20/11
Throughout TX	Texas Gamma Ray, L.L.C.	L05561	Pasadena	98	07/14/11

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Apex Geoscience, Inc.	L04929	Tyler	34	07/26/11
Wichita Falls	City of Wichita Falls	L03217	Wichita Falls	17	07/25/11

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
San Antonio	University of Texas at San Antonio	L01962	San Antonio	65	07/18/11

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
League City	Trident Imaging Services, L.L.C.	L06312	League City	01	07/15/11
San Antonio	Cardiology Northwest San Antonio, P.A.	L05923	San Antonio	02	07/26/11

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-201102979
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: August 4, 2011



Texas Lottery Commission

Instant Game Number 1401 "Texas Lottery® - Black - Series IV - Limited Edition"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1401 is "TEXAS LOTTERY® - BLACK - SERIES IV - LIMITED EDITION" The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1401 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 1401.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, COIN SYMBOL, \$10.00, \$20.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000 and \$1MILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1401 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
COIN SYMBOL	COIN
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND

\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$1MILL SYMBOL	ONE MILL

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000, \$10,000 or \$1,000,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1401), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1401-0000001-001.

K. Pack - A pack of "TEXAS LOTTERY® - BLACK - SERIES IV - LIMITED EDITION" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS LOTTERY® - BLACK - SERIES IV - LIMITED EDITION" Instant Game No. 1401 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS LOTTERY® - BLACK - SERIES IV - LIMITED EDITION" Instant Game is determined once the latex on the ticket is scratched off to expose 66 (sixty-six) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE for that number. If a player reveals a "coin" play symbol, the player wins the PRIZE for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 66 (sixty-six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 66 (sixty-six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 66 (sixty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 66 (sixty-six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award

of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No more than five duplicate non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 10 and \$10).

G. The "COIN" (auto win) play symbol will only appear once on a ticket.

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS LOTTERY® - BLACK - SERIES IV - LIMITED EDITION" Instant Game prize of \$10.00, \$20.00, \$50.00, \$100, \$200 or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$50.00, \$100, \$200 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS LOTTERY® - BLACK - SERIES IV - LIMITED EDITION" Instant Game prize of \$1,000, \$5,000, \$10,000 or \$1,000,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS LOTTERY® - BLACK - SERIES IV - LIMITED EDITION" Instant Game prize, the

claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. a sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TEXAS LOTTERY® - BLACK - SERIES IV - LIMITED EDITION" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of \$600 or more from the "TEXAS LOTTERY® - BLACK - SERIES IV - LIMITED EDITION" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing,

distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the

Figure 2: GAME NO. 1401 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	1,680,000	7.14
\$20	1,680,000	7.14
\$50	180,000	66.67
\$100	80,000	150.00
\$200	18,000	666.67
\$500	8,600	1,395.35
\$1,000	800	15,000.00
\$5,000	200	60,000.00
\$10,000	32	375,000.00
\$1,000,000	9	1,333,333.33

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.29. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1401 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1401, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201103068
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: August 10, 2011

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North Central Texas Council of Governments

space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 1401. The approximate number and value of prizes in the game are as follows:

Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is requesting consultant services to assist in creating a transit oriented development plan for the City Center area of Cedar Hill which will strongly encourage ongoing public engagement throughout the planning process. This project will build upon the City's plans and studies, specifically the City of Cedar Hill's City Center Vision Plan and other regional planning activities which are aimed at transforming the City Center into a transit, bicycle and pedestrian oriented area that is positioned to take maximum advantage of the future commuter rail line known as the Midlothian Corridor.

Due Date

Proposals must be received no later than 5:00 p.m., Central Daylight Time, on Friday, September 16, 2011, by Karla Weaver, AICP, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at <http://www.nctcog.org/trans/admin/rfp> by the close of business on Friday, August 19, 2011. NCTCOG encourages participation by

disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the RFP. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-201103051

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: August 9, 2011



Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction

Purchase of Land - Palo Pinto and Eastland Counties

In a meeting on August 25, 2011 the Texas Parks and Wildlife Commission (the Commission) will consider authorizing the purchase of three (3) privately owned tracts totaling approximately 3,300 contiguous acres near the town of Strawn in Palo Pinto and Eastland Counties.

At this meeting, the public will have an opportunity to comment on the proposed transaction before the Commission takes action. The meeting will start at 9:00 a.m. at the Texas Parks and Wildlife Department Headquarters, 4200 Smith School Road, Austin, Texas 78744. Prior to the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or through the TPWD website at tpwd.state.tx.us.

TRD-201103037

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Filed: August 8, 2011



Public Utility Commission of Texas

Amended Notice of Proceeding for 2011 Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund

Notice is given to the public of the 2011 annual compliance affidavit proceeding initiated by the Public Utility Commission of Texas for el-

igible telecommunications providers (ETP) to attest to the proper use of Texas universal service funds (TUSF).

Project Title and Number: Annual Compliance Affidavit Attesting to Proper Use of Texas Universal Service Fund Pursuant to PURA §56.030. Project Number 32567.

The Public Utility Commission of Texas (commission) initiated this proceeding pursuant to Public Utility Regulatory Act (PURA) §56.030 and P.U.C. Substantive Rule §26.417. PURA §56.030 requires that on or before September 1 of each year, a telecommunications provider that receives disbursements from the TUSF file with the commission an affidavit certifying that the telecommunications provider complies with the requirements for receiving money from the TUSF and requirements regarding the use of money from TUSF program for which the telecommunications provider receives disbursements.

This certification requirement applies to every ETP receiving support from the TUSF. In accordance with PURA §56.030 and P.U.C. Substantive Rule §26.417, each ETP receiving TUSF support must file with the commission a sworn affidavit (using the commission prescribed form) certifying that the provider complies with the requirements for receiving money from the TUSF and the requirements regarding the use of money from each TUSF program for which the provider receives funds.

Carriers designated as ETPs may contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. Persons contacting the commission regarding this certification proceeding should refer to Project Number 32567.

TRD-201103000

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: August 5, 2011



Amended Notice of Proceeding for 2011 Annual State Certification for Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds

Notice is given to the public of the 2011 annual certification proceeding initiated by the Public Utility Commission of Texas for state certification of common carriers as eligible telecommunications carriers (ETC) to receive federal universal service funds (FUSF).

Project Title and Number: Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds. Project Number 24481.

Under 47 C.F.R. §54.313 and §54.314, the Public Utility Commission of Texas (commission) annually certifies that all federal high-cost support provided to carriers in Texas will be used only for "the provision, maintenance, and upgrading of facilities and services for which the support is intended." The commission must file the certification with the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC) by October 1. Without certification, carriers will not receive federal high-cost support.

The certification requirement applies to all incumbent local exchange carriers and competitive eligible telecommunications carriers seeking federal high-cost support in the service area of an incumbent local exchange carrier. Under P.U.C. Substantive Rule §26.418(j), each carrier shall provide the commission with a sworn affidavit certifying that

the carrier complies with federal requirements for receiving federal high-cost support. All carriers in Texas requesting certification by the commission shall submit an affidavit by September 1, 2011.

Carriers seeking to be certified may contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll-free at (800) 735-2989. Persons contacting the commission regarding this certification proceeding should refer to Project Number 24481.

TRD-201102999
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 5, 2011



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 1, 2011, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Etan Industries, Inc. d/b/a CMA Communications to amend its State-Issued Certificate of Franchise Authority; to add City Limits of Merkel, Texas, Project Number 39634.

The requested amendment is to expand the service area footprint to include the municipality of Merkel, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All inquiries should reference Project Number 39634.

TRD-201102960
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 3, 2011



Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on August 3, 2011, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Montgomery County, Texas.

Docket Style and Number: Application of Consolidated Communications of Texas Company dba Consolidated Communications to Amend its Certificate of Convenience and Necessity for a Minor Boundary Change between the Conroe and Verizon Southwest Willis Exchange. Docket Number 39639.

The Application: The minor boundary amendment is being filed to realign the boundary between the Conroe exchange of Consolidated Communications and the Willis exchange of Verizon Southwest (Verizon). Verizon provided a letter of concurrence for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by August 26, 2011, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 39639.

TRD-201103001
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 5, 2011



Notice of Petition for Adjustments to Universal Service Plan

Notice is given to the public of a petition filed with the Public Utility Commission of Texas on August 8, 2011.

Docket Style and Number: Adjustments to Support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan Pursuant to PURA §56.032. Docket Number 39643.

The Application: The staff of the Public Utility Commission of Texas (commission) filed a petition for adjustments to support from the Small and Rural Incumbent Local Exchange Company Universal Service Plan (the plan) to small and rural incumbent local exchange companies (ILECs) pursuant to Public Utility Regulatory Act §56.032 and House Bill 2603 of the 82nd Regular Session of the Texas Legislature.

The Texas Legislature amended Chapter 56 of the Texas Utilities Code to add a new §56.032 which establishes methodologies for calculation of monthly support amounts from the plan. Eligible companies can elect the option listed in Public Utility Regulatory Act §56.032(c) by filing a written request prior to December 31, 2011. Companies that are not electing companies under Chapter 58 or 59 can elect the option in Public Utility Regulatory Act §56.032(d) by filing a written request at any time prior to the expiration of that section on September 1, 2013.

This docket creates an efficient mechanism to revise the monthly support amounts available to eligible small and rural incumbent local exchange companies from the plan. This proceeding gives guidance to Small ILECs regarding a consistent method for electing to make changes to their support amounts from the Plan, so that a single formula for each election can be used, a single docket can be used to process such elections, and consideration of such elections can be promptly processed. Commission Staff attached Sample Election Forms to the petition companies can use to make their filing.

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. 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. The deadline for comments is Thursday, September 1, 2011. All correspondence should refer to Docket Number 39643.

TRD-201103073
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 10, 2011



Public Notice of Workshop on the Factors Affecting Pricing During Reliability Deployments by ERCOT

The Public Utility Commission of Texas (commission) will hold a workshop to discuss the factors that may affect ERCOT market resource and reserve adequacy pricing, on Monday, August 22, 2011, at 1:30 p.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 37897 has been established for this proceeding. This workshop is part of a series of workshops on reserve adequacy and shortage pricing. Prior to the workshop, the commission requests interested persons file comments to the following questions:

1. Please provide proposals to address non-spinning reserve deployment procedures and describe in detail the market incentives that are derived from your proposal.
2. How does your proposal enable the most competitive and efficient prices when non-spinning reserves are deployed?

Responses may be filed by submitting 16 copies to the Commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by Thursday, August 18, 2011. All responses should reference Project Number 37897. This notice is not a formal notice of proposed rulemaking; however, the parties' responses to the questions and comments at the workshop will assist the commission in developing a commission policy or determining the necessity for a related rulemaking.

Five days prior to the workshop the commission shall make available in Central Records under Project Number 37897 an agenda for the format of the workshop.

Questions concerning Project Number 37897 or this notice should be referred to Doug Whitworth, Competitive Markets Division, (512) 936-7368, or Jason Haas, Legal Division, (512) 936-7295. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201102977

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 4, 2011



Request for Proposals for a Report on Extreme Weather Preparedness

RFP No. 473-11-00314

The Public Utility Commission of Texas (PUCT or commission) is issuing a Request for Proposals (RFP) for a person or entity to provide a report on extreme weather preparedness best practices. The contractor will: (1) examine the widespread generation outages in Texas associated with frigid weather conditions in early February of 2011; (2) examine best practices for winter and summer extreme weather preparedness processes for electric generation facilities; and (3) prepare a Summer and Winter Preparedness report to the Texas Legislature, as required by Senate Bill 1133, which can be found at <http://www.legis.state.tx.us/BillLookup/Text.aspx?LegSess=82R&Bill=SB1133>. The PUCT will submit the Summer report to the lieutenant governor, the speaker of the house of representatives, and members of the legislature no later than Thursday, March 1, 2012 and the Winter report no later than Saturday, September 1, 2012.

In addition, the contractor will examine the power outages caused by electric facility contamination as it applies to salt, sand, ash and other airborne contaminants along the Texas coast and throughout the

state and will develop and report on the best practices for generators, transmission, and distribution providers to proactively protect facilities against these contaminants.

The contractor's report will include recommendations identifying the programs (separately or in combination) that will provide the maximum benefit per cost expended on both a statewide and Gulf Coast region basis. The contractor regularly will discuss the report's contents, methodology, results, or recommendations with PUC staff. The contractor may discuss similar issues with the PUC Commissioners during two open meetings and two PUC workshops.

RFP documentation may be obtained by contacting:

Purchaser
Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711-3326
(512) 936-7069

purchasing@puc.state.tx.us

RFP documentation is also located on the PUCT website at <http://www.puc.state.tx.us/agency/about/procurement/Default.aspx>.

Deadline for proposal submission is 5:00 p.m. on Thursday, September 8, 2011.

TRD-201103038
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2011



Texas Department of Transportation

Public Notice - Disadvantaged Business Enterprise Goals Fiscal Year 2012

In accordance with Title 49, Code of Federal Regulations, Part 26, recipients of federal-aid funds authorized by the Transportation Equity Act for the 21st Century (TEA 21) are required to establish Disadvantaged Business Enterprise (DBE) programs. Section 26.45 requires the recipients of federal funds, including the Texas Department of Transportation (department), to set overall goals for DBE participation in U.S. Department of Transportation assisted contracts. As part of this goal-setting process, the department is publishing this notice to inform the public of the proposed overall goals, and to provide instructions on how to obtain copies of documents explaining the rationale for each goal.

The proposed Fiscal Year 2012 DBE goals are 11.7% for aviation design and construction, and 1.62% for public transportation. The proposed goals and goal-setting methodology for each is available for inspection between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, for 30 days following the date of this notice. The information may be viewed in the office of the Texas Department of Transportation, Office of Civil Rights, 200 East Riverside Drive, Austin, Texas 78704.

The department will accept comments on the DBE goals until 5:00 p.m. on October 3, 2011. Comments can be sent to Eli Lopez, Office of Civil Rights, 125 East 11th St., Austin, Texas 78701; (512) 486-5511; fax: (512) 486-5509; email: eli.lopez@txdot.gov.

TRD-201102998

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 5, 2011

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Texas Water Development Board

Applications for August, 2011

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #73621, a request from the Harris County Municipal Utility District No. 33, 1001 McKinney, Suite 1000, Houston, Texas 77002, received April 26, 2011, for a loan in the amount of \$2,195,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73613, a request from the San Antonio Water System, acting on behalf of the City of San Antonio, P.O. Box 2449, San Antonio, Texas 78298-2449, received April 21, 2011, for a loan in the amount of \$19,630,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #73610, a request from the San Patricio Municipal Water District, P.O. Box 940, Ingleside, Texas 78368, received February 11, 2011, for a loan in the amount of \$11,615,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

Project ID #10422, a request from the City of Iola, P.O. Box 84, Iola, Texas 77861, received September 23, 2010, for a grant in the amount of \$235,000 from the Economically Distressed Areas Program for the planning costs to provide first time wastewater service, utilizing the pre-design funding option.

Project ID #10417, a request from the City of Silverton, 409 Broadway Street, Silverton, Texas 79257, received June 11, 2010, for a grant in the amount of \$1,735,000 from the Economically Distressed Areas Program for the planning, acquisition and design costs for water system improvements, utilizing the pre-design funding option.

Project ID #10420, a request from the City of Tahoka, P.O. Box 300, Tahoka, Texas 79473, received July, 2010, for a grant in the amount of \$239,000 from the Economically Distressed Areas Program for the planning and design costs for water system improvements, utilizing the pre-design funding option.

Project ID #10402, a request from the Zavala County Water Control and Improvement District No. 1, P.O. Box 358, La Pryor, Texas 78872, received January 13, 2009, for financial assistance in the amount of \$1,326,000, consisting of a \$193,000 loan and a \$1,133,000 grant, from the Economically Distressed Areas Program for the construction of water system improvements, utilizing the pre-design funding option.

Project ID #21707, a request from the City of Hawkins, P.O. Box 329, received May, 2011, for a loan in the amount of \$3,720,000 from the Texas Water Development Fund to finance wastewater system improvements, utilizing the pre-design funding option.

TRD-201103072
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: August 10, 2011

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Workforce Solutions Brazos Valley Board

Request for Quotes

The Workforce Solutions Brazos Valley Board (WSBVB) is soliciting quotes for an independent Planner to provide workforce services through competitive Request for Quotes (RFQ) process in the following counties: Brazos, Grimes, Washington, Burleson, Robertson, Madison, and Leon. The Request for Planner RFQ can be downloaded at: www.bvjobs.org or by request to V. Morrison, (979) 595-2800, extension 2138; by email at vmorrison@bvcog.org; or in writing to P.O. Box 4128, Bryan, Texas 77805, Attention: Request for Planner RFQ.

The purpose of the RFQ is to solicit proposals for an independent Planner to manage competitive procurements for WSBVB services for Workforce programs; provide contract administrative consultation and assist with the integrated plan.

The primary consideration in selecting a Planner within the workforce development area shall be the effectiveness of the individual or organization in delivering comparable or related procurement services, planning and contract administration consultation services based on demonstrated past performance.

The Planner, in executing this procurement, will use the Brazos Valley Council of Government/WSBVB developed procurement policies and procedures, and adhere to the Texas Workforce Commission's (TWC) Contract Administration Manual; the TWC's Financial Management Manual for Grants and Contracts; the Texas Administrative Code Title 40, Part 20, Chapter 809; the final regulations (9-294); and regulations pertaining to programs under House Bill 1863.

The deadline for proposals is 4:00 p.m. CST on Tuesday, September 13, 2011. Please submit proposals to:

Workforce Solutions Brazos Valley Board

Attn: V. Morrison

P.O. Box 4128

Bryan, Texas 77805

Bidders will have the opportunity to ask questions during the bidder's conference. The bidder's conference will be held **Wednesday, August 24, 2011 at 2:00 p.m., the call in number for the conference call is (979) 595-2802**. Proposers may attend the bidder's conference call at the Center for Regional Services, 3991 East 29th Street, Bryan, Texas 77802.

Deadline for Questions: Bidders can submit questions to V. Morrison by **noon August 22, 2011** by email at vmorrison@bvcog.org or mailed to the listed address. These questions will be answered during the bidder's conference. Attendance at the bidder's conference is not mandatory. All questions and answers will be posted at www.bvjobs.org by August 29, 2011.

TRD-201103036
Tom Wilkinson
Executive Director
Workforce Solutions Brazos Valley Board
Filed: August 8, 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)